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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.

No. CV-22-00509-PHX-SRB (Lead)

**PROMISE ARIZONA AND
 SOUTHWEST VOTER
 REGISTRATION EDUCATION
 PROJECT'S TRIAL MEMORANDUM
 OF LAW**

- 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

AND CONSOLIDATED CASES.

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INTRODUCTION

1
2 House Bill 2243 (“H.B. 2243”) places an undue burden on the ability of voters to
3 participate in elections in violation of the First and Fourteenth Amendments to the U.S.
4 Constitution.¹ The law creates a voter registration cancellation regime that unfairly flags
5 registered voters as not being United States citizens based on inaccurate data and suspicion,
6 and that gives voters woefully insufficient opportunity to respond in order to remain
7 registered. H.B. 2243’s provisions threaten to unduly burden voters, particularly
8 naturalized U.S. citizens and people of color, to address a purported problem—voting by
9 non-U.S. citizens—that does not exist.
10
11

12 Plaintiffs Promise Arizona and Southwest Voter Registration Education Project
13 (collectively, “Promise Arizona Plaintiffs”) submit this Trial Memorandum of Law
14 addressing non-U.S. Consolidated Plaintiffs claims challenging H.B. 2243 as imposing an
15 undue burden on the right to vote under the First and Fourteenth Amendments to the United
16 States Constitution. This Memorandum also addresses Promise Arizona and Southwest
17 Voter Registration Education Project’s standing. Promise Arizona Plaintiffs also join the
18 Trial Memoranda separately and concurrently filed by other Consolidated Plaintiffs, which
19 together with this Trial Memorandum, address the questions of law and evidence that
20 Promise Arizona Plaintiffs currently anticipate will arise at trial.
21
22

23 Under H.B. 2243, a county recorder must cancel a voter’s registration after
24 “obtain[ing][...]information” from monthly, mandatory comparisons between the voter
25
26

27 ¹ House Bill 2243 (“H.B. 2243”) includes amendments to A.R.S. § 16-165. While
28 Plaintiffs refer to H.B. 2243 throughout this trial brief, for ease of reference, Plaintiffs are referring to the provisions of A.R.S. § 16-165.

1 registration database and state and federal databases, such as the Arizona driver license
2 database and the Social Security Administration database. A.R.S. § 16-165(A)(10); A.R.S.
3 § 16-165(G)-(K). The law also requires cancellation when county recorders have “reason
4 to believe” voters are not U.S. citizens and must monthly use the Systematic Alien
5 Verification for Entitlements (“SAVE”) maintained by United States Citizenship and
6 Immigration Services (“USCIS”) to look up such voters. *Id.* at (I).

8 Prior to cancellation, county recorders are mandated to send the suspected non-U.S.
9 citizen notice that their registration will be canceled in a mere *thirty-five* days “unless the
10 person provides satisfactory evidence of United States citizenship.” *Id.* If the registrant
11 cannot provide this often-expensive evidence that is difficult to obtain within this short 35-
12 day timeframe, county recorders are required to cancel the person’s registration and refer
13 the accused to “the county attorney and attorney general for possible investigation” and
14 prosecution. *Id.*

17 At trial, Non-U.S. Plaintiffs will prove that H.B. 2243 unduly burdens Arizona voters
18 in a manner that is not narrowly tailored to a compelling state interest and thus is in violation
19 of the First and Fourteenth Amendment to the United States Constitution.²

21 ARGUMENT

22 I. PROMISE ARIZONA AND SOUTHWEST VOTER REGISTRATION 23 EDUCATION PROJECT HAVE ORGANIZATIONAL STANDING.

24 Similar to individuals, organizations establish standing when “(1) they have suffered
25 an injury-in-fact, meaning an injury that is ‘concrete and particularized’ and ‘actual and
26

27 ² On September 13th, 2023 this Court granted Plaintiffs’ Cross-Motion for Summary
28 Judgment that H.B. 2243 violates “Section 8(c) of the NVRA by allowing systematic
cancellation of registrations within 90 days of an election.” Order at 34, ECF 534.

1 imminent,’ (2) the alleged injury is ‘fairly traceable’ to the defendants’ conduct, and (3) it
2 is ‘more than speculative’ that the injury is judicially redressable.” *East Bay Sanctuary*
3 *Covenant v. Biden*, 993 F.3d 640, 662-663 (9th Cir. 2021) (quoting *Lujan v. Defenders of*
4 *Wildlife*, 504 U.S. 555, 560–561 (1992)). As to the injury requirement, an organizational
5 plaintiff “may demonstrate that the organization *itself* was injured in fact. In the Ninth
6 Circuit, this requires the organization to demonstrate (1) frustration of its organizational
7 mission and (2) diversion of its resources in response to that frustration of purpose.”
8 *International Soc’y for the Prot. Of Mustangs and Burros v. U.S. Dep’t of Agric.*, No. CV-
9 22-08114-PHX-SPL, 2022 WL 3588223, at *2 (citing *East Bay Sanctuary Covenant v.*
10 *Biden*, 993 F.3d 640, 663 (9th Cir. 2021)).

11
12
13 The missions of both Promise Arizona and Southwest Voter Registration Education
14 Project are to improve the participation of Latino and other minority communities in the
15 democratic process. Testimony and documentary evidence will illustrate that H.B. 2243
16 will most likely burden and prohibit Latino voters and naturalized citizens from exercising
17 their right to vote. *See Infra* Parts II-III; *see also* Consolidated Plaintiffs’ Trial Memoranda.
18 Because H.B. 2243 aims to disfranchise the targeted demographics served by Plaintiffs,
19 Plaintiffs will meet this element.

20
21
22 Plaintiffs will prove that, if implemented, H.B. 2243 will force both Promise Arizona
23 and Southwest Voter Registration Education Project to divert their limited money, time,
24 and resources dedicated to their mission in order to counteract the law’s effects through
25 conducting community outreach, organizing educational campaigns, preparing English and
26 Spanish educational materials, hiring and training staff, and helping re-register those who
27
28

1 purged under the challenged law. Decl. of Petra Falcon at 3, ECF 398-5; Decl. of Lydia
2 Camarillo at 3-4, ECF 398-4. Accordingly, Plaintiffs have organizational standing.

3 **II. H.B. 2243 IMPOSES AN UNDUE BURDEN ON THE RIGHT TO VOTE.**

4
5 In assessing Non-U.S. Plaintiffs' challenge to H.B. 2243, this Court "must first
6 consider the character and magnitude of the asserted injury to the rights protected by the
7 First and Fourteenth Amendments that [Plaintiffs] seek[] to vindicate." *Anderson v.*
8 *Celebrezze*, 460 U.S. 780, 789 (1983).³

9
10 At trial, Plaintiffs will prove that H.B. 2243 warrants strict scrutiny review under the
11 *Anderson-Burdick* framework. The examination of the "character and magnitude" of the
12 challenged voting provisions usually involves a fact-intensive examination of the provisions
13 and burdens involved. *See generally Arizona Democratic Party v. Hobbs*, 18 F.4th 1179,
14 1187-1190 (9th Cir. 2021); *see also Fish v. Schwab*, 957 F.3d 1105, 1128-1130 (10th Cir.
15 2020). Voting restrictions are held to not be severe when they "are generally applicable,
16 evenhanded, politically neutral, and protect the reliability and integrity of the election
17 process." *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 (9th Cir. 2016).
18 Plaintiffs will establish the severity of H.B. 2243's burden on voters by showing: 1) that it
19 is discriminatory toward voters of color and naturalized U.S. citizen voters; 2) that voters
20 will be burdened by being forced to provide "satisfactory evidence" of U.S. citizenship in
21 a short time period; and 3) that the enforcement of H.B. 2243's provisions will deter and
22 intimidate eligible individuals from registration and electoral participation.
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27 ³ Non-U.S. Plaintiffs, including Promise Arizona Plaintiffs, incorporate by reference the
28 legal standard for an *Anderson-Burdick* challenge as described by the trial memorandum
submitted by Plaintiffs Democratic National Committee and Arizona Democratic Party.

1 **A. H.B. 2243’s burdens on the right to vote fall on voters of color and naturalized**
2 **U.S. citizens.**

3 “Laws that ‘place[] a particular burden on an identifiable segment’ of voters are
4 more likely to raise constitutional concerns.” *Arizona Democratic Party v. Hobbs*, 18 F.4th
5 at 1190 (citing *Anderson*, 460 U.S. 780 at 792). That is exactly the case here. At trial,
6 Plaintiffs will show through expert and lay testimony that H.B. 2243’s DPOC requirements
7 primarily burden naturalized citizens, a majority of whom are Latino and Asian Americans
8 and Pacific Islanders (“APIs”), and voters of color. H.B. 2243 requires county recorders
9 to generate the “information” that is the predicate for voter registration cancellation using
10 database comparisons that produce inaccurate information, or even from the subjective
11 discretion of county recorders. Because of the inaccuracy and uneven nature of
12 enforcement of provisions (G)-(K), naturalized citizens are more likely to be flagged as
13 potential noncitizens under H.B. 2243. The provisions of H.B. 2243 that flag registered
14 voters as suspected non-U.S. citizens are dependent on several databases and programs,
15 including the SAVE program, the driver license database, and the Social Security
16 Administration database. A.R.S. § 16-165(G)-(K). Expert testimony and documentary
17 evidence will demonstrate that the databases listed in H.B. 2243 often do not reflect up-to-
18 date or accurate U.S. citizenship data for many individuals and that they do not actually
19 serve the purpose of verifying eligibility.
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24 One of those databases—the Arizona driver license database maintained by the
25 Arizona Department of Transportation (“ADOT”)—does not contain current U.S.
26 citizenship data for many of its customers. Under A.R.S. § 16-165(G), as amended by H.B.
27 2243, the Secretary of State, on a monthly basis, “shall compare the statewide voter
28

1 registration database to the driver license database maintained by the department of
2 transportation[...][and] notify the appropriate county recorder if a person who is registered
3 to vote in that county [...] is not a United States citizen.” The county recorder must then
4 begin the notice and cancellation process based on this monthly list of individuals sent by
5 the Secretary. *See* A.R.S. 16-165(A)(10). Testimony and stipulations will show that ADOT
6 has already begun to provide a monthly data extract of all MVD “customers” who have a
7 driver license or ID in Arizona for the purpose of allowing the Secretary to run the monthly
8 comparison between the driver license database and the voter registration database under
9 A.R.S. 16-165(G), as amended by H.B. 2243. *See* Dkt. 571-1 (Plaintiffs’ Proposed
10 Stipulations Accepted by Defendants) at ¶¶105-109.

11
12
13 Plaintiffs’ expert Dr. Michael McDonald will testify, and the testimony of the
14 director of ADOT’s Motor Vehicle Division will show, that ADOT’s citizenship data is
15 unreliable for the purposes of identifying and confirming a lack of U.S. citizenship because
16 the data reflect a person’s citizenship status at a single point in time—when they interact
17 with the driver’s license agency. *See* Dkt. 571-1 (Plaintiffs’ Proposed Stipulations Accepted
18 by Defendants) at ¶¶ 91-98. The evidence will show that naturalized U.S. citizens are under
19 no obligation to update their citizenship status with ADOT and that they do not have a clear
20 need to do so prior to expiration of their credential because updating citizenship status
21 would require an in-person visit to the agency to present new records. *See id.* The testimony
22 of state and county officials and Dr. McDonald will show that Arizona elections officials
23 are well-aware of the limited accuracy of ADOT credential data as an indicator of current
24 U.S. citizenship. Furthermore, Dr. McDonald will show examples from other states where
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1 the lack of reliability of driver license data as an indicator for U.S. citizenship led to the
2 misidentification of thousands of duly registered, naturalized U.S. citizen voters as non-
3 U.S. citizens.

4
5 The evidence will also show that H.B. 2243's mandated use of SAVE will target
6 naturalized U.S. citizens and fail to serve the stated purpose of citizenship "verif[ication]."
7 See A.R.S. § 16-165(I). H.B. 2243 requires use of the SAVE program to "verify" the
8 citizenship status of current registrants whom county recorders form an unspecified "reason
9 to believe" are non-U.S. citizens, or do not have DPOC. A.R.S. § 16-165(I). USCIS official
10 testimony will show that SAVE is administered by the federal government and allows users
11 to make automated requests and manual searches into different data sources. However,
12 Plaintiffs will show through testimony by USCIS officials that the SAVE program cannot
13 verify native-born U.S. citizens under any circumstances. Therefore, the program's ability
14 to verify is limited only to naturalized and acquired U.S. citizens. Accordingly, H.B. 2243's
15 mandated use of the SAVE program will target those who were former immigrants and born
16 outside of the United States.⁴

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20 The testimony of county recorders' offices will also show that H.B. 2243's "reason
21 to believe" language, which dictates whom county recorders look up in SAVE, is unclear

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24 ⁴ Equity Coalition explains in its trial memorandum of law that Consolidated Plaintiffs
25 challenge H.B. 2243 because it discriminates against voters based on their race, national
26 origin, and/or alienage in violation of the Fourteenth and Fifteenth Amendments.
27 Regarding alienage classification and discrimination, H.B. 2243 is not a facially neutral
28 statute that "merely disproportionately impact[s] a protected class, but rather" through its
mandatory use of SAVE targets voters who are, "by definition, born outside the United
States" and former aliens. See *Tiwari v. Mattis*, 363 F.Supp.3d 1154, 1165-66 (W.D. Wash.
2019); see also *Faruki v. Rogers*, 349 F.Supp. 723, 729 (D.D.C. 1972) (durational residency
requirement applying only to Foreign Service applicants who were naturalized U.S. citizens
classified citizens on the basis of former alienage and was facially discriminatory).

1 and leaves county recorders discretion to identify suspected non-U.S. citizen voters in a
2 non-uniform manner. One county recorder’s deposition testimony demonstrates the lack of
3 clarity regarding how to implement 16-165(I)’s “reason to believe” language: “If somebody
4 walks into my office and says that they believe their next-door neighbor is not a United
5 States citizen, is that credible? I don’t know. If there’s a list that somebody from anywhere
6 provided [...] do I know if that’s credible or not? [...] I need guidance on what makes it
7 credible to make me believe it.” Janine Petty Depo. Tr. pp. 235:3-236:1.
8

9
10 Furthermore, testimony from Dr. McDonald and USCIS officials will show that
11 SAVE has accuracy limitations due to data entry, data latency, and matching issues and that
12 such data management challenges are compounded because SAVE draws upon information
13 from multiple sources. County recorder and USCIS official testimony will show that some
14 naturalized U.S. citizens may not immediately appear as U.S. citizens when searched in the
15 SAVE system due to these challenges. Expert testimony will explain the limited accuracy
16 of DHS records upon which SAVE relies, as well as the non-uniform usage of SAVE by
17 customers, including Arizona’s county recorders.
18

19
20 Dr. McDonald will also testify regarding the lack of reliability of other databases for
21 the flagging of supposed non-U.S. citizens under H.B. 2243’s provisions, such as the Social
22 Security Administration database and the National Association for Public Health and
23 Statistics Systems’ Electronic Verification of Vital Events (EVVE) database.
24

25 Accordingly, naturalized citizens—as opposed to native-born U.S. citizens—will be
26 subject to additional voter registration barriers under H.B. 2243. The testimony of expert
27 and lay witnesses, as outlined further below, will delineate such barriers. Dr. McDonald’s
28

1 demographic analysis of Arizona’s voters will show that the unique burdens of H.B. 2243
2 will particularly affect the 111,513 citizens who have naturalized in Arizona since 2015–
3 most of whom are Latino and AAPI.⁵ For these reasons, H.B. 2243 will have a
4 disproportionate impact on naturalized citizens and voters of color.
5

6 **B. H.B. 2243’s provisions impose severe burdens on the right to vote.**
7

8 The burdens imposed by A.R.S. 16-165(A)(10), as amended by H.B. 2243, are
9 severe because the law gives voters insufficient time to obtain often-costly documentary
10 proof of citizenship and does not give voters any opportunity to cure their registration or
11 otherwise prove eligibility after the short time-period. Arizona voters’ registrations will be
12 canceled if county recorders suspect current registrants of lacking U.S. citizenship under
13 H.B. 2243. The registrant can avoid registration cancellation only by providing
14 “satisfactory evidence of United States citizenship” within thirty-five days. A.R.S. § 16-
15 165(A)(10). “Satisfactory evidence” of citizenship under Arizona law includes a driver’s
16 license, a nonoperating identification license, a birth certificate, a United States passport,
17 naturalization documents, a Bureau of Indian Affairs card number, a tribal treaty card
18 number, or a tribal enrollment number. A.R.S. § 16-165(A)(10); A.R.S. § 16-166(F). If
19 the voter does not provide “satisfactory” evidence of U.S. citizenship within the 35-day
20 window, county recorders *must* cancel their voter registration and “notify the county
21 attorney and attorney general for possible investigation” and prosecution. A.R.S. § 16-
22 165(A)(10) (collectively, “DPOC requirements”).
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27 _____
28 ⁵ U.S. Department of Homeland Security, <https://www.dhs.gov/profiles-naturalized-citizens>, (last visited Oct. 12, 2023)

1 Plaintiffs’ expert Dr. Traci R. Burch and lay witnesses will explain how meeting the
2 DPOC requirements within the 35-day window will impose heavy burdens on voters. For
3 instance, a replacement naturalization certificate is \$555.00 and can entail long wait times—
4 80% of applications for a replacement naturalization certificate are processed within 9
5 months. The period of 35 days will simply not be enough for many voters, including
6 naturalized citizens and voters of color, many of whom have low English proficiency and
7 will therefore have trouble complying with requests for DPOC in such a short timeframe.
8

9
10 In addition, voters of color—significant percentages of whom live below the poverty
11 line—will have more difficulty with obtaining DPOC besides naturalization documents on
12 short notice due to costs associated with such documents and replacements. Dr. Burch’s
13 testimony will describe this disproportionate impact and show how Arizona charges more
14 than other states for certified copies of birth certificates; that birth certificate copies for
15 Native American voters can be costly and take longer than other native-born U.S. citizen
16 birth certificates to obtain; and, for voters who are born out of state, that birth certificate
17 copies from their birth states can take longer than 35 days to obtain.
18

19
20 H.B. 2243 provides no measure of grace. Under the challenged law, registrants who
21 fail to provide satisfactory evidence of U.S. citizenship within 35 days are at risk for
22 potential “investigation” and prosecution. *See* A.R.S. § 16-165(A)(10). After this period
23 lapses, there is no way—such as through a hearing or an affidavit process—that voters can
24 cure their registration by providing DPOC and an explanation of why such DPOC was not
25 timely submitted. Arizona’s H.B. 2243 voter registration cancellation regime therefore
26 contains no “safety valve” for voters close to a state or local election that is not aligned with
27
28

1 a federal election. *See Fish v. Schwab*, 957 F.3d 1105, 1129 (10th Cir. 2020) (distinguishing
2 state's DPOC requirement for voting from the DPOC requirement upheld by *Crawford* in
3 part because of lack of provisional voting method). Even though Defendants may posit that
4 individuals whose voter registrations are canceled may re-register, Dr. Burch's testimony,
5 as described below, will show that cancellation and exposure to a potential investigation by
6 the Attorney General will deter voters from re-registering. Additionally, such voters will
7 have endured the burdens described above to obtain the requisite DPOC.
8

9
10 Finally, nothing in H.B. 2243 prevents county recorders or the Secretary from
11 flagging voters as non-U.S. citizens under subsections (G)-(K) more than once, including
12 as frequently as monthly, thus requiring them to prove their U.S. citizenship using DPOC
13 repeatedly. Dr. McDonald's testimony will show that H.B. 2243 will repeatedly ensnare
14 voters in its circuitous data-matching provisions and onerous DPOC requirements.
15

16
17 **C. H.B. 2243 also presents burdens in the form of deterrence of eligible voters from
18 electoral participation.**

19 Through expert testimony, Plaintiffs will show that the looming threat of state-
20 sponsored investigation and prosecution will only end up deterring and excluding eligible
21 naturalized citizens from fully participating in Arizona's electoral process. The testimony
22 of Dr. Burch will demonstrate that there is a psychological cost to voters, particularly those
23 voters targeted and disproportionately affected by H.B. 2243, that comes from the threat of
24 adverse consequences and potential investigation from law enforcement. *See Burch Report*
25 *22-23*. Racial and ethnic minorities will be discouraged from participation in aspects of
26 government where law enforcement investigation may be involved. Lay testimony from
27
28

1 Plaintiff Promise Arizona will corroborate this evidence, detailing how potential
2 investigation by the attorney general or county attorneys for illegal voting or registration
3 would intimidate voters and harm Promise Arizona's organizational reputation.
4

5 H.B. 2243 provides many Arizona voters "few alternate means of access to the
6 ballot." *Obama for America v. Husted*, 697 F.3d 423, 431 (6th Cir. 2012) (internal citations
7 omitted). Naturalized citizens will be the ones to shoulder the high expense, wait time,
8 investigation, and prosecution that is intertwined with H.B. 2243. As a result, H.B. 2243
9 operates to impose a severe on burden Arizona voters, particularly naturalized U.S. citizens
10 and voters of color, and strict scrutiny review of H.B. 2243 is warranted.
11

12 **III. THE PROVISIONS OF H.B. 2243 ARE NOT NARROWLY** 13 **TAILORED TO ADVANCE A COMPELLING STATE INTEREST.**

14 **A. The State's purported interests are neither compelling nor rational.**

15 Defendants can present no evidence regarding a compelling state interest that H.B.
16 2243 furthers because there is no sufficiently weighty state interest that justifies the law's
17 burdens on voters. Plaintiffs anticipate that Defendants will argue that the purpose of H.B.
18 2243 is to deter and prevent non-U.S. citizens from voting. However, as Plaintiffs DNC
19 and ADP delineates in their pretrial memorandum regarding H.B. 2492's *Anderson-Burdick*
20 challenges, the testimony of designated witnesses from most county recorder offices will
21 show that they were either unaware of any instances of non-citizens voting in their county
22 or that they could not identify a single such case. *See* DNC Trial Memo at 8-9. Plaintiffs'
23 expert Dr. Lorraine C. Minnite will also testify regarding the complete lack of any credible
24 evidence that non-U.S. citizens are in fact voting in Arizona or anywhere else despite
25 multiple efforts to turn up evidence of the same, including by some of the very people who
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1 have continued to peddle these theories. Dr. Minnite will also explain that Arizona had
2 policies and procedures in place to prevent unlawful voting, including voting by non-U.S.
3 citizens, before the passage of H.B. 2243.
4

5 **B. H.B. 2243’s provisions are not narrowly tailored to prevent voting**
6 **by ineligible voters.**

7 H.B. 2243’s 35-day period to respond is not narrowly tailored to achieve the
8 purported interests of the state. The challenged provisions of H.B. 2243 originated in H.B.
9 2617 and moved into H.B. 2243 through a floor amendment at the very end of the legislative
10 session after H.B. 2617 was vetoed. The legislative history of H.B. 2617 and H.B. 2243
11 shows that legislators created a more restrictive notice-and-response period than was
12 necessary. The period originally was set at 90 days, but legislators shortened it to 35 with
13 no justification.
14

15 H.B. 2617 was introduced to the Arizona Legislature on January 31, 2022.⁶ The
16 introduced version of H.B. 2617 required county recorders to cancel a registration “[w]hen
17 the county recorder receives information that the person registered. . . is not a United States
18 Citizen.”⁷ On February 9, 2022, Representative Chaplik explained that H.B. 2617 “allows
19 for the counties to clean up the voter roll . . . to make sure that who we’re sending ballots
20 to actually are residents of Arizona.”⁸ To address the concerns from counties and the
21 legislature, on March 1, 2022, Representative Chaplik later proposed an amendment to H.B.
22
23
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25 _____
26 ⁶ Arizona State Legislature, <https://apps.azleg.gov/BillStatus/BillOverview/76698>, (last
visited Oct. 12, 2023)

27 ⁷ Arizona State Legislature, Introduced Version of HB 2617, p. 1 (2022),
<https://www.azleg.gov/legtext/55leg/2R/bills/HB2617P.pdf>.

28 ⁸ Arizona State Legislature, House Government and Elections Committee, (Feb. 9, 2022),
<https://www.azleg.gov/videoplayer/?eventID=2022021045&startStreamAt=10321>

1 2617 during a House floor Session.⁹ Chaplik’s floor amendment specified that before a
2 county recorder cancels a voter registration on the basis of citizenship, they were required
3 to send the suspected noncitizen registrant notice that the registration would be canceled in
4 ninety days “unless the person provides satisfactory evidence that the person is qualified.”¹⁰
5 If the accused failed to provide “satisfactory evidence within 90 days,” county recorders
6 were mandated to “cancel the registration and notify the county attorney and attorney
7 general for possible investigation.”¹¹ That day, Representative Chaplik’s amendment was
8 adopted.¹² The Arizona Legislature passed H.B. 2617 on May 25, 2022.¹³ On May 27,
9 2022, Former Arizona Governor Ducey vetoed H.B. 2617. In his veto letter, Governor
10 Ducey asserted that H.B. 2617 did not have the “necessary safeguards” to “protect the vote
11 of any Arizonian who is eligible and lawfully registered.”¹⁴ In response to the Governor’s
12 veto, Senator Warren Petersen proposed an amendment to H.B. 2243 on June 22, 2022.¹⁵
13 According to Petersen, his amendment incorporated “what was House Bill 2617” into H.B.
14 2243.¹⁶ Petersen further stated that his amendment added “additional notice requirements.
15 But besides that, it’s identical to” H.B. 2617.¹⁷ That same day, Warren Petersen’s
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21 ⁹ Arizona State Legislature, House Committee of the Whole #2, (March 1, 2022),
22 <https://www.azleg.gov/videoplayer/?eventID=2022031017&startStreamAt=1371>

23 ¹⁰ Joseph Chaplik, House Floor Amendment Explanation, p.1 (2022),
24 https://www.azleg.gov/legtext/55leg/2R/adopted/H.2617FloorCHAPLIK_Merged.pdf.

25 ¹¹ *Id.*

26 ¹² Arizona Legislature, <https://apps.azleg.gov/BillStatus/BillOverview/76698>, (last visited
27 Oct. 12, 2023).

28 ¹³ *Id.*

¹⁴ Governor Douglas A. Ducey, Re: House Bill 2617 (voter registration; cancellations;
causes), p.1 (May 27, 2022), <https://www.azleg.gov/govlettr/55leg/2r/hb2617.pdf>

¹⁵ Mike Hans, Floor Amendment Explanation, (June 22, 2022),
<https://www.azleg.gov/legtext/55leg/2R/adopted/S.2243PETERSEN0501.pdf>

¹⁶ Arizona State Legislature, Senate Committee of the Whole, (June 22, 2022),
<https://www.azleg.gov/videoplayer/?eventID=2022061052&startStreamAt=2847>

¹⁷ *Id.*

1 amendment was adopted.¹⁸

2 With respect to registrants who are suspected of being noncitizens, Warren
3 Petersen's assurances were untrue. As written, H.B. 2243 actually shortens the notice
4 period from 90 days, as originally provided in H.B. 2617, to a mere 35 days.¹⁹ A.R.S. § 16-
5 165(A)(10). Despite making "what was House Bill 2617" worse, former Governor Doug
6 Ducey signed H.B. 2243 into law on July 6, 2022.²⁰

7
8 At trial, Plaintiffs will also prove that Arizona county recorders will implement H.B.
9 2243's citizenship verification and cancellation requirements in a non-even-handed manner.
10 H.B. 2243 fails to specify what information would give county recorders "reason to believe"
11 that a registrant is not a United States citizen. As it stands now, the Secretary of State's
12 office and the Arizona Election Procedures Manual have provided little to no guidance on
13 these key provisions. Arizona county recorders therefore have wide discretion when
14 determining whether a registrant is subject to a SAVE search under H.B. 2243. Expert and
15 county recorder testimony will reveal that the law's lack of clarity will lead to each county
16 recorder having their own definitions of H.B. 2243's voter cancellation requirements.
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20 CONCLUSION

21 For the foregoing reasons, Plaintiffs will prove at trial that H.B. 2243 is in violation
22 of the First and Fourteenth Amendments to the United States Constitution.

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26 ¹⁸ Arizona State Legislature, <https://apps.azleg.gov/BillStatus/BillOverview/76698>, (last visited Oct. 12, 2023).

27 ¹⁹ Arizona State Legislature, Senate Engrossed House Bill 2617, (2022),
<https://www.azleg.gov/legtext/55leg/2R/bills/HB2617S.pdf>

28 ²⁰ Arizona State Legislature, <https://apps.azleg.gov/BillStatus/BillOverview/76698>, (last visited Oct. 12, 2023).

1 Dated: October 19th, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

/s/ Ernest Herrera
Ernest Herrera

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