

1 KRISTEN CLARKE  
Assistant Attorney General  
2 Civil Rights Division

GARY M. RESTAINO  
United States Attorney  
District of Arizona

3 ELISE C. BODDIE  
Principal Deputy Assistant Attorney General  
4 Civil Rights Division  
5

6 T. CHRISTIAN HERREN, JR. (AL Bar No. ASB6671R63T)  
RICHARD A. DELLHEIM (NY Bar No. 2564177)  
7 EMILY R. BRAILEY (DC Bar No. 1684650)  
JENNIFER J. YUN (DC Bar No. 1600953)  
8 Attorneys, Voting Section  
9 Civil Rights Division  
U.S. Department of Justice  
10 4CON – Room 8.1815  
11 950 Pennsylvania Avenue, NW  
Washington, DC 20530

12 Tel.: (202) 353-5724 / Fax: (202) 307-3961  
13 Email: Chris.Herren@usdoj.gov  
14 Richard.Dellheim@usdoj.gov  
15 Emily.Brailey@usdoj.gov  
16 Jennifer.Yun@usdoj.gov  
*Attorneys for the United States*

17 **IN THE UNITED STATES DISTRICT COURT**  
18 **FOR THE DISTRICT OF ARIZONA**

19 Mi Familia Vota, et al.,  
20 Plaintiffs,

21 v.

22 Adrian Fontes, et. al.,  
Defendants.

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

United States' Response to Motion to Intervene

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

v.

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1 Adrian Fontes,  
2 Defendant,  
3 and  
4 State of Arizona, et al.,  
5 Intervenor-Defendants.

6 Poder Latinx, et al.,  
7 Plaintiffs,  
8 v.  
9 Adrian Fontes, et al.  
10 Defendants.

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

16 Democratic National Committee, et al.,  
17 Plaintiffs,  
18 v.  
19 Adrian Fontes, et al.,  
20 Defendants,  
21 and  
22 Republican National Committee,  
Intervenor-Defendant.

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Arizona Asian American Native Hawaiian  
and Pacific Islander for Equity Coalition,  
Plaintiff,

v.

Adrian Fontes, et al.,  
Defendants.

Promise Arizona, et al.,  
Plaintiffs,

v.

Adrian Fontes, et al.,  
Defendants.

Tohono O’odham Nation, et al.,

v.

Kris Mayes, et al.,  
Defendants.

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**UNITED STATES’ RESPONSE TO MOTION TO INTERVENE**

The United States does not oppose the April 4, 2023 motion to intervene by the Arizona Speaker of the House and the Arizona President of the Senate (the “Legislature”), to the extent it seeks permissive intervention. *See* Mot. at 11-12, ECF No. 348.

Arizona enacted H.B. 2492 in March 2022 and H.B. 2243 in July 2022. The United States and seven other groups sued the State and various officials to enjoin enforcement of certain provisions of these state laws. The State responded to the lawsuits by noting its intention to defend the challenged laws. *See, e.g.*, Letter from Mark Brnovich to Kristen Clarke (July 1, 2022), <https://perma.cc/SRP3-PYRB>. Attorney General Kris Mayes took office in January 2023, Mot. at 5, ECF No. 348, and has continued to litigate the matter.

On February 16, 2023, this Court denied the State Defendants’ motion to dismiss the United States’ claims, including those brought under Section 6 of the National Voter Registration Act (NVRA), 52 U.S.C. § 20505(a). ECF No. 304.

On April 17, 2023, the Arizona Attorney General’s Office sent a letter to counsel for all parties in this consolidated litigation to provide “some clarity” regarding the Attorney General’s “positions with respect to the claims and defenses asserted in this litigation.” *See* Ex. A, Letter from Hayleigh S. Crawford, Deputy Solicitor General, Off. of the Ariz. Att’y Gen., to All Counsel for All Parties (April 17, 2023). For example, the letter indicates that the Attorney General “does not intend to continue asserting as a defense to Plaintiffs’ claims that Congress lacks the power to regulate presidential

1 elections” since “[t]hat defense is foreclosed by binding authority.” *Id.* As such, the  
2 letter indicated that “the State acknowledges that to the extent H.B. 2492 conditions  
3 acceptance of the federal mail voter registration form for presidential election registration  
4 on documentary proof of citizenship, it is preempted by the federal requirement that  
5 States ‘accept and use’ the federal form” under the NVRA. *Id.* The letter advises that  
6 “[t]he State further acknowledges that this ‘accept and use’ requirement under federal law  
7 likewise preempts H.B. 2492 to the extent it conditions acceptance of the federal mail  
8 voter registration form for federal election registration on documentary proof of  
9 residence.” *Id.* The letter also notes that the Attorney General has “serious concerns  
10 about the legality of conditioning access to early ballots for federal elections on the  
11 provision of documentary proof of citizenship,” and that the Office “is continuing to  
12 evaluate the defensibility of this provision of H.B. 2492.” *Id.* Aside from certain issues,  
13 the letter indicates that the Attorney General “otherwise generally intends to continue  
14 defending H.B. 2492 and H.B. 2243.” *Id.*

15 In light of the Arizona Attorney General’s April 17 representations, the United  
16 States does not oppose the Legislature’s motion to intervene permissively under Rule  
17 24(b). *See* Mot. at 11-12, ECF No. 348. Accordingly, the United States respectfully  
18 suggests that the Court need not reach the Legislature’s arguments regarding intervention  
19 as of right under Rule 24(a).

1 Date: April 18, 2023

2 Respectfully submitted,

3 GARY M. RESTAINO  
4 United States Attorney  
District of Arizona

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

5 ELISE C. BODDIE  
6 Principal Deputy Assistant Attorney General  
Civil Rights Division

7 /s/ Emily R. Brailey  
8 T. CHRISTIAN HERREN, JR.  
9 RICHARD A. DELLHEIM  
EMILY R. BRAILEY  
10 JENNIFER J. YUN  
Attorneys, Voting Section  
11 Civil Rights Division  
U.S. Department of Justice  
4CON – Room 8.1815  
12 950 Pennsylvania Avenue, NW  
Washington, DC 20530

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on April 18, 2023, I electronically filed the foregoing with the Clerk  
15 of the Court using the CM/ECF system, which will send notification of this filing to  
16 counsel of record.

17 /s/ Emily R. Brailey  
18 Emily R. Brailey  
Civil Rights Division  
19 U.S. Department of Justice  
950 Pennsylvania Ave, NW  
20 Washington, DC 20530  
(202) 353-5724  
21 Emily.Brailey@usdoj.gov

22

# Exhibit A

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**KRIS MAYES**  
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL  
SOLICITOR GENERAL'S OFFICE

**HAYLEIGH S. CRAWFORD**  
DEPUTY SOLICITOR GENERAL  
DIRECT PHONE NO. (602) 542-8255  
HAYLEIGH.CRAWFORD@AZAG.GOV

April 17, 2023

**VIA EMAIL**

To Counsel for All Parties

Re: *Mi Familia Vota, et al. v. Fontes, et al.*, No. CV-22-00509-PHX-SRB & consolidated cases

All:

These consolidated lawsuits name, among others, the State of Arizona and its Attorney General as defendants. As you are aware, during the pendency of this matter, Arizonans elected Kris K. Mayes as Attorney General. Because many of you have inquired regarding Attorney General Mayes's positions with respect to the claims and defenses asserted in this litigation, we write to offer some clarity.

In short, the State and Attorney General Mayes intend to continue defending the lawfully enacted provisions of H.B. 2492 and H.B. 2243, recognizing that the State has an interest in enforcing laws duly enacted by the people's representatives.

Several points require clarification, however.

First, the Attorney General does not take allegations concerning discriminatory intent and impact on Arizona voters lightly. Although she intends to defend H.B. 2492 and H.B. 2243 against claims of facial unconstitutionality, Attorney General Mayes recognizes that other challenges to these laws require a careful examination of the facts. As discovery continues in this matter, Attorney General Mayes will continue to objectively evaluate the merits of such claims in light of the evidence produced.

Second, after reviewing Judge Bolton's order dated February 16 and related authorities, Attorney General Mayes does not intend to continue asserting as a defense to Plaintiffs' claims that Congress lacks the power to regulate presidential elections. That defense is foreclosed by binding authority. *See Burroughs v. United States*, 290 U.S. 534, 545 (1934); *Voting Rights Coal. v. Wilson*, 60 F.3d 1411, 1414 (9th Cir. 1995).



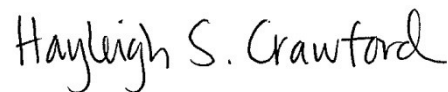
April 17, 2023  
Page 2

Accordingly, the State acknowledges that to the extent H.B. 2492 conditions acceptance of the federal mail voter registration form for presidential election registration on documentary proof of citizenship, it is preempted by the federal requirement that States “accept and use” the federal form. 52 U.S.C. § 20505(a)(1); *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 15-18 (2013).<sup>1</sup> The State further acknowledges that this “accept and use” requirement under federal law likewise preempts H.B. 2492 to the extent it conditions acceptance of the federal mail voter registration form for federal election registration on documentary proof of residence. *See id.*

Third, after reviewing Judge Bolton’s order dated February 16 and related authorities, the Attorney General agrees that if H.B. 2492’s documentary proof of residence provisions are construed in a way that prevents Arizonans who lack a physical street address (or who lack certain other documentation) from voting, the law would raise serious constitutional concerns. But H.B. 2492 need not be construed so strictly. The law requires “proof of location of residence,” which can be satisfied by providing “[a]ny of the identifying documents prescribed in section 16-579 subsection A, paragraph 1.” *Id.* § 5. The law does not state that these are the only acceptable documents. Moreover, although the identifying documents in A.R.S. § 16-579(a)(1) must include an “address,” the term “address” may not necessarily require a physical street address. In addition, § 16-579(a)(1) must be read in conjunction with A.R.S. § 16-121(B), which provides that “[a] person who is otherwise qualified to register to vote shall not be refused registration or declared not qualified to vote because the person does not live in a permanent, private or fixed structure.” Thus, H.B. 2492’s documentary proof of residence requirement can and should be construed and applied in a lawful and constitutional manner and the State will continue to defend it on this basis.

The Attorney General otherwise generally intends to continue defending H.B. 2492 and H.B. 2243, recognizing that this is a complex and fast-moving case. If any party would like to discuss specific claims, please feel free to contact our office.

Sincerely,



Hayleigh S. Crawford  
Deputy Solicitor General

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<sup>1</sup> The Attorney General also has serious concerns about the legality of conditioning access to early ballots for federal elections on the provision of documentary proof of citizenship. *See* A.R.S. § 16-127(A)(2). The Office is continuing to evaluate the defensibility of this provision of H.B. 2492.