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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mi Familia Vota, et al.,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as Arizona Secretary of State, et al.,

Defendants,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

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

ARIZONA ASIAN AMERICAN NATIVE HAWAIIAN AND PACIFIC ISLANDER FOR EQUITY COALITION'S REPLY IN SUPPORT OF ITS CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

Oral Argument Requested.

No. CV-22-00519-PHX-SRB
No. CV-22-01003-PHX-SRB
No. CV-22-01124-PHX-SRB
No. CV-22-01369-PHX-SRB
No. CV-22-01381-PHX-SRB
No. CV-22-01602-PHX-SRB
No. CV-22-01901-PHX-SRB

Living United For Change In Arizona, et al.,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as Arizona Secretary of State, et al.,

Defendant,

and

State of Arizona, et al.,

Intervenor-Defendants,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

Poder Latinx,

Plaintiff,

v.

Adrian Fontes, in his official capacity as Arizona Secretary of State, et al.,

Defendants,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

United States of America,

Plaintiff,

v.

State of Arizona, et al.,

Defendants,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

Democratic National Committee, et al.,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as Arizona Secretary of State, et al.,

Defendants,

and

Republican National Committee,

Intervenor-Defendant,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

Arizona Asian American Native Hawaiian And Pacific Islander For Equity Coalition,

Plaintiff,

v.

Adrian Fontes, in his official capacity as Arizona Secretary of State, et al.,

Defendants,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

Promise Arizona, et al.,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as Arizona Secretary of State, et al.,

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and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

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I. INTRODUCTION

House Bill 2243 ("H.B. 2243") violates the National Voter Registration Act ("NVRA") by implementing a systematic voter purge scheme within 90 days of a federal election. H.B. 2243 compels county recorders and the Secretary of State to engage in systematic, monthly inquiries into registered voters' citizenship against databases that the Secretary of State has admitted are inaccurate and unreliable for this purpose. There is no provision in H.B. 2243 that pauses or defers these checks within 90 days of an election. By its terms, therefore, H.B. 2243 runs afoul of the NVRA's unequivocal prohibition against systematic voter removal programs within 90 days of a federal election. *See* 52 U.S.C. § 20507(c)(2)(A) (the "90-Day Provision"). It should be struck and Section 8 of House Bill 2492 ("H.B. 2492")—which had previously modified the same section of Arizona law in a similar manner, just a few months prior to being superseded by H.B. 2243 in this respect—should be rejected as well, for the same reasons.[1]

The Attorney General ("State") barely refutes this in its Opposition. Instead, the State asks this Court to change the law in a misguided attempt to save it. The State first asks the Court to write in an exception to the 90-Day Provision for systematic non-citizen removals based on an erroneous and needless application of wholly different portion of the NVRA, 52 U.S.C. § 20507(a)(3) and (4) (the "General Removal Provision"). But the State hardly defends this argument, and quickly pivots to an alternative, fallback argument that the Court can "harmonize" H.B. 2243 with the 90-Day Provision by pausing all (or most) of H.B. 2243's purge scheme within the 90-day quiet period; essentially another "re-write"

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[1] The chronology of these two provisions, and their interrelationship on this issue, requires brief explanation. Section 8 of H.B. 2492 added 16-165(A)(10) as a ground when a county recorder shall cancel a registration: "When the county recorder receives and confirms information that the person registered is not a United States citizen." This bill was passed on March 30, 2022. H.B. 2243, passed a few months later (July 6, 2022) amends and entirely supersedes this language in H.B. 2492. H.B. 2243 is thus the operative statute as to this issue, and Plaintiffs' Cross-Motion (and this Reply) therefore focuses on it. But should H.B. 2243 be struck down and Section 8 of H.B. 2492 be reinstated, H.B. 2492 would also violate the NVRA for the same reasons set out here. For ease of reference, Plaintiff will refer to H.B. 2243 throughout this brief, but its arguments apply equally to H.B. 2492 as to the operative issue here: the unlawfulness of these laws in seeking to implement a systematic voter removal program within 90 days of a federal election.

argument. Neither argument is persuasive. For one, the State's first argument contravenes black letter law governing statutory interpretation, and has been rejected by the one circuit court that has addressed the issue. For another, the State's fallback argument is untenable because H.B. 2243 and the 90-Day Provision cannot be reconciled and it is not the province of the courts to rewrite laws. For these reasons, set out in more detail below, the State's counterarguments are insufficient to disrupt the plain conclusion that H.B. 2243's mandatory, systematic removal scheme violates the 90-Day Provision as a matter of law.

Plaintiffs respectfully request that the Court grant Plaintiffs' Motion.

II. ARGUMENT

Summary judgment is appropriate because the State's Opposition fails to refute that H.B. 2243 violates the 90-Day Provision as a matter of law. Indeed, the State hardly addresses any of Plaintiffs' affirmative arguments in its Opposition and essentially concedes that H.B. 2243 implements a systematic voter purge scheme that operates within 90 days of federal elections. *See* Opp. at 26. Ignoring the merits of Plaintiffs' affirmative arguments, the State raises only two alternative arguments to the contrary. The State first argues that the Court should create a non-existent exception to the 90-Day Provision for systematic removal programs aimed at suspected non-citizens. The State's second argument is more of a concession: the State asks the Court to issue an order prohibiting H.B. 2243 from operating within 90 days of a federal election. Both arguments fail, and neither stands in the way of granting summary judgment in Plaintiffs' favor.

A. H.B. 2243 Is A Systematic Purge Scheme That Violates the NVRA 90-Day Provision As A Matter Of Law

As explained in Plaintiffs' Cross-Motion, H.B. 2243 violates the NVRA's 90-Day Provision because it is a systematic voter purge scheme that, by its terms, will be enforced within 90 days of federal elections. *See* Dkt. 396 ("Mot.") at 4-7. The 90-Day Provision of the NVRA is unequivocal: "[a] State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible

voters." 52 U.S.C. § 20507(c)(2)(A). Stated plainly, with only limited exceptions inapplicable to H.B. 2243, no systematic removal is permitted within 90 days of federal elections. But that is what H.B. 2243 is.

H.B. 2243 is a "program the purpose of which is to systematically remove" voters, and is one that will operate within the 90-day quiet period. *Id.* H.B. 2243 implements a data-matching program to identify and remove suspected non-citizens from the voter rolls through subjective monthly comparisons with various databases, including the Systematic Alien Verification for Entitlements ("SAVE") Program. Based on those checks, county recorders are required to send out notices and remove voters from the voter rolls in 35 days unless the recorders receive "satisfactory" evidence of citizenship. Such indiscriminate database checks without any guardrails to ensure an accurate match and that put the onus on the voters, and not the state, to confirm the citizenship of registered voters after they have been added to the rolls, establish that H.B. 2243's purge scheme is systematic in nature. *See, e.g.*, *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014) (holding that a program using a "mass computerized data-matching process to compare the voter rolls" with databases, including SAVE, was "systematic"); *N.C. State Conf. of the NAACP v. Bipartisan Bd. of Elections & Ethics Enf't*, No. 1:16CV1274, 2018 WL 3748172, at *7-8 (M.D.N.C. Aug. 7, 2018) (holding that canceling voter registrations on the basis of "generic evidence"—undeliverable mailings—was "systematic"). And because H.B. 2243's database checks must occur monthly without exception in the law that suspends its operation within 90 days of a federal election, it runs afoul of the 90-Day Provision.

None of this is contested. The State does not even address Plaintiffs' arguments or case law. Moreover, the State essentially agrees that H.B. 2243 (and H.B. 2492) includes "programs to systematically cancel registrations." Dkt. 436 ("Opp.") at 25-26 ("The State acknowledges that parts of the Voting Laws constitute systematic removal programs . . . ."). Similarly, the State concedes that H.B. 2243—as written—operates within 90 days of a federal election. *Id.*; *see also* Dkt. 364 at 10 (urging the Court to "simply interpret the Voting Laws as including the 90-day quiet period" because they do not already include it).

Though the State does not attempt to defend H.B. 2243 as an individualized removal program, it now points to one provision of H.B. 2243 that it suggests may be permissible within the 90-day quiet period because it is "based on individualized information." Opp. at 24. That provision requires county recorders to send 35-day cancellation notices when the county recorder receives a summary report from the jury commissioner or jury manager pursuant to section 21-314 indicating that a person who is registered to vote has stated that the person is not a United States citizen. *Id.* at 24-25; A.R.S. § 16-165(A)(10).

But that provision alone does not transmute H.B. 2243 from a systematic removal program into an individualized one. The 90-Day Provision applies to "*any program* the purpose of which is to systematically remove the names of ineligible voters[.]" 52 U.S.C. § 20507(c)(2)(A) (emphasis added). The State does not argue that H.B. 2243 as a whole is an individualized program. Indeed, as noted above, the State concedes that it is not.

Furthermore, while some individualized determinations are permitted within 90 days of a federal election, H.B. 2243's jury provision bears none of the hallmarks of a permitted one. The NVRA does not prohibit individualized determinations that involve "rigorous individualized inquiry" based on "reliable first-hand evidence specific to that voter," because these types of programs bear a "smaller chance for mistakes." *N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, No. 1:16-cv-1274, 2016 WL 6581284, at *5 (M.D.N.C. Nov. 4, 2016) (voter removal program under which one piece of undeliverable mail was sufficient to remove a voter from the rolls was a systematic scheme in violation of the 90-Day Provision) (citing *Arcia*, 772 F.3d at 1346); *see also Forward v. Ben Hill Cnty. Bd. of Elections*, 509 F. Supp. 3d 1348, 1356 (M.D. Ga. 2020) (voter removal program based on change of address data from the National Change of Address registry violated the 90-Day Provision because defendants lacked "written confirmation from the voter of a change of address, and the challenges did not include the individualized inquiries necessary to sustain challenges made within 90 days of a federal election"); *cf. Bell v. Marinko*, 367 F.3d 588, 589-91 (6th Cir. 2004) (removals following an individualized hearing where evidence was elicited and presented did not violate the

NVRA). But under H.B. 2243, removal for non-citizenship under this provision is not contingent on the individual juror questionnaire itself wherein there may be "reliable first-hand evidence." Instead, it is based on a generic "summary report from the jury commissioner or jury manager," A.R.S. § 16-165(a)(10), the underlying information for which may be destroyed within 90 days of receipt, *see* A.R.S. § 21-314(C) ("The jury commissioner or jury manager may destroy the fully answered questionnaire ninety days after the commissioner or manager receives it."). A summary report is hardly reliable information that constitutes "rigorous individualized inquiry" that is subject to any standards of accuracy and the basis of which cannot be verified as the questionnaire itself may not be available. Regardless, this lone unreliable method cannot save the whole of H.B. 2243.[2] H.B. 2243 is a systematic removal program in direct violation of the NVRA.[3]

B. Non-Citizen Removals Are No Exception To The 90-Day Provision

The State's primary argument, that the NVRA does not prevent systematic removals based on non-citizenship within the 90-day quiet period, is flat wrong. By its plain terms, the 90-Day Provision broadly applies to "any program" whose purpose is the systematic removal of voters. The 90-Day Provision includes only three enumerated exceptions to a systematic removal program, *none* of which relate to the removal of voters suspected of

[2] The State never addressed that the Arizona Legislature's intent was that the provisions of H.B. 2243 rise and fall together. *See* Mot. at 8 n.5. This is another reason why the Court should not accept the State's invitation for the Court to rewrite the law (Opp. at 25-26), or to allow the parties to do so (*id.* at 26).

[3] To the extent the State's argument is that cancellation notices under H.B. 2243 are "individualized," that fares no better. H.B. 2243 is a systematic removal program that is effectuated through individual cancellation notices, but the means by which the notice is sent does not transform the program itself from a systematic one into an individual one. Were it otherwise, only schemes that were effectuated through broad circulation, like newspapers, would fall within the 90-Day Provision. That is not the law. *See, e.g.*, *Arcia*, 772 F.3d at 1344 (removal program based on SAVE database checks "followed by the mailing of notices" was systematic where the "program did not rely upon individualized information or investigation to determine which names from the voter registry to remove"); *Forward*, 509 F. Supp. 3d at 1355 (program suspending registrations of voters who appeared on a list compiled from systematic database checks "does not include the type of individualized information that the [county] would have needed to undertake the individualized inquiry required by the NVRA"); *N.C. State Conf. of the NAACP*, 2016 WL 6581284, at *5 (individualized challenge hearings prompted by systematic removal program were insufficient to make a systematic program "individualized").

being non-citizens. *See* 52 U.S.C. § 20507(c)(2)(A). "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions *are not to be implied*, in the absence of evidence of a contrary legislative intent." *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980) (emphasis added); *see also United States v. Brockamp*, 519 U.S. 347, 352 (1997) (declining to read an equitable exception into a tax code where "explicit listing of exceptions" suggested that "Congress did not intend courts to read other unmentioned [] exceptions into the statute"); *accord Jeldness v. Pearce*, 30 F.3d 1220, 1225 (9th Cir. 1994) (citing *Andrus* and declining to create a judicial exemption to Title IX for prisons where prisons were not listed among Title IX's list of exemptions). The fact that Congress chose not to include citizenship-based systematic removals in its list of exceptions to the 90-Day Provision is "good evidence" that such mass removals are prohibited. *Arcia*, 772 F.3d at 1345.

Again, the State disputes none of this. And while the State completely ignored the Eleventh Circuit's *Arcia* decision in its own motion, *see* Dkt. 364, it now concedes that *Arcia* is directly on point. Opp. at 23. As Plaintiffs explained, the *Arcia* court reviewed the reasoning in *United States v. Florida*, 870 F. Supp. 2d 1346 (N.D. Fla. 2012)—the only case the State cites to challenge *Arcia*—and rejected it. Mot. at 9. Nonetheless, the State asks this Court to infer a non-citizen exception because, in the State's view, the *Florida* district court "has the better argument." Opp. at 24.[4] But the State does not even attempt to justify this statement. A simple review of the two opinions explains why it cannot.

Ignoring the plain language of the statute, and that no non-citizen exception is included in the 90-Day Provision, *Florida* held—without citation to a single authority—that the NVRA did not prevent states from implementing systematic removal programs directed at suspected non-citizens within the 90-day quiet period because the "parallel" General Removal Provision cannot be read to apply to voters who were improperly

[4] The State also cites the *Arcia* dissent as support for its argument, but the dissent just points to the overturned *Arcia* district court opinion and *United States v. Florida*, 870 F. Supp. 2d 1346 (N.D. Fla. 2012)—which is unpersuasive for all the reasons explained here.

registered in the first place. 870 F. Supp. 2d at 1349-50. To get there, *Florida* explained (again without any support) that "surely" the "removed" language in the General Removal Provision and the "remove" language in the 90-Day Provision "mean the same thing" such that what goes for one must go for the other without even considering whether "systematic" removals may change the interpretation. *Id.* at 1350. The *Florida* court never considered principles of statutory interpretation, never considered the NVRA holistically, never considered the purposes of the NVRA, and never considered the NVRA's legislative history. For example, *Florida* never considered the State's own quotation here of the NVRA legislative history: "One of the purposes of this bill is to ensure that once *a citizen* is registered to vote, he or she should remain on the voting list so long as he or she *remains eligible* to vote in that jurisdiction." Opp. at 22. Unsurprisingly, the *Florida* court's reasoning led it to the preposterous conclusion that the removal of ***180,000 eligible citizen voters*** from the voter rolls through a systematic purge scheme implemented within 90 days of an election would be perfectly fine under the NVRA. 870 F. Supp. 2d at 1348 (holding this despite recognizing that the program was flawed and compiled "in a manner certain to include a large number of citizens," and could reasonably be expected to include "180,000 properly registered new citizens"). That conclusion is antithetical to the NVRA's purposes, as is the State's arguments here that would lead to a similar result. H.B. 2243, like the program at issue in *Florida*, is likely to result in the removal of eligible citizens. *See* Mot. at 12-13.

By contrast, the Eleventh Circuit's *Arcia* opinion carefully examined the NVRA holistically and determined that the 90-Day Provision makes no exception for systematic removals aimed at purported non-citizens within 90 days of elections. The *Arcia* court began with the plain meaning of the 90-Day Provision and easily found "that Congress intended the 90 Day Provision to encompass programs of any kind, including a program . . . to remove non-citizens," just like H.B. 2243. *Arcia*, 772 F.3d at 1343-44; *see also United States v. Flores*, 729 F.3d 910, 914 (9th Cir. 2013) ("The interpretation of a statutory provision must begin with the plain meaning of its language."). Considering the statutory

context and purpose, the *Arcia* court examined the NVRA as a whole, including the General Removal Provision. *Arcia*, 772 F.3d at 1344-46; *see also Kalispel Tribe of Indians v. U.S. Dep't of the Interior*, 999 F.3d 683, 690 (9th Cir. 2021) ("[W]e construe the entire statute, examining not only the specific provision at issue, but also the structure of the statute as a whole, including its object and policy.") (citations omitted). The court recognized that there is no "exception for removal of non-citizens" among the 90-Day Provision's enumerated exceptions, indicating "that such removals are prohibited." *Arcia*, 772 F.3d at 1345 (citing *Andrus*, 446 U.S. at 616-17 and *Brockamp*, 519 U.S. at 352).

Further, the *Arcia* court explained that the 90-Day Provision reflects Congress's particular concern about giving voters removed pursuant to systematic sweeps sufficient time to correct the record. Unlike "individual removals" based on "individual correspondence or rigorous individualized inquiry" where the risk of mistake is lower, "the calculus changes" with respect to programs that "systematically remove voters" in the final days leading up to an election because those voters "will likely not be able to correct the State's errors in time to vote." *Id.* at 1346. "This is why the 90 Day Provision strikes a careful balance: It permits systematic removal programs at any time *except* for the 90 days before an election because that is when the risk of disfranchising eligible voters is the greatest." *Id.* A State may not "remove names from its rolls in a manner that fails to respect [the] balance that Congress has drawn." *U.S. Student Ass'n Found. v. Land*, 546 F.3d 373, 388 (6th Cir. 2008) (striking down program removing eligible voters or "registrants" based on undeliverable mailings without complying with 52 U.S.C. § 20507(d)). *Arcia* held that the NVRA did not include an express exception for these types of removal programs and that it would be inappropriate to infer one into the 90-Day Provision, which applies to "any" program and reflects a more "cautious" approach to systematic removal programs so close to elections. *Arcia*, 772 F.3d at 1346-47.

The *Arcia* court also carefully rejected the reasoning in *Florida* that is endorsed by the State here. For example, like the State raises here (Opp. at 22, 24), the *Arcia* defendant argued that ineligible voters who were improperly registered in the first place fell outside

the General Removal Provision because the NVRA protects only "eligible" voters, and as such that both the General Removal Provision and the 90-Day Provision must be read commensurately.[5] *See* 772 F.3d at 1346. Stated differently, "[b]ecause the 90 Day Provision and the General Removal Provision share many of the same exceptions [] [defendant] believes that the statutory text of the NVRA provides us with only one of two options: either non-citizens may be excluded at any time, or not at all." *Id.* The *Arcia* court correctly rejected such a binary view, holding that it did not need to address whether it could imply an exception into the General Removal Provision for removing non-citizens to determine—correctly—that the 90-Day Provision applies to bar citizenship-based systematic removal programs within the 90-day quiet period. *See id.* at 1346-47. The court also recognized that such an interpretation "would functionally eviscerate the meaning of the phrase 'any program' in the 90 Day Provision" because it would reduce the 90-Day Provision to only prohibiting "the removal of registrants who become ineligible to vote after moving to a different state." *Id.* at 1348. Instead, the court recognized that it must "honor the broad statutory language in the 90-Day Provision, which unambiguously covers programs like" the one challenged in *Arcia* and H.B. 2243 here. *Id.* at 1347.

Arcia likewise dispenses with the State's supposed constitutional concerns. The State argues that states have the power to determine voter eligibility, meaning that interpreting the NVRA as "prohibiting states from removing ineligible voters would raise

[5] For this, the State also cites *Bell v. Marinko*, 367 F.3d 588 (6th Cir. 2004), Opp. at 21-22, but as Plaintiffs have explained (Mot. at 12-13), *Bell* is inapposite. As the Sixth Circuit later held in *Land*, the removals in *Bell* were permissible because they followed investigations and hearings in which a voter's ineligibility was *individually* determined, while the program in *Land* risked disenfranchising *eligible* registered voters based on undeliverable mail. 546 F.3d at 385-86. Curiously, the State latches onto this part of *Land* to argue that it is distinguishable: here, "the Voting Laws require removal when a county recorder '*confirms* that the person registered is not a United States Citizen.'" Opp. at 22 (citing *Land* and A.R.S. § 16-165(A)(10)) (emphasis in original). Not so. H.B. 2243's "confirmation" language refers to the database checks, which the Secretary of State has admitted may contain "inaccurate" citizenship data and are "unreliable" for this purpose. Secretary of State Answer to Plaintiffs Poder Latinx and CPLC's Second Amended Complaint, Dkt. 189 ¶ 44; Secretary of State Answer to Plaintiff AAANHPI-EC Complaint, Case No. 2:22-cv-1381-SRB, Dkt. 63 ¶ 12. These database checks are nothing like the individual eligibility hearings in *Bell*.

constitutional concerns[.]" Opp. at 21. But as the *Arcia* court explained, "[t]he 90 Day Provision by its terms only applies to programs which 'systematically' remove the names of ineligible voters. As a result, the 90 Day Provision would not bar a state from investigating potential non-citizens and removing them on the basis of individualized information even within the 90-day window." 772 F.3d at 1348. Thus, contrary to the State's position here, states may still remove non-citizens within the 90 day quiet period based on individual investigation. *See* Mot. at 11.[6] But H.B. 2243 is not individualized.

The Eleventh Circuit did not follow the flawed statutory interpretation in *Florida* urged by the State, and the Court should not do so here.

C. H.B. 2243 Cannot Be "Harmonized" With The 90-Day Provision

In the alternative, the State asks the Court to "harmonize" H.B. 2243 and the 90-Day Provision by issuing an order that H.B. 2243 "must not be in effect during the 90 days before federal elections." Opp. at 25. This alternative position fares no better than the State's first argument. "Harmonizing" H.B. 2243 and the 90-Day Provision is not possible here, as the State implicitly concedes. By its terms, H.B. 2243 will operate each month, including the 90 days prior to federal elections—running headlong into NVRA's 90-Day Provision. This makes H.B. 2243 unlike the law at issue in *Unocal Corp. v. Kaabipour*, the only case the State cites for this proposition. Opp. at 25 (citing 177 F.3d 755, 769 (9th Cir. 1999)). In *Unocal*, the Ninth Circuit "harmonized" state and federal marketing laws by recognizing that the state law "fill[ed] gaps" not covered by the federal law. 177 F.3d at 769. But H.B. 2243 does not "fill gaps" in the NVRA, nor can it be interpreted in such a way as to allow both the state and federal law to coexist. *See, e.g.*, *Wash. Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1269-70 (W.D. Wash. 2006) (striking down law where compliance with both state and federal requirements was not possible); *see also Swinomish Indian Tribal Comm. v. BNSF Railway Co.*, 951 F.3d 1142, 1160 (9th Cir. 2020)

[6] The State suggests that this case presents the question of whether both the General Removal Provision and the 90-Day Provision of the NVRA bar removal of non-citizens altogether. Opp. at 24. Not so. Plaintiffs have not taken the position that states may never remove non-citizens from the rolls.

(statutes whose provisions are "easily reconcilable" may be harmonized); *Ellis v. S.F. State Univ.*, 136 F. Supp. 3d 1140, 1146 (N.D. Cal. 2015) (harmonization between two laws was possible where compliance with one did not foreclose compliance with the other).

What the State is really asking is for the Court to rewrite H.B. 2243 to include a provision—entirely absent in the law—that would prevent it from operating within 90 days of a federal election. But "[r]ewriting the statute is a job for the Arizona legislature, . . . not for this court." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1021 (9th Cir. 2013) (declining to replace the text of a statute with different elements to make it not unconstitutionally vague, and holding that state law in direct conflict with federal immigration law was preempted); *Lucht v. Molalla River Sch. Dist.*, 225 F.3d 1023, 1029 (9th Cir. 2000) (declining to "rewrite the statute to substitute" defendant's preferred language for the extant language because courts are not authorized to do so) (citing *Badaracco v. C.I.R.*, 464 U.S. 386, 396 (1984)); *cf. Patel v. United States*, No. CV-20-01864-PHX-DLR, 2021 WL 2454048, at *2 (D. Ariz. June 16, 2021) (declining to rewrite a law "to achieve what it believes to be the legislature's objective").

The State also suggests that, in the event the Court enters its alternate ruling, the Court should permit the parties "to submit a proposed order specifying which parts of the Voting Laws constitute systematic removal programs[.]" Opp. at 26. At the same time, the State concedes that all but a portion of A.R.S. § 16-165(A)(10), the provision discussed above, "constitute systematic removal programs." *Id.* But as explained *supra* at II.A, H.B. 2243 is a systematic removal scheme irrespective of any particular provision. And it is a systematic removal program that is in direct conflict with, and plainly violates, the 90-Day Provision of the NVRA, and should be struck down in its entirety.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for partial summary judgment and issue a declaration that H.B. 2243 is invalid under the 90-Day Provision of the NVRA.

Dated: July 19, 2023

Respectfully submitted,

By */s/ Amit Makker*

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2023, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

/s/ Amit Makker
Amit Makker