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15  
16 **IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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

19 (Consolidated)

20 v.

21 Adrian Fontes, et al.,  
22 Defendants.

No. 2:22-cv-00509-SRB (Lead Case)  
No. 2:22-cv-01124-SRB

United States' Trial Memorandum

23 And associated consolidated matters.  
24

25 Pursuant to the Court's July 27, 2023, Order (ECF No. 485), the United States  
26 respectfully submits this Trial Memorandum on a single issue: Whether Arizona House  
27 Bill ("HB") 2492's birthplace requirement is material to determining whether a  
28 prospective voter is qualified to vote in Arizona. *See* 52 U.S.C. § 10101(a)(2)(B)

1 (“Materiality Provision”); *see also* ECF No. 534 (resolving the remainder of the United  
2 States’ claims).

3 For decades, the Arizona voter registration form (“State Form”) gave applicants  
4 the option to provide their state or country of birth when registering to vote. Some  
5 registrants provided that information or attempted some form of it. Some did not.  
6 Omitting that information, however, carried no consequence. HB 2492 changed that.  
7 Under that law, which went into effect in 2023, place of birth is now required on the  
8 State Form; prospective registrants who fail to provide that information will not be  
9 registered to vote.

10 HB 2492’s birthplace requirement violates the Materiality Provision, which  
11 prohibits states from denying the right to vote based on an error or omission on voting-  
12 related paperwork if the error or omission is “not material in determining whether such  
13 individual is qualified under State law.” 52 U.S.C. § 10101(a)(2)(B). No party  
14 disputes that HB 2492’s birthplace requirement prevents prospective registrants from  
15 voting if they omit their birthplace on the State Form. The sole contested issue for trial  
16 is whether a voter registrant’s birthplace is material to determining whether that  
17 prospective registrant is qualified to vote in Arizona. The facts and law establish that it  
18 is not.

19 **I. Birthplace Is Not Material to Determining Voter Eligibility.**

20 The Court has already determined that “material” voter registration information  
21 must “actually impact[] an election official’s [voter] eligibility determination.” Order  
22 on Mot. Summ. J. at 26, ECF No. 534; *see also* ECF No. 304 at 32 (denying motion to  
23 dismiss the United States’ Materiality Provision claim). Accordingly, HB 2492’s  
24 birthplace requirement must be more than just “useful” or “minimally relevant” to a  
25 voter eligibility determination. Summ. J. Order at 26 n.17. A voter’s birthplace must  
26 “actually impact” a determination of whether the applicant meets Arizona’s voter  
27 qualifications. In Arizona, those qualifications are limited to age, citizenship,  
28 residency, ability to write one’s name or make one’s mark, lack of treason or felony

1 convictions or, if convicted, a restoration of civil rights, and no adjudications deeming  
2 one incapacitated. *Id.* at 23; Ariz. Const. art. VII § 2; Ariz. Rev. Stat. § 16-101; *see*  
3 *also* U.S. Mot. Summ. J. at 18 (collecting cases on the definition of “material”).

4 Just one of those eligibility criteria is at issue here. The Arizona Attorney  
5 General claims that “birthplace is material in determining citizenship [], in the sense  
6 that persons born in the United States are citizens.” State Defs.’ Mot. Summ. J. Reply  
7 Br. at 35, ECF No. 436. But that is incorrect. Persons born in the United States can  
8 still be noncitizens if they were born to diplomat parents or later renounce their  
9 citizenship. *See* 8 C.F.R. § 101.3(a)(1); 8 U.S.C. § 1481. And, of course, individuals  
10 born outside the United States can nonetheless be native citizens if born to United  
11 States citizen parents or they may acquire citizenship through the naturalization  
12 process—a point the Arizona Attorney General concedes. State Defs.’ Mot. Summ. J.  
13 Reply Br. at 35, ECF No. 436. These examples—by no means exhaustive—  
14 demonstrate that birthplace alone is not, and cannot be, material to determining a  
15 registrant’s citizenship.

16 As this Court already found in the context of HB 2492’s citizenship checkbox  
17 requirement, “the materiality of an error or omission is determined by the other  
18 information available to the State.” Order on Mot. Summ. J. at 27. Here, the State  
19 already requires State Form registrants to prove their citizenship via documentary  
20 proof of citizenship (DPOC) as a prerequisite to registration. Arizona thus possesses  
21 conclusive proof of the applicant’s citizenship status, regardless of what, if anything,  
22 the applicant states as to birthplace. Nor can birthplace information substitute for  
23 DPOC. State Forms without DPOC must be rejected even if registrants write “United  
24 States” as their birthplace. Birthplace information thus at best duplicates information  
25 already established by the applicant’s DPOC and, at worst, is a false proxy for  
26 citizenship. At any rate, birthplace alone plays no role—much less a material one—in  
27 determining a prospective registrant’s citizenship or any other Arizona voter  
28

1 qualification. HB 2492’s birthplace requirement thus violates the Materiality  
2 Provision.

3 **II. Birthplace Is Not Even Helpful to Establishing a Voter Registrant’s**  
4 **Eligibility.**

5 Even if Defendants were correct that “material” information under the statute  
6 need only be “helpful”—an interpretation this Court already rejected—a person’s  
7 birthplace is not helpful, useful, or even minimally relevant to Arizona county  
8 officials’ voter eligibility determinations. The evidence here is extraordinarily strong:  
9 No Arizona county relies on birthplace information to determine whether a prospective  
10 voter is eligible to vote in the State. And for decades, Arizona county officials  
11 determined a prospective voter’s eligibility before birthplace was required information.  
12 In fact, about a third of registered voters in the State have historically omitted that  
13 information when registering to vote, but counties have always been able to determine  
14 the voters’ eligibility to vote.

15 **III. Birthplace Information Is Unusable for Confirming Identity.**

16 Defendants have argued that birthplace “can help confirm [a] voter’s identity”  
17 and is thus material to voter eligibility. Defs.’ Mot. Summ. J. at 14, ECF No. 364. But  
18 that is incorrect for at least two reasons. First, the State Form does not instruct voters  
19 to provide their birthplace in a uniform manner, and the Secretary of State does not  
20 provide counties any guidance on entering birthplace data into the voter registration  
21 database. In practice, whatever voters write down is recorded. Voters also often  
22 misread the instructions on the form and provide a county or town name (rather than  
23 “state or country of birth,” as the form indicates) or abbreviations that are not easily  
24 discernible. As a result, Arizona’s birthplace data is often ambiguous and unhelpful  
25 for identification purposes. For example, prospective voters may write their birthplace  
26 on the State Form as “CA,” which could be either California or Canada. And some  
27 individuals write “A” or “AZ,” which requires officials to speculate about the  
28 registrant’s intent. “A” could be any of four states beginning with that letter; “AZ”  
could be Arizona or Azerbaijan. Nor does the Arizona Secretary of State’s Office or

1 any Arizona county have a means to verify birthplace information. The Arizona  
2 Secretary of State's Office has no plans to update or supplement the birthplace data  
3 already in the voter registration database, nor does that Office plan to update the State  
4 Form or provide guidance to make data entry more uniform going forward.

5 Second, even if Arizona's birthplace data were perfect—as in, each entry leaves  
6 no doubt as to which state or country it is referring to—birthplace would still not “help  
7 confirm [a] voter's identity,” let alone be material to establishing a voter's identity.  
8 The only plausible scenario in which birthplace could be used to help confirm a new  
9 registrant's identity is when a county election official seeks to confirm that a State  
10 Form application came from a new voter, rather than an existing voter. But it is  
11 exceedingly rare that county election officials need any information beyond the voter's  
12 name, date of birth, and an ID number (Arizona driver's license or the last four digits  
13 of a social security number) to distinguish between two voters in Arizona's voter  
14 registration database.<sup>1</sup> And even in those circumstances, birthplace is not a useful  
15 datapoint to distinguish between two people considering the number of people born in  
16 Arizona or the United States on any given day.<sup>2</sup>

17 It is unsurprising, therefore, that Arizona counties have never used birthplace to  
18 establish voter identity, nor have they expressed the need to have birthplace as a  
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20 <sup>1</sup> Defendants have also sought testimony from county election officials as to whether  
21 birthplace would hypothetically help distinguish between two voters with the same  
22 name and date of birth. As the United States' expert Dr. Eitan Hersh will show,  
23 Arizona's voter registration database contains only 2,734 of such records, out of 4.7  
24 million registered voters. Over 2,000 of them have an ID number associated with their  
25 voter record, meaning birthplace would not play any role in distinguishing between  
26 voters with the same name and date of birth. Further, as noted, a new voter could  
27 never be registered using the State Form with just their name and date of birth, as  
28 documentary proof of citizenship is required for those registering with the State Form.  
In other words, this hypothetical situation—where *nothing else* is known about a voter  
other than their name, date of birth, and birthplace—would never happen in practice.

<sup>2</sup> On average, 210 people are born in Arizona each day, and 10,039 people are born in  
the United States each day. See U.S. Center for Disease Control and Prevention,  
*National Vital Statistics System: Birth Data* (2023), available at  
<https://www.cdc.gov/nchs/nvss> (3,664,292 persons born in the United States in 2021);  
Arizona Department of Health Services, *Population Health and Vital Statistics: Table  
5B-3* (2021), available at [https://pub.azdhs.gov/health-  
stats/menu/info/trend/index.php?pg=births](https://pub.azdhs.gov/health-<br/>stats/menu/info/trend/index.php?pg=births) (76,781 persons born in Arizona in 2020).

1 mandatory field to help them identify a voter. On the contrary, Arizona county  
2 recorders and the Secretary of State have insisted that birthplace is irrelevant to  
3 determining voter eligibility or identity and that requiring it serves no purpose in voter  
4 registration.

5 Birthplace does not help county election officials confirm a voter's identity or  
6 establish that voter's eligibility. Requiring such information does not clear even  
7 Defendants' lower, newly coined bar of "helpfulness" in a Materiality Provision  
8 analysis.

#### 9 **IV. Administrative Uses of Birthplace Do Not Pertain to Voter Eligibility.**

10 Defendants have also argued that county election officials may use birthplace  
11 for reasons *other than* establishing a voter registrant's eligibility. But requiring  
12 birthplace information for administrative uses *unrelated* to voter eligibility and  
13 rejecting voter registration applications for failing to provide that information violates  
14 the Materiality Provision all the same.

15 One category of such administrative uses occurs when county election officials  
16 determine whether a prospective voter has provided satisfactory DPOC. But while  
17 birthplace is mentioned in the protocols for inspecting DPOC in some cases, birthplace  
18 is not used to determine that registrant's eligibility. For example, a prospective voter  
19 who presents a passport to establish citizenship must provide the page of the passport  
20 that contains the photo, passport number, name, nationality, date of birth, gender, place  
21 of birth, and signature.<sup>3</sup> A county official must only visually inspect the passport for  
22 the document to satisfy Arizona's DPOC requirement. Thus, the requirements related  
23 to the passport merely confirm that the document produced is in fact a U.S. passport—  
24 and that the prospective registrant is a U.S. citizen—rather than to corroborate the  
25 information on the voter registration form. It does not matter, then, whether that same  
26 voter provided birthplace information on the State Form or whether the birthplace

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<sup>3</sup> A passport is one of six types of satisfactory evidence of citizenship in Arizona. Ariz. Rev. Stat. Ann. § 16-166(F)(2), (3).

1 provided on the State Form matches the birthplace on the passport. What does matter  
2 is whether the registrant is a U.S. citizen, which a U.S. passport demonstrates.  
3 Birthplace plays no role in Arizona’s citizenship determination.

4 Another example involves a registrant who presents a birth certificate to  
5 establish citizenship. If the voter’s current name is different from the one listed on the  
6 birth certificate, the prospective voter must supply additional documentation, such as a  
7 marriage certificate or court-documented name change. If no documentation is  
8 provided, then an election official will match certain information on the birth  
9 certificate—such as birthplace—to the prospective voter’s State Form. So rare are  
10 these situations that many county election officials have never encountered them. But  
11 even in such scenarios, a prospective voter’s birthplace does not establish their  
12 eligibility to vote; that is accomplished by the person’s birth certificate.

13 Because no potential administrative uses of birthplace pertain to determining a  
14 prospective registrant’s eligibility, such uses cannot justify rejecting applications that  
15 omit birthplace information.

16 **CONCLUSION**

17 HB 2492’s birthplace requirement violates the Materiality Provision because a  
18 prospective voter’s birthplace is not material to determining whether that person meets  
19 Arizona’s qualifications to vote.

20  
21 Date: October 19, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to counsel of record.

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