

1 Papetti Samuels Weiss McKirgan LLP
2 Bruce Samuels (State Bar No. 015996)
3 bsamuels@pswmlaw.com
4 Jennifer Lee-Cota (State Bar No. 033190)
5 jleecota@pswmlaw.com
6 Scottsdale Quarter
7 15169 North Scottsdale Road
8 Suite 205
9 Scottsdale, AZ 85254
10 +1 480 800 3530

11 Wilmer Cutler Pickering Hale and Dorr LLP
12 Seth P. Waxman, (*pro hac vice*)
13 seth.waxman@wilmerhale.com
14 Daniel S. Volchok, (*pro hac vice*)
15 daniel.volchok@wilmerhale.com
16 Christopher E. Babbitt (*pro hac vice*)
17 christopher.babbitt@wilmerhale.com
18 Edward Williams (*pro hac vice*)
19 ed.williams@wilmerhale.com
20 Susan M. Pelletier (*pro hac vice*)
21 susan.pelletier@wilmerhale.com
22 1875 Pennsylvania Avenue N.W.
23 Washington, D.C. 20006
24 +1 202 663 6000 (telephone)
25 +1 202 663 6363 (facsimile)

26 *Attorneys for the Democratic National*
27 *Committee and Arizona Democratic Party*

28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,

Plaintiffs,

v.

Katie Hobbs, in her official capacity as Arizona
Secretary of State, et al.

Defendants.

Case No. 22-00509-PHX-SRB

**DEMOCRATIC NATIONAL
COMMITTEE-ARIZONA
DEMOCRATIC PARTY
OPPOSITION TO STATE'S
MOTION TO DISMISS**

1
2 Living United for Change in Arizona, et al.,

3 Plaintiffs,

4 v.

5 Katie Hobbs

6 Defendant,

7 and

8 State of Arizona, et al.,

9 Intervenor-Defendants.

10
11 Poder Latinx,

12 Plaintiff,

13 v.

14 Katie Hobbs, et al.,

15 Defendants.

16
17 United States of America,

18 Plaintiff,

19 v.

20 State of Arizona, et al.,

21 Defendants.

22
23 Democratic National Committee, et al.,

24 Plaintiffs,

25 v.

26
27 Katie Hobbs, in her official capacity as Arizona
28 Secretary of State, et al.,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendants,
and
Republican National Committee,
Intervenor-Defendant.

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

TABLE OF AUTHORITIES ii

GLOSSARY v

ARGUMENT 1

I. PLAINTIFFS HAVE STANDING 1

 A. Representational Standing 1

 B. Organizational Standing 2

 C. Traceability And Redressability 3

II. H.B. 2492 VIOLATES THE NVRA..... 4

 A. The NVRA Constitutionally Applies To Presidential Elections 4

 B. The State Offers No Specific Argument On Several NVRA Claims 8

 C. The State’s Arguments As To Plaintiffs’ NVRA Section 8 Claims Fail..... 9

CONCLUSION..... 10

CERTIFICATE OF SERVICE 11

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

Page(s)

CASES

1

2

3

4 *ACORN v. Edgar*, 56 F.3d 791 (7th Cir. 1995)..... 6

5 *ACORN v. Miller*, 129 F.3d 833 (6th Cir. 1997)..... 6

6 *Arizona Libertarian Party, Inc. v. Bayless*, 351 F.3d 1277 (9th Cir. 2003) 3

7 *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013)..... 9

8 *Bowsher v. Synar*, 478 U.S. 714 (1986)..... 1

9 *Burroughs v. United States*, 290 U.S. 534 (1934) 5, 7

10 *Condon v. Reno*, 913 F.Supp. 946 (D.S.C. 1995)..... 8

11 *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) 1

12 *Friends of the Earth, Inc. v. Laidlaw Environmental (TOC) Services, Inc.*, 528

13 U.S. 167 (2000) 2

14 *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)..... 1

15 *In re Coy*, 127 U.S. 731 (1888)..... 6

16 *In re Debs*, 158 U.S. 564 (1895)..... 1

17 *Jacobson v. Florida Secretary of State*, 974 F.3d 1236 (11th Cir. 2020)..... 4

18 *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018) 10

19 *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) 3

20 *M’Culloch v. State*, 17 U.S. 316 (1819)..... 7

21 *Mecinas v. Hobbs*, 30 F.4th 890 (9th Cir. 2022)..... 2, 3, 4

22 *National Council of La Raza v. Cegavske*, 800 F.3d 1032 (9th Cir. 2015) 2, 3

23 *Oregon v. Mitchell*, 400 U.S. 112 (1970) 5, 6

24 *Project Vote v. Blackwell*, 455 F.Supp.2d 694 (N.D. Ohio 2006)..... 10

25 *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004) 2

26 *Smiley v. Holm*, 285 U.S. 355 (1932) 6

27

28

1 *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) 8
 2 *United States v. Comstock*, 560 U.S. 126 (2010)..... 7
 3 *United States v. Florida*, 870 F.Supp.2d 1346 (N.D. Fla. 2012) 10
 4 *Voting Rights Coalition v. Wilson*, 60 F.3d 1411 (9th Cir. 1995) 6
 5 *Yellowstone County v. Pease*, 96 F.3d 1169 (9th Cir. 1996) 4

CONSTITUTIONAL AND STATUTORY PROVISIONS

7 U.S. Const.
 8 art. I, §8, cl. 18..... 7
 9 art. I, §4..... 6
 10 art. II, §1, cl. 4 7
 11 art. II, §1, cl. 3 7
 12 2 U.S.C. §7..... 6
 13 3 U.S.C. §1 6
 14 52 U.S.C.
 15 §20501 8
 16 §20502 5
 17 §20504 8, 9
 18 §20505 1, 5, 8
 19 §20507 5, 9, 10
 20 §20508 9
 21 §20509 3
 22 §30101 5
 23 Arizona House Bill 2492..... *passim*
 24 Arizona Revised Statutes
 25 §16-142..... 3
 26 §16-452..... 4
 27 Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314
 28 (1970) 7

OTHER AUTHORITIES

26 Corasanitti, Nick, *Arizona Passes Proof-of-Citizenship Law for Voting in
 Presidential Elections*, N.Y. Times (Mar. 3, 2022),
 27 [https://www.nytimes.com/2022/03/31/us/politics/arizona-voting-bill-
 citizenship.html](https://www.nytimes.com/2022/03/31/us/politics/arizona-voting-bill-citizenship.html) 2

1 Duda, Jeremy, *Few voters use federal-only ballots*, AZMirror (Jan. 9, 2019),
2 <https://www.azmirror.com/blog/few-voters-use-federal-only-ballots> 3
3 Election Procedures Manual, Arizona Secretary of State (2021) 3
4 *The Federalist* No. 59 (C. Rossiter ed. 1961) 7
5 House Report, No. 103-9 (1993) 8
6 Karlan, Pamela S., *Section 5 Squared*, 44 Hous. L. Rev. 1 (2007) 6
7 Senate Report, No. 103-6 (1993) 8
8 Stephanopoulos, Nicholas O., *The Sweep of the Electoral Power*, 36 Const.
9 Comment. 1 (2021) 6, 7
10 Sweren-Becker, Eliza & Michael Waldman, *The Meaning, History, and*
11 *Importance of the Elections Clause*, 96 Wash. L. Rev. 997 (2021) 6, 7
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RETRIEVED FROM DEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GLOSSARY

DPOC: Documentary proof of citizenship

DPOR: Documentary proof of residence

H.B. 2492: House Bill 2492

NVRA: National Voter Registration Act

RETRIEVED FROM DEMOCRACYDOCKET.COM

1 The National Voter Registration Act requires states to “accept and use” a prescribed
 2 form to register voters for federal elections. 52 U.S.C. §20505. That form does not require
 3 an applicant to provide documentary proof of citizenship (DPOC) or residence (DPOR), but
 4 only to aver U.S. citizenship and residence under penalty of perjury. Yet Arizona’s recently
 5 enacted House Bill 2492 bars federal-form applicants who fail to provide DPOR from voting
 6 and those who fail to provide DPOC from voting in any federal election by mail and from
 7 voting in presidential elections at all unless state officials can verify an applicant’s citizen-
 8 ship using means that are poorly designed to do so. The NVRA preempts these provisions.

9 The State’s dismissal arguments fail. As explained herein, its standing arguments
 10 have been rejected, including in many challenges to voting restrictions brought by political
 11 parties and voting-rights organizations. And its claim that the NVRA does not apply to
 12 presidential elections—a claim that no court has accepted and that would create a tectonic
 13 shift in both voting-rights and constitutional law—gainsays the statutory text and decades of
 14 case law upholding congressional regulation of such elections. Regardless, H.B. 2492 (much
 15 of which the State scarcely defends) violates the NVRA even as to congressional elections.¹

16 ARGUMENT

17 I. PLAINTIFFS HAVE STANDING

18 If one consolidated plaintiff has standing on any claim, this Court need not consider
 19 others’ standing on that claim. *See Bowsher v. Synar*, 478 U.S. 714, 721 (1986); *Crawford v.*
 20 *Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (op. of Stevens, J.). The State does
 21 not dispute that the United States has standing on its NVRA and Civil Rights Act claims, and
 22 it assuredly does. *See In re Debs*, 158 U.S. 564, 584 (1895). For the remaining claims, it
 23 suffices for any other plaintiff to have either representational *or* organizational standing. *See*
 24 *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982). Plaintiffs have both.

25 A. Representational Standing

26 An organization may sue on behalf of members who could “sue in their own right” if
 27 “the interests at stake are germane to the organization’s purpose, and neither the claim
 28

¹ The DNC and ADP adopt the other plaintiffs’ pertinent arguments against dismissal.

1 asserted nor the relief requested requires the participation of individual members.” *Friends*
2 *of the Earth, Inc. v. Laidlaw Envtl. (TOC) Servs., Inc.*, 528 U.S. 167, 181 (2000). Under this
3 test, organizations can sue on behalf of members injured by a state’s voter-registration laws.
4 *Nat’l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

5 The State argues (MTD 9-10) that organizational plaintiffs must identify affected
6 members by name. The Ninth Circuit has rejected this argument, holding—after citing the
7 Supreme Court case the State relies on—that an organization need not name injured
8 members where the injury to members is clear and members’ specific identity is not relevant
9 to the defendant’s ability to understand or respond. *Nat’l Council*, 800 F.3d at 1041. And
10 courts routinely hold that political parties and civic-membership organizations can represent
11 members in voting-rights cases without naming specific affected members. *Id.*; *Sandusky*
12 *Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573-574 (6th Cir. 2004) (per curiam).

13 The DNC and ADP have identified (Compl. ¶15) the 1.3 million registered Democrats
14 in Arizona as members. Those include some of the roughly 35,000 voters in Arizona who
15 registered without DPOC. Corasaniti, *Arizona Passes Proof-of-Citizenship Law for Voting*
16 *in Presidential Elections*, N.Y. Times (Mar. 3, 2022), [https://www.nytimes.com/2022/03/31/](https://www.nytimes.com/2022/03/31/us/politics/arizona-voting-bill-citizenship.html)
17 [us/politics/arizona-voting-bill-citizenship.html](https://www.nytimes.com/2022/03/31/us/politics/arizona-voting-bill-citizenship.html). It is thus “relatively clear, rather than
18 speculative,” *Nat’l Council*, 800 F.3d at 1041, that under H.B. 2492, DNC-ADP members
19 will be barred from voting by mail and in presidential elections, and subject to investigation
20 and removal from the rolls. These members would have standing to sue. Democratic voters’
21 rights are also germane to the DNC’s and ADP’s mission to elect Democratic candidates and
22 to ensure all eligible voters can vote, including by mail. Compl. ¶14. Finally, the State does
23 not argue that either the claims asserted or the relief requested requires individual members
24 to participate here. Hence, under *National Council*, plaintiffs have representational standing.

25 **B. Organizational Standing**

26 Organizations have standing in their own right if a challenged law will require them to
27 divert resources from other efforts, *Nat’l Council*, 800 F.3d at 1040-1041, or harm their
28 electoral prospects, *Mecinas v. Hobbs*, 30 F.4th 890, 897-898 & n.3 (9th Cir. 2022). A

1 diversion-of-resources injury occurs if an organization must spend additional resources to
2 achieve its mission. *See Nat'l Council*, 800 F.3d at 1040-1041. And such an injury suffices
3 “to establish organizational standing at the pleading stage, even when it is ‘broadly alleged.’”
4 *Id.* at 1040. Separately, the Ninth Circuit has recognized political parties’ “competitive
5 standing ... to sue ‘to prevent their opponent from gaining an unfair advantage in the
6 election process.’” *Mecinas*, 30 F.4th at 897-898 & n.3.

7 The DNC and ADP have standing under either approach. They allege (Compl. ¶16)
8 that H.B. 2492 will require them to divert resources from “voter-outreach and mobilization
9 efforts” toward education, to ensure “voters are not erroneously removed from the voter
10 rolls.” They also allege (*id.*) that H.B. 2492 “undermin[es their] ability to succeed in having
11 Democrats elected,” especially given that many federal-only voters are registered Democrats.
12 *See Duda, Few voters use federal-only ballots*, AZMirror (Jan. 9, 2019),
13 <https://www.azmirror.com/blog/few-voters-use-federal-only-ballots>. That is sufficient.

14 C. Traceability And Redressability

15 Traceability requires “a causal connection between the injury and the ... challenged
16 action.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). And “[r]edressability is
17 satisfied so long as the requested remedy would ... significant[ly] increase ... the likelihood
18 that the plaintiff would obtain relief that directly redresses the injury.” *Mecinas*, 30 F.4th at
19 900. These requirements are met here by virtue of the secretary’s authority, including over
20 county officials. The Ninth Circuit has twice “held that a challenged Arizona election law
21 was traceable to” and redressable by an order against the secretary, “relying on [her] role in
22 promulgating rules ... for ... statewide elections.” *Id.*; *see Ariz. Libertarian Party, Inc. v.*
23 *Bayless*, 351 F.3d 1277, 1281 (9th Cir. 2003) (per curiam). The same is true here because
24 the secretary is “responsible for coordination of State responsibilities” related to registration
25 under the NVRA, 52 U.S.C. §20509; *see* A.R.S. §16-142. And in fact, she has issued
26 comprehensive guidance to county officials on voter registration as part of the Election
27 Procedures Manual. *See* Election Procedures Manual, Arizona Secretary of State (2021).
28 An order that she conform that guidance to federal law would remedy plaintiffs’ injuries.

1 The State’s response—that voter registration is not a proper subject for the secretary’s
 2 Election Procedure Manual (MTD 11)—does not defeat traceability or redressability. The
 3 secretary “prescribe[s] rules ... on the procedures for early voting and voting, ... producing,
 4 distributing, collecting, counting, tabulating and storing ballots.” A.R.S. §16-452. This
 5 Court could thus redress the H.B. 2492 injuries by directing her to issue rules under this
 6 authority permitting federal-only voters to vote by mail and in presidential elections even if
 7 they do not provide DPOC, and requiring that those votes be counted. Such rules would
 8 redress the injuries because “the counties would have no choice but to follow a mandate
 9 from” the secretary, *Mecinas*, 30 F.4th at 900. In addition, H.B. 2492 directs the secretary to
 10 take specific actions plaintiffs challenge (*see* DNC Compl. ¶2), including referring
 11 individuals and providing information to the attorney general for investigation, H.B. 2492
 12 §7(A), and providing database access to the attorney general, *id.* §7(C). An order preventing
 13 those actions would redress injuries arising from them. Similarly, certain H.B. 2492 injuries
 14 are traceable to the attorney general, specifically investigations and prosecutions he conducts
 15 under the law. An order enjoining those actions would redress those injuries.

16 Finally, the county officials that the State says (MTD 11-12) must be joined to
 17 establish redressability *are* parties in the consolidated action. They will thus be named in
 18 any injunction, ensuring redress. By contrast, in the State’s cited authority, *Jacobson v. Fla.*
 19 *Sec’y of State*, 974 F.3d 1236 (11th Cir. 2020), county officials had *not* been joined and
 20 hence would not have been named in an injunction.²

21 **II. H.B. 2492 VIOLATES THE NVRA**

22 **A. The NVRA Constitutionally Applies To Presidential Elections**

23 The State argues (MTD 22-23) that the NVRA cannot constitutionally apply to

24 _____
 25 ² Citing nothing, the State makes a one-sentence argument (MTD 12) that county recorders
 26 are required parties here. But even putting aside that they all *are* parties to the consolidated
 27 action, Federal Rule of Civil Procedure 19 requires joining an entity only if (1) complete
 28 relief is otherwise not possible or (2) the absent party claims a legally protected interest in
 the action. *Yellowstone Cnty. v. Pease*, 96 F.3d 1169, 1172 (9th Cir. 1996). Neither is true
 here of county recorders: This Court can declare H.B. 2492 unlawful, affording complete
 relief to plaintiffs, without joining the recorders in each consolidated case. *See supra* pp.3-4.
 And the recorders have not asserted any protected interest.

1 presidential elections, and that this Court therefore should read the law to apply only to
2 congressional elections. Even if that argument had merit, H.B. 2492 would still be
3 preempted as to congressional elections. The State claims (MTD 22, 24) that H.B. 2492
4 does not apply to those elections, but that is plainly wrong. The law excludes federal-form
5 voters who do not provide DPOC from voting “by mail ... in *any* election,” §4(E) (emphasis
6 added). Permitting voters who provide DPOC to vote by mail in congressional elections
7 while requiring others to vote in person violates NVRA section 6’s requirement that states
8 “accept” the federal form, 52 U.S.C. §20505(a)(1), and section 8’s requirement that the
9 state’s registration regime “be uniform [and] non-discriminatory,” *id.* §20507(b)(1). So does
10 treating federal-form applications not accompanied by DPOR as entirely invalid, H.B. 2492
11 §4(A), §5, and subjecting only federal-form voters to investigation, H.B. 2492 §7.

12 That aside, the State is wrong about both the NVRA’s reach and its constitutionality.
13 The law reaches both congressional and presidential elections, 52 U.S.C. §20502(2); *id.*
14 §30101(3). And that is constitutional: As explained in the paragraphs that follow, courts—
15 including the Supreme Court and the Ninth Circuit—have upheld Congress’s authority to
16 enact legislation related to the administration of federal elections (both congressional and
17 presidential). Those decisions reflect that the Elections Clause, the Electors Clauses, the
18 Necessary and Proper Clause, and the Fourteenth and Fifteenth Amendments collectively
19 give Congress expansive authority to ensure that elections for federal office (including the
20 presidency) are conducted smoothly and fairly, and that all qualified Americans can register
21 and vote for the highest official in the land. The Fourteenth and Fifteenth Amendments also
22 give Congress authority to prevent discrimination, including in voting for president.

23 In *Burroughs v. United States*, 290 U.S. 534 (1934), the Supreme Court held that
24 “Congress, undoubtedly, possesses” the “power to pass ... legislation to safeguard [a
25 presidential] election ... from impairment,” rejecting an argument (much like the State’s)
26 that Congress cannot regulate presidential elections, *id.* at 545. And in *Oregon v. Mitchell*,
27 400 U.S. 112 (1970), the Court upheld a law lowering the voting age for *all* federal elections
28 and limiting registration and absentee-voting deadlines for presidential elections, *see id.* at

1 124 (Black, J. op.); *id.* at 141-144 (Douglas, J. op.); *id.* at 238 (Brennan, J. op.). Justice
2 Black explained that “it is the prerogative of Congress to oversee the conduct of presidential
3 and vice-presidential elections and to set the qualifications for voters for electors for those
4 offices” and therefore “[i]t cannot be seriously contended that Congress has less power over
5 the conduct of presidential elections than it has over congressional elections.” *Id.* at 124.

6 Relying on these decisions, the Ninth Circuit rejected a challenge to the NVRA’s
7 constitutionality, explaining that “[t]he broad power given to Congress over congressional
8 elections has been extended to presidential elections.” *Voting Rights Coal. v. Wilson*, 60
9 F.3d 1411, 1414 (9th Cir. 1995); *accord ACORN v. Miller*, 129 F.3d 833, 836 n.1 (6th Cir.
10 1997); *ACORN v. Edgar*, 56 F.3d 791, 793 (7th Cir. 1995). Indeed, the Elections Clause
11 itself gives Congress vast authority to regulate federal elections. “[T]he history of the Clause
12 ... tells a clear story” that “[i]t was understood from the start to give Congress extraordinary
13 power over federal elections.” Sweren-Becker & Waldman, *The Meaning, History, and*
14 *Importance of the Elections Clause*, 96 Wash. L. Rev. 997, 1001-1002 (2021). This history
15 supports courts’ longstanding view that the Clause is “comprehensive,” and “embrace[s]
16 authority to ... to enact the numerous requirements ... necessary in order to enforce the
17 fundamental rights involved.” *Smiley v. Holm*, 285 U.S. 355, 366 (1932). And because
18 presidential and congressional elections are held simultaneously, 2 U.S.C. §7; 3 U.S.C. §1,
19 applying the NVRA to presidential elections is a necessary and proper way to regulate the
20 “manner” of congressional elections, U.S. Const., art. I, §4, to avoid chaos from the
21 proliferation of conflicting regimes for voting in such elections—not just within any one
22 state, but nationwide. *See generally* Stephanopoulos, *The Sweep of the Electoral Power*, 36
23 Const. Comment. 1, 53-55 & nn.308, 310 (2021). The Elections Clause, in fact, “has long
24 been interpreted to give Congress power over so-called ‘mixed elections’—that is, to permit
25 Congress to regulate all aspects of an election ... used even in part to select members of
26 Congress.” Karlan, *Section 5 Squared*, 44 Hous. L. Rev. 1, 17 (2007); *see, e.g., In re Coy*,
27 127 U.S. 731, 751-752 (1888). Congress thus has the authority to ensure that states do not
28 concoct cumbersome or error-prone systems that could interfere with elections for federal

1 office, including the presidency. *See* Sweren-Becker & Waldman, *supra*, at 1029-1033.³

2 Regulating registration for presidential elections is also a “necessary and proper”
3 exercise, U.S. Const. art. I, §8, cl. 18, of Congress’ authority to “determine the Time of
4 ch[oo]sing” the presidential electors, *id.* art. II, §1, cl. 4, and to “count” those electors’ votes,
5 *id.* cl. 3. As noted, Congress has exercised this authority to mandate simultaneous
6 presidential and congressional elections. But that authority goes beyond timing, to
7 encompass steps necessary and proper to ensure that the selection process is “beneficial[ly]”
8 carried out, *M’Culloch v. State*, 17 U.S. 316, 409 (1819). Congress’ determination that one
9 voter-registration process should apply to all federal elections is plainly a “means that is
10 rationally related to the implementation of” Congress’ power under the Electors Clause,
11 *United States v. Comstock*, 560 U.S. 126, 134 (2010). The State offers no argument why
12 setting minimum registration requirements across all federal elections would not be
13 “convenient,” “useful” or “conducive” to the exercise of Congress’s authority to set the time
14 for choosing electors—which is all that is required under Supreme Court precedent to bring
15 it within the scope of the Necessary and Proper Clause, *id.* at 133-134.

16 Moreover, Congress’ power over presidential elections is properly exercised to
17 “preserve the departments and institutions of the general government,” including the
18 presidency, “from impairment.” *Burroughs*, 290 U.S. at 545. The Founders recognized that
19 “every government ought to contain in itself the means of its own preservation.” *The*
20 *Federalist* No. 59, p.362 (C. Rossiter ed. 1961). Ensuring that voters can easily register and
21 vote, and preventing states from using voter-registration requirements to disenfranchise
22 people, are appropriate means of preserving the democratic process and ensuring that the
23 presidential-selection process is not impaired. Recognizing this, “courts have construed the
24 Electors Clause coextensively with the Elections Clause, holding that the former endows
25 Congress with the same authority over presidential elections that the latter grants it over
26 congressional races.” Stephanopoulos, *supra*, pp.54-55; *see also supra* pp.5-6.

27 _____
28 ³ The State’s argument also conflicts with decades of the NVRA applying to presidential
elections, and of Congress regulating such elections, *see* Voting Rights Act Amendments of
1970, Pub. L. No. 91-285, §§301-305, 84 Stat. 314, 318-319 (1970).

1 Finally, the Fourteenth and Fifteenth Amendments further expand Congress’s power
2 over presidential elections, and the NVRA (including as applied to presidential elections) is a
3 valid exercise of that power because “Congress may use any rational means to effectuate the
4 constitutional prohibition of racial discrimination in voting,” *South Carolina v. Katzenbach*,
5 383 U.S. 301, 324 (1966). Contrary to the State’s claim (MTD 23 n.7), “the legislative
6 history and the text ... are clear” that Congress relied on that power to enact the NVRA.
7 *Condon v. Reno*, 913 F.Supp. 946, 962 (D.S.C. 1995). Indeed, the law explicitly states that
8 “discriminatory and unfair registration laws and procedures ... disproportionately harm voter
9 participation by various groups, including racial minorities.” 52 U.S.C. §20501(a)(3); *see*
10 *also* H.Rep. No. 103-9, at 3 (1993) (NVRA was necessary to complete the work of the
11 Voting Rights Act); S.Rep. No. 103-6, at 3 (1993) (same). The NVRA was a “rational
12 means,” *Katzenbach*, 383 U.S. at 324, of preventing such harm, which can obviously occur
13 with presidential elections as well as other federal elections.

14 **B. The State Offers No Specific Argument On Several NVRA Claims**

15 The State boldly proclaims (MTD 24) that “All Plaintiffs’ NVRA Claims Fail as a
16 Matter of Law.” But it then makes no specific argument for dismissal as to several of
17 plaintiffs’ core claims about how H.B. 2492 violates, and thus is preempted by, the NVRA.
18 Arguments for dismissal of those claims cannot be first made in reply; they are waived.

19 For example, the State makes no specific argument on plaintiffs’ claim (e.g., DNC
20 Compl. ¶¶69-72) that sections 4 and 5 of H.B. 2492 violate NVRA section 6, which requires
21 Arizona to register for *all* federal elections any qualified elector who timely submits the
22 federal form. 52 U.S.C. §20505(a)(1). Nor does the State specifically address plaintiffs’
23 claim (e.g., DNC Compl. ¶¶79-83) that H.B. 2492’s DPOC requirement violates NVRA
24 section 5, which provides that voter-registration applications included with driver’s license
25 applications “may require only the minimum amount of information necessary to ... enable
26 State ... officials to assess ... eligibility ... and to administer voter registration,” 52 U.S.C.
27 §20504(c)(2)(B)(i)-(ii). Requiring DPOC violates this provision because the NVRA makes
28 clear that all that is “necessary” to assess citizenship is “an attestation” signed under penalty

1 of perjury. *Id.* §20508(b)(1); *see also id.* §20504(c)(2)(C)(i)-(iii) (requiring voter-
 2 registration applications accompanying state driver’s license applications to include that
 3 same information). Because these provisions violate the NVRA, they are preempted. *See*
 4 *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 20 (2013). And again, as to these
 5 claims, the State relies entirely on the argument that the NVRA does not and cannot reach
 6 presidential elections. For purposes of the motion to dismiss, any other argument is waived.

7 The State tries to obscure its failure to address these claims by rebutting straw men,
 8 pointing to various complaints’ *recitations* of certain NVRA mandates and pretending those
 9 are plaintiffs’ *claims*. For example, the State says (MTD 24) that “Plaintiffs argue the
 10 NVRA requires registration at motor vehicle ... and other ... agencies.” The NVRA does
 11 require that, and the State does not say otherwise. But none of the complaints here claims
 12 that H.B. 2492 violates the NVRA because it prohibits all registrations at these agencies, as
 13 the State suggests. The State cannot obtain dismissal of the NVRA claims plaintiffs *have*
 14 made by ignoring them and instead attacking claims plaintiffs *have not* made.

15 C. The State’s Arguments As To Plaintiffs’ NVRA Section 8 Claims Fail

16 The State briefly addresses plaintiffs’ two claims that H.B. 2492 is inconsistent with
 17 (and thus preempted by) section 8 of the NVRA. Its arguments fail as to each claim.

18 1. Plaintiffs’ first section 8 claim (e.g., DNC Compl. ¶¶73-78) is that H.B. 2492
 19 violates section 8’s uniformity provision, 52 U.S.C. §20507(b)(1), by treating federal-form
 20 voters who do not provide DPOC and/or DPOR differently than other voters—excluding
 21 only the former from voting by mail or in presidential elections (or in the context of DPOR,
 22 from all elections) and (in the context of DPOC) subjecting only them to investigation and
 23 possible prosecution and removal from the rolls. The State argues (MTD 25) that this claim
 24 fails as a matter of law because “requiring proof of citizenship as a condition for registration
 25 or voting by mail is not discriminatory.” That is another straw man. The discrimination is
 26 not “requiring proof of citizenship.” It is treating those who adequately proved their
 27 citizenship via the attestation under penalty of perjury that federal law says is sufficient
 28 differently than those who did so via DPOC. The State says not one word in defense of *that*

1 discrimination and non-uniformity. It likewise does not respond to other plaintiffs' claims
 2 (LUCHA FAC ¶¶361; Poder Latinx Compl. ¶¶148-150) that the DPOC requirement
 3 discriminates against naturalized citizens, who are more likely to be removed from voter
 4 rolls based on the Act's problematic citizenship investigations, *see United States v. Florida*,
 5 870 F.Supp.2d 1346, 1350 (N.D. Fla. 2012). A law violates the uniformity requirement "by
 6 erecting barriers—only for a selected class of persons—that previously did not exist."
 7 *Project Vote v. Blackwell*, 455 F.Supp.2d 694, 703 (N.D. Ohio 2006). Laws are "neither
 8 uniform nor non-discriminatory" when, as is true of the bar on presidential and mail voting
 9 and the investigations, "they do not apply to everyone involved in the process." *Id.*⁴

10 2. Plaintiffs' second section 8 claim (e.g., DNC Compl. ¶¶84-86) is that because
 11 H.B. 2492 imposes no timing limit on its directive to de-register voters whose citizenship is
 12 not verified, it violates section 8's bar on "any program ... to systematically remove ...
 13 ineligible voters from the" rolls within "90 days" of a federal election. 52 U.S.C.
 14 §20507(c)(2)(A). Citing no authority, the State responds (MTD 24) that "nothing in the Act
 15 provides for removal of voters from the rolls immediately before an election." In fact, H.B.
 16 2492 section 8 does *exactly* that, providing that any voter "shall" be removed from the rolls
 17 if officials confirm that the voter is not a U.S. citizen. Nothing in the statute limits that
 18 mandate temporally (nor does the State suggest otherwise). H.B. 2492 thus establishes a
 19 "program ... to systematically remove ... ineligible voters from the" rolls within "90 days"
 20 of a federal election, 52 U.S.C. §20507(c)(2)(A), which the NVRA prohibits. To the extent
 21 the State is asking the Court to read an implicit 90-day time limit into H.B. 2492, the Court
 22 cannot do so. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 842 (2018).

23 CONCLUSION

24 The State's motion to dismiss should be denied.

25
 26 ⁴ Yet another straw man is the State's argument (MTD 24) that "removal from the rolls of
 27 voters determined not [to] be citizens" is not discriminatory or non-uniform. Removal from
 28 the rolls of non-U.S. citizens is not what plaintiffs allege to be non-uniform or
 discriminatory. It is instead that H.B. 2492 subjects only *some* voters who proved their
 citizenship (i.e., those who did so via attestation, as federal law says suffices) to investigation
 and the possibility of erroneous removal from the rolls. On that, the State is (again) silent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted this 17th day of October, 2022.

PAPETTI SAMUELS WEISS MCKIRGAN LLP

/s/Bruce Samuels

Bruce Samuels

Jennifer Lee-Cota

WILMER CUTLER PICKERING

HALE AND DORR LLP

Seth P. Waxman (*pro hac vice*)

Daniel S. Volchok (*pro hac vice*)

Christopher E. Babbitt (*pro hac vice*)

Edward Williams (*pro hac vice*)

Susan M. Pelletier (*pro hac vice*)

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

On the 17th day of October, 2022, I caused the foregoing to be filed and served electronically via the Court's CM/ECF system upon counsel of record.

/s/ Bruce Samuels

Bruce Samuels