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**UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA**

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

20 v.

21 Adrian Fontes, et al.,
 22 Defendants.

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

**MFV PLAINTIFFS' TRIAL
 MEMORANDUM**

23 AND CONSOLIDATED CASES.
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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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2 Plaintiffs Mi Familia Vota (“MFV”) and Voto Latino (“VL”) (together, the “MFV
3 Plaintiffs”) challenge provisions of Arizona House Bill 2492 (“H.B. 2492”) under the First
4 and Fourteenth Amendments to the U.S. Constitution and the Materiality Provision of the
5 Civil Rights Act of 1964.¹ The MFV Plaintiffs will present testimony and other evidence
6 at trial demonstrating that both organizations have standing in this action and are entitled
7 to declaratory and injunctive relief on their claims that the challenged provisions of H.B.
8 2492 impose an undue burden on the constitutional right to vote and deprive voters of
9 procedural due process and equal protection in violation of the First and Fourteenth
10 Amendments, and that H.B. 2492, § 4’s Birthplace Requirement violates the Materiality
11 Provision of the Civil Rights Act. This Memorandum specifically focuses on the MFV
12 Plaintiffs’ standing and the Materiality Provision claim.²

13 **I. MFV AND VL HAVE STANDING TO PURSUE EACH OF THEIR CLAIMS**

14 Plaintiffs’ testimony at trial will show that both MFV and VL satisfy Article III’s
15 standing requirement, because H.B. 2492 frustrates their missions and forces them to divert
16 resources away from other mission-critical activities to prevent the disenfranchisement of,
17 and potentially the baseless criminal investigation of, their core constituents.

18 Under Article III’s standing requirements, a plaintiff must show an injury in fact
19 traceable to Defendants and redressable by the court. *Lujan v. Defs. of Wildlife*, 504 U.S.
20 555, 560 (1992). “An organization can assert Article III standing in its own right, provided
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22 ¹ This memorandum does not address the MFV Plaintiffs’ claims challenging H.B. 2492’s
23 restrictions on voting in presidential elections and by mail under the National Voter
24 Registration Act of 1993 or Citizenship Checkbox Requirement under the Materiality
25 Provision, which were resolved by this Court’s Order on Partial Summary judgment. ECF
26 No. 534; *see also* Proposed Joint Pretrial Order, ECF No. 571 at 9-11.

26 ² The MFV Plaintiffs join the Trial Memoranda of DNC Plaintiffs, Equity Coalition
27 Plaintiffs, and LUCHA Plaintiffs, also filed October 19, 2023, which address the MFV
28 Plaintiffs’ Undue Burden on the Right to Vote, Procedural Due Process, and Equal
Protection claims, respectively.

1 it can ‘allege[] such a personal stake in the outcome of the controversy as to warrant [its]
2 invocation of federal-court jurisdiction.’” *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44
3 F.4th 867, 879 (9th Cir. 2022) (citation omitted). “[W]here [an organization] establishes
4 that the defendant’s behavior has frustrated its mission and caused it to divert resources in
5 response to that frustration of purpose,” it has standing. *Id.* at 879-80 (citation omitted).
6 Having to divert staff and volunteer time—such as to efforts “to assist individuals with
7 voter registration”—also satisfies the injury in fact requirement. *Nat’l Council of La Raza*
8 *v. Cegavske*, 800 F.3d 1032, 1040-41 (9th Cir. 2015).

9 **a. MFV Has Organizational Standing**

10 MFV is a national, nonprofit civic engagement organization headquartered in
11 Arizona and now operating in seven states. For nearly 20 years, MFV has been doing work
12 to increase the civic participation of Arizonans and, since 2016, has registered over 60,000
13 new voters. At trial, MFV’s State Director Carolina Rodriguez-Greer will testify to MFV’s
14 mission of uniting Latino, immigrant, and allied communities to promote social and
15 economic justice, which MFV furthers through voter registration drives, GOTV
16 campaigns, and other voter assistance efforts. Ms. Rodriguez-Greer will explain how H.B.
17 2492’s challenged provisions make it harder for MFV to achieve its mission, including by
18 making it harder for eligible Arizonans to register to vote, creating barriers for already
19 lawfully registered voters to exercise their right to vote, making voting early by mail and
20 voting for president harder to do, and creating convoluted registration requirements that
21 are likely to only confuse voters. Ms. Rodriguez-Greer will testify about how these burdens
22 are likely to fall heavily on MFV’s core constituency—Latino voters—many of whom
23 stand to be disenfranchised, or have their voting rights severely infringed, as a result. For
24 example, Ms. Rodriguez-Greer will testify about how Latino voters in Arizona are more
25 likely to be naturalized citizens than non-Latino voters, are less likely to be fluent English
26 speakers, and are more likely to be from underserved communities already
27 disproportionately targeted by law enforcement. Moreover, early voting and voting by mail
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1 are of great importance to Latino voters in Arizona, and MFV has focused its GOTV efforts
2 on increasing Latino vote-by-mail and early-vote turnout. Accordingly, H.B. 2492's new
3 burdens on Arizona voters, including potential investigation and prosecution by the
4 Attorney General, will fall most heavily on those MFV seeks to serve. As a result, it will
5 cause injury not only to that constituency, but also to MFV itself, making it more difficult
6 for it to accomplish its mission and requiring it to divert resources from other mission-
7 critical efforts to address the new law's harms.

8 **b. VL Has Organizational Standing**

9 VL is a 501(c)(4) nonprofit, social welfare organization that works to ensure that
10 Latinx voters are enfranchised and included in the democratic process. At trial, VL's
11 Managing Director, Ameer Patel, will testify about VL's mission of educating,
12 empowering, and growing political engagement in historically underrepresented
13 communities, especially amongst its core constituency: Latinx voters, including those in
14 Arizona—one of the states that VL recognizes as most important to its mission. Mr. Patel
15 will further testify that, in furtherance of that mission, VL expends significant resources to
16 register and mobilize thousands of Latinx voters each cycle in Arizona, and that from 2017
17 to 2020, Voto Latino registered over 50,000 new voters in Arizona. Mr. Patel will explain
18 how H.B. 2492's challenged provisions make it harder for VL to achieve its mission and
19 for its constituents to exercise their fundamental rights. To this end, Mr. Patel will testify
20 that H.B. 2492 frustrates VL's mission by making it harder for eligible Arizonans within
21 its constituency to register to vote, creating barriers for already lawfully registered voters
22 to exercise their right to vote, making voting early by mail and voting for president harder
23 to do, and confusing voters with convoluted registration requirements. Mr. Patel will also
24 testify about VL's current voter registration and engagement plans in Arizona, and about
25 how VL will be forced to change these plans and divert resources to combat H.B. 2492's
26 harms. Mr. Patel will testify that this change of course in response to H.B. 2492 will require
27 that VL divert its limited money, staff, volunteers, time, and resources away from its other
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1 mission-critical registration, mobilization, and advocacy activities, both in Arizona and
2 nationally.

3 **II. H.B. 2492's BIRTHPLACE REQUIREMENT VIOLATES THE**
4 **MATERIALITY PROVISION OF THE CIVIL RIGHTS ACT**

5 The Materiality Provision of the Civil Rights Act states: "No person acting under
6 color of law shall[] . . . deny the right of any individual to vote in any election because of
7 an error or omission on any record or paper relating to any application, registration, or other
8 act requisite to voting, if such error or omission is not material in determining whether such
9 individual is qualified under State law to vote in such election." 52 U.S.C. §
10 10101(a)(2)(B). As this Court has recognized, "[t]he Materiality Provision was 'intended
11 to address the practice of requiring unnecessary information for voter registration with the
12 intent that such requirements would increase the number of errors or omissions on the
13 application forms, thus providing an excuse to disqualify potential voters.'" ECF No. 534
14 at 23 (quoting *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003); see also *Migliori v.*
15 *Cohen*, 36 F.4th 153, 164 (3d Cir.), cert. granted, judgment vacated sub nom. *Ritter v.*
16 *Migliori*, 143 S. Ct. 297 (2022)).³

17 To prevail, Plaintiffs must show that state action denies individuals the right to vote,
18 as defined in the Civil Rights Act, based on errors or omissions on "any record or paper
19 relating to any application [or] registration" that are not material to determining the
20 individual's qualifications to vote under state law. 52 U.S.C. § 10101(a)(2)(B); see also
21 *Migliori*, 36 F.4th at 163-64.⁴ The Civil Rights Act defines the word "vote" to include "all

22 ³ The Supreme Court vacated *Migliori* consistent with its practice when a matter becomes
23 moot before the Court can rule on it. The Third Circuit's decision "continues to have
24 persuasive force." *Hart v. Massanari*, 266 F.3d 1155, 1159 (9th Cir. 2001).

25 ⁴ Although the Court found the issue moot in ruling on the parties' partial motions for
26 summary judgment in light of the United States' overlapping Materiality Provision claims,
27 see ECF No. 534 at 29, 35, MFV and the other Non-U.S. Plaintiffs may enforce the
28 Materiality Provision. As both the Eleventh and Third Circuits have concluded, Congress
drafted the Materiality Provision to confer federal rights that may be enforced under §
1983, and further to create a private remedy that permits direct enforcement under the Civil

1 action necessary to make a vote effective including, but not limited to, registration or other
2 action required by State law prerequisite to voting, casting a ballot, and having such ballot
3 counted and included in the appropriate totals.” 52 U.S.C. § 10101(e). Rejecting a
4 registration application for an immaterial error or omission violates the Materiality
5 Provision as much as rejecting a ballot. *See Schwier*, 340 F.3d at 1294 (explaining
6 Materiality Provision “was intended to address the practice of requiring unnecessary
7 information for voter registration”). Thus, Plaintiffs must show that a prospective
8 registrant’s place of birth is not material to determining whether that individual is qualified
9 to vote under state law, and that a failure to provide the birthplace information results in a
10 denial of the right to vote.

11 The evidence presented at trial will establish that the Birthplace Requirement
12 violates each element of the Materiality Provision. *First*, evidence will show that the
13 Birthplace Requirement denies registrants the right to vote based on “an error or omission”
14 that is “on a record or paper relating to any application [or] registration.” 52 U.S.C. §
15 10101(a)(2)(B). Uniform testimony from the County Recorders—the officials responsible
16 for reviewing voter registration forms, A.R.S. §§ 16-112, 16-120, 16-131, 16-166—
17 establishes that the Birthplace Requirement requires Recorders to reject State-Form voter
18 registration applications that omit the applicant’s birthplace. *E.g.*, *Hiser Tr.* 265:22-266:9
19 (Pima County); *Durst Tr.* 74:16-20 (Mohave County); *Webber Tr.* 100:2-5 (Yavapai
20 County); *see also* A.R.S. § 16-121.01(A) (amended by H.B. 2492 § 4) (conditioning
21 presumption of proper registration to vote “on completion of a registration form . . . that
22 contains . . . [the] place of birth . . . of the registrant . . .”). Failure to comply with the
23 Birthplace Requirement is thus an “omission” on a “record or paper relating to . . .
24 registration” that results in denial of the right to “vote.” 52 U.S.C. § 10101(a)(2)(B).

25
26 Rights Act itself. *See* ECF No. 399 at 10-15 (*citing, e.g., Gonzaga Univ. v. Doe*, 536 U.S.
27 273, 274, 284 (2002); *Schwier*, 340 F.3d at 1291, 1295-96; *Migliori*, 36 F.4th at 159-162);
28 ECF No. 478 at 1-3.

1 *Second*, overwhelming evidence will show that the omission of birthplace
2 information is *not* material in determining whether a person is qualified to vote under state
3 law. Whether a person is “qualified under State law to vote” depends on a state’s statutory
4 and constitutional qualifications for voting. *See Schwier*, 340 F.3d at 1297. In Arizona, a
5 person is qualified to vote if they are: (1) a U.S. citizen; (2) a resident of Arizona and of
6 their registered county for 29 days before an election; (3) at least 18 years old before the
7 next general election; (4) able to write their name and make a mark on a ballot, unless
8 prevented by a physical disability; (5) not legally incapacitated; and (6) not convicted of
9 treason or a felony, unless their civil rights are restored. A.R.S. § 16-101; Ariz. Const. art
10 VII, § 2; *see also* ECF No. 534 at 23 (finding same). As this Court has recognized, Plaintiffs
11 can demonstrate immateriality by showing that the required information is “unnecessary
12 and therefore not material to determining an individual’s qualifications to vote” under
13 Arizona law. ECF No. 304 at 26 n.17 (quoting *La Union del Pueblo Entero v. Abbott*, 604
14 F. Supp. 3d 512, 542 (W.D. Tex. 2022)).

15 As the record will show, the Secretary of State—Arizona’s chief election officer,
16 A.R.S. § 16-142—has repeatedly admitted that “[w]hether a prospective voter, through
17 error or omission, fails to list their birthplace is not material to Arizona determining
18 whether they are qualified to vote under State law.” *E.g.*, ECF No. 388 ¶ 35 (citing Sec’y
19 Ans. to MFV SAC ¶ 103, ECF No. 123). The Secretary’s testimony confirms that
20 birthplace is irrelevant to voter registration and that it is not necessary to assessing any of
21 the state’s voter qualifications. *See* Connor Tr. 71:19-20, 71:22-23, 71:25-72:14, 293:12-
22 20, 294:11-12, 294:14-15, 294:17-22, 294:24, 295:1-4. When asked if there was even any
23 administrative utility in counties collecting birthplace information, the Secretary’s
24 representative “c[ouldn]’t think of anything.” *Id.* 81:22-82:1.

25 County Recorders—the Arizona election officials who are broadly responsible for
26 processing registration applications and determining if an applicant is qualified to vote—
27 similarly confirm that birthplace is immaterial for this purpose. *See, e.g.*, Hansen Tr. 54:6-
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1 55:12, 55:15-24; 56:2-8, 57:3-6 (Coconino County) (“So you don’t use birthplace
2 information to verify or confirm voter identity or eligibility; correct?” “That’s correct.”);
3 Lerma Tr. 97:4-6, 97:8 (Navajo County) (similar); Hiser Tr. 218:16-20 (Pima County)
4 (similar); Webber Tr. 100:6-16 (Yavapai County) (similar). Additional testimony from the
5 County Recorders will also explain that information that a person was not born in the
6 United States says nothing about their citizenship. As Coconino County Recorder Patti
7 Hansen testified, “just because you’re born in another country, it doesn’t mean that you are
8 not a U.S. citizen.” Hansen Tr 56:25-57:1; *see also, e.g.*, Merriman Tr. 93:7-10 (Graham
9 County (similar); Milheiro Tr. 66:16-20 (Greenlee County) (similar); Hiser Tr. 222:4-11
10 (Pima County) (similar); ECF No. 399 at 3 (presenting naturalization statistics). Even if
11 birthplace information could at times be useful or had minimal relevance to determining a
12 person’s qualifications—the County Recorders’ contrary testimony notwithstanding—this
13 Court has already correctly determined that the Materiality Provision requires the
14 information be *necessary* for this purpose, not merely useful or relevant. *See* ECF No. 534
15 at 26 n.17.

16 Moreover, County Recorders will testify that the vast majority of new registrations
17 are State-Form applications, *see, e.g.*, Hansen Tr 93:9-12 (Coconino County), which, in
18 addition to birthplace, must include “satisfactory evidence of United States citizenship,”
19 A.R.S. § 16-166(F). As this Court recognized in resolving Plaintiffs’ Materiality Provision
20 claims regarding the Citizenship Checkbox at the summary judgment stage, “the
21 materiality of an error or omission is determined by the other information available to the
22 State.” ECF No. 534 at 27. “So when an applicant includes DPOC,” the absence of
23 birthplace information “should not alter any determination of her eligibility to vote.” *See*
24 *id.*; *see also League of Women Voters of Arkansas v. Thurston*, No. 5:20-cv-05174, 2021
25 WL 5312640 (W.D. Ark., Nov. 15, 2021) (finding plaintiffs stated a claim that a voting
26 law violated the Materiality Provision because it required absentee voters to provide
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1 information about their eligibility to vote “several times”). Yet, even here, the Birthplace
2 Requirement will mandate the *rejection* of these voters’ applications.

3 The testimony at trial will also show that, even if birthplace information *could* aid
4 County Recorders in determining an individual’s qualification to vote—and no evidence
5 will show that it does—County Recorders “have no reliable way to check that the
6 birthplace information is accurate to begin with.” Hiser Tr. 222:12-15 (Pima County); *see*
7 *also, e.g.*, Connor Tr. 88:25-89:5, 89:7-15, 89:17-19 (Secretary) (similar); Morales Tr.
8 68:21-22, 68:24 (Secretary) (similar); Petty Tr. 228:18-25 (Maricopa County) (similar);
9 Hansen Tr. 56:15-18 (Coconino County) (similar); Lewis Tr. 106:6-11 (Pinal County)
10 (similar); Lerma Tr. 55:3-6 (Navajo County) (similar); Durst Tr. 74:21-23 (Mohave
11 County) (similar); Shreeve Tr. 38:3-38:9 (Apache County) (similar); Webber Tr. 100:6-9
12 (Yavapai County) (similar); Merriman Tr. 98:19-22 (Graham County) (similar);
13 Asrarynezami Tr. 105:9-17 (Gila County) (similar).

14 Evidence of the State’s past practices also further supports finding the Birthplace
15 Requirement immaterial. The State Form has contained an *optional* field for birthplace
16 since 1979, ECF No. 124, ¶ 57; ECF No. 328, ¶ 57, but Arizona has never rejected
17 applications for failing to provide birthplace information. *See, e.g.*, Petty Tr. 184:11-14
18 (Maricopa County) (testifying that, prior to H.B. 2492, birthplace has always been
19 optional); Hiser Tr. 218:16-20 (Pima County) (similar); Lewis Tr. 105:14-16 (Pinal
20 County) (similar). H.B. 2492 § 4 amends A.R.S. § 16-121.01(A) to now *require* that State-
21 Form voter registration applicants include their place of birth to be registered. Arizona’s
22 four-decade-long practice of asking for—but not requiring—birthplace information
23 directly undercuts any claim that that it is material to determining voter qualifications. *See*
24 *Migliori*, 36 F.4th at 164 (holding omission of dates on ballot envelopes immaterial in part
25 because state accepted materials with wrong dates); *Ford v. Tenn. S.*, 2006 WL 8435145,
26 at *10-11 (W.D. Tenn. Feb. 1, 2006) (requirement that voters sign applications and poll
27 books immaterial where state previously treated failure to sign as immaterial); *Martin*, 347
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1 F. Supp. 3d at 1309 (finding argument birth year was material undercut by “fact that other
2 Georgia counties do not require absentee voters to furnish such information *at all*”).

3 Those Defendants that have chosen to defend the Birthplace Requirement—the
4 Attorney General and Intervenors—have never presented a consistent or cogent theory for
5 how the Birthplace Requirement comports with the Materiality Provision. In its summary
6 judgment briefing, the Attorney General suggested birthplace information “can help
7 confirm the voter’s identity.” ECF No. 364 at 14. But testimony from the County Recorders
8 in discovery flatly contradicts this claim, as discussed above. In sum, the overwhelming
9 weight of the record, in particular testimony from the officials actually responsible for
10 administering elections in Arizona, will prove that the Birthplace Requirement does not
11 have any “probability of actually impacting an election official’s eligibility determination,”
12 as this Court has explained the Materiality Provision requires. ECF No. 534 at 26; *see also*
13 *id.* n.17 (material “means something more than useful or minimally relevant”) (cleaned
14 up). Accordingly, the Court should enter judgment for Plaintiffs on this claim.

15 III. CONCLUSION

16 Because the evidence at trial will show that MFV Plaintiffs have standing and the
17 Birthplace Requirement violates the Materiality Provision, Plaintiffs request declaratory
18 and injunctive relief enjoining Defendants from enforcing the Birthplace Requirement; an
19 award of costs, expenses, and reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988 and
20 any other applicable law; and such other and further relief as the Court deems just and
21 proper.

22 MFV Plaintiffs join the Trial Memoranda of DNC Plaintiffs, Equity Coalition
23 Plaintiffs, and LUCHA Plaintiffs, also filed October 19, 2023, which address MFV
24 Plaintiffs’ Undue Burden on the Right to Vote, Procedural Due Process, and Equal
25 Protection claims, respectively.

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2 Dated: October 19, 2023

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