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**UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA**

16 Mi Familia Vota, et al.,  
 17 Plaintiffs,  
 18 v.  
 19 Adrian Fontes, et al.,  
 20 Defendants.

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

**MFV PLAINTIFFS' REPLY IN  
 SUPPORT OF CROSS-MOTION  
 FOR PARTIAL SUMMARY  
 JUDGMENT**

21  
 22 AND CONSOLIDATED CASES.

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

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1 As established in its motion for partial summary judgment, ECF No. 399 (“MFV  
2 Mot.”), MFV is entitled to summary judgment on its claims under the Materiality Provision  
3 and NVRA Section 8(a). MFV is also entitled to summary judgment on its NVRA Section  
4 6 claim and joins in DNC’s motion. None of the officials actually responsible for running  
5 elections in Arizona—the Secretary of State and County Recorders—oppose. And nothing  
6 in the oppositions from the Attorney General and State (together, the “State”) or the RNC  
7 provide reason to deny MFV summary judgment. MFV’s motion should be granted.

## 8 ARGUMENT

### 9 **I. The Materiality Provision may be enforced by non-United States plaintiffs via 10 Section 1983 and directly under the Civil Rights Act.**

11 As a matter of law, the non-US Plaintiffs may enforce the Materiality Provision via  
12 § 1983 and under the Civil Rights Act. The RNC alone contends otherwise, but its limited  
13 arguments fail. First, the RNC’s contention that Congress did not, “in clear and  
14 unambiguous terms,” create any rights in the Materiality Provision, RNC Resp. 12, is  
15 wrong. The Provision guarantees “the right of any individual to vote,” specifically by  
16 protecting against the denial of that right “because of an error or omission on any record or  
17 paper relating to,” among other things, a registration form, where the “error or omission is  
18 not material in determining whether” the person is “qualified” to vote. 52 U.S.C. §  
19 10101(a)(2)(B). This language is unambiguous and “clearly analogous to the rights-  
20 creating language cited by the Supreme Court in *Gonzaga*.” *Schwier v. Cox*, 340 F.3d  
21 1284, 1296 (11th Cir. 2003). Indeed, it is remarkably similar to rights-creating language  
22 that the Supreme Court found sufficient in *Health & Hosp. Corp. of Marion Cnty. v.*  
23 *Talevski*, 143 S. Ct. 1444, 1458 (2023), just a month ago, a decision that the RNC ignores.

24 Rather than grapple with this clear rights-creating text, the RNC makes the curious  
25 assertion that the Materiality Provision does not “fashion any new ‘right’ at all” because  
26 the right to vote is preexisting. RNC Resp. 13. But it cites no authority for the proposition  
27 that Congress may only confer novel, previously unheard-of rights in a statute. In many  
28 cases, Congress protects constitutional rights with statutory rights. Moreover, the RNC

1 ignores that the Materiality Provision does not confer an unqualified and abstract “right to  
2 vote,” but a specific statutory right not to be denied the right “*because of an [immaterial]*  
3 *error or omission* on any record or paper relating to any application, registration, or other  
4 act requisite to voting.” 52 U.S.C. § 10101(a)(2)(B) (emphasis added). Congress created  
5 this novel statutory right because of a well-documented history of election officials  
6 imposing burdensome registration requirements on Black voters to deny them access to the  
7 franchise. *See Schwier*, 340 F.3d at 1294; *Fla. State Conf. of NAACP v. Browning*, 522  
8 F.3d 1153, 1173 (11th Cir. 2008); 10 Cong. Rec. 6715 (1964).<sup>1</sup>

9 The RNC next argues that “a regulatory restraint on state actors” cannot confer a  
10 private right, RNC Resp. 13, but this argument was rejected by long-standing Ninth Circuit  
11 precedent the RNC again ignores. *See* MFV Mot. 11-12 (collecting cases). The RNC also  
12 ignores that the Supreme Court, too, rejected this argument in *Talevski*, explaining that “it  
13 would be strange to hold that a statutory provision fails to secure rights simply because it  
14 considers, alongside the rights bearers, the actors that might threaten those rights.” 143 S.  
15 Ct. at 1458. The Court emphasized that it has “never so held.” *Id.*<sup>2</sup>

16 The RNC is wrong to suggest the Attorney General’s enforcement power precludes  
17 private enforcement. Defeating the presumption of private enforcement via § 1983 requires  
18 “*incompatibility* between enforcement under § 1983 and the enforcement scheme that  
19 Congress has enacted.” *Talevski*, 143 S. Ct. at 1459 (emphasis added). The Supreme Court  
20 has found such “implicit preclusion” in only three cases, each of which “concerned statutes  
21 with self-contained enforcement schemes that included statute-specific rights of action.”  
22 *Id.* at 1460-61 (collecting cases). The Materiality Provision contains no such scheme.

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23  
24 <sup>1</sup> The Provision’s text alone confers a private right. *See* RNC Resp. 13 n.3. But  
25 “contemporary legal context” can “buttress[]” conclusions supported by statutory text,  
*Alexander v. Sandoval*, 532 U.S. 275, 288 (2001), as it does here, MFV Mot. 12-13.

26 <sup>2</sup> The cases the RNC cites to support its contention pre-date *Talevski* and are irrelevant  
27 because each statute at issue “lack[ed] rights-creating language.” *Lil’ Man in the Boat, Inc.*  
28 *v. City & Cnty. of S.F.*, 5 F.4th 952, 959-60 (9th Cir. 2021) (discussing cases). The  
Materiality Provision does not. *E.g.*, *Migliori v. Cohen*, 36 F.4th 153, 159 (3d Cir. 2022).

1           The RNC also argues that private enforcement of the Materiality Provision would  
2 render “superfluous” 52 U.S.C. § 10101(e), which it claims “authorize[s] private litigants  
3 to assert claims.” RNC Resp. 14. Both the premise and the conclusion are wrong. First,  
4 what subsection (e) allows for is a special procedure in litigation initiated “upon request of  
5 the Attorney General,” where the court finds a “pattern or practice” of vote denial “on  
6 account of race or color,” for affected members of the targeted racial group to “appl[y]”  
7 for an “order declaring [the applicant] qualified to vote.” 52 U.S.C. § 10101(e). This is  
8 nothing like a “comprehensive enforcement scheme” for the entire Civil Rights Act that is  
9 “incompatible with” private enforcement of the Materiality Provision. *City of Rancho*  
10 *Palos Verdes v. Abrams*, 544 U.S. 113, 120 (2005). Nor is subsection (e)’s narrow  
11 application “incompatible with” private enforcement of the Materiality Provision. *Id.* “In  
12 focusing on what [§ 10101] contains, [the RNC] ignore[s] what it lacks—a private judicial  
13 right of action, a private federal administrative remedy, or any carefu[l] congressional  
14 tailor[ing] that § 1983 actions would distort.” *Talevski*, 143 S. Ct. at 1461 (cleaned up).

15           The RNC also nowhere disputes that the Materiality Provision creates a private  
16 remedy. It does. MFV Mot. 14–15. If the Court finds the Provision creates a private right,  
17 it should hold it may be enforced through § 1983—because it creates a private right, *see*  
18 *Gonzaga*, 536 U.S. at 284—as well as directly under the Civil Rights Act—because it  
19 creates a private right *and* a private remedy, *id.* (quoting *Sandoval*, 532 U.S. at 292 n.8).  
20 The Court should grant MFV judgment on these points and deny the RNC’s motion.

## 21 **II. MFV is entitled to summary judgment on its Materiality Provision claims.**

22           The record uniformly establishes that the officials that administer elections in  
23 Arizona do not deem HB 2492’s Birthplace, Citizenship Checkbox, or Federal-Form  
24 DPOC Requirements material to determining whether an applicant is qualified to vote. The  
25 State does not dispute this evidence. State CSOF § 1 ¶¶ 35-47. As a result, there is no  
26 factual dispute as to whether these requirements are material to determining voter  
27 qualifications in Arizona: they are not. The Court should grant MFV summary judgment  
28 on these claims and deny the State’s motion for judgment on the same.

1           **A. The Materiality Provision looks to State election officials’ actual means**  
2           **of qualifying voters.**

3           Absent any evidence supporting its position, the State relies on a deeply flawed  
4           premise—that materiality is an isolated legal question turning on whether the information  
5           is objectively “relevant” to confirming voter eligibility, regardless of whether election  
6           officials actually use, or even *could* use, the information for this purpose. *See* State Resp.  
7           27-28. That is not what the Materiality Provision says. It prohibits denying the right to vote  
8           for an error or omission if it “*is not material in determining* whether” a person “is qualified  
9           under State law to vote in such election.” 52 U.S.C. § 10101(a)(2)(B) (emphasis added).

10           And the cases applying the Materiality Provision look to what state election officials  
11           actually do, finding invalid laws that reject applications or ballots for errors or omissions  
12           that are not truly material to determining voter qualifications. *E.g.*, *Migliori*, 36 F.4th at  
13           164 (3d Cir. 2022) (holding omission of dates on ballot envelopes immaterial in part  
14           because state accepted materials with wrong dates); *Ford v. Tenn. S.*, 2006 WL 8435145,  
15           at \*10-11 (W.D. Tenn. Feb. 1, 2006) (requiring voters sign applications and poll books  
16           immaterial where state previously treated failure to sign as immaterial); *Martin v.*  
17           *Crittenden*, 347 F. Supp. 3d 1302, 1309 (N.D. Ga. 2018) (finding birth year not material  
18           because “other Georgia counties do not require absentee voters to furnish such information  
19           *at all*”). Indeed, Congress enacted the Materiality Provision precisely to prohibit requiring  
20           information “relevant” to eligibility in the abstract, but immaterial in practice, such as  
21           demanding applicants provide their age in days. *Schwier*, 340 F.3d at 1294.

22           The State has no answer except to claim that “how election officials use [this]  
23           information is not the question.” State Resp. 33. But under the plain language of the  
24           Materiality Provision, it absolutely is a relevant question. And even since MFV filed its  
25           motion, additional County Recorders have confirmed what the record already uniformly  
26           reflected—that no official responsible for administering elections in Arizona claims the  
27           information at issue is material to determining voter qualifications. (*See* Exhibit 1). The  
28           State attempts to avoid the clear consequence of this evidence, characterizing it as “not

1 dispositive,” because the Court has the ultimate say on materiality. State Resp. 34. But  
2 these are not simply assertions about what these individuals think the law means, they are  
3 assertions by election officials charged with determining voter eligibility in Arizona about  
4 *whether or how this information is useful for this purpose.*

5 An examination of each of the requirements further illustrates the absurdity of the  
6 State’s position, which asks the Court to ignore the evidence about the practical use of this  
7 information in favor of a flawed legal theory divorced from both the concerns of the  
8 Materiality Provision and the practical application of these new requirements.

9 **B. The Birthplace Requirement is not material.**

10 First, the State’s argument that “a voter’s place of birth . . . can help confirm the  
11 voter’s identity,” State Mot. 14, is pure speculation. The State points to no evidence  
12 showing that Arizona’s election officials could use birthplace for this purpose; the only  
13 evidence on this point is that they cannot. MFV Mot. 4-5. The State’s reliance on the  
14 alleged materiality of birthplace in *other contexts* only highlights the absence of any  
15 evidence showing it is material *here*. State Resp. 34. And while the State initially asserted  
16 that a few *other* states appear to require birthplace information for voter registration, it has  
17 now abandoned even that contention. *Id.* at 34 n.7. The undisputed record is that Arizona  
18 is the only state that will reject a person’s registration for failure to include birthplace  
19 information. Non-U.S. Pls.’ CSOF § 2 ¶¶ 9-11. The State’s reliance on the suggestion of  
20 an out-of-circuit district court that “verifying an individual’s identity is a material  
21 requirement,” *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 841 (S.D. Ind. 2006),  
22 does not remedy the State’s failure to explain *how the Birthplace Requirement* aids in  
23 confirming a voter registration applicant’s identity, which is the key question here.

24 Perhaps sensing its identity-confirmation theory has fallen flat, the State shifts gears  
25 and revives its pleading-stage argument that birthplace is material to determining  
26 citizenship “in the sense that persons born in the United States are citizens,” State Resp.  
27 35—an argument it did not make in its opening motion and hence waived. *See, e.g., Smith*  
28

1 *v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999). But the argument is undermined in any  
2 event by the State’s own admission that that “[m]any persons born outside the United States  
3 become citizens.” State Resp. 35. The State thus concludes that “birthplace is a sufficient  
4 but not necessary condition for citizenship,” *id.*—hardly a persuasive rationale when  
5 “information that is unnecessary [is] not material.” *La Union del Pueblo Entero v. Abbott*,  
6 604 F. Supp. 3d 512, 542 (W.D. Tex. 2022); *Martin*, 347 F. Supp. 3d at 1309 (similar).  
7 And the State does not even attempt to explain how birthplace could be material for  
8 purposes of identity *or* citizenship verification when Arizona’s state registration form  
9 *already* requires DPOC (in addition to their name, address, and birthdate).

10 The State suggests that the Secretary’s repeated admission that birthplace is *not*  
11 material to determining voter qualifications under state law, MFV Mot. 10 (collecting  
12 cites), should be discounted as merely the “previously expressed view” of that office. State  
13 Resp. 34. Not so. As an official capacity defendant, prior statements of the Secretary or his  
14 office remain “conclusively binding” on him unless affirmatively amended. *Am. Title Ins.*  
15 *Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). The Secretary has not amended  
16 these admissions, or (to MFV’s knowledge) ever even expressed a different view. Nor does  
17 the Secretary oppose MFV’s motion. And in the Joint Rule 26(f) Report to which the State  
18 cites, the Secretary refers to the prior filings in the case as his own, stating he “has answered  
19 the complaints in all of the consolidated actions.” ECF No. 281 at 10. Those include the  
20 Secretary’s prior statements that birthplace is not material. MFV Mot. 4. If anything, that  
21 both the prior and current Secretaries admit that the Birthplace Requirement is immaterial  
22 to determining voter qualifications provides further reason to find in MFV’s favor.

23 **C. The Citizenship Checkbox Requirement is not material.**

24 The Citizenship Checkbox Requirement is also immaterial to determining a voter’s  
25 qualifications, and the State provides no reason to find otherwise. The State’s argument  
26 that even if the checkbox is duplicative—which it is—that does not make it immaterial,  
27 State Resp. 29, ignores both logic and the Materiality Provision’s text. If an election official  
28

1 has already “determine[d]” that an applicant has satisfied a state-law qualification to vote,  
2 additional demands for the same information are, by definition, “not material” and can only  
3 serve to reject voters already found to be qualified. *See, e.g., League of Women Voters of*  
4 *Ark. v. Thurston*, 2021 WL 5312640, at \*4 (W.D. Ark. Nov. 15, 2021) (finding  
5 immateriality “where State law requires absentee voters to provide some [] information  
6 several times and . . . they have correctly provided that information at least once”). The  
7 decision in *Diaz v. Cobb* supports MFV, not the State. There, the court found that Florida’s  
8 citizenship checkbox was “not duplicative of signing [an] oath” because the oath did not  
9 include an affirmation of citizenship. 435 F. Supp. 2d 1206, 1212-13 (S.D. Fla. 2006).  
10 Here, in contrast, Arizona’s redundant Citizenship Checkbox Requirement conveys the  
11 exact same information conveyed by the citizenship affirmation or DPOC.

12 The State has no real response except to assert that the Checkbox Requirement seeks  
13 duplicative information but in a “different manner.” State Resp. 29. But this is the problem.  
14 Once an election official “determines” a person is “qualified under state law” based on the  
15 voter’s provision of information in one manner, they may not deny them the right to vote  
16 for an error or omission in providing that same information in a different manner. 52 U.S.C.  
17 § 10101(a)(2)(B). The Materiality Provision was intended to prohibit exactly this. *Schwier*,  
18 340 F.3d at 1294. The State’s unsupported view that “in some ways” the “checkbox is a  
19 more specific way of eliciting information” is irrelevant—once an official has determined  
20 a registrant is a citizen, they need not reconfirm the point at the State’s caprice.

21 Finally, the State suggests that procedures under HAVA pertaining to the citizenship  
22 checkbox on the Federal Form support finding materiality here. State Resp. 29. But HAVA  
23 says nothing about whether completing the checkbox is material to determining a voter’s  
24 qualifications where they have already affirmed their citizenship, nor does it require  
25 rejection of applications due to failure to check a box. 52 U.S.C. § 21083(b)(4)(B).  
26 Moreover, the Election Assistance Commission (“EAC”)—which HAVA created to advise  
27 states on compliance with the law—“advised the states” that because “[t]his subsection is  
28

1 ‘subject to state law,’” they “may choose to honor the affirmation of citizenship [] that goes  
2 with the signing of the registration form and register a person who did not check the ‘yes’  
3 box.” *Edelman v. State*, 248 P.3d 581, 591 (Wash. App. 2011) (quoting EAC guidance).<sup>3</sup>

4 At bottom, the Citizenship Checkbox Requirement merely serves to trip up  
5 applicants who have already attested to their citizenship under penalty of perjury and threat  
6 of deportation or provided “*satisfactory evidence of United States citizenship*,” A.R.S. §  
7 16-166(F). No evidence shows it is material to determining an applicant’s qualification to  
8 vote, whereas successive Secretaries of State have confirmed it is not. MFV Mot. 7.

9 **D. The DPOC Requirement for Federal-Form Applicants is not material.**

10 Requiring DPOC from Federal-Form applicants (even those already registered),  
11 who affirm their citizenship under penalty of perjury and threat of deportation, violates the  
12 Materiality Provision for the reasons above—once a recorder has determined an applicant  
13 is qualified, they may not reject them for failure to provide duplicative information. *Supra*  
14 §§ II(B)-(C); MFV Mot. 8-9. The State repeatedly relies on the decision in *Gonzalez*, State  
15 Resp. 32-33 (quoting *Gonzalez v. Arizona*, 2007 WL 9724581, at \*2 (D. Ariz. Aug. 28,  
16 2007)), but *Gonzalez* was cursory not just because it was “concise,” *id.* at 33, but because  
17 it relied on no evidence, authority, or analysis in reaching its unaffirmed conclusion. Nor  
18 did it address whether Arizona may layer duplicative requests for citizenship information  
19 atop one another, including for those *already registered*. It may not.

20 The State also argues that, because DPOC is now a registration requirement under  
21 HB 2492, it is “akin to citizenship itself.” *Id.* (citing A.R.S. § 16-101(A)(1)). This reasoning  
22 is not only circular; it is at odds with the Arizona Constitution, which, in listing the  
23 “[q]ualifications of voters” in addition to age, residency, capacity, and rights-restoration,  
24

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25 <sup>3</sup> The State’s reliance on *Browning* is misplaced. Even “accepting the error” of failing to  
26 check the box “as true and correct,” 522 F.3d at 1175, Arizonans must either swear to their  
27 citizenship or present documentary proof of it—a situation *Browning* did not address. Nor  
28 do Plaintiffs’ Materiality Provision claims concern the scenario where a registration  
affirmatively checks the “no” box as to their citizenship. *Cf. Edelman*, 248 P.3d at 591.

1 provides only that a “person *be* a citizen of the United States.” Ariz. Const. art. VII, § 2(A)  
 2 (emphasis added). Arizona may not smuggle immaterial requirements past the Materiality  
 3 Provision merely by labeling them voter qualifications. *Schwier*, 439 F.3d at 1286  
 4 (affirming registration requirement violated Materiality Provision even though registration  
 5 was a qualification for voting under state law); *cf. Harper v. Va. State Bd. of Elections*, 383  
 6 U.S. 663, 666 (1966) (distinguishing qualifications from compliance with poll tax).

7 \* \* \*

8 The law and record cut entirely in MFV’s favor on its Materiality Provision claims.  
 9 The State asks the Court to ignore the actual evidence—which uniformly establishes that  
 10 the challenged requirements are immaterial. And because no one contends that further  
 11 factual development will show otherwise, no dispute of *material* fact exists and resolution  
 12 of these important claims should not be deferred until after an unset trial date. *See Fam.*  
 13 *Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008)  
 14 (finding no abuse of discretion to deny request to defer ruling on summary judgment when  
 15 requesting party “failed to show how the evidence is ‘essential’ to oppose summary  
 16 judgment”).<sup>4</sup> In the alternative, the Court should deny the State’s motion and hold open  
 17 MFV’s cross-motion until the close of fact discovery, provided MFV is permitted to renew  
 18 its motion then and any supplemental briefing is limited to addressing new evidence  
 19 bearing on the Materiality Provision claims.<sup>5</sup>

20 \_\_\_\_\_  
 21 <sup>4</sup> While the United States and LUCHA claim additional discovery is necessary under Rule  
 22 56(d), U.S. Mot. 21-23; LUCHA Mot. 6-7, they acknowledge that they anticipate that  
 23 further discovery would only “further confirm” what the record already shows, *id.* As a  
 24 result, it “will not yield information that creates a genuine dispute of material fact.” *Tillman*  
 25 *v. Everett*, 2020 WL 1904637, at \*3 (D. Ariz. Apr. 17, 2020); *see also Anderson v. Liberty*  
 26 *Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Only disputes over facts that might affect the  
 outcome of the suit . . . will properly preclude the entry of summary judgment.”). Moreover,  
 resolving *MFV’s* claims now in no way precludes other plaintiffs with similar claims in  
 their separate operative complaints from seeking judgment later.

27 <sup>5</sup> MFV recognizes the Court indicated at the case management conference that there would  
 28 be no further summary judgment briefing after this round, and that the Court would hold

1 **III. HB 2492 violates Section 8(a) of the NVRA.**

2 Finally, MFV is also entitled to judgment on its NVRA Section 8(a) claim. HB 2492  
 3 prohibits county recorders from registering applicants to vote in all federal elections, or to  
 4 vote by mail, if they cannot independently verify the applicant’s sworn affirmation of  
 5 citizenship on the Federal Form. HB 2492 § 4 (enacting A.R.S. § 16-121.01(D)-(E)). That  
 6 violates Section 8(a)’s command that States “*shall* . . . ensure that any eligible applicant is  
 7 registered to vote” in “elections for Federal office” if the Federal Form or other “valid voter  
 8 registration form” is submitted or received at least 29 days before an election. 52 U.S.C. §  
 9 20507(a)(1); *see also* A.R.S. § 16-120(A) (setting Arizona’s voter registration deadline 29  
 10 days before an election). Section 8(a) does not permit the State to deprive an eligible  
 11 applicant who submits a timely Federal Form the opportunity to vote “in elections for  
 12 Federal office” simply because the State wishes to further investigate the applicant’s  
 13 citizenship but cannot reach a conclusive determination. “[T]he unambiguous terms of the  
 14 NVRA require[] Arizona to ensure that a qualified voter who submit[s] their [federal]  
 15 registration application twenty-nine days before [an election] be registered to vote in that  
 16 election.” *Isabel v. Reagan*, 987 F.3d 1220, 1230 (9th Cir. 2021) (citing § 20507(a)).

17 ***The State does not disagree.*** It concedes it “is true” that under Section 8(a) recorders  
 18 cannot refuse to register eligible Federal Form applicants simply because they failed to  
 19 separately confirm that person’s citizenship ahead of an election. State Br. 15. Because HB  
 20 2492 directly conflicts with Section 8, it is preempted. As the State itself explains, HB 2492  
 21 “could be preempted” to the extent “an eligible voter who submits a valid form at least [29]  
 22

23 \_\_\_\_\_  
 24 “a trial on the merits of whatever’s left after fact discovery.” CMC Tr. 45:15-18. Here,  
 25 however, summary judgment briefing on the Materiality Provision claims is essentially  
 26 complete and resolving the claims after fact discovery would require, at most, limited  
 27 supplemental briefing on new record evidence, allowing this matter to be expeditiously  
 28 resolved before trial, without delaying setting a trial date. Moreover, MFV is not aware of  
 a single Materiality Provision case that has been decided at trial; such claims are well-  
 suited to resolution on summary judgment. That is particularly true here where the parties  
 have fully briefed the relevant legal issues and dispute no material facts.

1 days . . . beforehand is not permitted to vote” in presidential elections or by mail, *id.*, the  
 2 exact penalty HB 2492 imposes on registrants whose citizenship cannot be independently  
 3 confirmed by county recorders. That is precisely the relief MFV seeks—an order requiring  
 4 the County Recorders to register eligible Federal Form applicants for all Federal offices  
 5 and to vote by mail even if the Recorder cannot independently verify their citizenship.

6 Despite these admissions, the State opposes summary judgment for abstract—and  
 7 legally baseless—reasons. It charges that MFV has “identifie[d] no such case” in which a  
 8 person has been deprived the right to vote in all Federal elections because of HB 2492.  
 9 State Br. 15. But that is unsurprising—HB 2492 is not currently being enforced. More  
 10 importantly, the State fundamentally misunderstands the law of federal preemption. It  
 11 argues that HB 2492 can only be preempted “as applied” to *specific* voters who, despite  
 12 submitting timely and valid applications, are not registered because county recorders  
 13 cannot independently verify their citizenship. State Br. 15. But whether a state law is  
 14 preempted by federal laws like the NVRA is not assessed on a case-by-case basis. Rather,  
 15 courts answer “[t]he straightforward textual question” of whether the statute, *on its face*,  
 16 “conflicts with the NVRA’s mandate.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570  
 17 U.S. 1, 9 (2013). Where a state’s election regulation is “inconsistent with” the NVRA, it  
 18 must “give way.” *Id.* at 15. On its face, HB 2492 is inconsistent with Section 8(a) because  
 19 it forbids recorders to properly register timely and valid voter federal form applicants  
 20 despite the NVRA’s mandate that these voters be registered. HB 2492 is therefore  
 21 preempted by, and must “give way” to, the NVRA, *Inter Tribal, id.* at 1, 15—Plaintiffs  
 22 need not wait until a voter is denied their right to vote in a federal election before  
 23 challenging a state law that, on its face, violates the NVRA’s command.<sup>6</sup>

## 24 CONCLUSION

25 The Court should grant MFV’s cross-motion for partial summary judgment.

26  
 27 <sup>6</sup> The RNC says HB 2492 complies with Section 8(a) because it does not regulate mail  
 28 voting or presidential elections. RNC Br. 8-9. It does. DNC Mot. 7-15; DNC Reply 1-9.

1 Dated: July 19, 2023

Respectfully submitted,

2  
3 /s/ Christopher D. Dodge

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**CERTIFICATE OF SERVICE**

On this day, July 19, 2023, I caused the foregoing to be filed and served electronically via the Court’s CM/ECF system upon all counsel of record.

/s/ Christopher D. Dodge  
Christopher D. Dodge

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