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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 Mi Familia Vota, et al.,
Plaintiffs,

17 v.

18 Katie Hobbs, et al.,
19 Defendants.

No. 2:22-cv-00509-SRB (Lead Case)
No. 2:22-cv-01124-SRB (Consolidated)

United States' Response to Motion to
Dismiss

20 Living United for Change in Arizona, et al.,
Plaintiffs,

21 v.
22

1 Katie Hobbs,
2 Defendant,
3 and
4 State of Arizona, et al.,
Intervenor-Defendants.

5 Poder Latinx, et al.,
6 Plaintiffs,
7 v.
8 Katie Hobbs, et al.
9 Defendants.

10 United States of America,
11 Plaintiff,
12 v.
13 State of Arizona, et al.,
14 Defendants.

15 Democratic National Committee, et al.
16 Plaintiffs,
17 v.
18 State of Arizona, et al.,
19 Defendants,
20 and
21 Republican National Committee,
22 Intervenor-Defendant.

INTRODUCTION

1
2 In 2013, the United States Supreme Court held that federal law barred Arizona
3 from requiring voter registration applicants using a uniform federal voter registration
4 form (“Federal Form”) to submit documentary proof of citizenship (“DPOC”). *Arizona*
5 *v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 20 (2013) (“*ITCA*”). Soon after, the
6 U.S. Election Administration Commission (“EAC”) confirmed that DPOC was not
7 necessary for states to determine whether someone is eligible to vote in federal elections
8 and declined to add the requirement to the Federal Form.

9 Defying that precedent and bedrock authority establishing Congress’s power to
10 regulate *all* federal elections, Arizona’s new election law—House Bill 2492 (“HB
11 2492”)—again requires some Federal Form registrants to provide DPOC to be able to
12 vote in presidential elections. It may not do so. The National Voter Registration Act of
13 1993 (“NVRA”) requires Arizona to permit voters to register to vote in all federal
14 elections, including those for president, when using the Federal Form without providing
15 DPOC. HB 2492 thus violates the NVRA. HB 2492 also violates the Civil Rights Act of
16 1964 (“CRA”) by requiring election officials to reject voter registration forms for simple
17 errors or omissions that are not material to establishing a voter’s qualifications.

18 The United States’ Complaint sufficiently alleges these NVRA and CRA
19 violations. The State’s motion to dismiss the United States’ Complaint should be denied.

FACTUAL BACKGROUND

20
21 Arizona HB 2492 is an omnibus election law that restricts eligible U.S. citizens’
22 ability to register and vote. HB 2492 goes into effect on January 1, 2023, and will impact

1 voters in the 2024 elections.

2 Section 4 of HB 2492 requires election officials to take specific steps to confirm
3 the citizenship status of applicants who use the Federal Form to register to vote in federal
4 elections, including comparing those applicants within certain databases. *See* Compl.
5 ¶ 36, *United States v. Arizona*, No. 2:22-cv-01124 (D. Ariz.), ECF No. 1. If officials are
6 unable to verify an applicant’s citizenship status, they must notify the applicant, who
7 must then provide DPOC. *Id.* ¶¶ 37-38. Applicants who fail to provide DPOC are denied
8 the right to vote in presidential elections. *Id.* ¶ 39. These applicants also cannot vote by
9 mail in congressional elections; their votes for U.S. Senate and House contests will only
10 count if they vote in person. *Id.*

11 Section 4 further requires applicants who have already provided DPOC in
12 registering to vote in either state or federal elections to also check “Yes” in response to a
13 question on the Arizona state registration form (“State Form”) regarding their citizenship
14 status. *Id.* ¶¶ 57-58. Forms without this mark must be rejected, even though the
15 applicant provided DPOC. *Id.* ¶¶ 57-58. Finally, Section 4 requires applicants using the
16 State Form to provide their birthplace, or their application will be rejected. *Id.* ¶¶ 49-50.

17 Section 5 of HB 2492 prohibits even those who have already registered to vote in
18 federal elections from voting in presidential elections or by mail if they have not
19 produced DPOC. *Id.* ¶ 40.

20 Following HB 2492’s enactment, the United States sued the State of Arizona and
21 its Secretary of State to enforce Section 6 of the NVRA and the “Materiality Provision”
22 codified in Section 101 of the CRA. The United States’ Complaint alleges that Sections

1 4 and 5 of HB 2492 violate the NVRA by requiring federal-only voter¹ registration
2 applicants to provide DPOC, which is more than what is necessary to prove their
3 eligibility to vote in presidential elections or by mail. *Id.* ¶¶ 62-65.

4 The Complaint further alleges that Sections 4 and 5 of HB 2492 violate the
5 Materiality Provision by requiring registration applications to be rejected on the basis of
6 omissions or errors not material to an applicant’s qualifications to vote. *Id.* ¶¶ 66-71. For
7 example, the Complaint alleges that HB 2492 requires a state registration application to
8 be rejected if the voter failed to state a birthplace or if the voter provided satisfactory
9 DPOC but did not check the “Yes” box affirming citizenship. *Id.* ¶¶ 67-68. The
10 Complaint also alleges that HB 2492 violates the Materiality Provision by requiring those
11 seeking to vote in presidential elections or by mail, or those already registered to vote in
12 such elections, to provide DPOC in addition to attesting to their citizenship. *Id.* ¶¶ 69-70.

13 The Secretary of State admits that “the challenged provisions of HB 2492” conflict
14 with the NVRA and that the birthplace and checkbox provisions conflict with the
15 Materiality Provision of the CRA. SOS Ans. ¶¶ 64, 67-68, ECF No. 122.

16 STATUTORY BACKGROUND

17 I. The National Voter Registration Act

18 Section 6 of the NVRA requires states to “accept and use” the Federal Form to
19 register voters for federal elections, 52 U.S.C. § 20505(a), including presidential
20

21 ¹ Those eligible to vote in both state and federal elections are referred to as “full-ballot
22 voters” and those eligible to vote in only federal elections are referred to as “federal-only
voters.”

1 elections, *id.* §§ 20502(2), 30101(3). The Federal Form specifies that an applicant must
2 be a citizen to vote in federal elections and requires applicants to attest to their citizenship
3 under penalty of perjury. *Id.* § 20508(b)(2).

4 The EAC develops the Federal Form and prescribes its contents in consultation
5 with the chief election officers of the states. *Id.* § 20508(a). The Federal Form contains
6 “only such identifying information (including the signature of the applicant) and other
7 information (including data relating to previous registration by the applicant), as is
8 necessary to enable the appropriate State election official to assess the eligibility of the
9 applicant and to administer voter registration and other parts of the election process.” *Id.*
10 § 20508(b)(1). The NVRA thus forbids states “from requiring a Federal Form applicant
11 to submit information beyond that required by the form itself,” including DPOC. *ITCA*,
12 570 U.S. at 20 (rejecting Arizona’s attempt to require Federal Form applicants to submit
13 DPOC to be registered in federal elections).

14 **II. The Materiality Provision of the Civil Rights Act**

15 The Materiality Provision prohibits states from denying “the right of any
16 individual to vote in any election because of an error or omission on any record or paper
17 relating to any application, registration, or other act requisite to voting, if such error or
18 omission is not material in determining whether such individual is qualified under State
19 law to vote in such election.” 52 U.S.C. § 10101(a)(2)(B). The Materiality Provision
20 specifically covers registration. *Id.* § 10101(e); *see also id.* § 10101(a)(3)(A).

21 **LEGAL STANDARD**

22 “To survive a motion to dismiss, a complaint must contain sufficient factual

1 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
 2 *Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). “[C]ourts must consider the complaint in
 3 its entirety, as well as other sources courts ordinarily examine when ruling on Rule
 4 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by
 5 reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor*
 6 *Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *see also In re Alphabet, Inc. Secs. Litig.*,
 7 1 F. 4th 687, 693-94 (9th Cir. 2021). A motion to dismiss must be denied so long as the
 8 “plaintiff pleads factual content that allows the court to draw the reasonable inference
 9 that the defendant is liable.” *Iqbal*, 556 U.S. at 678.

10 ARGUMENT

11 **I. The United States Has Stated a Claim That HB 2492 Violates Section 6 of the NVRA.**

12 HB 2492’s DPOC requirement conflicts with the NVRA’s requirement that
 13 Arizona “accept and use” the Federal Form, and therefore Arizona’s latest DPOC
 14 requirement is preempted. HB 2492’s DPOC requirement is not beyond the NVRA’s
 15 scope simply because it targets voters in presidential elections rather than congressional
 16 elections: An unbroken line of precedent confirms Congress’s power to regulate *all*
 17 federal elections, including those for president. *See infra* Part I.B.

18 **A. HB 2492’s DPOC Requirement for Federal-Only Voters Violates Section 6 of the NVRA.**

19
 20 HB 2492 violates the NVRA because it requires federal-only voter applicants to
 21 provide more than is necessary—in this case, DPOC—to prove their eligibility to vote in
 22 presidential elections. *ITCA* bars that. 570 U.S. at 20 (holding that the NVRA

1 “precludes Arizona from requiring a Federal Form applicant to submit information
2 beyond that required by the form itself”). The Federal Form requires applicants to attest
3 under oath to their citizenship. The EAC has determined that is all that is necessary to
4 establish a Federal Form applicant’s citizenship. *Kobach v. U.S. Election Assistance*
5 *Comm’n*, 772 F.3d 1196-98 (10th Cir. 2014), *cert. denied*, 576 U.S. 1055 (2015). The
6 EAC alone makes that determination, which “acts as both a ceiling and a floor.” *League*
7 *of Women Voters of United States v. Newby*, 838 F.3d 1, 10 (D.C. Cir. 2016); *ITCA*, 570
8 U.S. at 18. Thus, as long as applicants in Arizona attest under oath that they are citizens
9 and meet remaining Federal Form requirements, the NVRA requires Arizona election
10 officials to accept and use that Form. *ITCA*, 570 U.S. at 9-13 (holding that the NVRA
11 mandates that states accept the Federal Form “as sufficient for the requirement it is meant
12 to satisfy”); 52 U.S.C. § 20505(a)(1).

13 Because the EAC has expressly rejected DPOC as a necessary requirement on the
14 Federal Form to prove citizenship, Arizona cannot require it of federal-only applicants.
15 *ITCA* cemented that principle in 2013; Arizona cannot flout it now. HB 2492 therefore
16 violates the NVRA. Federal-only voters must be permitted to vote in *all* federal
17 elections, including presidential elections, so long as those voters submit a complete and
18 valid Federal Form.

19 **B. Congress Possesses Broad Power to Regulate Presidential Elections.**

20 The State concedes that Congress enacted the NVRA using its Elections Clause
21 power. Mot. to Dismiss at 22, ECF No. 127; *see ITCA*, 570 U.S. at 8-9. But it argues
22 that Congress lacks authority to regulate presidential elections. The State is incorrect.

1 As the Supreme Court has long recognized, Congress possesses power to enact
2 laws governing presidential elections. *Buckley v. Valeo*, 424 U.S. 1, 13 n.16 (1976) (per
3 curiam) (“The Court has also recognized broad congressional power to legislate in
4 connection with the elections of the President and Vice President.”); *see also Oregon v.*
5 *Mitchell*, 400 U.S. 112, 124 (1970) (opinion of Black, J.) (“It cannot be seriously
6 contended that Congress has less power over the conduct of presidential elections than it
7 has over congressional elections.”); *id.* at 124 n.7 (“[I]nherent in the very concept of a
8 supreme national government with national officers is a residual power in Congress to
9 insure that those officers represent their national constituency as responsively as possible.
10 This power arises from the nature of our constitutional system of government and from
11 the Necessary and Proper Clause.”); *Burroughs v. United States*, 290 U.S. 534, 545
12 (1934) (holding that Congress “undoubtedly” possesses the “power to pass appropriate
13 legislation to safeguard [presidential elections]” because such power is “essential to
14 preserve the departments and institutions of the general government from impairment or
15 destruction”). And in the course of upholding the NVRA, courts—including the Ninth
16 Circuit Court of Appeals—have cited Congress’s power to regulate presidential elections.
17 *See Voting Rights Coal. v. Wilson*, 60 F.3d 1411, 1414 (9th Cir. 1995) (“The broad power
18 given to Congress over congressional elections has been extended to presidential
19 elections”), *cert. denied*, 516 U.S. 1093 (1996); *see also Ass’n of Cmty. Orgs. for Reform*
20 *Now (ACORN) v. Miller*, 129 F.3d 833, 836 n.1 (6th Cir. 1996) (same); *ACORN v. Edgar*,
21 56 F.3d 791, 793 (7th Cir. 1995) (same); *see also, e.g., S. Rep. 103-6*, at 4 (1993)
22 (“Congress has the power to regulate Federal elections, including the establishment of

1 national voter registration procedures for Presidential and congressional elections.”). The
2 State ignores that authority.

3 That the Constitution confers upon Congress the power to regulate congressional
4 elections in the Elections Clause does not detract from Congress’s power to regulate
5 presidential elections. The omission of presidential elections from the Elections Clause
6 reflects that the framers did not contemplate that a presidential election would be
7 conducted by popular vote in the way it is now. *See, e.g., Chiafalo v. Washington*, 140 S.
8 Ct. 2316, 2320-21 (2020) (explaining that the framers initially approved a system of
9 presidential electors to elect the President, but this system evolved over time, until by
10 1832, nearly every state introduced popular voting for presidential elections); *McPherson*
11 *v. Blacker*, 146 U.S. 1, 28 (1892) (explaining that the framers voted down a proposition
12 that the President be elected by popular vote and instead left to the states the task of
13 appointing electors). By Reconstruction, however, Congress recognized our system of
14 popular voting, enacting Section 2 of the Fourteenth Amendment and later Section 1 of
15 the Twenty-Fourth Amendment, both of which refer to and operate to regulate the
16 popular vote for presidential elections.² These Amendments confirm Congress’s
17 concomitant authority to regulate voting in congressional *and* presidential elections—

18 _____
19 ² Section 2 of the Fourteenth Amendment penalizes a state for denying the right to vote
20 “for President and Vice President of the United States, Representatives in Congress, the
21 Executive and Judicial officers of a State, or the members of the Legislature thereof.”
22 And Section 1 of the Twenty-Fourth Amendment states, “The right of citizens of the
United States to vote in any primary or other election for President or Vice President, for
electors for President or Vice President, or for Senator or Representative in Congress,
shall not be denied or abridged by the United States or any State by reason of failure to
pay any poll tax or other tax.”

1 powers the Supreme Court and federal appellate courts have long recognized.

2 Moreover, it is necessary and proper for Congress to regulate voter registration for
3 presidential elections if it is to do so effectively for congressional elections. *Cf. United*
4 *States v. Comstock*, 560 U.S. 126, 133 (2010). Under our system of “supreme national
5 government with national officers,” Congress may “insure that those officers represent
6 their national constituency as responsively as possible.” *Mitchell*, 400 U.S. at 124 n.7
7 (opinion of Black, J.). This power must include the ability to legislate as to all elections
8 for federal office, including presidential elections. *See id.* A state’s attempt to impose
9 dual and disparate processes for registering to vote for different federal offices
10 undermines that power. Congress, therefore, passed the NVRA under express
11 constitutional grants to enforce the system of fair and equal elections contemplated by the
12 framers. *ITCA*, 570 U.S. at 8, 13-14.

13 **C. The NVRA Is a Permissible Exercise of Congress’s Power to Enforce**
14 **the Fourteenth and Fifteenth Amendments.**

15 The NVRA is also a valid exercise of Congress’s authority under the Fourteenth
16 and Fifteenth Amendments. *See Condon v. Reno*, 913 F. Supp. 946, 962 (D.S.C. 1995)
17 (holding that the NVRA’s legislative history and text “are clear that Congress was
18 utilizing its power to enforce the equal protection guarantees of the Fourteenth
19 Amendment”); *id.* at 967 (Congress had a “sound basis” for concluding that the NVRA
20 was an “appropriate means” to further Fourteenth and Fifteenth Amendment protections);
21 *ACORN v. Edgar*, 880 F. Supp. 1215, 1221 (N.D. Ill. 1995), *aff’d in relevant part*, 56
22 F.3d at 791; *see also ACORN v. Miller*, 912 F. Supp. 976, 984 (W.D. Mich. 1995) (“Even

1 if the NVRA violated the Tenth Amendment, it would still pass Constitutional muster
2 under the Fourteenth and Fifteenth Amendments.”), *aff’d* 129 F.3d at 833.

3 Those holdings are well-founded. Congress passed the NVRA to combat
4 “discriminatory and unfair registration laws” that “disproportionately harm voter
5 participation by various groups, including racial minorities.” 52 U.S.C. § 20501(a)(3).
6 The legislative record includes findings that laws, policies, and practices had imposed
7 barriers to minority applicants’ ability to register to vote. *See, e.g.*, Staff of Subcomm. on
8 Civ. & Const. Rights of the H. Comm. on the Judiciary, 98th Cong., 2d Sess., *After the*
9 *Voting Rights Act: Registration Barriers* (Comm. Print 1984) (H.R. Ser. No. 18, at 2-5);
10 S. Rep. No. 103-6, at 3, 17-18 (1993); *see also Condon*, 913 F. Supp. at 962-63; *Edgar*,
11 880 F. Supp. at 1221; *Miller*, 912 F. Supp. at 984. The NVRA responds to these
12 problems by requiring uniform, nationwide procedures to prevent discriminatory
13 administration of registration laws and make registration easier. S. Rep. No. 103-6, at 4
14 (1993) (“This Act seeks to remove the barriers to voter registration and participation
15 under Congress’ power to enforce the equal protection guarantees of the 14th
16 Amendment to the Constitution.”).

17 Such uniform rules are an effective way to enforce—and are well within
18 Congress’s scope of powers under—the Fourteenth and Fifteenth Amendments. *See*
19 *Mitchell*, 400 U.S. at 283-84 (opinion of Stewart, J.); *South Carolina v. Katzenbach*, 383
20 U.S. 301, 324 (1966); *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966). The Fourteenth
21 and Fifteenth Amendments authorize Congress to “use any rational means to effectuate
22 the constitutional prohibition of racial discrimination in voting.” *Katzenbach*, 383 U.S. at

1 324; *accord Morgan*, 384 U.S. at 651. Congress may thus adopt uniform, nationwide
2 rules targeting practices with a discriminatory effect. *See Mitchell*, 400 U.S. at 132-33
3 (opinion of Black, J.) (upholding nationwide ban on literacy tests); *id.* at 216 (opinion of
4 Harlan, J.) (same); *id.* at 283-284 (opinion of Stewart, J.) (same). The NVRA does just
5 that. *See also* H.R. Rep. No. 103-9, at 3-4 (1993) (indicating that Congress passed the
6 NVRA in part “to reduce [the] obstacles to voting to the absolute minimum while
7 maintaining the integrity of the electoral process,” as “low voter turnout in Federal
8 elections poses potential serious problems in our democratic society.”).

9 The State disregards this authority. And the cases it does cite are inapt. *See* Mot.
10 at 23 n.7. For instance, in *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997), the
11 Supreme Court observed that the congressional record on voter suppression abundantly
12 supported legislative protection under the Fourteenth and Fifteenth Amendments in the
13 course of concluding that the record on modern religious persecution was lacking by
14 comparison. *See id.* at 518, 525-27, 530-31, 532-33. The State’s disregard of the
15 NVRA’s text and ample legislative record is telling, and renders its bare *City of Boerne*
16 citation particularly ill-founded. The State is similarly silent on how *Shelby County v.*
17 *Holder*, 570 U.S. 529 (2013), and *Northwest Austin Municipal Utility District No. One v.*
18 *Holder*, 557 U.S. 193 (2003)—neither of which analyze the NVRA—apply here. *See*
19 Mot. at 23 n.7.

20 **II. The United States Has Stated a Claim That HB 2492 Violates the Materiality**
21 **Provision of the Civil Rights Act.**

22 The Materiality Provision prohibits any state action that denies individuals the

1 right to vote based on errors or omissions on “any record or paper relating to any
2 application [or] registration” that are not material to the voter’s qualifications. 52 U.S.C.
3 § 10101(a)(2)(B). That a state may allow an otherwise eligible voter to cure an
4 immaterial error or omission is irrelevant. The United States has adequately alleged that
5 HB 2492 violates the Materiality Provision by requiring prospective voters to provide
6 their birthplace and DPOC, and to attest to citizenship even if they have already provided
7 DPOC, none of which are material to establishing the voter’s qualifications to vote.

8 **A. The Materiality Provision Applies to Codified State Laws.**

9 The Materiality Provision bars a state from “deny[ing] the right of any individual
10 to vote in any election” based on errors or omissions not material to a voter’s
11 qualifications. *Id.* The Provision applies whether a state passes or enforces a law
12 requiring such denials or takes actions that exceed state law. Courts have regularly
13 declined to dismiss Materiality Provision challenges to existing state laws. *See, e.g., La*
14 *Unión del Pueblo Entero (LUPE) v. Abbott*, No. 5:21-cv-844, 2022 WL 1651215, at *21
15 (W.D. Tex. May 24, 2022) (declining to dismiss challenge to statute requiring provision
16 of an identification number matching voter record); *Sixth Dist. of Afr. Methodist*
17 *Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260, 1282 (N.D. Ga. 2021) (declining to
18 dismiss challenge to statute requiring provision of birthdate on absentee ballots and
19 applications); *League of Women Voters of Ark. v. Thurston*, No. 5:20-cv-5174, 2021 WL
20 5312640, at *4 (W.D. Ark. Nov. 15, 2021) (declining to dismiss challenge to law
21 requiring rejection of materials based on omission of or inconsistencies in information on
22 voter statement and application); *see also Wash. Ass’n of Churches v. Reed*, 492 F. Supp.

1 2d 1264, 1270 (W.D. Wash. 2006) (finding likelihood of success on challenge to state
2 law requiring matching a voters' name to a database before registration).³

3 But Arizona contends that the Materiality Provision does not reach conduct
4 codified in state law, just "ad hoc" practices that "exceed" state law. Mot. at 26-27. The
5 State is incorrect. Nothing in the Materiality Provision's text supports that argument.
6 Nor do the State's cited authorities hold that existing statutes are insulated from
7 Materiality Provision challenges. See *Org. for Black Struggle v. Ashcroft*, 493 F. Supp.
8 3d 790, 802-03 (W.D. Mo. 2020); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308-09
9 (N.D. Ga. 2018).⁴

10 The State also wrongly suggests that Congress intended the Materiality Provision
11 to bar only discriminatory application and administration of apparently nondiscriminatory
12 laws. Mot. at 26. The Provision's text is clear: it does not refer to race or

13 _____
14 ³ Contrary to the State's contention, the weight of authority recognizes a private right of
15 action to enforce the Materiality Provision. See, e.g., *Schwier v. Cox*, 340 F.3d 1284,
16 1297 (11th Cir. 2003); *LUPE v. Abbott*, No. 5:21-cv-0844, 2022 WL 3045657, at *30
17 (W.D. Tex. Aug. 2, 2022); *Thurston*, 2021 WL 5312640, at *4; *Brooks v. Nacrelli*, 331 F.
18 Supp. 1350, 1352 (E.D. Pa. 1971).

19 ⁴ The court in *Organization for Black Struggle* did not reject all challenges to state laws;
20 it simply agreed that the defendants' "rejection of ballot envelopes that are unclear as to
21 the voter's name, address, and attestation" of authorization to vote, pursuant to state law,
22 was not likely to violate the Materiality Provision. 493 F. Supp. 3d at 803. *Martin*, for
its part, held that rejecting voters' absentee ballot envelopes based on their inability "to
correctly recite [their] year of birth" thereon likely violated the Materiality Provision,
because the state had already confirmed the voter's substantive qualifications through the
absentee ballot application process. 347 F. Supp. 3d at 1308-09. The court said this
conclusion "[was] only strengthened by the Georgia Supreme Court's explicit recognition
that Georgia law 'does not mandate the automatic rejection of any absentee ballot lacking
the elector's place and/or date of birth'"; it did not hold that any requirement Georgia law
might impose would be permitted under the Materiality Provision. *Id.* at 1309 (citation
omitted).

1 discrimination, but broadly forbids any denial of the right to vote based on immaterial
2 errors and omissions. And Congress addressed discriminatory application and
3 administration of laws through a different CRA provision. *See* 52 U.S.C.
4 § 10101(a)(2)(A) (prohibiting states from “apply[ing] any standard, practice, or
5 procedure different from . . . [those] applied under such law or laws to other individuals”
6 qualified to vote). The Materiality Provision separately forbids election officials from
7 denying the right to vote based on errors and omissions not material to voter
8 qualifications. 52 U.S.C. § 10101(a)(2)(B).

9 Congress enacted the Materiality Provision to prohibit election officials from
10 treating registration forms as tests for voters, rather than as a mechanism to gather
11 information necessary to assess voters’ qualifications. *See* 110 Cong. Rec. 1694 (1964)
12 (statement of Rep. Emanuel Celler), *id.* at 6733 (statement of Sen. Philip A. Hart);
13 *Schwier*, 340 F.3d at 1294 (explaining that Congress sought “to address the practice of
14 requiring unnecessary information for voter registration with the intent that such
15 requirements would increase the number of errors or omissions on the application forms,
16 thus providing an excuse to disqualify potential voters”); *see also United States v.*
17 *Cartwright*, 230 F. Supp. 873, 876 (M.D. Ala. 1964) (finding the application form to be
18 “a strict examination or test” when registration is denied “because of technical and
19 inconsequential errors and omissions”). Whether officials do so on the basis of codified
20 state laws or as the result of “ad hoc” decisionmaking “exceed[ing]” state law is
21 irrelevant. The Materiality Provision targets *all* state conduct that denies the right to vote
22 based on immaterial errors or omissions.

1 To be sure, errors or omissions must be “not material in determining whether [an
2 individual] is qualified under State law” to vote. 52 U.S.C. § 10101(a)(2)(B). But this
3 reference to “State law” addresses voters’ substantive qualifications, which, in Arizona,
4 include age, citizenship, residence, ability to write their name or make their mark, and
5 criminal or incapacitated status. *See, e.g., Migliori v. Cohen*, 36 F.4th 153, 163 (3d Cir.
6 2022) (explaining that a “requirement is material [under Pennsylvania law] if it goes to
7 determining age, citizenship, residency, or current imprisonment for a felony”), *vacated*
8 *as moot sub nom. Ritter v. Migliori*, No. 22-30, 2022 WL 6571686 (U.S. Oct. 11, 2022)
9 (mem.); *Martin*, 347 F. Supp. 3d at 1308 (“the only *qualifications* for voting in Georgia
10 are U.S. [c]itizenship, Georgia residency, being at least eighteen years of age, not having
11 been adjudged incompetent, and not having been convicted of a felony”); *Wash. Ass’n of*
12 *Churches*, 492 F. Supp. 2d at 1270 (similar).

13 Accordingly, by its terms and history, the Materiality Provision bars state laws—
14 such as HB 2492—that deny the right to vote based on errors or omissions in completing
15 registration forms that do not bear on a voter’s substantive qualifications. Arizona’s
16 novel and unsupported arguments to the contrary must be rejected.

17 **B. The Availability of a Cure Process Does Not Save HB 2492.**

18 Arizona argues that HB 2492 does not violate the Materiality Provision because
19 affected voters might be able to cure the errors or omissions that required their
20 registration materials to be rejected. Mot. at 3, 27. Not so. Nothing in the Provision’s
21 text requires a state’s improper rejection of registration materials to be absolute and final
22 before a violation can occur. *See* 52 U.S.C. § 10101(a)(2)(B). By the statute’s plain

1 terms, a violation occurs whenever voting materials are rejected based on errors or
 2 omissions immaterial to a voter’s qualifications, *id.*, regardless of the would-be voter’s
 3 ability to try to fix the problem. *See LUPE*, 2022 WL 1651215, at *21 (rejecting
 4 argument because the Materiality Provision “does not say that state actors may initially
 5 deny the right to vote based on errors or omissions that are not material as long as they
 6 institute cure processes”); *Kemp*, 574 F. Supp. 3d at 1282.⁵ As alleged, HB 2492 violates
 7 the Materiality Provision because it requires the rejection of registration applications
 8 based on such immaterial errors or omissions. Compl. ¶¶ 66-71.

9 **C. The Complaint Sufficiently Alleges That HB 2492 Violates the**
 10 **Materiality Provision.**

11 The United States has adequately alleged that HB 2492 imposes restrictions on

12 ⁵ In *Vote.Org v. Callanen*, 39 F.4th 297 (5th Cir. 2022), the Fifth Circuit stayed pending
 13 appeal a district court decision permanently enjoining Texas’s wet signature rule as a
 14 violation of the Materiality Provision. The Fifth Circuit reasoned that a wet signature
 15 was likely material because Texas qualifications included whether one was “a registered
 16 voter,” and state law required an original, wet signature on registrations submitted by fax.
 17 *Id.* at 306-07. The court further reasoned that it was “hard to conceive how [a] wet
 18 signature rule deprives anyone of the right to vote” where state law “confers a right to
 19 cure and allows other means of registration.” *Id.* at 305-06. The court has not yet issued
 20 a decision on the merits of this appeal, and decisions on stay motions are not binding on
 21 the merits panel. *See, e.g., Tex. Democratic Party v. Abbott*, 978 F.3d 168, 176 (5th Cir.
 22 2020).

18 In any event, the court’s analysis is incorrect. It would allow states to make any
 19 immaterial requirement material simply by codifying it as a part of their registration
 20 process, thus subverting the very purpose of the Materiality Provision. *Schwier*, 340 F.3d
 21 at 1294. And with respect to cure processes, the court’s reasoning hinged on the
 22 availability of other means of registration. In this case, HB 2492 provides *no* such
 alternatives. In order to register to vote in state elections by any means, applicants must
 provide their birthplace and check a box affirming their citizenship, even if they have
 provided DPOC; and to register to vote in presidential elections and by mail ballot,
 applicants must provide DPOC.

1 eligible U.S. citizens' ability to register and vote based on errors or omissions in voter
2 registration papers that are not material to determining voter qualifications. A voting
3 requirement is material if it goes to determining a voter's substantive qualifications to
4 vote. *See, e.g., Martin*, 347 F. Supp. 3d at 1308; *Wash. Ass'n of Churches*, 492 F. Supp.
5 2d at 1270. In Arizona, these qualifications include age, citizenship, residency, ability to
6 write one's name or make one's mark, and lack of criminal convictions or adjudications
7 deeming one incapacitated. Ariz. Const. art VII, § 2, cl. A; Ariz. Rev. Stat. § 16-101.

8 For a requirement to be material to voter qualifications, it must be more than
9 merely relevant. *Cf. Cone v. Bell*, 556 U.S. 449, 469-70 (2009) (defining materiality for
10 purposes of *Brady* violations as "a reasonable probability that . . . the result of the
11 proceeding would have been different"); *Kungys v. United States*, 485 U.S. 759, 771-72
12 (1988) (defining materiality for purposes of the Immigration and Nationality Act as
13 "predictably capable of affecting" an official decision); *United States v. Uchimura*, 125
14 F.3d 1282, 1285 (9th Cir. 1997) (defining materiality for purposes of tax fraud cases as
15 "necessary to a determination of whether" tax is owed).⁶

16
17 ⁶ Contrary to the State's claims, neither *Gonzalez v. Arizona*, No. 06-cv-1268, 2007 WL
18 9724581 (D. Ariz. Aug. 28, 2007), nor *Diaz v. Cobb*, 435 F. Supp. 2d 1206 (S.D. Fla.
19 2006), defines materiality as simple relevance. While *Gonzalez* states that *citizenship* is
20 material, it does not explain why provision of DPOC, beyond an attestation, is material.
21 2007 WL 9724581, at *2. *Diaz*, for its part, explicitly did *not* address "an applicant's
22 failure to re-answer a question that is asked twice in the same way," concluding simply
that the "information conveyed by check-boxes and the oath" at issue there was "not the
same" since the oath "contains a general affirmation of eligibility," while the "check-
boxes contain specific affirmations of specific qualifications." 435 F. Supp. 2d at 1212-
13. And even a case that considered whether "material" could mean "minimal
relevance," without deciding, treated relevance as requiring that information "ha[ve] a

1 If all requirements a state could conceive of as relevant were also considered
2 material, states could require prospective voters to prove each qualification via several
3 methods and deny their right to vote if they fail to complete just one. But courts set a
4 higher standard than mere relevance, finding unnecessary or duplicative requirements
5 immaterial to voting qualifications. *See LUPE*, 2022 WL 1651215, at *21 (finding
6 plaintiffs had plausibly alleged state law requiring provision of identification number
7 “may require information that is unnecessary and therefore not material to determining an
8 individual’s qualifications to vote under Texas law”); *Martin*, 347 F. Supp. 3d at 1309
9 (finding provision of birth year on a ballot envelope immaterial where a voter’s eligibility
10 was confirmed in earlier application process); *Thurston*, 2021 WL 5312640, at *4
11 (upholding Materiality Provision claim “where State law requires absentee voters to
12 provide some [required] information several times and . . . they have correctly provided
13 that information at least once”). Doing otherwise undercuts the Materiality Provision’s
14 purpose. *See Schwier*, 340 F.3d at 1294.

15 Under HB 2492, as alleged here, applicants’ State Form registration applications
16 will be rejected if the applicants omit their birthplace, despite one’s birthplace having no
17 material bearing on one’s qualifications to vote. Compl. ¶¶ 48-56, 67. The State
18 suggests that this requirement is material to the citizenship qualification because it “helps
19 define what sort of proof can serve to demonstrate citizenship.” Mot. at 28. But even
20 persons born in the United States—and with U.S. birth certificates—might not be citizens

21 _____
22 natural tendency to influence” the outcome of an analysis. *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1173 (11th Cir. 2008) (citations omitted).

1 if born to foreign diplomatic officers, *see* 8 C.F.R. § 101.3(a)(1), or if they lose
2 citizenship through expatriation. Similarly, individuals born abroad might be U.S.
3 citizens without having naturalization papers if they were born to citizen parents. *See*
4 Compl. ¶ 52.

5 Arizona has not previously considered birthplace necessary to demonstrate
6 citizenship. Registration applications in Arizona have never before been rejected for
7 omitting a voter's birthplace, though birthplace has long been included on the State Form.
8 *See* Compl. ¶ 49; *cf. Ford v. Tenn. Senate*, No. 06-2031, 2006 WL 8435145, at *11
9 (W.D. Tenn. Feb. 1, 2006) (finding a requirement that voters sign ballot applications and
10 poll books immaterial because the state “ha[d] in the past treated the failure to sign” as
11 such); *see also Migliori*, 36 F.4th at 164 (holding that a date requirement was immaterial
12 in part because the State accepted materials including incorrect dates).

13 In addition, the United States' complaint also adequately alleges that HB 2492
14 violates the Materiality Provision because even voters who have *already provided* DPOC
15 will have their materials rejected based on a simple failure to *also* check a box affirming
16 their citizenship on the State Form. The State argues that this requirement is material
17 only because it “is a minimally burdensome affirmation by the voter” that they have
18 fulfilled the citizenship qualification. Mot. at 28. But the relative burden a requirement
19 imposes is irrelevant in assessing its materiality.⁷ Since voters who have supplied DPOC
20 have already demonstrated their citizenship, the checkmark provision amounts to a purely

21 _____
22 ⁷ In any event, how weighty this burden might be is a factual question not suitable for
consideration on a motion to dismiss. *Iqbal*, 556 U.S. at 678.

1 technical requirement that voters be able to read and precisely follow instructions on how
2 to complete their registration. Compl. ¶ 59. It is therefore immaterial—a conclusion
3 only bolstered by the fact that the State *already knows* the applicant is a citizen.

4 Finally, the United States has adequately alleged that HB 2492 violates the
5 Materiality Provision because both new and existing federal-only voters' registration to
6 vote in presidential elections will be rejected if they fail to provide DPOC in addition to
7 an attestation of citizenship. Arizona says simply that “[p]roof of citizenship attests that
8 a voter is indeed eligible.” Mot. at 28. But federal-only voters have already provided
9 that attestation on the Federal Form, which Arizona considers sufficient to demonstrate
10 citizenship for federal-only voters who vote in person for congressional elections. There
11 are no additional substantive citizenship requirements for presidential or mail voters—
12 such as length or type of citizenship—that DPOC might be necessary to prove. *See* Ariz.
13 Const. art VII, § 2, cl. A; Ariz. Rev. Stat. § 16-542. Thus, if DPOC is not material to
14 establishing a voter's qualification to vote in a congressional contest, it is equally not
15 material as to that same voter seeking to vote in a presidential election or by mail. HB
16 2492's DPOC requirement is therefore not only unnecessary and duplicative, it is
17 illogical as well. As such, it violates the Materiality Provision. *See LUPE*, 2022 WL
18 1651215, at *21; *Martin*, 347 F. Supp. 3d at 1309; *Thurston*, 2021 WL 5312640, at *4.

19 CONCLUSION

20 For the foregoing reasons, the State's Motion to Dismiss the United States'
21 Complaint should be denied.

22

1 Date: October 17, 2022

2 Respectfully submitted,

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13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on October 17, 2022, I electronically filed the foregoing with the
15 Clerk of the Court using the CM/ECF system, which will send notification of this filing
16 to counsel of record.
17

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