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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MI FAMILIA VOTA et al.,

Plaintiffs,

v.

KATIE HOBBS, in her official capacity as Secretary of State for Arizona, et al.,

Defendants,

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

LUCHA PLAINTIFFS' OPPOSITION TO DEFENDANT-INTERVENORS' MOTION TO DISMISS

LIVING UNITED FOR CHANGE IN ARIZONA, et al.,

Plaintiffs,

v.

KATIE HOBBS, in her official capacity as Secretary of State of Arizona,

Defendant,

MARK BRNOVICH, in his official capacity as Attorney General of Arizona, et al.,

Intervenor-Defendants.

PODER LATINX, et al.,

Plaintiffs,

v.

KATIE HOBBS, in her official capacity as Secretary of State of Arizona, et al.,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ARIZONA, et al.,

Defendants.

DEMOCRATIC NATIONAL COMMITTEE, et al.,

Plaintiffs,

v.

KATIE HOBBS, in her official capacity as Secretary of State of Arizona, et al.,

Defendants,

REPUBLICAN NATIONAL COMMITTEE, et al.,

Intervenor-Defendants.

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GLOSSARY

ASA	Arizona Students' Association
CRA	Civil Rights Act of 1964
DNC	Democratic National Committee
DPOC	Documentary proof of citizenship under A.R.S. § 16-166(F)
DPOR	Documentary proof of residence under A.R.S. § 16-579(A)(1)
ITCA	Inter Tribal Council of Arizona, Inc.
LUCHA	Living United for Change in Arizona
LULAC	League of United Latin American Citizens
FAC	LUCHA Plaintiffs' First Amended Complaint, ECF 67
MFV	Mi Familia Vota
NVRA	National Voter Registration Act
SOS	Secretary of State
VRA	Voting Rights Act

INTRODUCTION

The Court should deny Defendant-Intervenors' Motion to Dismiss LUCHA Plaintiffs' First Amended Complaint, ECF 67 ("FAC").[1] At this stage of the litigation, Plaintiffs allege facts that, accepted as true, allow the Court to reasonably infer they have standing and have stated claims that are plausible on their face. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

I. LUCHA Plaintiffs Plausibly Plead Injury in Fact.[2]

First, LUCHA Plaintiffs sufficiently allege associational injury.[3] It is "relatively clear, and not merely speculative, that one or more" of the LUCHA Plaintiffs' members "will be adversely affected" by the enforcement of HB 2492 and HB 2243. *Nat'l Council of La Raza v. Cegavske* ("*NCLR*"), 800 F.3d 1032, 1041 (9th Cir. 2015). The San Carlos Apache Tribe is a federally recognized Indian Tribe with 11,000 enrolled Members living within the Reservation, many of whom "are likely to be unable to obtain documentary proof of their residence, as required by HB 2492, either because their residence lacks a numbered street address entirely, or because they are not officially listed as a resident of the home where they stay." FAC ¶ 284; *see also id.* ¶¶ 277-29. ASA represents over

[1] LUCHA Plaintiffs join and incorporate by reference the other plaintiffs' arguments in their briefs in opposition to the consolidated motion to dismiss filed in these consolidated cases and the related case *AZ AANHPI for Equity Coalition v. Hobbs*, No. 22-cv-01381-SRB, as they pertain to Defendant-Intervenors' challenge to the LUCHA FAC.

[2] LUCHA Plaintiffs' claims are traceable and redressable for the same reasons explained in the DNC Plaintiffs' and Poder Latinx's briefs. Moreover, the Attorney General has already conceded that LUCHA Plaintiffs' injuries are traceable to him because he is "specifically charged with enforcing" the challenged laws, Mot. to Intervene at 1, and are redressable through the relief requested, *see id.* at 4 ("HB 2492 confers both authority and duties on the Attorney General—all of which could be invalidated if Plaintiffs were to prevail here."). The Court should not allow the Attorney General to use his enforcement authority to show standing to intervene but disavow that authority to challenge Plaintiffs' standing.

[3] An association has standing to sue on behalf of its members when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). Defendant-Intervenors only challenge Plaintiffs' showing on the first prong.

540,000 Arizona students, many of whom live away from home and lack access to documents sufficient to meet either the DPOC or DPOR requirements. *Id.* ¶¶ 239-41. LUCHA has approximately 2,000 members, including naturalized U.S. citizens who will be subject to classification and heightened barriers to registration and voting based solely on national origin. *Id.* ¶¶ 211-13. As such, LUCHA Plaintiffs sufficiently allege that at least "one or more" of the over *half a million* individuals represented by just these three Plaintiffs will suffer the injuries alleged. *NCLR*, 800 F.3d at 1041. Because Defendant-Intervenors failed to show any "need[] to know the identity of a particular member" to respond to their claims, *id.*, LUCHA Plaintiffs plausibly allege associational injury.

Second, LUCHA Plaintiffs sufficiently allege organizational injury. Organizational plaintiffs are injured when forced "to expend resources that they would not otherwise have expended, in ways they would not have expended them." *Id.* at 1040. LUCHA Plaintiffs, who regularly conduct voter registration among their members and communities, allege that the challenged laws will force them to make new expenditures to purchase equipment to process the newly required documentation, educate voters on the laws' requirements, and re-register federal eligible voters who are denied registration because they have used the State rather than the Federal Form. *See, e.g.*, FAC ¶¶ 210-302. LUCHA Plaintiffs also allege these new expenditures will force them to divert resources away from other programmatic activities. *Id.* These allegations plausibly support LUCHA Plaintiffs' organizational injuries. *NCLR*, 800 F.3d at 1040.

Third, the San Carlos Apache Tribe has *parens patriae* standing. As a sovereign, the Tribe has standing to "assert an injury to . . . a 'quasi-sovereign' interest" that impacts "a substantial portion" of their populations. *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 601, 607 (1982). The San Carlos Apache Tribe has an interest in ensuring that they and their citizens are not denied the benefits of their Tribal Members exercising their fundamental right to vote. *See id.* at 607-08 (finding that a sovereign "ha[s] an interest . . . in assuring that the benefits of the federal system are not denied to its general population").

This is particularly so considering the "indirect effects" of denying Tribal Members the right to vote on the Tribe's ability to vindicate its interests. *See id.*; *see also Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (finding that the right to vote is "a fundamental political right, because [it is] preservative of all rights."). Here, the San Carlos Apache Tribe plausibly alleges that a substantial portion of the 11,000 Tribal Members living within the Reservation will be *directly* affected by the challenged laws, particularly the DPOR requirement, *see, e.g.*, FAC ¶¶ 37-41, 274-85. This far outnumbers the 749 citizens represented by Puerto Rico in *Snapp*, *see* 458 U.S. at 607, and is sufficient to establish *parens patriae* standing.

Finally, LUCHA Plaintiffs' claims are ripe for the same reasons discussed in Poder Latinx's and MFV's Oppositions.[4] Additionally, Defendant-Intervenors' ripeness argument ignores the motion to dismiss standard. LUCHA Plaintiffs allege that the HB 2492 and HB 2243 databases contain stale and erroneous information. *See* FAC ¶¶ 102-08, 115-16, 120-22. Likewise, LUCHA Plaintiffs proffer detailed allegations of the severe disparate impact of the DPOR requirement on Native voters and the DPOC, birthplace, and outdated database provisions on Latino and language-minority voters, as well as other factors supporting their Section 2 claim. *See, e.g., id.* ¶¶ 137-91. The Court must accept these allegations as true. That LUCHA Plaintiffs are not required to adduce testimonial or documentary support for those allegations at this stage.

II. LUCHA Plaintiffs Plausibly Allege First and Fourteenth Amendment Claims Under the *Anderson-Burdick* Framework (Count 1)

The Court should not dismiss LUCHA Plaintiffs' First and Fourteenth Amendment *Anderson-Burdick* claims for the same reasons explained in the MFV Opposition.

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[4] Indeed, had Plaintiffs waited, Defendant-Intervenors would certainly argue their claims are barred under *Purcell v. Gonzalez*, 549 U.S. 1 (2006), for seeking relief too close to an election. The Court should reject Defendant-Intervenors' Goldilocks argument, where plaintiffs in voting cases must seek relief at a precise yet unknown "right" time. *See, e.g.*, *DNC v. Bostelmann*, 466 F. Supp. 3d 957, 963 (W.D. Wis. 2020) (recognizing paradox between *Purcell* and ripeness, and rejecting arguments); *Fitzgerald v. Alcorn*, 285 F. Supp. 3d 922, 942 (W.D. Va. 2018) (same).

Resolving the fact-specific *Anderson-Burdick* inquiry is disfavored on a motion to dismiss. *Mecinas v. Hobbs*, 30 F.4th 890, 905 (9th Cir. 2022); *Soltysik v. Padilla*, 910 F.3d 438, 447 (9th Cir. 2018). Regardless, Defendant-Intervenors do not carry their burden to show that dismissal is warranted. Defendant-Intervenors fail to recognize the cumulative nature of the burdens LUCHA Plaintiffs allege (*see* FAC ¶ 312); misunderstand the nature of LUCHA Plaintiffs' burden claims as to the U.S. Citizenship Checkmark and Birthplace Requirements;[5] and do not address—and thus waive—LUCHA Plaintiffs' burden claims with respect to the database and prosecution provisions of HB 2492 and the removal provisions of HB 2243 (*see* FAC ¶¶ 318-21).

LUCHA Plaintiffs also plausibly allege that the DPOR requirement imposes a severe and undue burden, particularly on Tribal Members. *See* FAC ¶¶ 24-41, 128, 137-55. A state policy in which "otherwise eligible voters [are] not allowed to vote in a determinative election" is a "severe burden on the excluded voters' right to vote." *See Dudum v. Arntz*, 640 F.3d 1098, 1108 (9th Cir. 2011) (citation omitted). Because a substantial number of residences on Indian reservations in Arizona lack residential street addresses, enrolled Tribal Members, including of the San Carlos Apache Tribe and other ITCA Member Tribes, do not have and cannot obtain DPOR. *See* FAC ¶¶ 25-26, 29-38, 139-40. Without DPOR, enrolled Tribal Members will be unable to register to vote for the first time or to re-register after moving to a new residence, and as a result will be denied the right to vote entirely. *See id.* ¶¶ 26, 29, 36, 41, 138-39.[6] Defendant-Intervenors' blithe

[5] With respect to the U.S. Citizenship Checkmark Requirement, the burden is not the difficulty of checking the box but rather the extreme consequence (rejection of registration) assigned to an inadvertent error that does not bear on an individual's eligibility when the State otherwise has evidence of an individual's citizenship. With respect to the Birthplace Requirement, Defendant-Intervenors fail to address LUCHA Plaintiffs' allegations that the requirement will intimidate naturalized citizens. *See* FAC ¶ 314. This fear is particularly credible considering Defendant-Intervenors' astounding admission that they intend to use birthplace as a proxy for citizenship. Mot. at 19, n.6.

[6] Defendant-Intervenors' reliance on *Crawford v. Marion Cty. Election Board.*, 553 U.S. 181, 199 (2008), is misplaced. Mot. at 15-16. In *Crawford*, the Supreme Court held at the summary judgment stage that despite the burden of obtaining voter ID, the law at issue did not result in vote denial because it left open other avenues for voting, 553 U.S. at

assertion that the DPOR Requirement can be satisfied with a "tribal enrollment card," Mot. at 15, ignores these allegations. Likewise, Defendant-Intervenors do not address LUCHA Plaintiffs' allegations regarding the burden of the DPOR Requirement on those experiencing homelessness, FAC ¶ 42, students, *id.* ¶ 25, 241, and other marginalized communities, *see, e.g.*, *id.* ¶ 25.

The difficulty of accessing DPOR for Native voters is well-known to Defendant-Intervenors. In a prior case addressing Arizona's voter identification law, the State—recognizing that many Tribal Members do not have traditional street addresses—entered a stipulation allowing Tribal Members to vote by presenting tribal ID that does not include a residential address. *See* Joint Stipulation, *Gonzalez v. Arizona*, No. 06-cv-1268 (D. Ariz. Apr. 18, 2008) (ECF 749) ("*Gonzalez* Stipulation"); SOS Ans., ECF 124, ¶¶ 39. As such, Defendant-Intervenors' reliance on *Gonzalez* is particularly unavailing because Tribal Members had an alternative means to vote without providing DPOR when the *Gonzalez* decision was issued. The DPOR requirement here does not provide any such accommodation for Tribal Members and will leave Native voters who would be able to vote under the *Gonzalez* Stipulation unable to register using the same identification they use to vote. *See* SOS Ans. ¶¶ 28, 40-41. The burdens that justified a stipulation in *Gonzalez* have not dissolved and more than overcome the plausibility bar at this stage.[7]

199. But the backup voting methods cited in *Crawford* do not exist here. Native voter registration applicants who cannot obtain DPOR because they have no numbered street address will be unable to register—and thus vote—under any circumstance. *See* FAC ¶¶ 24-41, 128, 137-55.

[7] Defendant-Intervenors invoke the same generalized interests untethered to the statutes' provisions to justify the DPOR Requirement as the other challenged provisions and therefore LUCHA Plaintiffs join MFV's Opposition addressing Defendant-Intervenors' insufficient justifications, which are factual and cannot be addressed at the motion to dismiss stage. Notably, Defendant Hobbs has admitted that the challenged laws do not serve any "meaningful or legitimate governmental purpose in ensuring free, fair, and secure elections, furthering the orderly and efficient administration of elections, or preventing fraud in elections." SOS Ans. ¶¶ 193-95. Further, the fact that members of federally recognized tribes have under prior stipulation been exempted from the requirement to provide DPOR to cast a ballot demonstrates that the State can accomplish its purported goals through narrower means with respect to registration as well. *See, e.g.*, FAC ¶¶ 39-41; SOS Ans. ¶¶ 39-41; *Gonzalez* Stipulation.

III. LUCHA Plaintiffs Plausibly Allege that HB 2492 and HB 2243 Intentionally and Facially Discriminate Against Naturalized Citizens (Count 2)

Defendant-Intervenors are mistaken to suggest that HB 2492 and 2243 do not classify voters based on national origin. In fact, both HB 2492 and 2243 subject voters to additional burdensome procedures to verify their eligibility to vote, as well as mandatory criminal investigation, only if they were born outside the United States. This national origin discrimination is unconstitutional. *See, e.g.*, *Tx. LULAC v. Whitley*, No. SA-19-CA-074-FB, 2019 WL 7938511 (W.D. Tex. Feb. 27, 2019) (enjoining faulty registrational removal program that discriminated against naturalized U.S. citizens by relying on stale citizenship data) ; *see also Arcia v. Fla. Sec. of State*, 772 F.3d 1335, 1340-41 (11th Cir. 2014) (finding that targeting of naturalized U.S. citizens in list maintenance process conferred legal injury). LUCHA Plaintiffs have adequately alleged, for example, that a naturalized U.S. citizen may be denied registration (or removed from the rolls) and subject to mandatory criminal referral simply because they lawfully obtained a driver's license before naturalizing and registering to vote—a burden never imposed on native-born U.S. citizens. FAC ¶¶ 100-136.[8] Thus, the law *by design* distinguishes between native-born and naturalized U.S. citizens, and subjects only the latter to a series of potential consequences including voter registration denial, removal from the rolls, and/or criminal investigation. *See Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 271-73 (1979).

Defendant-Intervenors also admit that the Birthplace Requirement is intended to facially classify U.S. citizens based on national origin. *See* Mot. at 7 (asserting that the requirement allows officials to classify applicants as "birthright" citizens); *see also id.* at 19 n.6. Further, they suggest that a different burden of proof applies to "birthright" versus naturalized U.S. citizens. *Id.* at 28. This is express national origin discrimination.

Explicit classifications based on membership in a protected class are subject to strict

[8] Defendant-Intervenors argue the laws are facially neutral because they are only triggered when "a county recorder receives information that a registered voter is not a U.S. citizen." Mot. at 18. But, by design, only naturalized U.S. citizens trigger the laws.

scrutiny, *Graham v. Richardson*, 403 U.S. 365, 371-72 (1971), and does not survive based on "post-hoc rationalizations," *cf.* Mot. at 16. National origin is a protected classification and the targeting of naturalized U.S. citizens, who by definition are born outside of the United States, triggers strict scrutiny. *Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. 86, 88 (1973). Defendants' argument that LUCHA Plaintiffs failed to allege any facial classification, and thus are subject to *Arlington Heights*, flatly ignores the allegations made in their FAC. But even assuming *Arlington Heights* applies (it does not), LUCHA Plaintiffs have made detailed, not "conclusory,"[9] allegations that the laws intentionally discriminate against naturalized U.S. citizens.[10] *See, e.g.*, FAC ¶¶ 100-36, 202 (alleging that a sponsor of HB 2492 has spread lies about noncitizen voting to vilify immigrant voters). LUCHA Plaintiffs' allegations adequately plead intentional discrimination.

IV. LUCHA Plaintiffs Plausibly Allege that HB 2492 Arbitrarily Discriminates Against Federal-Only Voters Based on Registration Form (Count 3)

LUCHA Plaintiffs adequately allege that HB 2492 violates the Fourteenth Amendment by "arbitrarily discriminat[ing] against eligible voter registration applicants based on whether they apply using a State Form or a Federal Form." FAC ¶ 337. This claim hinges on an undisputed mandate of HB 2492: two voters can submit otherwise *identical* voter registration forms accompanied by the *same* evidence of eligibility (*i.e.*, affirmation of voter qualifications under penalty of perjury), yet one will be placed on the Federal-Only list and permitted to vote for congressional elections while the other will not. *See* SOS Ans. ¶ 88-89. This was how the DPOC requirement operated before Plaintiffs LULAC and ASA sued over this arbitrary treatment in 2018. *Id.* In response, the State entered a

[9] Defendant-Intervenors' reliance on *Lee v. City of Los Angeles*, 250 F.3d 668, 686-87 (9th Cir. 2001), is inapposite because the plaintiffs in that case did not allege that the defendant acted with discriminatory animus. Here, LUCHA Plaintiffs allege that the Legislature imposed these requirements "because of" their adverse effects on naturalized citizens, not despite them. *See, e.g.*, FAC ¶¶ 8, 194, 202.

[10] Because such claims are fact-intensive, they are not amenable to resolution at this stage. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 962 (9th Cir. 2003) ("Discovering discriminatory intent, however, is a fact-intensive process . . . .").

consent decree requiring officials to treat applicants equally regardless of the form they used and to place eligible State Form applicants on the Federal-Only List even if they did not provide DPOC sufficient to receive a full ballot. *See* Consent Decree, *LULAC v. Reagan*, No. 2:17-cv-04102-DGC, ECF No. 37 (D. Ariz. June 18, 2018); SOS Ans. ¶ 83-85. HB 2492 forces election officials to violate that decree. SOS Ans. ¶ 86.

The "rational basis" Defendant-Intervenors offer for this policy misses the point. They contend that because "those using the State Form are required to provide DPOC and DPOR, Arizona can be substantially more confident that the voters are indeed U.S. citizens and reside in the districts in which they intend to cast a vote." Mot. at 18-19. But this claim does not hinge on whether Arizona can require voters to provide DPOC and DPOR to register for state elections, but whether Arizona can deny voters who prove citizenship by affirmation the right to vote in federal elections because they registered using the State Form rather than the Federal Form. That Arizona can purportedly be "more confident" that voters who provide DPOC are U.S. citizens is irrelevant when DPOC is not required to vote in federal elections, and Defendant-Intervenors provide no rationale for treating federal-eligible voters differently because they registered using the State Form. *Cf.* SOS Ans. ¶ 90 (Defendant Hobbs admitting that HB 2492's distinction between the Federal Form and the State Form is arbitrary and requires her to violate a federal consent decree); *see also id.* ¶ 340.

Nothing about this arbitrary distinction "combat[s] voter fraud" or "safeguard[s] voter confidence." Mot. at 19. And Defendant-Intervenors' final rationale—that there is no *statutory requirement* to treat State Form applicants equally—is no answer to LUCHA Plaintiffs' constitutional claim. Arizona is not entitled to arbitrarily deny thousands of eligible Arizonans the right to vote simply for picking what Defendant-Intervenors arbitrarily believe to be the wrong registration form. Given that Defendant-Intervenors offer no rationale related to the disparate treatment LUCHA Plaintiffs challenge—and

Defendant Hobbs avers that the statute serves no legitimate regulatory interest—the Court should deny the motion to dismiss.

V. LUCHA Plaintiffs Plausibly Allege Claims Under the National Voter Registration Act and Civil Rights Act (Counts 4 and 5)

LUCHA Plaintiffs' claims under the NVRA and CRA pass muster at the motion to dismiss stage for the reasons stated by the other Private Plaintiffs and the Department of Justice. Additionally, as to the NVRA, Defendant-Intervenors' sole argument is that the NVRA does not apply to presidential elections and the challenged laws only regulate state and presidential elections. But *none* of LUCHA Plaintiffs' claim depend on applying the NVRA to presidential elections. Defendant-Intervenors' claim that Arizona complies with the NVRA by providing the Federal Form at its motor vehicle and public assistance agencies is an unsupported factual assertion that the Court cannot rely upon to grant a motion to dismiss and, LUCHA Plaintiffs aver, will be belied by the facts. Further, Defendant-Intervenors do not address—and thus waive—LUCHA Plaintiffs' challenges to the unreliable database rejection and removal provisions of HB2492 and 2243 that apply to congressional elections.

VI. LUCHA Plaintiffs Plausibly Allege a Section 2 Claim (Count 6)

Section 2 of the Voting Rights Act ("Section 2") prohibits states from enacting voting rules that "result[] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" or language-minority status. 52 U.S.C. § 10301(a). LUCHA Plaintiffs plausibly allege that HB 2492 and HB 2243 violate Section 2 because they disproportionately burden eligible Latino, Native American, and language-minority voters by imposing "barriers to registration" that will cause "impacted individuals [to] be wholly barred from voting." FAC ¶ 369. LUCHA Plaintiffs allege specific and detailed burdens that are no "mere inconvenience" and go far beyond "the usual burdens of voting;" will result in a large and predictable disparate impact that is not simply the result of socioeconomic differences; and depart from standard voting practices when

Section 2 was amended in 1986. *See Brnovich v. DNC*, 141 S. Ct. 2321, 2338 (2021); *see also* FAC ¶¶ 156-91; 363-71; *supra* Section III.

Section 2 cases are fact-intensive inquiries requiring an intensely local appraisal of the totality of the circumstances not appropriate at the motion to dismiss stage. *See Brnovich*, 141 S. Ct. at 2338 ("[A]ny circumstance that has a logical bearing on whether voting is 'equally open' and affords equal 'opportunity' may be considered.").[11] Defendant-Intervenors' contentions that LUCHA Plaintiffs have not sufficiently quantified the disparate impact of the racial disparities, that the burdens HB 2492 and HB 2243 impose are "mere inconveniences," or that the opportunities provided by the State's entire voting system outweigh those burdens[12] go to "the merits of the claims" and require "an inquiry into facts not alleged" in the FAC. *Sixth District of the African Methodist Episcopal Church, et al. v. Kemp*, 574 F.Supp.3d 1260, 1277 (N.D. Ga. 2021) ("*AME*"). Thus, they "are not appropriate at the motion to dismiss stage." *Id.*; *see also id.* (explaining the "*Brnovich* factors are not prescriptive" and "Plaintiffs are not required to allege those factors or otherwise provide detailed factors regarding them"); *Fla. State Conf. of NAACP v. Lee*, 566 F. Supp. 3d 1262 (N.D. Fla. 2021) (denying motion to dismiss and holding Section 2 plaintiffs need not "prove their case at the pleading stage").

CONCLUSION

For the reasons explained above and by the other consolidated plaintiffs, Defendant-Intervenors' Motion to Dismiss should be denied.

Date: October 17, 2022 Respectfully submitted,

[11] Although Defendant-Intervenors purport to rely on *Brnovich*, *Brnovich* was decided on a full record and reaffirmed the fact-intensive nature of Section 2 cases.

[12] This contention makes little sense given that voter registration is a prerequisite to access to any other voting opportunities offered by the State.

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2022, I caused the foregoing document to be electronically transmitted to all counsel of record via the Court's CM/ECF electronic filing system.

/s/ James Barton
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