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14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF ARIZONA**

16 Mi Familia Vota, et al.,
Plaintiffs,

17 v.

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

19 Defendants,

20 and

21
22 Speaker of the House Ben Toma and Senate
23 President Warren Petersen,

24 Intervenor-Defendants.

25 AND CONSOLIDATED CASES

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

**TRIAL MEMORANDUM OF LAW BY
PLAINTIFF ARIZONA ASIAN
AMERICAN NATIVE HAWAIIAN
AND PACIFIC ISLANDER FOR
EQUITY COALITION**

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 **I. PRELIMINARY STATEMENT**

2 Consolidated Plaintiffs challenge certain provisions of Arizona House Bill 2492
3 (“H.B. 2492”) and Arizona House Bill 2243 (“H.B. 2243”) (collectively, the “Challenged
4 Laws”). Together, the Challenged Laws make significant—and dangerous—changes to
5 voter registration requirements, voter list maintenance procedures, and other aspects of
6 voting in Arizona. As detailed in the Joint Proposed Pretrial Order, Dkt. 571, the
7 Challenged Laws violate the First, Fourteenth, and Fifteenth Amendments of the U.S.
8 Constitution, the National Voter Registration Act (“NVRA”), Section 101 of the Civil
9 Rights Act of 1964, and Section 2 of the Voting Rights Act.

10 Plaintiff Arizona Asian American Native Hawaiian And Pacific Islander For Equity
11 Coalition (“Equity Coalition”) submits this Trial Memorandum of Law addressing with
12 particularity a subset of Consolidated Plaintiffs’ claims that remain for trial. Specifically,
13 this Memorandum addresses Equity Coalition’s standing as well as Consolidated Plaintiffs’
14 claims for violations of (1) the NVRA, (2) Procedural Due Process under the Fourteenth
15 Amendment, and (3) the Fifteenth Amendment and Equal Protection under the Fourteenth
16 Amendment, because the Challenged Laws impermissibly target particular classes of
17 voters. Equity Coalition also joins the Trial Memoranda separately and concurrently filed
18 by other Consolidated Plaintiffs, which together with this Trial Memorandum, address the
19 questions of law and evidence that Equity Coalition currently anticipates will arise at trial.¹

20 **II. ARGUMENT**

21 **A. Equity Coalition Has Standing To Bring Its Claims**

22 Under Article III, a plaintiff has standing to bring a claim if it can show (1) a
23 concrete and particularized “injury in fact” that is actual or imminent and not hypothetical;
24 (2) that the injury is fairly traceable to the defendant’s actions; and (3) that it is likely, as
25 opposed to speculative, that the injury will be redressed by a favorable decision. *Lujan v.*

26 _____
27 ¹ These issues will be addressed in more detail in the Consolidated Plaintiffs’ forthcoming
28 proposed findings of fact and conclusions of law, per the Joint Proposed Pretrial Order.
Dkt. 571.

1 *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). As the Court has recognized, an
 2 organization has standing to sue where “it establishes that the defendant’s behavior has
 3 frustrated its mission and caused it to divert resources in response to that frustration of
 4 purpose.” Dkt. 304 at 16 (quoting *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663
 5 (9th Cir. 2021)).

6 At trial, Equity Coalition will demonstrate that it has standing to challenge H.B.
 7 2492 and H.B. 2243. As this Court previously held, allegations that the Challenged Laws
 8 will force Equity Coalition to “divert money, personnel, time, and resources away from”
 9 other voter registration and education activities, and that the Challenged Laws will
 10 “disproportionately disenfranchise[]” demographics whose voter registration and
 11 participation Equity Coalition seeks to increase, confer standing. *Id.* at 17. May
 12 Tiwamangkala, Equity Coalition’s Democracy Defender Director, will provide testimony
 13 demonstrating Equity Coalition’s standing. *See, e.g.*, Case No. 2:22-cv-01381-SRB, Dkt.
 14 33 (Tiwamangkala Declaration).

15 **B. The Challenged Laws Violate The NVRA**

16 Plaintiffs are entitled to judgment on their remaining three NVRA claims for the
 17 reasons set forth below.

18 **1. Section 2 Of H.B. 2243 Violates (And Is Preempted By) Section 6** 19 **Of The NVRA’S Requirement That States “Accept And Use” The** 20 **Federal Form**

21 Section 2 of H.B. 2243 is preempted by Section 6 of the NVRA, which, as this Court
 22 has already ruled, requires states to “accept and use” the Federal Form for registering voters
 23 for all federal elections.² 52 U.S.C. § 20505(a)(1). H.B. 2243 forces county recorders to
 24 ignore that requirement. The Federal Form requires that a voter applicant attest under
 25 penalty of perjury that they meet voter “eligibility requirement[s] (including citizenship),”

26 _____
 27 ² The Court granted summary judgment on Plaintiffs’ NVRA Section 6 claims with respect
 28 to H.B. 2492. Order at 10-15 (holding that H.B. 2492’s requirement that registrants provide
 DPOC to vote in presidential elections and by mail is inconsistent with, and therefore
 preempted by, Section 6). The Court’s Order did not, however, resolve the similar claim
 with respect to H.B. 2243.

1 but does not require anything more from voters to prove their citizenship. 52 U.S.C. §
2 20508(b)(2). Rather than “accept and use” the Federal Form, county recorders must run
3 monthly database checks and verify the citizenship of voters who have not provided DPOC
4 or for whom the county recorder has “reason to believe” is not a U.S. citizen. This violates
5 Section 6 of the NVRA.

6 As this Court explained in holding that Section 6 preempts H.B. 2492’s DPOC
7 requirement for voting in presidential elections and voting-by-mail, a state law may be
8 preempted if “it is impossible for a private party to comply with both state and federal
9 requirements,” or if the state law “creates an unacceptable obstacle to the accomplishment
10 and execution of the full purpose and objectives of Congress.” Dkt. 534 (“Order”) at 9
11 (quoting *Chamber of Commerce v. Bonta*, 62 F.4th 473, 482 (9th Cir. 2023)). Thus, “a
12 state-imposed requirement of evidence of citizenship [to vote in federal elections] not
13 required by the Federal Form is ‘inconsistent with’ the NVRA’s mandate that States ‘accept
14 and use’ the Federal Form,” and is therefore preempted. *Arizona v. Inter Tribal Council*
15 *of Ariz., Inc.*, 570 U.S. 1, 15 (2013) (striking down an Arizona law requiring officials to
16 reject applications, including federal forms, that were not accompanied by DPOC).

17 Section 2 of H.B. 2243 requires county recorders to perform mandatory monthly
18 database checks on any registered voter that lacks DPOC. A.R.S. § 16-165(I) (requiring
19 comparison with the Systematic Alien Verification for Entitlements Program or “SAVE”);
20 § 16-165(J) (requiring comparison with the Electronic Verification of Vital Events
21 System). Voters who are matched to “information” in the databases that suggests they are
22 not citizens are then sent a notice informing the voter that they will be purged from the
23 rolls in 35 days if they cannot provide DPOC. *Id.* § 16-165(A)(10). Notably, unlike H.B.
24 2492, which distinguishes between full-ballot voters and Federal-only voters in
25 (impermissibly) regulating the latter’s ability to vote for President and by mail, H.B. 2243
26 makes *no distinction whatsoever*. In other words, H.B. 2243 mandates database checks for
27 Federal-only voters even if they were only allowed to vote in congressional elections.

28

1 Plaintiffs will present evidence at trial demonstrating that H.B. 2243’s regime is
2 preempted by the NVRA, or otherwise presents an obstacle to the NVRA’s purpose to
3 “enhance[] the participation of eligible citizens as voters.” Order at 13-14 (quoting 52
4 U.S.C. § 20501(b)(2)); *see also Inter Tribal*, 570 U.S. at 12 (explaining that the Federal
5 Form’s simplicity provides a “backstop” to further this goal). As Plaintiffs will show, H.B.
6 2243’s provisions impose proof of citizenship requirements in excess of the sworn
7 attestation of citizenship necessary to register using for the Federal Form, which conflicts
8 with the NVRA’s requirement that states “*accept and use*” the Federal Form. The evidence
9 presented at trial, including through expert testimony,³ will show that a sworn attestation
10 is sufficient to safeguard against non-citizen voting, *see, e.g.*, Dkt. 571-1 at Stipulation 157
11 (Attorney General unaware of any conviction for non-citizen voting since 2010); Dkt. 571-
12 6 at Thomas Tr. 319:11-13, 328:2-6 (similar), Lerma Tr. 60:22-61:3 (similar), Durst Tr.
13 128:16-22 (similar), and Casner Tr. 62:19-22 (similar), and that the database checks and
14 citizenship investigation procedures are ill-suited and ineffective for verifying a person’s
15 current citizenship status, *see, e.g.*, Dkt. 571-1 at Stipulations 148-151; Dkt. 571-6 at
16 Munoz Tr. 52:23-53:17, Garcia Tr. 56:3-58:2, 71:1-9, Petty Tr. 94:20-96:9. Plaintiffs will
17 also show that H.B. 2243’s provisions will likely decrease registration and participation in
18 elections, contrary to the purposes of the NVRA.

19 **2. The Challenged Laws Violate Section 8 Of The NVRA Because**
20 **They Are Not Uniform Or Nondiscriminatory**

21 Five provisions of the Challenged Laws—Sections 4, 5, 7 and 8 of H.B. 2492 and
22 Section 2 of H.B. 2243—violate Section 8 of the NVRA by imposing a non-uniform and
23 discriminatory voter purge schemes that will disparately impact naturalized voters and
24 voters in certain racial and ethnic minority groups. Under Section 8(b), “[a]ny State
25 program or activity to protect the integrity of the electoral process by ensuring the
26 maintenance of an accurate and current voter registration roll for elections for Federal

27 _____
28 ³ Expert discovery remains ongoing.

1 office” must be “uniform, nondiscriminatory, and in compliance with the Voting Rights
2 Act of 1965.” 52 U.S.C. § 20507(b)(1). The “uniform [and] nondiscriminatory”
3 requirement is violated when a voter-roll maintenance program targets or singles out
4 specified classes of voters for disparate treatment. *See Project Vote v. Blackwell*, 455 F.
5 Supp. 2d 694, 703 (N.D. Ohio 2006). A discriminatory effect on a group of registered
6 voters is also a violation of this section. *See id.* at 703-04; *cf. Chisom v. Roemer*, 501 U.S.
7 380, 394 (1991) (explaining that voting laws with discriminatory effects violate the Voting
8 Rights Act).

9 Plaintiffs will present evidence at trial showing that the Challenged Laws create a
10 non-uniform system in violation of the NVRA. The provisions of the Challenged Laws
11 subject some, but not all, voters to investigation and additional DPOC requirements. For
12 example, H.B. 2243 requires each county recorder “to the extent practicable” (a term that
13 the statute does not define) to investigate the citizenship of those voters it has “reason to
14 believe are not United States Citizens” (also undefined) or who did not provide DPOC,
15 using the same faulty databases specified in H.B. 2492. A.R.S. §§ 16-165(I)-(K). These
16 databases include SAVE, which can *only* be used to verify the citizenship status of
17 naturalized citizens for whom county recorders have certain other information necessary
18 to query the system, but cannot be used to verify citizenship of U.S.-born voters. Dkt. 571-
19 1 at Stipulations 121-22, 131-32; Dkt. 571-6 at Doolittle Tr. 27:22, 28:8-11. H.B. 2492
20 similarly compels county recorders to “use all available resources” (also undefined) “to
21 verify the citizenship status of” applicants registering using the Federal Form who did not
22 provide DPOC, including checking databases that are prone to error and which do not
23 contain a comprehensive list of citizenship information. A.R.S. § 16-121.01(D); *see also*
24 *id.* § 16-143(B) (imposing similar requirement on the Arizona Attorney General).
25 Plaintiffs will demonstrate that because these investigation provisions “do not apply to
26 everyone,” they facially violate the NVRA’s uniformity principle. *Project Vote*, 455 F.
27 Supp. 2d at 703 (explaining that an Ohio law imposing requirements on only certain types
28 of persons was “on its face [] not a uniform and non-discriminatory attempt to protect the

1 integrity of the electoral process”). Plaintiffs will also demonstrate that the lack of clarity
2 and guidance regarding the Challenged Laws’ subjective terms leaves “local county
3 officials [to] interpret and apply the [laws] differently,” which also makes H.B. 2243’s
4 removal program non-uniform. *Common Cause Indiana v. Lawson*, 327 F. Supp. 3d 1139,
5 1149, 1153 (S.D. Ind. 2018); *See, e.g.*, 571-6 at Petty Tr. 145:1-25, 154:3-14, 235:10-236:1,
6 Lerma Tr. 95:25-96:9, Garcia Tr. 75:21-76:11, 77:3-22, 82:7-85:15.

7 Plaintiffs will also prove at trial that these provisions are discriminatory. The
8 evidence will show that these Challenged Laws will operate to disparately impact
9 naturalized citizens and voters in certain racial and ethnic groups, who will be
10 disproportionately singled out for further investigation under these laws as explained *infra*
11 and in other Plaintiffs’ Trial Memoranda. *See Project Vote*, 455 F. Supp. 2d at 703-04.

12 **3. H.B. 2492 Violates the 90-Day Provision of NVRA Section 8**

13 The Court granted summary judgment on the claim that H.B. 2243’s mandatory,
14 monthly voter purge scheme violated Section 8’s prohibition on “systematic” removals of
15 voters within 90 days of an election. Order at 15-18. The Court did not, however, rule on
16 the provision in H.B. 2492 that H.B. 2243 superseded. *See id.* at 16 n.9; Dkt. 396 at 3 n.3
17 (quoting A.R.S. § 16-165(A)(10)). Because H.B. 2492’s language does not provide for the
18 suspension of voter cancellations within 90 days of an election, it also violates Section 8
19 of the NVRA. Should the Court’s ruling against H.B. 2243 somehow result in H.B. 2492
20 being reinstated, the Court should rule that H.B. 2492 violates the NVRA’s 90-Day
21 Provision.

22 **C. The Challenged Laws Violate Voters’ Procedural Due Process Rights**

23 When evaluating a procedural due process challenge to an election law, courts
24 employ the *Anderson/Burdick* balancing test. *Ariz. Democratic Party v. Hobbs*, 18 F.4th
25 1179, 1194-95 (9th Cir. 2021). As this Court has recognized, under this framework, for
26 laws that impose a severe burden on the right to vote, the state must meet strict scrutiny
27 and show a compelling interest narrowly tailored to serve that interest. Dkt. 304 at 20
28 (citing *Pierce v. Jacobsen*, 44 F.4th 853, 859-60 (9th Cir. 2022)). Lesser burdens have to

1 meet less demanding levels of scrutiny. *Id.* However, in all cases *Anderson/Burdick*
2 imposes a “means-end fit framework,” *Pub. Integrity All. v. City of Tucson*, 836 F.3d 1019,
3 1024 (9th Cir. 2016), such that even where a burden is slight, it must be justified by relevant
4 and legitimate state interests sufficiently weighty to justify the limitation. *See, e.g., Ariz.*
5 *Democratic Party*, 18 F.4th at 1187; *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181,
6 191 (2008) (Stevens, J., controlling op.).

7 Plaintiffs’ procedural due process claims challenge the following provisions that
8 significantly burden Arizonans’ voting rights with insufficient notice and insufficient
9 opportunity to cure:

- 10 • **Section 2 of H.B. 2243:** Significantly burdens voters’ procedural due process rights
11 by cancelling a voter’s registration without an adequate opportunity to contest or
12 cure when a county recorder obtains information that the person registered is not a
13 United States citizen.⁴
- 14 • **Section 4 of H.B. 2492:** Significantly burdens voters’ procedural due process rights
15 by rejecting a voter’s registration application upon determination that the applicant
16 is not a citizen and forwarding the application to the county attorney and Attorney
17 General for investigation without allowing the applicant an opportunity to contest
18 or cure such a determination.
- 19 • **Section 5 of H.B. 2492:** Significantly burdens voters’ procedural due process rights
20 by denying the right to vote in presidential elections of any registered voter who has
21 not provided satisfactory evidence of citizenship as prescribed by A.R.S. § 16-166
22 without providing any notice or opportunity to cure, and by denying the right to vote
23 early by mail of any registered voter who is eligible to vote only for federal offices
24 without providing any notice or opportunity to cure.

21 Plaintiffs will present evidence at trial showing that these provisions place severe
22 burdens on Arizonans’ right to vote, are not narrowly tailored, and do not advance a
23 compelling state interest. Regarding H.B. 2243, the evidence will show that its predecessor
24 bill, H.B. 2617, provided Arizonans accused of lacking U.S. citizenship with 90 days to
25 provide documentary proof of citizenship to retain their right to vote. *See* Dkt. 571-5,
26

27 ⁴ While superseded by Section 2 of H.B. 2243, Section 8 of H.B. 2492 is unconstitutional
28 because it provides no rubric or guardrails for disenfranchising voters that would provide
any opportunity to contest or cure.

1 Plaintiffs' Exhibit 4 at 2. Plaintiffs will present evidence showing that then-Arizona-
2 Governor Ducey vetoed H.B. 2617 for lacking "sufficient due process" protections. *See*
3 Dkt. 571-1 at Stipulation 50. Despite these due process concerns, the evidence will show
4 that in the last two days of the legislative session, the Senate amended H.B. 2243 to include
5 a modified version of H.B. 2617, which passed the House, and was then signed into law
6 with one substantial change: the amendment reduced the response period to provide DPOC
7 from H.B. 2617's 90 days to only 35 days for those accused of lacking U.S. citizenship.
8 *See* Dkt. 571-1 at Stipulations 51-58. That amendment creates a severe burden that was
9 never even discussed by the Legislature, and Defendants have come forward with zero
10 evidence to justify it. Plaintiffs will produce evidence showing the severe burdens H.B.
11 2243's 35-day provision imposes on voters, especially for voters of color and naturalized
12 citizens, such as offering testimony from expert and lay witnesses that will demonstrate
13 that the barriers to complying with H.B. 2243 and H.B. 2492, and the threat of
14 consequences resulting from failures of compliance, will chill voter participation.

15 Regarding H.B. 2492, the evidence will show that county recorders responsible for
16 implementing Section 4 of H.B. 2492 are unclear about the database matching
17 requirements and what constitutes "information that the applicant is not a United States
18 Citizen." *See, e.g.*, Dkt. 571-6 at Lerma Tr. 91:13-94:21, Garcia Tr. 77:3-79:7, 104:18-
19 108:6, Merriman Tr. at 84:11-88:3. Yet those same county recorders must then forward
20 that application for potential prosecution without giving the voter any opportunity to
21 contest and cure. Dkt. 571-6 at Knuth Tr. 31:1-32:11. Section 5 of H.B. 2492, meanwhile,
22 provides no notice or opportunity to cure before depriving *registered voters* of their right
23 to vote in presidential elections and to vote early by mail. A.R.S. § 16-127(A). Expert
24 testimony will demonstrate that there are approximately 20,000 Federal-Only voters in
25 Arizona, some of whom have been active voters for as long as nearly 20 years, who will
26 be deprived of any due process under this provision. This severe burden is only
27 exacerbated by the fact that the vast majority of Arizona voters vote early by mail and are
28 accustomed to its numerous benefits, as demonstrated by the testimony of many witnesses.

1 *See, e.g.*, Dkt. 571-6 at Hiser Tr. 245:20-249:11, Webber Tr. 106:17-108:16, Milheiro Tr.
2 43:23-25, 44:6-45:5.

3 Besides showing the severe burdens the Challenged Laws place on voters, Plaintiffs
4 will also show that neither bill advances any purported compelling state interest in
5 combating non-citizen voter fraud. For instance, the evidence will show that since 2010,
6 the Arizona Attorney General has not convicted a single person for registering to vote or
7 casting a ballot as a non-U.S. citizen. *See* Dkt. 571-1 at Stipulation 157. Moreover, the
8 Arizona Attorney General is only aware of two pending cases of non-citizen voting, but
9 both of these cases are publicly sealed meaning that the Legislature could not have been
10 aware of them when passing the Challenged Laws. Dkt. 571-5, Plaintiffs' Exhibit 106 at
11 2. Plaintiffs will also provide expert testimony that voter fraud in recent elections, both
12 nationally and in Arizona, is exceedingly rare, and that the incident of voter fraud
13 attributable to non-citizens in Arizona is essentially non-existent. Given the dearth of non-
14 citizen voting in Arizona, the evidence will show that Arizona passed the Challenged Laws
15 without a compelling state interest, meaning that Sections 4, 5, and 8 of H.B. 2492 and
16 Section 2 of H.B. 2243 violate Arizona voters' procedural due process rights.

17 **D. The Challenged Laws Target Protected Classes**

18 Plaintiffs bring claims that H.B. 2492 and H.B. 2243 discriminate against Arizonans
19 based on their race, national origin, and/or alienage in violation of the Fourteenth and
20 Fifteenth Amendments.

21 Plaintiffs will demonstrate that the Challenged Laws violate the Fourteenth and
22 Fifteenth Amendments by establishing that their enactment was motivated by a
23 discriminatory purpose under the totality of the relevant facts, including "(1) the impact of
24 the official action and whether it bears more heavily on one race than another; (2) the
25 historical background of the decision; (3) the specific sequence of events leading to the
26 challenged action; (4) the defendant's departures from normal procedures or substantive
27 conclusions; and (5) the relevant legislative or administrative history." *Arce v. Douglas*,
28 793 F.3d 968, 977-78 (9th Cir. 2015); *Washington v. Davis*, 426 U.S. 229, 242 (1976).

1 Plaintiffs need not prove that “the discriminatory purpose was the sole purpose of the
2 challenged action, but only that it was a motivating factor.” *Arce*, 793 F.3d at 977.

3 The evidence will show that the Challenged Laws will disproportionately impact
4 Asian American Pacific Islanders, Latinos, and naturalized citizens (referred to herein as
5 “voters of color and naturalized citizens”). Plaintiffs will provide testimony from experts
6 demonstrating how the laws disproportionately impact voters of color for a myriad of
7 reasons, including that notices provided to registrants to inform them they are being purged
8 from the rolls are not provided in AAPI languages, and that voters of color are
9 disproportionately represented amongst recently naturalized citizens in Arizona, meaning
10 that they are more likely to be incorrectly identified by database checks required by the
11 Challenged Laws than those belonging to other groups. Expert testimony will also
12 demonstrate how the Challenged Laws are part of a long history of discrimination in
13 Arizona against voters of color and naturalized citizens.

14 Plaintiffs will also present evidence regarding the context and events leading to the
15 enactment of the Challenged Laws. As documented in Promise Arizona’s Trial
16 Memorandum, the databases election officials are instructed to use under the Challenged
17 Laws contain stale data and are neither intended nor capable of confirming non-U.S.
18 citizenship, but they are effective at targeting naturalized U.S. citizens for removal from
19 the registration rolls and for criminal investigation. The evidence will also show that the
20 legislature was on notice that reliance on these databases would have precisely that effect.
21 Moreover, in the aftermath of claims that there was widespread voter fraud in Arizona’s
22 administration of the 2020 presidential election, the voting sphere was particularly charged
23 in Arizona, with some Arizona election officials experiencing harassment and death
24 threats, leading them to resign. Dkt. 571-6 at Connor Tr. 233:1-236:18. This charged
25 climate, along with evidence showing that the Challenged Laws were passed in an
26 irregular, and/or expedited fashion, further shows the Legislature’s discriminatory purpose.
27 *See* Dkt. 571-1 at Stipulations 51-58.

28

1 Plaintiffs will also show that, in at least three ways, the Challenged Laws facially
2 discriminate against persons on the basis of national origin and/or alienage, which,
3 “regardless of purported motivation, is presumptively invalid.” *Pers. Adm’r of Mass. v.*
4 *Feeney*, 442 U.S. 256, 272 (1979). First, Plaintiffs will show that H.B. 2492 Section 4
5 includes a “birthplace requirement” that requires registrants to provide information about
6 their national origin, which the state acknowledges “facilitates ascertaining if a registrant
7 is a U.S. citizen.” A.R.S. § 16-121.01(A); *see also* Dkt. 571-5, Plaintiffs’ Exhibit 206 at
8 7. Second, the evidence will show that Section 2 of H.B. 2243 requires county recorders
9 to compare a registered voter to SAVE every month, if the county recorder “has reason to
10 believe” such voter is not a U.S. citizen, or if a voter has not provided DPOC. A.R.S. §
11 16-165(I). Under this provision, the only database checked is the SAVE database, meaning
12 the “reason to believe” standard is only relevant to and only ever applied to voters born
13 outside the United States. *Id.* As such, H.B. 2243 facially discriminates against voters
14 based on their national origin. Third, the evidence will show that the use of other databases
15 in addition to SAVE likewise facially discriminates on the basis of national origin. None
16 of the databases identified in H.B. 2243 to be used to “confirm citizenship” have reliable,
17 up-to-date citizenship information. Therefore, H.B. 2243’s design on its face targets
18 eligible naturalized citizens because stale U.S. citizenship data only affects them, whereas
19 native-born U.S. citizenship status is far more static. In other words, the mandated usage
20 of outdated stale citizenship data to manage voter lists is nothing more than a proxy for
21 targeting non-Native born registrants for additional burdens.

22 **III. CONCLUSION**

23 Equity Coalition respectfully requests that the Court enter judgment in Consolidated
24 Plaintiffs’ favor on all claims identified herein and in other Consolidated Plaintiffs’ Trial
25 Memoranda and grant all relief requested.

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1 Dated: October 19, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2023, I served 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

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