

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

VOICE of the EXPERIENCED, *on behalf of
itself and its members*; POWER COALITION
for EQUITY and JUSTICE, *on behalf of itself
and its members*; and LEAGUE of WOMEN
VOTERS of LOUISIANA, *on behalf of itself
and its members*;

Plaintiffs,

Civil No. 3:23-cv-00331-JWD-SDJ

v.

R. KYLE ARDOIN, *in his official capacity as
Secretary of State of Louisiana,*

Defendant.

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs respectfully file this notice of supplementary authority to alert the Court to two recently issued opinions that may help the Court evaluate Plaintiffs' Motion for Preliminary Injunction: (1) *Tennessee Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Lee*, No. 3:20-CV-01039, 2024 WL 1685554 (M.D. Tenn. Apr. 18, 2024) [*"Tennessee NAACP"*], and (2) *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406 (D. Ariz. Feb. 29, 2024). Copies of each opinion are attached hereto.

In *Tennessee NAACP*, the district court denied the defendants' summary judgment motion and granted in part the plaintiffs' summary judgment cross-motion. The district court held, *inter alia*, that the plaintiff Tennessee NAACP had standing, reasoning that state policies requiring individuals with felony convictions to provide documentary proof of eligibility forced the Tennessee NAACP to "divert resources" "by following up with the eligible voter and communicating with various governmental authorities . . . to rectify the situation" and that "[t]his drain on its resources is sufficient to prove injury in fact." *Id.* at *10, 15.

The court also granted summary judgment to the plaintiffs on a National Voter Registration Act (“NVRA”) claim challenging Tennessee’s policy requiring documentary proof of eligibility for people with felony convictions. *Id.* at *25. The court reasoned, *inter alia*, that “[a]s it is undisputed that county and state election officials have the information the State says it needs to assess an applicant’s eligibility, Tennessee’s challenged documentation policy does not comply with the NVRA’s prohibition against requiring unnecessary information.” *Id.*

In *Mi Familia Vota*, following a bench trial, the district court concluded, *inter alia*, that an Arizona law requiring voter registration applicants to provide documentary proof of residence violates the NVRA as to federal elections. 2024 WL 862406, at *39. The court reasoned that Arizona had failed to prove, as required by the NVRA, that such proof was “‘necessary’ to determine the eligibility of the applicant,” noting that voters who, after registering, obtained an out-of-state license could confirm their residency with an attestation (i.e., without having to provide documentary proof, as Arizona required first-time registrants to do). *Id.*

Respectfully submitted this 26th day of April, 2024.

/s/Valencia Richardson

Valencia Richardson (LSBA #39312)

Danielle Lang*

Blair Bowie*

Christopher M. Lapinig*

Kate Uyeda*

Ellen Boettcher*

Reginald Thedford*

Campaign Legal Center

1101 14th St. NW Suite 400

Washington, DC 20005

(202) 736-2200

dlang@campaignlegal.org

bbowie@campaignlegal.org

vrichardson@campaignlegal.org

clapinig@campaignlegal.org

kuyeda@campaignlegal.org

eboettcher@campaignlegal.org

rthedford@campaignlegal.org

William P. Quigley (LSBA #07769)

Loyola University Law New Orleans

College of Law

7214 St. Charles Ave. Campus Box 902

New Orleans, LA 70118

Quigley77@gmail.com

* *Admitted pro hac vice*

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I hereby certify that on this date, April 26, 2024, I electronically filed the foregoing Motion with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to counsel of record who are registered with the Court's CM/ECF system.

/s/ Valencia Richardson
Valencia Richardson
Counsel for Plaintiffs

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TENNESSEE CONFERENCE of the)
NATIONAL ASSOCIATION for the)
ADVANCEMENT of COLORED)
PEOPLE, et al.,)

Plaintiffs,)

v.)

WILLIAM LEE, et al.,)

Defendants.)

NO. 3:20-cv-01039

JUDGE CAMPBELL

MAGISTRATE JUDGE FRENSELY


ORDER

Pending before the Court is a motion for summary judgment on Counts Four, Five, and Six filed by Defendants Trey Hargett (“Secretary Hargett”) and Mark Goins (“Coordinator Goins”) (Doc. No. 150), and a cross motion for summary judgment on Counts Four and Six filed by Plaintiff Tennessee National Association for the Advancement of Colored People (“TN NAACP”) (Doc. No. 153). The motions are fully briefed as to Counts Four, Five, and Six, and ripe for consideration. (Doc. Nos. 182, 190, 180, 192). For the reasons set forth in the accompanying memorandum, the motion for summary judgement filed by Secretary Hargett and Coordinator Goins is **DENIED** as to Counts Four, Five, and Six, and TN NAACP’s motion for summary judgment is **GRANTED** as to Count Six and **GRANTED** in part as to Count Four.

IT IS FURTHER ORDERED that, as soon as reasonably practicable, counsel for Secretary Hargett, Coordinator Goins, and TN NAACP shall meet in person and confer about the language for the injunction that will be entered as to Count Six. On or before **May 3, 2024**, Secretary Hargett, Coordinator Goins, and TN NAACP shall file an agreed proposed injunction as to Count Six or notify the Court that the parties could not agree on the injunction

IT IS FURTHER ORDERED that all parties in this action shall participate in mediation as to Counts One, Two, Three, and Four within 60 days of the entry of this Order. On or before **May 3, 2024**, the parties shall either notify the Court whether they each agree to mediating with Magistrate Judge Newbern or, in the alternative, jointly file a list of three proposed mediators agreeable to each of them, from which the undersigned will then select a mediator.

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES DISTRICT JUDGE

RETRIEVED FROM DEMOCRACYDOCKET.COM

In Count Four, TN NAACP claims that Tennessee's form to register to vote in elections for Federal office (hereinafter referred to as the "State Form") fails to inform applicants of Tennessee's voter eligibility requirements, in violation of the National Voter Registration Act of 1993 ("NVRA"). (*See* First Amended Complaint, Doc. No. 102 ¶¶ 153-57). In Count Six, TN NAACP claims that, since 2014, Tennessee has implemented a policy of rejecting forms to register to vote in elections for Federal office on which applicants indicate they have a prior felony conviction and requiring those applicants with a prior felony conviction to provide documentary proof of their eligibility to vote, in violation of multiple sections of the NVRA. (*See id.* ¶¶ 162-68). Count Five is brought under 42 U.S.C. 1983. In that Count, TN NAACP claims that Tennessee's policy of rejecting all voter registration forms on which the applicant affirmed they have a felony conviction violates eligible voters' fundamental right to vote in violation of the First and Fourteenth Amendments. (*See id.* ¶¶ 158-61).

In Counts Four through Six, TN NAACP seeks a preliminary and permanent injunction enjoining Hargett and Goins, in their official capacities, from rejecting valid voter registration applications from eligible voters and requiring Hargett and Goins, in their official capacities, to create registration forms and policies that comply with the NVRA and do not impose an undue burden on the right of eligible citizens to register to vote, including:

- i. specifying the eligibility requirements on all registration forms,
- ii. modifying the state voter registration form such that it can be used by all eligible citizens even if they have been convicted of a felony,
- iii. modifying the online voter registration portal such that it can be used by all eligible citizens even if they have been convicted of a felony, and

- iv. issuing statewide guidance prohibiting the requirement that people with convictions provide documentary proof of their eligibility and proscribing the rejection of valid voter registration applications from eligible voters because the applicant has a felony conviction.

(See First Amended Complaint, Doc. No. 102 at PageID # 658-59).

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY¹

Article 1, Section 5 of the Tennessee Constitution provides that “[t]he elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.” Tenn. Const. art. I, § 5. This provision is not self-executing, and disenfranchisement cannot be applied retroactively. *Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983). Thus, persons convicted of crimes are not disenfranchised unless prior to their conviction the legislature has by law “ascertained” that those crimes are “infamous” and “declared” that conviction of those crimes results in loss of the right to vote. *Crutchfield v. Collins*, 607 S.W.2d 478 (Tenn. Ct. App. 1980).²

Because of this constitutional structure, a felony conviction does not always result in the loss of voting rights in Tennessee. (Doc. No. 181 ¶ 1). A felony conviction before January 15, 1973 (a “pre-1973 conviction”) does not disqualify a person from voting unless the conviction is for one

¹ This Memorandum is limited to facts and procedural history concerning Counts Four through Six of the First Amended Complaint, Doc. No. 102.

² Such laws, which “designate a particular civil disability that occurs upon the conviction and remains in effect throughout the defendant's life unless restored by a specific statutory procedure,” are known as “specific disability statutes.” *Cole v. Campbell*, 968 S.W.2d 274, 276 (Tenn. 1998) (citing *Special Project, The Collateral Consequences of a Criminal Conviction*, 23 Vand. L.Rev. 929, 951 (1970)).

of 21 specific potentially infamous crimes listed in state law and the judgment of conviction included a statement rendering the crime “infamous.” (*Id.* ¶ 2; Defendants’ answer to First Amended Complaint, Doc. No. 199 ¶ 110). A felony conviction between January 15, 1973, and May 17, 1981, (the “grace period”) never disqualifies a Tennessean from voting. (Doc. No. 181 ¶ 3; *see also* Doc. No. 199 ¶¶ 107, 109).³ An otherwise qualified person with convictions only from this period did not lose the right to vote as a result of those convictions. (*Id.*).

³ Prior to 1972, Tennessee Code Annotated Section 40-2712 provided:

Upon conviction of the crimes of abusing a female child, arson and felonious burning, bigamy, burglary, felonious breaking and entering a dwelling house, felonious breaking into a business house, outhouse other than a dwelling house, bribery, buggery, counterfeiting, violating any of the laws to suppress the same, forgery, incest, larceny, horse-stealing, perjury, robbery, receiving stolen property, rape, sodomy, stealing bills of exchange or other valuable papers, subornation of perjury, and destroying a will, *it shall be part of the judgment of the court that the defendant be infamous, and be disqualified to exercise the elective franchise ...*

Crutchfield, 607 S.W.2d at 480 (emphasis added). In 1972, Section 40-2712 was amended to provide:

Upon conviction of the crimes of abusing a female child, arson and felonious burning, bigamy, burglary, felonious breaking and entering a dwelling house, felonious breaking into a business house, outhouse other than a dwelling house, bribery, buggery, counterfeiting, violating any of the laws to suppress the same, forgery, incest, larceny, horse-stealing, perjury, robbery, receiving stolen property, rape, sodomy, stealing bills of exchange or other valuable papers, subornation of perjury, and destroying a will, *it shall be part of the judgment of the court that the defendant be infamous...*

Id. at 480–81 (emphasis added). As explained by the Tennessee Court of Criminal Appeals:

Notice that the words “and be disqualified to exercise the elective franchise” are left out of the act as amended in 1972. This change does not change the crimes listed in any way. It simply does not require that persons convicted of the listed crimes lose the right to exercise the elective franchise. In 1981 the legislature again amended this code section and included the words “and be immediately disqualified from exercising the right of suffrage.”

Wilson v. State, No. 03C01-9604-CC-00142, 1997 WL 459728, at *3 (Tenn. Crim. App. Aug. 12, 1997).

“In 1981, the Tennessee legislature expanded the relevant statutory section to provide that *any* felony conviction would result in a declaration of infamy.” *May v. Carlton*, 245 S.W.3d 340, 345 (Tenn. 2008) (emphasis in original). Accordingly, felony convictions after May 18, 1981—whether by a Tennessee court, a court in another state, or a federal court—result in loss of the right to vote in Tennessee, until that right has been restored pursuant to state law. (Doc. No. 181 ¶ 4).

A. The National Voting Rights Act of 1993

The NVRA, Pub. L. No. 103–31, 107 Stat. 77 (codified as amended at 52 U.S.C. §§ 20501–20511), “requires States to provide simplified systems for registering to vote in *federal* elections, *i.e.*, elections for federal officials, such as the President, congressional Representatives, and United States Senators.” *Young v. Fordice*, 520 U.S. 273, 275 (1997) (emphasis in original). It was enacted under Article I, Section 4 of the Constitution, more commonly known as the Elections Clause, in response to congressional findings that discriminatory and unfair voter registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionality harm voter participation by various groups, including racial minorities. 52 U.S.C. § 20501(a)(3).

In crafting the NVRA, the 103rd Congress had four overriding purposes:

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.

Id. at § 20501(b). To achieve these purposes, the NVRA “requires each State to permit prospective voters to ‘register to vote in elections for Federal office’ by any of three methods: simultaneously with a driver’s license application, in person, or by mail.” *Arizona v. Inter Tribal Council of Arizona, Inc.* (“*ITCA*”), 570 U.S. 1, 5 (2013); 52 U.S.C. § 20503(a). The NVRA further requires each State to “inform applicants under sections 20504, 20505, and 20506 of this title of voter eligibility requirements.” 52 U.S.C. § 20507(a)(5)(A). The NVRA also requires “[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office” to “be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” *Id.* § 20507(b)(1).

The NVRA requires states to “accept and use” a uniform Federal form (“the Federal Form”) for registering to vote in federal elections. *Id.* § 20505(a)(1). The contents of the Federal Form are prescribed by a federal agency, the Election Assistance Committee. *Id.*⁴ The Federal Form contains state-specific instructions, which must be approved by the Election Assistance Committee before being included on the Federal Form. *ITCA*, 570 U.S. at 6. The Federal Form does not require documentary evidence of eligibility to register to vote; rather, it requires only that an applicant aver, under penalty of perjury, that he is eligible to register to vote. And the NVRA precludes states “from requiring a Federal Form applicant to submit information beyond that required by the form itself.” *ITCA*, 570 U.S. at 20; 52 U.S.C. § 20505(a)(1).

The NVRA also permits each state to develop and use its own mail voter registration form to vote in federal elections (“State Form”) so long as the State Form meets the criteria stated in

⁴ “The Help America Vote Act of 2002 [“HAVA”] transferred this function from the Federal Election Commission to the EAC.” *ITCA*, 570 U.S. 1, 6 n.1 (2013); see 52 U.S.C. § 21131. Under HAVA, the EAC directs funding to states for improving the administration of federal elections and access to voters with disabilities, research grants for new technologies, and pilot programs for testing new equipment and technologies. 52 U.S.C.A. § 21001.

Section 20508(b). 52 U.S.C. § 20505(a)(2), 20508(b).⁵ The NVRA establishes a private cause of action for those aggrieved by a violation to seek declaratory or injunctive relief. 52 U.S.C. § 20510(b); *Harkless v. Brunner*, 545 F.3d 445, 450 (6th Cir. 2008) (“NVRA authorizes judicial intervention if a state fails to comply with its terms.”).

B. Arizona v. Inter Tribal Council of Arizona, Inc.

In 2013, the Supreme Court took up the question of whether an Arizona state law which required state officials to “reject” a Federal Form unaccompanied by documentary evidence of citizenship conflicted with the NVRA’s mandate that Arizona “accept and use” the Federal Form. *ITCA*, 570 U.S. at 9 (“If so, the state law, so far as the conflict extends, ceases to be operative.”) (internal quotations omitted). With Justice Scalia writing for the majority, the Court began its analysis with consideration of the Elections Clause, which “empowers Congress to pre-empt state regulations governing the ‘Times, Places and Manner’ of holding congressional elections.” *ITCA*, 570 at 8. The Court explained that these “comprehensive words” in the Elections Clause “‘embrace authority to provide a complete code for congressional elections,’ including, as relevant here..., regulations relating to ‘registration.’” *Id.* at 8-9 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)); *Moore v. Harper*, 600 U.S. 1, 10 (2023) (The Elections Clause guards against the possibility that a State would refuse to provide for the election of representatives in federal elections, by authorizing Congress to prescribe its own rules). It expressly rejected the argument that the presumption against preemption applies in Election Clause cases, holding that the plain

⁵ Throughout their briefing, the parties refer to Tennessee’s mail voter registration form to vote in elections for Federal office developed pursuant to Section 20505(a)(2) in a variety of ways, including as “voter registration forms,” “Tennessee’s voter registration form,” “state-issued mail-in voter registration form,” “the State’s registration form(s),” “voter registration application(s),” and “application(s).” As a general matter, any unspecified reference to forms or applications in this Memorandum means Tennessee’s mail voter registration form to vote in elections for Federal office developed pursuant to Section 20505(a)(2), *i.e.* the “State Form.” The Federal Form is exclusively referred to the Federal Form.

text of the NVRA “accurately communicates the scope of Congress’s preemptive intent.” *Id.* at 13-14. Thus, “the States’ role in regulating congressional elections—while weighty and worthy of respect—has always existed subject to the express qualification that it ‘terminates according to federal law.’” *Id.* at 15 (quoting *Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 347 (2001)).

The Supreme Court was not persuaded by Arizona’s argument that Section 20505(a)(1) “require[d] merely that a State receive the Federal Form willingly and use that form as one element in its (perhaps lengthy) transaction with a prospective voter;” rejecting Arizona’s reading of the statute as “out of place in the context of an official mandate to accept and use something for a given purpose” because “[t]he implication of such a mandate is that its object is to be accepted *as sufficient* for the requirement it is meant to satisfy.” *ITCA*, 570 at 9. (emphasis in original). The Supreme Court determined that “a state-imposed requirement of evidence of citizenship not required by the Federal Form is ‘inconsistent with’ the NVRA’s mandate that States ‘accept and use’ the Federal Form.” *Id.* at 15.

Nor was the Supreme Court persuaded by Arizona’s contention “that its construction of the phrase “accept and use” was necessary to avoid a conflict between the NVRA and Arizona’s constitutional authority to establish qualifications (such as citizenship) for voting.” *Id.* at 15-16.

The Court explained:

...Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications. If, but for Arizona’s interpretation of the “accept and use” provision, the State would be precluded from obtaining information necessary for enforcement, we would have to determine whether Arizona’s interpretation, though plainly not the best reading, is at least a possible one. Happily, we are spared that necessity, since the statute provides

another means by which Arizona may obtain information needed for enforcement.

Section [20508](b)(1) of the Act provides that the Federal Form “may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” ... That is to say, § [20508] (b)(1) acts as both a ceiling and a floor with respect to the contents of the Federal Form....

Since...a State may request that the EAC alter the Federal Form to include information the State deems necessary to determine eligibility and may challenge the EAC's rejection of that request in a suit under the Administrative Procedure Act, no constitutional doubt is raised by giving the “accept and use” provision of the NVRA its fairest reading.

ITCA, 570 U.S. at 17-20. Accordingly, the Supreme Court held that Section 20505(a)(1)’s mandate that States “accept and use” the Federal Form to register voters for federal elections pre-empted Arizona law's requirement that voters present proof of citizenship when they registered to vote, as applied to federal form applicants. *See id.*

C. Tennessee Election Officials Defendants

Defendant Trey Hargett is the Secretary of State of Tennessee (“the Secretary”), and Defendant Mark Goins, under the supervision of Secretary Hargett, is the Coordinator of Elections for Tennessee (“the Coordinator”) (collectively “Tennessee Election Officials”). (Doc. No. 181 ¶ 16). Coordinator Goins is the head of the Tennessee Secretary of State’s Election Division (“Election Division”), the “chief election officer of the state,” and is charged with obtaining and maintaining uniformity in the application, operation, and interpretation of the election code. (Doc. No. 181 ¶ 16). Secretary Hargett first appointed Mark Goins as Coordinator of Elections for Tennessee in 2009. (Doc. No. 180-1 ¶ 1). As the Coordinator of Elections, Coordinator Goins is responsible for preparing instructions for voter registration and interpreting the election laws.

(Doc. No. 181 ¶ 17). Secretary Hargett and Coordinator Goins are responsible for the State of Tennessee's compliance with the National Voting Rights Act. (*Id.*).

D. Tennessee's State Voter Registration Form for Elections for Federal Office

Tennessee has made and tested changes to its State Form resulting in numerous versions of the form having been used over the years. (Doc. No. 181 ¶ 18). There are two specific versions of the State Form at issue in Count Four. The first version was used in the November 2020 general election and provides the following instruction regarding eligibility to vote for individuals with felony convictions: "To register to vote: ... you must not have been convicted of a felony, or if you have, your voting rights must have been restored." (*Id.* ¶ 30; Doc. No. 156-12; *see also* Coordinator Goins April 2021 letter, Doc. No. 156-36 at PageID # ("several employees of [Election Division] worked to revise and replace the Tennessee mail-in voter registration application, Form SS-3010, prior to the November 2020 election").⁶ The second version is the latest iteration of the State Form, which was "put into use" sometime between December 2020 and March 2021, provides the following instruction about eligibility based on a felony conviction:

If you have had a felony conviction, your eligibility to register and vote depends upon the crime you were convicted of and the date of your conviction. To assist in processing your application, provide the required information in box 4 and any responsive documents you have. For more information about this process, call 1-877-850-4959 or visit sos.tn.gov/restoration.

(Doc. No. 181 ¶¶ 19, 27; Doc. No. 156-10).

⁶ Coordinator Goins' office staff and the Tennessee Secretary of State's Election Division appear to be one and the same. *See e.g., Green Party of Tennessee v. Hargett*, 953 F. Supp. 2d 816, 825 (M.D. Tenn. 2013), vacated and remanded, 767 F.3d 533 (6th Cir. 2014) ("[t]he State Coordinator's office has eight (8) full-time employees, whose duties include ... implement[ing] various federal and state election regulations, including [HAVA] and the [NVRA].").

The latest version of the State Form does not state that grace period felony convictions are non-disqualifying or that convictions before January 15, 1973 are only disqualifying in certain circumstances. (Doc. No. 181 ¶¶ 20-21; Doc. No. 156-10). The latest version of the State Form does not list the pre-January 15, 1973 infamous crimes that are disqualifying (or those that are not), and does not include a way for an applicant to mark under penalty of perjury that they were not convicted of an infamous crime or not declared infamous in their judgment. (Doc. No. 181 ¶ 21). The latest version of the State Form directs applicants with any prior felony conviction to visit sos.tn.gov/restoration. (*Id.* ¶ 22). Presently, that link routes to the Secretary of State’s website to information on loss of voting rights. (*Id.*)⁷ The latest version of the State Form instructs applicants to fill out the required information in Box 4 of the form and to provide “any responsive documents you have,” without defining what “responsive documents” are and without informing applicants that their applications will be denied if they disclose a felony conviction and do not provide documentation. (*Id.* ¶ 23).

Box 4 in the latest version of the State Form asks applicants to check a box “yes” or “no” in response to the question: “Have you ever been convicted of a felony? (If expunged, answer ‘no’).” (*Id.* ¶ 24). It then directs applicants to provide certain information “if known”, including “Crime(s)” and “Date (mo./yr.)”. (*Id.*) Box 4 also asks for “Place (city/state),” presumably of conviction, and “Have you received a pardon or had your voting rights restored?” and has boxes to indicate “yes” or “no.” (*Id.* ¶¶ 25, 26). It instructs “If yes, provide copy of document,” but does not state what “copy of document” means or that an application may be rejected if such documentation is not provided. (*Id.*).

⁷ In early July 2023, that link resulted in a Secretary of State website page with an error message reading “Page Not Found.” (*Id.*).

When the Election Division implemented the latest iteration of the State Form, Tennessee Election Officials did not issue any specific new processing instructions to county election commissions, beyond the instructions on the form itself and answering “calls and e-mails when [the counties] have questions” about processing the new form. (*Id.* ¶ 28). The counties continued to be authorized to accept and process prior versions of the registration form even after the latest iteration of the State Form was released. (*Id.* ¶ 29). Prior versions of the State Form ask applicants a single question concerning prior felony convictions, “Have you ever been convicted of a crime which is a felony in this state, by a court in this state, a court in another state, or a federal court?” and provide a checkbox to mark “Yes” and a checkbox to mark “No.” (*Id.* ¶ 31). Some counties continue to use prior versions of the State Form and provided the older versions of the form on their county websites well into July 2023. (*Id.* ¶ 32).

E. Federal Voter Registration Form and Tennessee-specific instructions

United States citizens living in Tennessee may register to vote using the Federal Form, which does not include any space for an applicant to list any information regarding a prior felony conviction. (Doc. No. 181 ¶¶ 33-34). However, the Tennessee-specific instructions on the Federal Form indicate that to be eligible to register to vote in Tennessee, the applicant must “not have been convicted of a felony” and further state that if convicted, the applicant’s “eligibility to register and vote depends upon the crime convicted of and the date of conviction,” directing applicants to call 877-850-4959 or visit <https://sos.tn.gov/gov/restoration> “[f]or more information about this process. (*Id.* ¶ 35; Doc. No. 156-11). If a voter submits a Federal Form, the county processing the form would not know whether the individual has a conviction, nor the date or type of conviction, from the face of the form itself. (Doc. No. 181 ¶ 36).

F. Tennessee's Registration Application Blanket Rejection and Documentation Policy

From at least 2014 until July 21, 2023, election officials in Tennessee have rejected voter registration forms submitted with the felony conviction question answered in the affirmative absent additional documentation, pursuant to Election Division policy, training, and guidance. (Doc. No. 181 ¶¶ 37-39). According to that policy, in order for a State Form with the felony conviction question answered in the affirmative to be accepted, the elections office must have additional documentation of the applicant's eligibility. (*Id.* ¶ 40).

Although the Federal Form has no space for voters to attest to having or not having a felony conviction, election officials in Tennessee require documentation from applicants when they learn about an applicant's felony conviction(s) from a source beyond the registration form itself, including verbally from an applicant, or by way of Tennessee statute requiring clerks of court in every county to send notices of felony convictions to election officials, or when counties share this information with one another. (*Id.* ¶ 41). Election officials also learn about a Federal Form applicants' felony conviction when checking a county's "felony files." (*Id.* ¶ 42).

Applications Indicating a Pre-January 15, 1973 Conviction

Under the State's blanket rejection policy, when a county election official received a voter registration application indicating a pre-January 15, 1973 non-infamous conviction, they were directed to reject the application, file documents with the state election office showing the date of conviction and crime committed and wait for the state to send back an eligibility letter, despite the applicant never having lost their right to vote. (*Id.* ¶ 43). Sufficient documentation required a copy of the judgment or convicting document that showed what the person was convicted of and if they were judged infamous. (*Id.* ¶ 44).

Applications Indicating a Grace Period Conviction

Under the State's blanket rejection policy, when a county official received a voter registration application indicating a grace period conviction, they were directed to reject the application unless they had documentation confirming the individual's conviction was during the grace period, such as a copy of their conviction papers showing the date of the conviction and the type of crime. (*Id.* ¶ 45). While some election officials may have at times tried to work with the voter to find and obtain the required documentation, there is no official policy requiring election officials to do so, and the burden was ultimately on the applicant. (*Id.* ¶ 46).

The Election Division has acknowledged that individuals with grace-period convictions have faced difficulties obtaining the necessary documentation. (*Id.* ¶ 47). Obtaining the necessary documentation for grace-period or non-infamous pre-1973 convictions can be difficult because many times the conviction will be so old that the documentation will be in archives. (*Id.* ¶ 48). Sometimes, the required paperwork for grace-period or non-infamous pre-1973 convictions does not exist or cannot be found. (*Id.* ¶ 50). Obtaining the necessary documentation for grace-period or non-infamous pre-1973 convictions can also cost money. (*Id.* ¶ 49). For example, the Shelby County Criminal Court Clerk's office charged a prospective voter \$10 for a copy of his grace-period judgment that he was required to submit in order to register to vote, even though he never lost the right to vote. (*Id.*).

Applications Indicating a Post-May 17, 1981 Conviction

Under Tennessee's blanket rejection policy, when a county official received a voter registration application indicating that the voter has a disenfranchising felony conviction but had their voting rights restored, they were directed to reject the application unless the applicant also provided documentation proving their restoration of voting rights. (*Id.* ¶ 51). The State Form

instructs voters who mark “yes” to the question asking if they have “received a pardon or had [their] voting rights restored” to “provide copy of document.” (*Id.* ¶ 52). The form provides no information about what kind of document(s) must be provided. (*Id.*).

When processing voter registration applications indicating restoration of voting rights, county election offices are not required to confirm whether the Election Division already has a record of the applicant’s restoration of voting rights. (*Id.* ¶ 53). However, county election offices can ask the Election Division to search for confirmation of an applicant’s restoration of voting rights, and the Election Division can look through its “restored and denied databases” to see “if there [is] a restoration there.” (*Id.*).

Rejected Applications

Upon rejecting a State or Federal Form due to a felony conviction, county election officials are directed to send the applicant a notice of the rejection accompanied by a Voter Registration Appeal Request Form, a Certificate of Restoration form, and a blank voter registration form. (*Id.* ¶ 69). The Voter Registration Appeal Request Form allows an applicant to affirm that they “have not been convicted of a felony or if convicted [they] have had [their] rights properly restored” and include a place for the applicant to check whether they “have not been convicted of a felony” or they “have been convicted of a felony but have had [their] rights properly restored or [their] record expunged.” (*Id.* ¶ 70). As of December 2020, persons with a grace period conviction or a pre-January 15, 1973 conviction that did not render them infamous could not use the Voter Registration Appeal Request Form to appeal their rejection. (*Id.* ¶¶ 71-72; Doc. No. 156-28; Doc. No. 157-8).

Applications from Voters with Expungements and Judicial Diversions

The State Form instructs an individual with only expunged felony convictions to mark “no” in response to the felony question. (Doc. No. 181 ¶ 54). If a person with an expunged felony

conviction marks “yes” to the felony question, the Election Division policy is to reject the application and require the applicant to present documentation proving their felony was expunged. (*Id.* ¶ 55). A conviction subject to judicial diversion “acts the same as expungement” for the purposes of voting rights in that it does not result in the loss of the right to vote. (*Id.* ¶ 56). Voters with only convictions subject to judicial diversion can mark “no” to the felony question on the State Form, but the State Form does not provide this instruction. (*Id.* ¶¶ 56-57). If an applicant with a conviction subject to judicial diversion marks “yes” to the felony question, Election Division policy is to reject the application and require documentation. (*Id.* ¶ 58).

*Tennessee’s Practices and Procedures
for Verifying Non-Disenfranchising Felonies and Voting Rights Restoration*

Since at least 2014, the Election Division’s policy has been for county election commissions to “check every application against their felon files” when the person marked they had a felony conviction, and some counties check every application, regardless of whether the applicant indicates they have a felony conviction. (*Id.* ¶ 59). “Felon files” include information from various sources – the person, the courts, emails from U.S. Attorneys, the Tennessee Department of Corrections (TDOC), the Election Division, the state felon list, other county election officials, and their own clerks of court and jury coordinators – that the counties receive for people notifying them of a felony conviction or a previous voter registration application that the own person marked “Yes” under penalty of perjury to the felony question. (*Id.* ¶ 60).

The Election Division also disseminates “felon reports” to counties every 1-3 months that include the data on registrants’ state felony convictions from TDOC, federal convictions from the U.S. attorneys, and out-of-state convictions from the Interstate Compact. (*Id.* ¶ 61). For each applicant, felon reports would include all convictions for a person going back in time and include

the date of judgment, conviction or sentence. (*Id.* ¶ 62). The information in felon reports can be sufficient to verify whether an applicant has only grace-period convictions. (*Id.* ¶ 63).⁸

County election officials, as part of their regular voter-roll maintenance duties, routinely use information in felon files and felon reports to purge voters with felony convictions from the voter rolls. (*Id.* ¶ 64). In Hamilton County, the list maintenance program automatically flags new applicants who may match a record in databases listing individuals with felony convictions and individuals previously purged due to a felony conviction. (*Id.* ¶ 65). Hamilton County election officials must manually review these potential matches to determine whether the new registrant does indeed have a felony conviction. (*Id.*).

Upon receipt of a facially valid application indicating a felony conviction, county election officials are capable of reaching out to other county election officials or the Election Division to confirm the applicant's eligibility, although Election Division policy does not currently instruct or require them to do so. (*Id.* ¶ 66). County election officials are capable of searching or requesting public records or contacting courts and other relevant agencies to verify eligibility of voters with grace-period or non-infamous pre-1973 convictions, though there is "no definitive set-on practice" of doing so under Election Division policy. (*Id.* ¶ 67). The Election Division itself is also capable of verifying grace-period convictions without requiring documentation from the applicant by searching or requesting public records or contacting courts and other relevant agencies. (*Id.* ¶ 68).

⁸ Secretary Hargett and Coordinator Goins dispute this fact based on testimony noting that the felon reports are created from data from the TDOC. (*See* Doc. No. 181 at PageID# 2920). As it is already undisputed that the felon reports include data on registrants' state felony convictions from TDOC, (Doc. No. 181 ¶ 61), this does not create a genuine dispute of fact. Secretary Hargett and Coordinator Goins also appear to dispute this fact based on their contention that "because a county 'could' have information from other sources does not mean that the information will always be sufficient for verification." (Doc. No. 181 at PageID# 2920). As the statement of fact at issue does not suggest that the information will always be sufficient for verification, Secretary Hargett and Coordinator Goins have failed to create a genuine dispute of fact as to whether the information in the felon reports can be sufficient to verify whether an applicant has only grace-period convictions.

G. Plaintiff TN NAACP

Plaintiff TN NAACP is a nonpartisan, multi-racial, non-profit membership organization headquartered in Jackson, Tennessee. (Doc. No. 181 ¶ 5). TN NAACP was founded in 1946 to serve as the Tennessee arm of the NAACP. (*Id.* ¶ 6). Its mission is to eliminate race-based discrimination through securing political, educational, social, and economic equality rights and ensuring the health and well-being of all persons. (*Id.*). TN NAACP has three regional divisions—Eastern, Middle, and Western Tennessee—as well as 33 local branch units and 22 college chapters and youth councils. (*Id.* ¶ 7). TN NAACP and most of its local branch units are primarily volunteer-run, and all officers are volunteers. (*Id.*).

TN NAACP has more than 10,000 members across the state, more than 90% of whom are Black or brown. (*Id.* ¶ 8). Black people make up 16% of the state's total voting-age population, but account for more than 21% of individuals who are disenfranchised by a felony conviction in Tennessee. (*Id.*). Promoting voter registration and turnout are the primary activities through which the TN NAACP furthers its mission. (*Id.* ¶ 9). The organization expends resources helping individuals, including those with past felony convictions, register to vote. (*Id.*)⁹ Its staff and volunteers conduct public education workshops to help its constituents and other members of the community navigate the voter registration process. (*Id.*).

Volunteer time is the primary resource the TN NAACP uses in support of its mission. (*Id.* ¶ 10). The state conference and local branches also have limited monetary resources to put toward mission-furthering activities. (*Id.*). The TN NAACP prefers to use the online voter registration form when assisting individuals with voter registration at events or otherwise because it is a more

⁹ Secretary Hargett and Coordinator Goins do not dispute, for summary judgment purposes, that TN NAACP expends resources helping individuals register to vote. (Doc. No. 181 ¶ 9, PageID# 2897; Doc. No. 183 ¶¶ 5-6).

efficient means of registration, but individuals who have been convicted of felonies cannot use the online form, regardless of their eligibility to vote. (*Id.* ¶ 11).

The TN NAACP's typical assistance is rendered ineffective when the online registration portal excludes individuals with felony convictions from submitting a registration application and when election officials reject individuals with felony convictions who submit valid voter registration forms. (*Id.* ¶¶ 12, 13).¹⁰ The TN NAACP is aware, for example, of individuals who were convicted of felonies during the "grace period" between January 15, 1973, and May 17, 1981, but are nonetheless unable to register using the state voter registration form or the online registration form, despite never having lost the right to vote. (*Id.* ¶ 12).

When an eligible voter is incorrectly denied the ability to register to vote, the TN NAACP must divert resources from the other activities related to its mission by following up with the eligible voter and communicating with various governmental authorities (including, but not limited to, clerks of the court and probation officers) to rectify the situation. (*Id.* ¶ 13). In conjunction with these efforts, the TN NAACP has accompanied persons and taxed them to and from various governmental offices to troubleshoot the issue and correct the erroneous rejection. (*Id.*). This correction process may involve seeking old court records that are not easily accessible to the TN NAACP. These efforts are sometimes insufficient to remedy the erroneous rejection. (*Id.*). The TN NAACP would like to be able to dedicate greater resources to its voter turnout activities, rather

¹⁰ Secretary Hargett and Coordinator Goins provided a non-responsive answer to these statement of undisputed material facts. (Doc. No. 181 at PageID# 2899). Specifically, Secretary Hargett and Coordinator Goins dispute whether any citizen was erroneously denied the right to vote in response to TN NAACP's statement concerning eligible voters being incorrectly denied the *ability to register to vote*. (*See id.*). Accordingly, the Court considers these facts undisputed for purposes of summary judgment. Fed. R. Civ. P. 56(e)(2). Although, the Tennessee Election Officials attempt to dispute the fact that TN NAACP's assistance to eligible persons registering to vote is rendered ineffective when the State rejects those persons' registration forms, they fail to cite to any evidence in support of their dispute, as required under the applicable rules.

than just voter registration. (*Id.* ¶ 14). This would include providing stipends to volunteers to canvass or phonebank to encourage members and constituents to turn out on Election Day. The TN NAACP also provides transportation to the polls. (*Id.*).

When a person TN NAACP helps register to vote is rejected despite being eligible to register, the extra time and money spent assisting voters that the state has erroneously rejected depletes resources that could be spent on other mission-furthering activities. (*Id.* ¶ 15).¹¹ TN NAACP's political power and ability to carry out its mission are directly diminished by the inability of its members and constituents to register to vote. (*Id.*).

H. First Notice to Tennessee Election Officials of Noncompliance with NVRA

On August 22, 2018, TN NAACP sent Secretary Hargett and Coordinator Goins a letter (“First Notice Letter”), informing them that Tennessee’s State Form and state specific instructions on the Federal Form, failed to accurately advise people with felony convictions of the eligibility requirements for voting in Tennessee, in violation of Sections 20507(a)(5) and 20508(b)(2)(A). (Doc. No. 181 ¶ 78; Doc. No. 156-15). TN NAACP further notified the Tennessee Election Officials that the State Form “plainly misinforms voters of the eligibility requirements by stating

¹¹ Secretary Hargett and Coordinator Goins provided a non-responsive answer to paragraph fifteen of TN NAACP’s statement of undisputed material facts, including their citation to over 75 pages across four sets of documents without pin cites, which is not particularly helpful to the Court. (Doc. No. 181 at PageID# 2900). Even viewing the facts in the light most favorable to the Tennessee Election Officials and drawing all reasonable inferences in their favor, none of the cited documents appear to contradict the fact specifically averred by TN NAACP in this statement of fact. Accordingly, the Court considers this fact undisputed for purposes of summary judgment. Fed. R. Civ. P. 56(e)(2); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (Rule 56(e) provides that, when a properly supported motion for summary judgment is made, the adverse party “must set forth specific facts showing that there is a genuine issue for trial.”); *see e.g.*, *Lujan*, 497 U.S. at 888 (“In ruling upon a Rule 56 motion, a District Court must resolve any factual issues of controversy in favor of the non-moving party only in the sense that, where the facts specifically averred by that party contradict facts specifically averred by the movant, the motion must be denied.”) (internal quotations omitted).

that *no* individual with a felony conviction may register to vote unless she has undergone the restoration of rights process.” (Doc. No. 156-15 at PageID # 2517).

That year, 2018, Coordinator Goins, his staff, and legal counsel, “began discussions” with TN NAACP’s counsel about the State Form. (Doc. No. 180-1 ¶ 7 at PageID # 2891). The Election Division placed those discussions on hold during the 2019 legislative session, summer, and early fall. (Doc. No. 193 ¶¶ 7). In December 2019, Coordinator Goins agreed to make unspecified changes to the State Form and requested that the Election Assistance Commission make unspecified changes to the Tennessee instructions the Federal Form. (Doc. No. 180-1 ¶ 7 at PageID # 2891). In March 2020, Coordinator Goins discontinued discussions about the State Form. (Doc. No. 180-1 ¶¶ 8-9).

I. TN NAACP files present suit

On December 3, 2020, TN NAACP filed its original Complaint. (Doc. No. 181 ¶ 79). On December 30, 2020, Secretary Hargett, Coordinator Goins, and their co-defendants, moved to dismiss this case in its entirety for lack of standing and failure to state a claim. (Doc. No. 24).

J. Second Notice to Tennessee Election Officials of Noncompliance with NVRA

On January 27, 2021, TN NAACP sent a second notice letter to Secretary Hargett and Coordinator Goins explaining that the state’s registration policies and procedures for applicants with prior felony convictions remained non-compliant with the NVRA, specifically Sections 20507(a)(1), (5), (b)(1), 20508(b)(2)(A),(3), 20510(b)(2). (Doc. No. 181 ¶ 81; Doc. No. 156-16). It further notified Secretary Hargett and Coordinator Goins that placing the burden of proving eligibility onto the eligible prospective voter with a prior felony conviction—and requiring them to fight erroneous rejections with additional paperwork not required of other eligible applicants without a prior felony conviction—created a non-uniform registration process in violation of the

NVRA. (*Id.*). In addition to placing an unlawful burden on potential voters, TN NAACP explained to Coordinator Goins that the additional paperwork requirement is unnecessary in light of the Help America Vote Act's requirement that every state maintain databases and information flow sufficient to allow registrars to verify eligibility without it. (Doc. No. 156-16 at PageID # 2554).

Three months later, on April 27, 2021, Coordinator Goins responded by letter outlining the Election Division's planned revisions to the State Form and "its policy and guidance to the counties for processing voter registration applications from individuals with felony convictions." (Doc. No. 156-36 at PageID # 2699).

K. Third Notice to Tennessee Election Officials of Noncompliance with NVRA

On May 24, 2021, TN NAACP's counsel sent a final notice letter ("Third Notice Letter") to Coordinator Goins reiterating that the continued requirement of additional paperwork for certain eligible applicants was improper under the NVRA. (*Id.* ¶ 82; Doc. No. 156-18). Additionally, the Third Notice Letter put Coordinator Goins on notice that his proposed policies in his April 27, 2021 letter regarding registrants with pre-1973 convictions failed to comply with Tennessee law and the NVRA. (*Id.*).

L. Litigation Continues

On March 30, 2022, this Court granted in part and denied in part Defendants' Motion to Dismiss alleging, among other things, deficient notice under the NVRA. *See Tennessee Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Lee*, No. 3:20-CV-01039, 2022 WL 982667 (M.D. Tenn. Mar. 30, 2022). The Court dismissed Count 5 of the original complaint without prejudice and denied Defendants' Motion to Dismiss on all other counts. (Doc. No. 83 at

15-16, 18). On October 3, 2022, TN NAACP filed its First Amended Complaint. (Doc. No. 181 ¶ 83). On May 28, 2023, fact discovery closed. (Doc. No. 128).

On July 21, 2023, less than two months *after* the conclusion of fact discovery in this matter and less than two weeks *before* the extended deadline for filing dispositive motions, Coordinator Goins “established new policies and procedures for [county election] officials with respect to the registration of individuals convicted of a felony prior to January 15, 1973, and ... convicted of a felony between January 15, 1973, and May 17, 1981.” (Supplemental Declaration of Coordinator Goins, Doc. No. 180-1 ¶¶ 3, 4; Doc. No. 181 ¶¶ 73, 74; Doc. No. 151-2 (stating the new policies were “to avoid rejecting” voter registration applications from individuals “who did not lose their voting rights[.]”).

On September 19, 2023, Coordinator Goins declared under penalty of perjury that he established these new policies for processing voter registration forms “in response to ongoing discussions and deliberation with [his] staff and with legal counsel” and “pursuant to [his] statutory duties” set forth in Tennessee Code Annotated Section 2-11-202. (Supplemental Declaration of Coordinator Goins, Doc. No. 180-1 ¶¶ 4, 2). Coordinator Goins’ new policy instructs county administrators of elections to process voter registration forms from individuals with grace period convictions and from individuals who indicate that their felony convictions were prior to January 15, 1973, if the applicant indicates they were convicted of a felony that is not on the list of potentially infamous crimes. (Doc. No. 181 ¶¶ 77, 75; Doc. No. 151-2 at PageID # 1095-96). For State Forms on which an individual indicates they were convicted of one of the above felonies and declared infamous, Coordinator Goins’ new policy instructs county administrators of elections to

reject those voter registration forms unless the applicant has had their rights restored. (Doc. No. 181 ¶ 76; Doc. No. 151-2 at PageID # 1096).¹²

On August 2, 2023, the Tennessee Election Officials and TN NAACP filed cross motions for summary judgment as to Counts Four and Six. Secretary Hargett and Coordinator Goins also seek summary judgment as to Count Five.

III. STANDARD OF REVIEW

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The party bringing the summary judgment motion has the initial burden of informing the Court of the basis for its motion and identifying portions of the record that demonstrate the absence of a genuine dispute over material facts. *Rodgers v. Banks*, 344 F.3d 587, 595 (6th Cir. 2003). The moving party may satisfy this burden by presenting affirmative evidence that negates an element of the non-moving party's claim or by demonstrating an absence of evidence to support the nonmoving party's case. *Id.*

In evaluating a motion for summary judgment, the court views the facts in the light most favorable for the nonmoving party, and draws all reasonable inferences in favor of the nonmoving party. *Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 242 (6th Cir. 2015); *Wexler v. White's Fine Furniture, Inc.*, 317 F.3d 564, 570 (6th Cir. 2003). The Court does not weigh the evidence, judge the credibility of witnesses, or determine the truth of the matter. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Rather, the Court determines whether sufficient evidence has been presented to make the issue of material fact a proper jury question. *Id.* The mere scintilla of

¹² Coordinator Goins' new policy does not address how an individual convicted of one of the potentially infamous crimes would indicate on their registration whether they were declared infamous. (Doc. No. 181 ¶ 76; Doc. No. 151-2).

evidence in support of the nonmoving party’s position is insufficient to survive summary judgment; instead, there must be evidence of which the jury could reasonably find for the nonmoving party. *Rodgers v. Banks*, 344 F.3d 587, 595 (6th Cir. 2003). The standards for summary judgment do not change when, as here, the parties file cross-motions for summary judgment. *See Reform Am. v. City of Detroit, Michigan*, 37 F.4th 1138, 1147 (6th Cir. 2022).

IV. LAW AND ANALYSIS

Before turning to the merits, the Court must “determine as a threshold matter that [it] ha[s] jurisdiction.” *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178 (1988).

A. Subject Matter Jurisdiction

Federal courts only have jurisdiction to consider live cases and controversies. “Although the case-or-controversy requirement of Article III, § 2 of the Constitution ‘underpins both our standing and our mootness jurisprudence,’ *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000), standing and mootness inquiries diverge in several important respects, one of which is timing.” *Sullivan v. Benningfield*, 920 F.3d 401, 407 (6th Cir. 2019).¹³ Whether a plaintiff has standing to sue is determined as of the time the complaint is filed. *See Barber v. Charter Twp. of Springfield, Michigan*, 31 F.4th 382, 390 (6th Cir. 2022) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (“When assessing standing, courts look only to ‘the facts existing when the complaint is filed.’”). “If a plaintiff overcomes the standing hurdle at the time of filing, the doctrine of mootness then ‘requires that there be a live case or controversy at the time that a federal court decides the case.’” *Sullivan*, 920 F.3d at 407

¹³ Standing and mootness also diverge with respect to who shoulders the burden; the burden to establish jurisdiction rests on party invoking jurisdiction, while burden to defeat jurisdiction with mootness objection rests on party asserting mootness. *See Kentucky v. Yellen*, 54 F.4th 325, 340 (6th Cir. 2022).

(quoting *Burke v. Barnes*, 479 U.S. 361, 363 (1987)); see, e.g., *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 719 (2022) (“It is the doctrine of mootness, not standing, that addresses whether ‘an intervening circumstance [has] deprive[d] the plaintiff of a personal stake in the outcome of the lawsuit.’”) (quoting *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013)); *Fox v. Saginaw Cnty., Michigan*, 67 F.4th 284, 294–95 (6th Cir. 2023) (“... if a plaintiff possesses standing from the start, later factual changes cannot deprive the plaintiff of standing. Those changes instead will create “mootness” issues[.]”) (internal citations omitted).¹⁴ The Court addresses the standing and mootness doctrines in turn.

1. Article III Standing

The Court begins with standing, which “is a threshold issue for bringing a claim in federal court and must be present at the time the complaint is filed.” *Inner City Contracting, LLC v. Charter Twp. of Northville, Michigan*, 87 F.4th 743, 750 (6th Cir. 2023). To have Article III standing, a plaintiff must have suffered “(1) an injury in fact (2) that's traceable to the defendant's conduct and (3) that the courts can redress.” *Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992)). “To obtain declaratory or injunctive relief, a [plaintiff] must show a present ongoing harm or imminent future harm.” *Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 981 (6th Cir. 2020). As the party invoking federal jurisdiction, TN NAACP bears the burden of demonstrating that it has standing. See *Lujan*, 504 U.S. at 561. And it “must demonstrate standing separately for each form of relief sought.” *Friends of the Earth*, 528 U.S. at 185; *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). “While the proof required to establish standing increases as the suit proceeds, the standing

¹⁴ The foregoing authority dispenses with Secretary Hargett and Coordinator Goins’ argument that the policy changes in July 2023 deprive TN NAACP of standing. (Doc. No. 190 at PageID # 3195-97).

inquiry remains focused on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed.” *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008) (internal citations omitted). “This means that, ‘in response to a summary judgment motion,’ a plaintiff cannot rely on ‘mere allegations’ with respect to each standing element, ‘but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.’” *McKay v. Federspiel*, 823 F.3d 862, 867 (6th Cir. 2016) (quoting *Lujan*, 504 U.S. at 561).

TN NAACP readily satisfies the second and third prong of the standing inquiry. “As to traceability, a defendant's actions must have a ‘causal connection’ to the plaintiff's injury.” *Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021) (quoting *Lujan*, 504 U.S. at 560). Here, it is undisputed that Secretary Hargett and Coordinator Goins are responsible for coordinating implementation of the NVRA and for the Election Division’s policies and procedures for processing voter registration applications. (Doc. No. 181 ¶¶ 16-17). This shows the requisite causal link. “As to redressability, it must be ‘likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.’” *Gerber*, 14 F.4th at 505 (quoting *Lujan*, 504 U.S. at 561). Here, TN NAACP’s injury will redressed if the Court grants TN NAACP’s requested injunctive relief. Indeed, the NVRA establishes a private cause of action and authorizes judicial intervention for the purpose of providing redress for those aggrieved by a violation of the Act. 52 U.S.C. § 20510(b).

TN NAACP also satisfies its burden as to the first prong of the standing inquiry: injury in fact. In the present case, TN NAACP claims organizational injuries to sue on its own behalf. Perceptible impairment to “the organization’s activities” or a “drain on the organization’s resources” qualify as concrete and demonstrable injuries for Article III standing purposes. *See*

Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). TN NAACP’s mission is “advocate for the rights of individuals who have been discriminated against.” (Doc. No. 151-4 at PageID #1324, 1334; Doc. No. 156-2 ¶¶ 3-6).¹⁵ Its focus is voting rights, and its primary activity in furtherance of that goal is helping individuals register and turnout to vote. (Doc. No. 156-2 ¶¶ 7-8; Doc. No. 151-4 at PageID #1324-25, 1327-28). As part of its mission-furthering registration work, the TN NAACP provides voter registration assistance to individuals with felony convictions, all of whom must apply to register to vote using the challenged forms and are subject to the challenged policies. (Doc. No. 156-2 ¶¶ 8, 11; Doc. No. 181 ¶¶ 37-42).¹⁶ In a declaration, the TN NAACP states that the challenged forms and policies make it more time-consuming and costly for TN NAACP’s volunteers to provide registration assistance to individuals with felony convictions, which causes the organization’s scarce volunteer time and money to be diverted away from its other mission furthering activities. (Doc. No. 156-2 ¶¶ 8-10, 13-18).

This drain on its resources is sufficient to prove injury in fact to the organization itself at summary judgment. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *see, e.g., Online Merchants Guild v. Cameron*, 995 F.3d 540, 548 (6th Cir. 2021) (affirming “that within-mission organizational expenditures are enough to establish direct organizational standing.”). Secretary Hargett and Coordinator Goins’ argument that TN NAACP cannot establish standing

¹⁵ Secretary Hargett and Coordinator Goins argue Sweet-Love’s declaration is deficient under Federal Rule of Civil Procedure 56(c)(4) because she does not explain how she has personal knowledge of the information she provides concerning her statement that “the TN NAACP has accompanied persons and taxed them to and from government offices to troubleshoot the issue and correct the rejection.” (Doc. No. 190 at PageID # 3197 (quoting Sweet-Love Decl, Doc. No. 156-2 ¶ 14)). This argument fails because, as President of TN NAACP, Sweet-Love is charged with knowledge of its activities. *See Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp.*, 805 F. Supp. 2d 396, 406 (S.D. Ohio 2011) (citing *AGI Realty Serv. Grp., Inc. v. Red Robin Intern., Inc.*, No. 94-3911, 81 F.3d 160, 1996 WL 143465, at *4 (6th Cir. Mar. 28, 1996) (“Corporate officers are considered to have personal knowledge of the acts of their corporations and an affidavit setting forth those facts is sufficient for summary judgment.”)); *see also Fambrough v. Wal-Mart*, 611 Fed. Appx. 322, 330 (6th Cir. 2015) (citing *AGI Realty Serv.*, 1996 WL 143465, at *4).

¹⁶ The Court has already overruled the Tennessee Election Officials’ objections to these facts. *See supra*.

because it cannot show immediate threat of harm fails to recognize that TN NAACP presents evidence of *ongoing* harm. Because TN NAACP has shown a present ongoing harm, it does not need to also show imminent future harm to obtain declaratory or injunctive relief. *See Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 981 (6th Cir. 2020).

2. Mootness

Secretary Hargett and Coordinator Goins argue the part of Count Six challenging the State’s blanket policy rejecting all voter-registration applications that indicated the applicant has a felony conviction is partially moot because on July 21, 2023, Coordinator Goins issued a memorandum outlining a new policy for processing voter registration applications from individuals with grace period convictions and non-infamous felonies predating January 15, 1973. (Doc. No. 180 at PageID 2869-73; Doc. No. 181 ¶¶ 73, 77; Doc. No. 157-7; Doc. No. 151-2; Doc. No. 151 at PageID # 1083-84).

Mootness addresses whether an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit, so that the case-or-controversy requirement, in Article III, for federal jurisdiction is not satisfied. *Moore v. Harper*, 600 U.S. 1, 14 (2023); *Kentucky v. Yellen*, 54 F.4th 325, 340 (6th Cir. 2022) (“Whether an ‘intervening circumstance’ arising after a suit has been filed causes a plaintiff’s asserted injury to dissipate is really a question of mootness.”). The standard “for determining whether a case has been mooted by the defendant’s voluntary conduct is stringent: ‘A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (citation omitted); *Fed. Bureau of Investigation v. Fikre*, 144 S. Ct. 771 (2024) (same). The “heavy burden” of persuading the court that the challenged conduct cannot reasonably be expected to resume lies with the party

asserting mootness. *See id.* However, because it is the government that has voluntarily ceased its allegedly illegal conduct, the burden of showing of mootness is lower. *See Doe v. Univ. of Michigan*, 78 F.4th 929, 946 (6th Cir. 2023) (citing *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 767 (6th Cir. 2019)).

When considering whether challenged conduct can reasonably be expected to reoccur in evaluating defendant's assertion that case is moot, court takes into account totality of circumstances surrounding voluntary cessation. *Univ. of Michigan*, 78 F.4th at 946 (6th Cir. 2023) (citing *Speech First*, 939 F.3d at 767–68). Although courts treat cessation of the allegedly illegal conduct by government officials with more solicitude than similar action by private parties, not all government action “enjoys the same degree of solicitude[.]” *Id.* Accordingly, courts consider “the manner in which the cessation was executed” as part of the totality-of-the-circumstances analysis. *Id.*

Government action in the form of the passage of new legislation or the repeal of challenged legislation enjoys the most solicitude; this type of government action “presumptively moot[s] the case unless there are clear contraindications that the change is not genuine.” *Id.* When regulatory changes are implemented with “legislative-like procedures” or “formal processes,” the government “need not do much more than simply represent that it would not return to the challenged policies.” *Id.* On the other hand, when government action brings about change that is “ad hoc, discretionary, and easily reversible” or requires little in the way of formal process, “significantly more than the bare solicitude itself is necessary to show that the voluntary cessation moots the claim.” *Id.*

Additionally, courts should give the government “the same amount of solicitude when it makes a change to comply with binding precedent (even if it has done so in an ad hoc manner) as the courts give the government when it makes a change with legislative-like procedures[.]” *Univ. of Michigan*, 78 F.4th at 947–48 (citing *Thompson v. Whitmer*, No. 21-2602, 2022 WL 168395, at

*4 (6th Cir. Jan. 19, 2022) (litigation was moot when state supreme court declared challenged actions illegal and therefore, for the behavior to recur, the government would have to disregard the Michigan Supreme Court's interpretation of state law, which a court would not reasonably expect); *Midwest Inst. of Health, PLLC v. Whitmer*, Nos. 20-1611/1650, 2022 WL 304954, at *2 (6th Cir. Feb. 2, 2022) (same); *League of Indep. Fitness Facilities & Trainers, Inc. v. Whitmer*, 843 F. App'x 707, 709–10 (6th Cir. 2021) (same)). Accordingly, “[w]hen the government has made a regulatory change in order to comply with binding precedent, the government need only represent that it does not intend to return to the previous policy.” *Univ. of Michigan*, 78 F.4th at 948).

Here, Secretary Hargett and Coordinator Goins approved the new policy. (See Doc. No. 180-1 ¶ 4). Secretary Hargett and Coordinator Goins do not direct the court to any evidence suggesting that the Election Division would have to go through some formal process to change the policy again. See *Speech First*, 939 F.3d at 769. Nor have Secretary Hargett and Coordinator Goins produced evidence showing that the change in the Election Division’s policy for processing voter registration applications from individuals with pre-1981 felony convictions was legislative, involved a legislative-like process, or that it was made in order to comply with binding precedent. Instead, Coordinator Goins declared under penalty of perjury that this policy change was “in response to ongoing discussions and deliberation with [his] staff and with legal counsel.” (Doc. No. 180-1 ¶ 4). Therefore, “solicitude toward the government's cessation alone is insufficient to establish that the case is moot.” *Univ. of Michigan*, 78 F.4th at 947.

The timing of Election Division’s policy change also raises suspicions that its cessation is not genuine. Here, Secretary Hargett and Coordinator Goins changed the Election Division’s relevant policy well after the complaint and first amended complaint were filed. “If anything, this increases the [government]’s burden to prove that its change is genuine.” *Speech First*, 939 F.3d at

769. Moreover, Coordinator Goins “has not affirmatively stated” that he does not intend to revert back to the challenged policies. *See id.* Instead, Coordinator Goins points to his declaration that “absent a change in the applicable law or a court order, I have no intention of changing course.” (Doc. No. 180-1 ¶ 10). However, “[courts] do not assume that words mean more than what they say.” *See Speech First*, 939 F.3d at 769 (rejecting statement about what policy the government intended to use “presently” as “not a meaningful guarantee” that a new policy will remain the same). Finally, Secretary Hargett and Coordinator Goins’ continued defense of the constitutionality of the challenged conduct informs the inquiry regarding whether the government’s voluntary cessation of the conduct moots Count Six. *See id.* at 770 (citing *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007)). Here, Secretary Hargett and Coordinator Goins maintain that the challenged policies were lawful. (*See* Doc. No. 180 at 13 n.1 (“To be clear, Defendants in no way are conceding that the policies in place before July 21, 2023, were illegal.”)).

In sum, considering the totality of the circumstances, Secretary Hargett and Coordinator Goins have not met their burden of showing that the Election Division’s voluntary cessation make it “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth*, 528 U.S. at 189. Therefore, TN NAACP’s claims in Count Six will not be dismissed as moot. Nor will the Tennessee Election Officials’ motion for summary judgment be granted as to Counts Five and Six on the basis that the State’s challenged policy no longer exists. (*See* Tennessee Election Officials’ memorandum supporting their motion for judgment, Doc. No. 151 at PageID # 1085, 1083). Because this was the sole basis for the Tennessee Election Officials’ motion for summary judgment as to Count Five, (*see id.* at PageID # 1085), their motion will be denied as to that Count.

B. Merits

As noted above, in Counts Four and Six of the First Amended Complaint, TN NAACP seeks injunctive relief under the NVRA from Tennessee's challenged voter application registration forms and policies for processing the same. Counts Four and Six concern the following sections of the NVRA:

Section 20505 provides:

(a) Form

- (1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 20508(a)(2) of this title for the registration of voters in elections for Federal office.
- (2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 20508(b) of this title for the registration of voters in elections for Federal office.
- (3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

52 U.S.C.A. § 20505(a).

Section 20507(a)(1), (5) provides:

(a) In general

In the administration of voter registration for elections for Federal office, each State shall—

- (1) ensure that any eligible applicant is registered to vote in an election —
 - (A) in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

- (B) in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;
- (C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and
- (D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

- (5) inform applicants under sections 20504, 20505, and 20506 of this title of –
 - (A) voter eligibility requirements; and
 - (B) penalties provided by law for submission of a false voter registration applications

52 U.S.C.A. § 20507(a)(1), (5).

Section 20507(b)(1) provides:

(b) Confirmation of voter registration

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

- (1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965

52 U.S.C.A. § 20507(b)(1).

Section 20508(a) specifies the role of the Election Assistance Commission:

(a) In general

The Election Assistance Commission –

- (1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);
- (2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;
- (3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this chapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures, forms, and other matters affected by this chapter; and
- (4) shall provide information to the States with respect to the responsibilities of the States under this chapter.

52 U.S.C.A. § 20508(a)

Section 20508(b) specifies the content of mail voter registration forms:

(b) Contents of mail voter registration form

The mail voter registration form developed under subsection (a)(2) –

- (1) May require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;
- (2) Shall include a statement that –
 - a. Specifies each eligibility requirement (including citizenship);
 - b. Contains an attestation that the applicant meets each such requirement; and
 - c. Requires the signature of the applicant, under penalty of perjury;
- (3) May not include any requirement for notarization or other formal authentication; and
- (4) Shall include, in print that is identical to that used in the attestation portion of the application –

- i. The information required in section 20507(a)(5)(A) and (B) of this title;
- ii. A statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and
- iii. A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

52 U.S.C. § 20508(b).

1. Count Four

At issue in Count Four is whether Tennessee’s State Forms comply with the NVRA’s requirements to “inform ... applicants of voter eligibility requirements” and to “specif[y] each eligibility requirement” on the form. 52 U.S.C. §§ 20505(a)(2), 20508(b)(2). TN NAACP argues the State Forms, (Doc. Nos. 156-12, 156-10), do not meet these requirements because they do not provide enough information to convey to eligible applicants with non-disenfranchising pre-1973 or grace-period felony convictions that their felonies do not impact their right to vote. The Tennessee Election Officials contend the State Forms “adequately notify applications about state voting eligibility requirements.” The parties agree that Tennessee’s State Forms do not inform all eligible applicants of whether they are in fact eligible to register to vote. They disagree as to whether the NVRA requires State Forms to include information such that all eligible applicants – even eligible applicants with felony convictions – can discern from the State Form itself whether they are eligible to register to vote.

TN NAACP, Secretary Hargett, and Coordinator Goins agree that there are no genuine disputes as to any material fact with regard to Count Four. As such, the parties agree that the following felony convictions have never disqualified a person from being eligible to vote in

Tennessee: (1) a felony conviction before January 15, 1973, that does not include a statement in the judgment rendering the crime “infamous;” (2) a felony conviction between January 15, 1973, and May 17, 1981; (3) a felony conviction that has been expunged; and (4) a felony conviction that is subject to judicial diversion. (Doc. No. 181 ¶¶ 2-3, 56). The parties further agree that an otherwise qualified person with a disenfranchising felony conviction who has received a pardon or has their voting rights restored, is eligible to vote in Tennessee. (*Id.* ¶ 4). Accordingly, the Tennessee Election Officials and TN NAACP agree that applicants with felony convictions who never lost the right to vote and/or who have had their rights restored are “eligible” to vote.¹⁷

The Court must determine, as a matter of law, whether Tennessee’s State Forms and state-specific instructions on the Federal Form comply with the requirements of the NVRA. Under well-established rules of statutory interpretation, the Court begins with the language of the statute itself. *Consumer Prod. Safety Comm’n*, 447 U.S. 102, 108 (1980). Departure from the plain language of a statute is disfavored and “appropriate only in rare cases [in which] the literal application of the statute will produce a result demonstrably at odds with the intentions of its drafter ... or when the statutory language is ambiguous.” *Hoge v. Honda of Am. Mfg., Inc.* 384 F.3d 238, 246 (6th Cir. 2004) (quoting *Kelley v. E.I. Dupont de Nemours & Co.*, 17 F.3d 836, 842 (6th Cir. 1994)). Secretary Hargett and Coordinator Goins do not address statutory construction whatsoever and make no arguments that the statutory text at issue has a plain meaning or is ambiguous. (*See* Doc. Nos. 151, 180, 190 (making no reference to either plain meaning or ambiguity)). TN NAACP

¹⁷ This reveals the factual inaccuracies in the Tennessee Election Officials’ contentions that “the absence of a conviction for an infamous felony is a voter eligibility requirement” and that “the conviction crime and date ... are underlying preconditions for eligibility[.]” (Doc. No. 180 at PageID # 2873).

contends the language of the statute is not ambiguous and the Court must therefore give the statute its plain meaning.¹⁸

The NVRA does not define the terms “inform” or “specifies,” so the Court must look to the ordinary meaning of these terms at the time Congress enacted the statute. *Perrin v. United States*, 444 U.S. 37, 42 (1979); *see, e.g., Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021) (“When called on to resolve a dispute over a statute’s meaning, [courts] normally seek[] to afford the law’s terms their ordinary meaning at the time Congress adopted them.”). In 1993, the term “inform” was defined as “to make known: give instruction in” and “to give information: impart knowledge.” Webster’s Third New International Dictionary 1160 (1993). “Specify” was defined as “to mention or name in a specific or explicit manner: to tell or state precisely or in detail.” *Id.* at 2187.

As noted above, the Tennessee Election Officials do not identify a plain meaning of the terms “inform” or “specifies,” argue these terms are ambiguous, or otherwise engage in the requisite legal analysis to determine the meaning of statutory language. (*See* Doc. No. 151 at PageID #1080-82; Doc. No. 180 at PageID # 2873-79). Instead, Secretary Hargett and Coordinator Goins rely on an Eleventh Circuit case for the proposition that the NVRA is a “notice statute” and submit that “[b]y specifying the eligibility requirement – namely, the absence of a disqualifying felony – and by linking to a website describing what constitutes a disqualifying felony,¹⁹

¹⁸ *See* Doc. No. 154 at 11 (Arguing that the NVRA “plainly means to supply potential voters with enough accurate information to understand their own eligibility to register and vote”); Doc. No. 192 at 5 (arguing the Court should not follow *Thompson v. Sec. of State for the State of Alabama*, 65 F.4th 1288 (11 Cir. 2023), because of its “unpersuasive” approach to statutory interpretation and because “when the terms of a statute are plain and unambiguous, as here, the ‘inquiry begins with the statutory text, and ends there as well.’”).

¹⁹ The website contains a list of crimes that permanently disqualify an individual from voting. *See* Tennessee Secretary of State, <https://sos.tn.gov/restoration>. It contains an explanation of the procedure for restoring an individual’s voting rights when lost due to a felony conviction after May 18, 1981. *Id.* It states that individuals with felony convictions between January 15, 1973, and May 17, 1981, are eligible to vote, but that the Election Division must verify that the individual’s conviction occurred during that period. *Id.*

Tennessee’s current State Form puts applicants on notice about who qualifies to successfully register to vote,” and nothing more is required. (Doc. No. 151 at PageID# 1082 (citing *Thompson v. Sec. of State for the State of Ala.* 65 F.4th 1288, 1309 (11th Cir. 2023)); *see also* Doc. No. 180 at PageID # 2879 (“Tennessee’s voter registration application complies with the NVRA because it sufficiently notifies applicants that the absence of a conviction for an infamous felony is a voter eligibility.”).²⁰ Thus, the Tennessee Election Officials appear to assert that the current State Form satisfies the NVRA because it includes a link to the Tennessee Secretary of State’s website “where the reader can find information necessary to evaluate one’s eligibility.” (Doc. No. 180 at PageID # 2874-78; Doc. No. 151 at PageID # 1081). Stated another way, the Tennessee Election Officials argue the information and instructions provided on the Tennessee Secretary of State’s website “specify the eligibility requirement related to felony convictions and inform applicants that certain felons are ineligible to vote ...in compliance with the NVRA.” (Doc. No. 180 at PageID # 2874; *see e.g., id.* at PageID # 2879 (“But including all the information listed on the Secretary of State’s website [on the State Form] would result in an application of unwieldy length and unusable format.”)).

And while Secretary Hargett and Coordinator Goins fail to argue a plain meaning of the statutory terms at issue in Count Four – “inform” or “specifies” – they rely on out of circuit authority to argue what these terms do *not* mean. First, the Tennessee Election Officials argue that “Section 20508(b)’s ‘specif[ication]’ requirement does not mandate that states list *every*

It also provides a list of crimes that resulted in the loss of the right to vote prior to January 15, 1973, but includes a disclaimer stating, “Even if you were convicted of a crime listed above, you still have the right to vote if you can show that at the time of your conviction the judge did not render you ‘infamous,’ if your conviction was reversed on appeal or expunged, if you received a full pardon, or if you have your voting rights restored.” *Id.*

²⁰ The Tennessee Election Officials state that “functionally similar language is provided as a state-specific instruction on the Federal Form.” (Doc. No. 180 at PageID# 2874).

disqualifying felony or exhaustively describe the rules underlying each eligibility of Tennessee’s four eligibility requirements.” (Doc. No. 151 at PageID # 1082 (citing *Thompson*, 65 F.4th at 1308-09)). Second, Secretary Hargett and Coordinator Goins assert that “every disqualifying felony” and “describing the rules underlying each of Tennessee’s four eligibility requirements” would make the forms “unworkable,” “unwieldy and unnecessarily complicated.” (*Id.* (citing *League of Women Voters of Florida, Inc. v. Byrd*, No. 23-cv-165 (N.D. Fla. Jul. 10, 2023); *see also* Doc. No. 180 at PageID# 2879 (“The NVRA does not prescribe a voter-registration application composed of a comprehensive list of every felony conviction that results in the loss of the right to vote, nor does it require that the application contain a primer on voting rights restoration.”)).²¹

TN NAACP submits that the plain meaning of “inform applicants ... of voter eligibility requirements” in Section 20507(a)(5)(A) is “to supply potential voters with enough accurate information to understand their own eligibility to register and vote.” (Doc. No. 154 at PageID # 2290). It argues that the requirement that the forms “specif[y] each eligibility requirement” means that the eligibility requirements must be named or stated “explicitly or in detail.” (Doc. No. 154 at PageID # 2291 (quoting *Kucana v. Holder*, 558 U.S. 233, 243 n.10 (2010) (quoting *Websters New Collegiate Dictionary* 111c (1974))). In sum, TN NAACP submits that the plain meaning of “specifies” as used in Section 20508(b)(2)(A) is to state each eligibility requirement on the registration forms in a manner that enables applicants with past convictions to determine their eligibility. (Doc. No. 154 at PageID # 2291).

TN NAACP argues that Tennessee’s voter registration forms do not comply with the NVRA requirement to “inform applicants ... of voter eligibility requirements” and to “specif[y] each eligibility requirement” because the forms do not state that citizens with felony convictions

²¹ This is an argument against a straw man because TN NAACP does not argue the State Form should list any disqualifying felonies or explain the process for restoration of voting rights.

in the grace period fully retain their right to vote or that citizens with non-infamous pre-1973 convictions are likewise eligible.²² (Doc. No. 182 at PageID # 2951 (citing Doc. Nos. 156-10, 156-11, 156-12, 156-13, 156-14)). TN NAACP also notes that the current version of the State Form does not specify that felony convictions are no longer disqualifying upon the restoration of the right to vote and that earlier iterations of the state form that are still in use provide only an incorrect instruction that to be eligible “you must not have been convicted of a felony, or if you have, your voting rights must have been restored.” (*Id.* at PageID # 2951-52 (citing Doc. Nos. 1-2, 156-10, 156-13, 156-14)). TN NAACP contends “[t]his failure by Tennessee to specify, in detail, on its voter registration forms when voters with felony convictions are eligible to vote, and its provision of inaccurate information, contravene the NVRA’s requirement to ‘inform applicants ... of voter eligibility requirements.’” (Doc. No. 182 at PageID # 2952).

As it must, the Court begins its consideration of this issue with statutory construction, which, as the Court noted above, was not thoroughly briefed by TN NAACP and was not briefed whatsoever by the Tennessee Election Officials. The Court is not persuaded that the statute’s use of the term “specify” is unambiguous. TN NAACP asserted the dictionary definition, which is to “name or state explicitly or in detail.” *See Kucana v. Holder*, 558 U.S. 233, 243 n.10 (2010) (quoting Webster’s New Collegiate Dictionary 1116 (1974)). But this definition, which contains more than one “or,” does not resolve the question presented here. Secretary Hargett and Coordinator Goins appear to argue that the state complies with the NVRA if it names the voter eligibility requirements, while TN NAACP focuses on the part of the definition that requires detail.

²² TN NAACP asserts these deficiencies apply to the current version of the State Form and the Tennessee-specific instructions on the Federal Form, and except for the omission regarding restoration of voting rights, to prior versions of the State Form that are still in circulation and use. (Doc. No. 182 at PageID # 2951). TN NAACP agrees that certain prior versions of the State Form specified that citizens with felony convictions are not ineligible to vote if their voting rights had been restored. (*Id.*).

In this sense the statute is ambiguous concerning what it means to “specif[y] each eligibility requirement.” Is it sufficient, as Secretary Hargett and Coordinator Goins appear to contend, to merely list or provide notice of the voter eligibility requirements, or, as TN NAACP argues, is a greater level of detail required? The parties have not provided adequate briefing for the Court to resolve the plain meaning of the word “specify.”

As stated above, Secretary Hargett and Coordinator Goins provide no briefing on the issue of statutory construction, and the two cases cited by the Tennessee Election Officials do not aid the Court on this issue. In *Thompson v. Sec. of State for the State of Ala.*, the court merely notes that the verb “specifies” is not defined by the NVRA, and then finds that the plaintiff’s argument that the NVRA requires the state to list every disqualifying state, federal, and foreign felony on its voter registration forms is an “absurd, unworkable, and internally inconsistent interpretation of §20508(b)(2)(A).” 65 F.4th 1288, 1308 (11th Cir. 2023). That court’s brief consideration of the claim does not engage in any analysis of statutory construction, let alone consider whether the statute has a plain meaning or is ambiguous. *Id.* at 1308-09. Moreover, the relief requested by the *Thompson* plaintiff, which apparently would have included a lengthy list of every federal, state, and foreign felony deemed to involve moral turpitude, is not comparable to the limited information TN NAACP seeks to have included on the State Form.

The second case cited by the Tennessee election officials, *League of Women Voters of Florida, Inc. v. Byrd*, Case No. 4:23-cv-165-AW-MAF (N.D. Fla. Jul. 10, 2023) (Westlaw cite not available), is also not helpful on the issue of statutory construction. In that case, the court considered whether the NVRA required the voter registration form, which provided that convicted felons could not register to vote until their right to vote is restored, was required to specify the various means by which a felon may have his or her voting rights restored. The court concluded

that NVRA did not require such specificity because the eligibility requirement was simply that voting rights had been restored. The level of specificity on this requirement is not at issue in this case.²³ The Florida District Court did not consider the level of specificity required for the eligibility requirement regarding felony convictions or engage in meaningful statutory construction on that issue.

TN NAACP has largely assumed the terms of the statute are plain and unambiguous, with the caveat that “to the extent th[e] Court perceives any ambiguity in the NVRA’s mandate to specify and inform or seeks guidance about what level of specificity is required, it must look to the statutory context. The NVRA’s express purposes, surrounding provisions, and legislative history all indicate that ‘to specify’ means to include information on the face of the form sufficient to enable applicants (including those with past convictions) to easily and privately determine their eligibility.” (Pl. Reply to Def. Motion for Summary Judgment, Doc. No. 192 (citing Pl. Mem. in Support of Pl. Motion for Summary Judgment, Doc. No. 154 at 10-11)). TN NAACP points to House and Senate reports noting the importance that applicants “be advised of the voting requirements,” that “*all* registration requirements should be set forth in the application,” and “the importance of the voter eligibility specifications for maintaining accurate lists of only eligible voters and preventing fraud.” (Doc. No. 154 at 10-11 (emphasis provided by TN NAACP) (citing S. Rep. 103-6 at 24; H.R. Rep. 103-9 at 7-8)). But the cited legislative history, while perhaps instructive of individual legislators’ intentions, does not allow the Court to determine that TN NAACP’s requested level of specificity is required by the terms of the NVRA.

²³ The Court notes, however, that *League of Women Voters of Florida* appears to support TN NAACP’s argument that the form must state that felons whose voting rights have been restored are eligible to register to vote.

Nevertheless, the Court is not deciding between two competing proposals for the language on Tennessee's State Forms. Rather, the Court must determine whether Tennessee's State Forms, (Doc. Nos. 156-12, 156-10), comply with the NVRA's requirements to "inform ... applicants of voter eligibility requirements" and to "specif[y] each eligibility requirement." Whatever level of specificity the NVRA requires, there is no question in the Court's mind that voter applicants are not "informed" of the voter eligibility requirements unless the information presented on the form is accurate and not misleading. TN NAACP has identified two statements / omissions in this regard. First, the prior version of the form states, "you must not have been convicted of a felony, of if you have, your voting rights must have been restored." (*See* Doc. No. 156-12). As TN NAACP points out, this statement is overly inclusive, as not all felons who have not had their voting rights restored are ineligible to vote. As a result, prospective voters who have been convicted of a non-disqualifying felony would be deterred from registering to vote.

The revised State Form attempts to correct this over-inclusiveness by stating that an applicant's eligibility to register and vote "depends upon the crime you were convicted of and the date of your conviction." (Doc. No. 156-10). The form then provides a website that has additional information, including information about voting rights restoration. (*Id.* (referring applicants to Tennessee Secretary of State, <https://sos.tn.gov/restoration>)). But the form itself does not inform applicants that felons who have had their voting rights restored, irrespective of the crime and date of conviction, are not disqualified. Like the misleading statement in the first form, this omission could deter eligible voters.

For the foregoing reasons, the Court finds that Tennessee's State Forms, (Doc. Nos. 156-12, 156-10), do not comply with the NVRA's requirement under Section 20507(a)(5)(A) to "inform ... applicants of voter eligibility requirements." Accordingly, TN NAACP's motion for

summary judgment will be GRANTED as to this part of Count Four. The Court further finds that the parties have not provided sufficient briefing for the Court to determine what level of specificity is required under Section 20508(b)(2)(A). Accordingly, both sides' motions for summary judgment will be DENIED without prejudice as to this part of Count Four.

2. Count Six

At issue in Count Six is Tennessee's policy of rejecting valid Federal Forms and State Forms timely submitted by eligible applicants with felony convictions and requiring these eligible applicants to provide additional documents as further proof of their eligibility. TN NAACP, Secretary Hargett, and Coordinator Goins agree that there are no genuine disputes as to any material fact with regard to Count Six. (*See* Doc. No. 181 ¶¶ 2-4, 37-68). As such, the parties agree to the foregoing facts:

An otherwise qualified person with a grace period felony conviction and/or pre-1973 non-infamous felony conviction never lost their right to vote as a result of such a conviction. (*Id.* ¶¶ 2-3). Expunged felony convictions and felony convictions subject to judicial diversion also do not result in the loss of the right to vote in Tennessee. (*Id.* ¶ 56). Additionally, an otherwise qualified person with a disenfranchising felony who has received a pardon or has their voting rights restored, is eligible to vote in Tennessee. (*Id.* ¶ 4).

Counties in Tennessee receive and retain "Felon files" from various sources, including court orders, U.S. Attorneys, the Tennessee Department of Corrections, the Election Division, the state felon list, other county election officials, clerks of court, and jury coordinators, notifying them of new state, out-of-state, and federal felony convictions as well as all convictions for a person going back in time, including the date of judgment, conviction, or sentence. (*Id.* ¶¶ 60-62). Under the Election Division's policy, county election commissions check every registration

applicant indicating a felony conviction against their Felon files. (*Id.* ¶ 59). County election officials routinely rely on information in Felon files to purge voters with felony convictions from the voter roles as part of their regular voter-roll maintenance. (*Id.* ¶ 64). Additionally, county election officials can confirm an applicant's eligibility to vote by contacting the Election Division and/or other county election officials. (*Id.* ¶ 66).

Tennessee's policy from 2014 to at least July 21, 2023, directed county election officials to reject registration applications indicating an otherwise qualified person has: (1) a grace period felony conviction, (2) a pre-1973 non-infamous felony conviction, (3) only expunged felony convictions, (4) only convictions subject to judicial diversion, (5) received a pardon for any disenfranchising conviction, and/or (6) has had their voting rights restored, and to require such applicants to file a copy of their respective judgement, conviction papers, court documentation of expungement, judicial diversion, receipt of a pardon, and/or restoration of voting rights. (*Id.* ¶¶ 43-45, 51-52, 54-58).²⁴

In Count Six, TN NAACP claims Tennessee's challenged policy violates the NVRA because it imposes an unnecessary requirement in a non-uniform and discriminatory manner and does not ensure that any eligible applicant is registered if their valid registration form is timely received or "accept and use" the Federal Form. (Doc. No. 154 at PageID # 2294-98 (citing 52 U.S.C. §§ 20507(a)(1), (b)(1), 20505(a)(1), 20508(b)(1)). Secretary Hargett and Coordinator

²⁴ As previously noted, on July 21, 2023, Tennessee changed its policy to direct county election officials to process registration applications indicating an otherwise qualified person has a grace period felony conviction or a pre-1973 non-infamous felony conviction. (Doc. No. 181 ¶¶ 75,77).

Goins deny that Tennessee’s challenged policy, with respect to State Forms, violates the NVRA. (Doc. No. 151 at PageID # 1084).²⁵

TN NAACP points to the Supreme Court’s interpretation of “valid” in this context to mean “a completed copy of the form.” See *ITCA*, 570 U.S. 1, 12 (2013). It argues that Tennessee’s challenged policy does not “ensure” registration of eligible voters because it necessarily sweeps multiple categories of facially eligible voters with past felony convictions into the rejection pool. TN NAACP argues the additional documentation required of some applicants under Tennessee’s challenged policy is unnecessary because the attested information on the State Form – crime(s) and date and place of conviction and whether they have received pardon or had voting rights restored – is plainly sufficient for the State to assess whether the applicant has a grace-period conviction or a pre-1973 conviction of a crime that could not have rendered them ineligible to vote and/or whether the applicant’s voting rights have been restored from a pardon or otherwise. (Doc. No. 154 at PageID # 2301-02).²⁶

TN NAACP further argues that, even if it were necessary for state election officials to look beyond the attested information in the voter registration form, the undisputed material facts establish that county and state election officials already have access to information sufficient to assess eligibility, which therefore obviates the claimed need for applicants to provide

²⁵ Tennessee Election Officials do not respond to TN NAACP’s argument for summary judgment that Tennessee’s policy of requiring applicants using the Federal Form to submit documentation proof of voting rights restoration violates Section 20505(a)(1) of the NVRA. (Doc. No. 154 at PageID # 2300-01; Doc. No. 180 at PageID # 2882)). Accordingly, this part of TN NAACP’s motion will be granted as unopposed.

²⁶ TN NAACP also cites to *Fish v. Kobach* where the Tenth Circuit interpreted the necessity provision under Section 20504(c)(2) “as establishing the attestation requirement in every case as the presumptive minimum amount of information necessary for a state to carry out its eligibility-assessment and registration duties.” 840 F.3d 710, 738 (10th Cir. 2016). The Tennessee Election Officials respond that *Fish* is distinguishable because it addressed Section 20504(c)(2), which is not at issue in this case. (See Doc. No. 180 at PageID # 2883-84).

documentation. (Doc. No. 154 at PageID # 2302-05 (citing Doc. No. 181 ¶¶ 59-68)). Finally, TN NAACP argues Tennessee’s challenged policy imposes unjustified burdens and barriers to registration on a class of applicants – those with prior felony convictions – that do not apply to other classes of applicants. (Doc. No. 154 at PageID # 2305-06).

Secretary Hargett and Coordinator Goins do not dispute that applicants with felony convictions who never lost the right to vote or who have had their rights restored are “eligible” to vote. The Tennessee Election Officials do not respond to TN NAACP’s argument that “valid” in this context means “a completed copy of the form.” Secretary Hargett and Coordinator Goins do not dispute that Tennessee’s challenged policy ensures that eligible applicants will be rejected. Nor do the Tennessee Election Officials rebut TN NAACP’s contentions that: (1) the information attested to on the State Form is sufficient for the State to verify whether the applicant has a grace-period conviction or a pre-1973 conviction of a crime that could not have rendered them ineligible to vote and/or whether the applicant’s voting rights have been restored from a pardon or otherwise, and (2) that, even if it were necessary for county and state election officials to look beyond the attested information, they already have access to information sufficient to confirm an applicant’s eligibility. Additionally, Secretary Hargett and Coordinator Goins do not dispute that Tennessee’s challenged documentation policy imposes a barrier to registration to vote in elections for Federal office on a class of applicants – those with felony convictions – that does not apply to other classes of applicants.

Instead, Tennessee Election Officials submit that Tennessee’s policy of rejecting State Forms from certain applicants until they submit certain documentation does not violate the NVRA because (1) in *ITCA*, 570 U.S. at 12, the Supreme Court said that State Forms “may require information the Federal Form does not,” and (2) Tennessee “determined that it needs

documentation from [certain] applicants ... so that the State may assess the eligibility of the applicant and administer voter registration and other parts of the election process.” (Doc. No. 151 at PageID # 1084; Doc. No. 180 at PageID # 2881-82; Doc. No. 190 at PageID # 3200-01).

While Secretary Hargett and Coordinator Goins are correct that in *ITCA* the Supreme Court stated that State Forms “may require information the Federal Form does not,” this statement does not stand for the proposition that states may require information on their State Forms *carte blanche*, as the Tennessee Election Officials appear to suggest.²⁷ Section 20505(a)(2) authorizes states to develop and use a mail in voter registration form so long as it “meets all the criteria stated in section 20508(b) of this title for the registration of voters in elections for federal office.” The Federal Form must also meet all the criteria stated in Section 20508(b). *See* §§ 20505(a)(1), 20508(a)(2), 20508(b). The criteria stated in Section 20508(b) are as follows:

- (1) May require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;
- (2) Shall include a statement that –
 - a. Specifies each eligibility requirement (including citizenship);
 - b. Contains an attestation that the applicant meets each such requirement; and
 - c. Requires the signature of the applicant, under penalty of perjury;

²⁷ In *ITCA*, the Supreme Court answered the sole question of whether Arizona’s law requiring Federal Form applicants to produce documentation proving their citizenship conflicted with Section 20505(a)(1)’s mandate that States “accept and use” the Federal Form. *ITCA*, 570 U.S. at 15. Neither Arizona’s State Form nor its policies for processing its State Form were at issue in *ITCA*. As a result, *ITCA* did not involve any rulings as to whether Arizona’s State Form or policy for processing the same were in conflict with any provision of the NVRA.

- (3) May not include any requirement for notarization or other formal authentication; and
- (4) Shall include, in print that is identical to that used in the attestation portion of the application –
 - i. The information required in section 20507(a)(5)(A) and (B) of this title;
 - ii. A statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and
 - iii. A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

Because State Forms must meet all of the criteria stated in Section 20508(b), *see* Section 20505(a)(2), and one of the criteria stated in Section 20508(b) is that the form “may require only” information “as is necessary to enable the appropriate State election official to assess the eligibility of the applicant,” *see* Section 20508(b)(1), it follows that a State Form “may require only” information “as is necessary to enable the appropriate State election official to assess the eligibility of the applicant.” As states do not have uniform requirements for persons to register to vote, this necessarily means that State Forms “may require information the Federal Form does not.”

Thus, Secretary Hargett and Coordinator Goins are correct that State Forms may require information the Federal Form does not. *see ITCA*, 570 U.S. at 12; *see also McKay v. Thompson*, 226 F.3d 752, 755-56 (6th Cir. 2000) (Tennessee could require applicants to provide social security number on registration form); *Young v. Fordice*, 520 U.S. 273, 286 (1997) (State has discretion to decide whether State Form tells applicants that registration counts only for federal elections).²⁸


²⁸ Neither *Young* nor *McKay* concerned or contemplated a requirement for applicants to provide documentation beyond a voter registration form itself.

However, the Tennessee Election Officials are incorrect in suggesting that this concept – of being able to require information the Federal Form does not – means Tennessee’s challenged policy is compliant with compliant with Sections 20507(a)(1), (b)(1), 20508(b)(1) of the NVRA.

The Tennessee Election Officials’ argument that Tennessee determined it needs documentation to assess the eligibility of applicants with felony convictions appears to advance Justice Alito’s position in his dissent in *ITCA* – that the NVRA “lets the States decide for themselves what information ‘is necessary.’” 570 U.S. at 46-47 (Alito, J., dissenting) (quoting statutory text currently found at 52 U.S.C. § 20508). The majority in *ITCA* rejected such an understanding of federal election regulation. 570 U.S. at 12-15. The Court need not reach the legal merits of this argument in the present case because Secretary Hargett and Coordinator Goins fail to direct the Court to any evidence in the record of Tennessee making such a determination.

As it is undisputed that county and state election officials have the information the State says it needs to assess an applicant’s eligibility, Tennessee’s challenged documentation policy does not comply with the NVRA’s prohibition against requiring unnecessary information. 52 U.S.C. § 20508(b)(1). Tennessee’s challenged policy also fails to comply with Sections 20507(a)(1) and (b)(1) given that it is undisputed Tennessee’s challenged documentation policy imposes an unnecessary requirement in a non-uniform manner that does not ensure eligible applicants are registered if their valid registration form is timely received. Accordingly, for the foregoing reasons, TN NAACP’s motion for summary judgment will be granted as to Count Six and the Tennessee Election Officials’ motion for summary judgment will be denied as to Count Six.

An appropriate Order shall enter.



WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Mi Familia Vota, et al.,
Plaintiffs,

No. CV-22-00509-PHX-SRB
AMENDED ORDER*

v.

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

AND CONSOLIDATED CASES

This case arises out of Plaintiffs’ challenge to the Arizona Legislature’s passage of H.B. 2492 and H.B. 2243 (collectively, the “Voting Laws”). The Court conducted a 10-day bench trial, which concluded on December 19, 2023. Having considered the evidence and the arguments of counsel, the Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT¹

* The Court’s Amended Order amends the Court’s conclusion at page 108, lines 27 to 28 that “Arizona may conduct SAVE checks on registered voters who have provided DPOC” to instead read that “Arizona may conduct SAVE checks on registered voters who have **not** provided DPOC.”

¹ All docket citations refer to *Mi Familia Vota*, 2:22-cv-00509-SRB, unless otherwise noted. Portions of the Court’s findings of fact have been adopted from Plaintiffs’ and Defendants’ respective Proposed Findings of Fact and Conclusions of Law, without separate citation. (See Doc. 673, Pls.’ Proposed Findings of Fact; Doc. 674, Pls.’ Proposed Conclusions of Law; Doc. 676, Defs.’ Proposed Findings of Fact and Conclusions of Law.) Citations to exhibits or documents refer to each exhibit’s numbering system unless otherwise indicated. Citations to the trial transcript are denoted by “Tr.”

1 **A. Arizona Election Law Background**

2 To be qualified to vote in Arizona, a person must be a United States citizen, a
3 resident of Arizona, and at least eighteen years of age. Ariz. Const. art. VII, § 2.

4 **1. Voter Demographics**

5 As of the 2020 Census, Arizona had a total population of 7,151,502. (Doc. 672,
6 Plaintiffs’ Revised Request for Judicial Notice (“Pls.’ Judicial Notice”) ¶ 1.)² The Census
7 Bureau estimates that as of 2022, Arizona’s population was 52.9% non-Hispanic White,
8 32.5% Hispanic or Latino, 5.5% Black or African American, 5.2% American Indian and
9 Alaska Native, 3.9% Asian, and 0.3% Native Hawaiian and Other Pacific Islander. (*Id.* ¶
10 20; Doc. 672-2, Ex. 20, at ECF-218.) The Census Bureau’s 2017 to 2021 American
11 Community Survey estimates that Arizona’s U.S. citizen voting-age population is
12 5,000,102. (Pls.’ Judicial Notice ¶ 3.) Approximately 436,816 of these individuals are
13 naturalized U.S. citizens. (*Id.* ¶ 5.) There are approximately 1.2 million voting-age Latino
14 (Hispanic) citizens, 17.5% of whom are naturalized citizens. (*Id.* ¶ 31; *see* Doc. 672-4, Ex.
15 31, at ECF-9, -19.) There are approximately 136,607 voting-age Asian-American, Native
16 Hawaiian, and Pacific Islander (“AANHPI”) citizens, 61.5% of whom are naturalized
17 citizens. (*See* Doc. 672-1, Ex. 6, at ECF-37; Doc. 672-1, Ex. 7, at ECF-42.)

18 As of July 2023, there were 4,198,726 registered voters in Arizona. (Doc. 571-1,
19 Pls.’ Stipulated Facts (“Pls.’ Stip.”) No. 26.) This includes 19,439 active voters who have
20 not provided documentary proof of citizenship (“DPOC”) and are registered only for
21 federal elections (“Federal-Only Voters”). (Ex. 336.) The remaining are “Full-Ballot
22 Voters” who may vote in Arizona’s State and federal elections. Non-Hispanic White
23 citizens are more likely to be registered to vote than Hispanic citizens or citizens of color.³
24 (*See* Doc. 672-1, Ex. 8, at ECF-44.) Arizona’s 19,439 Federal-Only Voters represent less

25 ² The Court takes notice of those facts cited from Plaintiffs’ Request for Judicial Notice, as
26 the Court finds that these facts are “not subject to reasonable dispute.” Fed. R. Evid. 201(b).
27 This includes data from the U.S. Census and the Census Bureau’s American Community
28 Survey (“ACS”). *See Evenwell v. Abbott*, 578 U.S. 54, 63–64 (2016) (referring to ACS data
to determine compliance with one-person, one-vote rule).

³ Specifically, the ACS estimates that 80.1% of non-Hispanic White citizens are registered
to vote, as compared to 79.2% of Black citizens, 70.2% of Asian citizens, and 66.8% of
Hispanic citizens. (*See* Doc. 672-1, Ex. 8, at ECF-44.)

1 than half a percent of all the State’s registered voters. Dr. Michael McDonald⁴ estimated
 2 that the racial composition of the Federal-Only Voters is 53.3% non-Hispanic White and
 3 46.7% minority individuals. (Ex. 338; *see* McDonald Tr. 1125:20–1129:22.) According to
 4 Dr. McDonald’s estimates, approximately one-third of a of non-Hispanic White voters are
 5 Federal-Only Voters, while a little more than two-thirds of a percent of minority voters are
 6 Federal-Only Voters.⁵

7 2. Proposition 200 and the LULAC Consent Decree

8 Arizona residents qualified to vote may register for elections using Arizona’s state-
 9 created registration form (“State Form”) or the form created by the United States Election
 10 Assistance Commission (“Federal Form”). *See Gonzales v. Arizona*, 677 F.3d 383, 395
 11 (9th Cir. 2012), *aff’d sub nom. Arizona v. Inter Tribal Council of Arizona, Inc.* (“ITCA”),
 12 570 U.S. 1 (2013); (*see generally* Ex. 27, (“State Form”); Ex. 28, (“Federal Form”).) Public
 13 assistance agencies in Arizona typically use the State Form to register individuals to vote.
 14 (Petty Tr. 89:9–15.)

15 In 2004, Arizona voters approved Proposition 200, which required individuals
 16 registering to vote to provide one of the following forms of “satisfactory evidence of
 17 citizenship,” also known as documentary proof of citizenship or “DPOC” (“DPOC
 18 Requirement”):

19 1. The number of the applicant’s driver license or nonoperating identification
 20 license issued after October 1, 1996 by the department of transportation or
 21 the equivalent governmental agency of another state within the United States
 22 if the agency indicates on the applicant’s driver license or nonoperating
 identification license that the person has provided satisfactory proof of
 United States citizenship.

23 ⁴ Plaintiffs offered Dr. McDonald “as an [expert] on political science, voter registration,
 24 election registration and quantitative methodologies.” (McDonald Tr. 1067:9–12.) The
 Court found Dr. McDonald credible and affords his analysis considerable weight unless
 otherwise noted.

25 ⁵ Dr. McDonald applied geocoding and surname matching to estimate the percent of voters
 26 by ballot-type, race, and ethnicity. (McDonald Tr. 1125:20–1129:22.) Using these
 27 estimates, minority voters comprise 28.8% of Arizona’s active registered voters, or
 1,199,610 voters. (*See* Ex. 338 (minority active registered voter population (0.231 + 0.017
 28 + 0.018 + 0.022) multiplied by 4,165,313 voters.) Minority voters comprise 46.7% of
 Federal-Only Voters, or 9,078 voters. (*Id.* (minority Federal-Only Voter population (0.378
 + 0.052 + 0.012 + 0.025) multiplied by 19,439 voters.) Only 0.76% of all minority voters
 in Arizona are registered as federal-only (9,078/1,199,610). And 0.35% of White voters
 are registered as federal-only. (*Id.* ((19,439 x 0.533) / (4,165,313 x 0.712)).)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 2. A legible photocopy of the applicant’s birth certificate that verifies citizenship to the satisfaction of the county recorder.
- 3. A legible photocopy of pertinent pages of the applicant’s United States passport identifying the applicant and the applicant’s passport number or presentation to the county recorder of the applicant’s United States passport.
- 4. A presentation to the county recorder of the applicant’s United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States immigration and naturalization service by the county recorder.
- 5. Other documents or methods of proof that are established pursuant to the immigration reform and control act of 1986.
- 6. The applicant’s bureau of Indian affairs card number, tribal treaty card number or tribal enrollment number.

Ariz. Rev. Stat. § 16-166(F). County recorders must document that a voter has submitted DPOC in the voter’s “permanent voter file” and store the voter’s DPOC for at least two years. § 16-166(J). In 2013, the United States Supreme Court held that the National Voter Registration Act (“NVRA”) preempted the DPOC Requirement as applied to persons registering to vote with the Federal Form, requiring Arizona to register Federal Form users without DPOC as Federal-Only Voters. *ITCA*, 570 U.S. at 20. The Supreme Court confirmed, however, that Arizona’s State Form “may require information the Federal Form does not” and may “be used to register voters in both state and federal elections.” *Id.* at 12.

Following *ITCA*, Arizona continued to reject State Forms that were not accompanied by DPOC. In 2018, the Arizona Secretary of State entered into a consent decree that requires Arizona to treat Federal Form and State Form users the same when registering applicants⁶ for federal elections (“LULAC Consent Decree”). (Ex. 24, (“LULAC Consent Decree”).)⁷ Specifically, the LULAC Consent Decree mandates that for *any* applicant who does not provide DPOC, Arizona must review the motor vehicle

⁶ The Voting Laws at issue in this case refer to individuals registering to vote as “applicants,” but the Court will use the term “applicant” and “registrant” interchangeably.
⁷ The LULAC Consent Decree was the result of a lawsuit initiated by the League of United Latin American Citizens of Arizona (“LULAC”), alleging that county recorders were not registering State Form applicants who omitted DPOC for any elections. (See LULAC Consent Decree at 1–2.)

1 division (“MVD”) database to check for citizenship documentation. (*Id.* at PX 024-8 to -
 2 10, -13 to -14.) Arizona must then register an applicant as a Full-Ballot Voter if MVD
 3 records show the applicant has provided DPOC, or as a Federal-Only Voter if MVD records
 4 show no DPOC or “foreign-type” Arizona credential on file, regardless of whether the
 5 applicant used the State Form or Federal Form. (*Id.*)

6 3. H.B. 2492

7 Under House Bill 2492 § 4 and § 5, “[a] person is presumed to be properly registered
 8 to vote” only if she, among other things, provides documentary “proof of location of
 9 residence” (“DPOR Requirement”), lists her “place of birth” (“Birthplace Requirement”),
 10 and marks “yes” in the checkbox confirming United States citizenship (“Checkbox
 11 Requirement”).⁸ H.B. 2492 §§ 4–5, 55th Leg., 2d Reg. Sess. (Ariz. 2022); A.R.S. § 16-
 12 121.01(A); *see* A.R.S. § 16-123; (*see generally* Ex. 1, (“H.B. 2492 Text”).) If an applicant
 13 fails to include all the information necessary to be presumed properly registered to vote,
 14 “the county recorder shall notify the applicant within ten business days of receipt of the
 15 registration form” and inform the applicant that her registration cannot be completed until
 16 the applicant supplies the missing information.⁹ A.R.S. § 16-134(B), *see* § 16-121.01(A).

17 A person seeking to register as a Full-Ballot Voter must also satisfy the DPOC
 18 Requirement by providing one of the forms of DPOC enumerated in § 16-166(F).¹⁰ § 16-
 19 121.01(C); (LULAC Consent Decree at PX 024-8 to -9, -13.) For applicants who use the
 20 Federal Form and do not provide DPOC, H.B. 2492 § 4 requires that county recorders “use
 21 all available resources to verify the citizenship status of the applicant” before that applicant
 22 may be registered to vote (“Citizenship Verification Procedures”). § 16-121.01(D), (E).

23 ⁸ The Federal Form does not include a space for applicants to provide birthplace
 24 information. (*See generally* Federal Form.)

25 ⁹ The Court previously ruled that section 6 of the NVRA pre-empted H.B. 2492’s
 26 requirement that Federal Form users provide DPOR to be registered for federal elections.
 (Doc. 534, 09/14/2023 Order at 9; *see* H.B. 2492 Text.) The Court did not decide Plaintiffs’
 27 claims regarding whether Arizona may reject State Forms that lack DPOR.

28 ¹⁰ The Court previously ruled that Arizona must register any qualified voter who does not
 complete the Checkbox Requirement but instead satisfies the DPOC Requirement.
 (09/14/2023 Order at 34.) The Court also found that Arizona must abide by the LULAC
 Consent Decree and may not reject State Forms not accompanied by DPOC if the registrant
 is otherwise found qualified to vote. (*Id.*; *see* H.B. 2492 Text at PX 001-4 to -5 (requiring
 county recorder to reject any State Form not accompanied by DPOC).)

1 Specifically:

2 [A]t a minimum [the county recorder] shall compare the information
3 available on the application for registration with the following, *provided the*
4 *county has access*:

- 5 1. The department of transportation databases of Arizona driver licenses or
6 nonoperating identification licenses [(“MVD database”)].
- 7 2. The social security administration [(“SSA”)] databases.
- 8 3. The United States citizenship and immigration services systematic alien
9 verification for entitlements [(“SAVE”)] program, if practicable.
- 10 4. A national association for public health statistics and information systems
11 electronic verification of vital events system [(“NAPHSIS”)].
- 12 5. Any other state, city, town, county or federal database and any other
13 database relating to voter registration to which the county recorder . . .
14 has access, including an electronic registration information center
15 database.

16 § 16-121.01(D) (emphasis added).¹¹

17 H.B. 2492 § 4 mandates different outcomes from these database searches. A county
18 recorder “shall” register as Full-Ballot Voters those registrants who the county recorder
19 verifies are United States citizens and qualified to vote. § 16-121.01(E). But if the county
20 recorder “matches the applicant with information that the applicant is not a United States
21 citizen, the county recorder . . . shall reject the application, notify the applicant that the
22 application was rejected because the applicant is not a United States citizen and forward
23 the application to the county attorney and attorney general for investigation.”¹² *Id.* H.B.
24 2492 does not require county recorders to provide an applicant with an opportunity to
25 submit DPOC before rejecting the applicant’s registration and forwarding the registration
26 for investigation. *See id.*

27 H.B. 2492 § 7 directs county recorders to “make available to the attorney general a

28 ¹¹ As further discussed *infra* Section I(B)(1), the MVD database contains information on
all Arizonans who possess an Arizona driver’s license or identification. The SSA database
contains individuals’ social security numbers. The SAVE program is a federal system used
to retrieve immigration-related information to determine an immigrant’s eligibility for state
and federal benefits. NAPHSIS is a nonprofit organization that collects vital records,
including birth certificates.

¹² H.B. 2492 also requires Federal Form applicants to provide DPOC to vote in presidential
elections or by mail if the county recorder was unable to verify the registrant’s citizenship
status. § 16-121.01(E). The Court ruled that section 6 of the NVRA preempts H.B. 2492’s
DPOC Requirement for voting in presidential elections or by mail. (09/14/2023 Order at
33; *see also* H.B. 2492 Text at PX 001-6 to -7.)

1 list of all individuals who are registered to vote and who have not provided [DPOC],”¹³ as
2 well as the registrations forms of these voters by October 31, 2022. A.R.S. § 16-143(A).
3 The Attorney General must then use “all available resources to verify the citizenship” of
4 these individuals and “at a minimum” consult the same databases listed in § 16-121.01(D)
5 (collectively, “Attorney General Referral Provision”). § 16-143(B). As of trial, neither the
6 Secretary of State nor any county recorders had furnished these lists or registration forms
7 to the Attorney General. (*See* Petty Tr. 113:20–114:1; Knuth Tr. 2122:7–8.) And without
8 these lists or forms, the Attorney General has not investigated the citizenship status of any
9 registered voters pursuant to the Voting Laws. (*See* Knuth Tr. 2124:4–6; Ex. 285.) H.B.
10 2492 § 7 also directs the Attorney General to “prosecute individuals who are found to not
11 be United States citizens pursuant to § 16-182.” § 16-143(D); *see also* A.R.S. § 16-182(A)
12 (stating that a person who “knowingly” registers himself or another person “knowing” that
13 the registrant is not eligible to vote is guilty of a class 6 felony).

14 4. H.B. 2243

15 House Bill 2243 expanded upon or superseded H.B. 2492 in certain respects. H.B.
16 2243, 55th Leg., 2d Reg. Sess. (Ariz. 2022); (*see generally* Ex. 2, (“H.B. 2243 Text”).)
17 Specifically, election officials must regularly consult state and federal databases to identify
18 potential non-citizens (collectively, “List Maintenance Procedures”). For example, the
19 Secretary of State must compare the Arizona Voter Registration Database to the MVD
20 database each month and notify county recorders of voters who have moved residences or
21 are not citizens. § 16-165(G). County recorders must also, “[t]o the extent practicable,”
22 conduct monthly SAVE checks on registered voters “who the county recorder has reason
23 to believe are not United States citizens” (“Reason to Believe Provision”) and on voters
24 “who are registered to vote without [DPOC].” § 16-165(I). County recorders must conduct
25 similar checks with the SSA database and NAPHSIS database. § 16-165(H), (J). Under
26 H.B. 2243 § 2’s “Cancellation Provision,” a county recorder must then cancel a voter
27 registration:

28 ¹³ Voters who registered before the effective date of Proposition 200 are “deemed to have provided” DPOC. *See* § 16-166(G).

1 When the county recorder obtains information pursuant to this section and
2 confirms that the person registered is not a United States citizen, including
3 when the county recorder receives a summary report from the jury
4 commissioner or jury manager pursuant to § 21-314 indicating that a person
5 who is registered to vote has stated that the person is not a United States
6 citizen. Before the county recorder cancels a registration pursuant to this
7 paragraph, the county recorder shall send the person notice by forwardable
8 mail that the person’s registration will be canceled in thirty-five days unless
9 the person provides satisfactory evidence of United States citizenship
10 pursuant to § 16-166. The notice shall include a list of documents the person
11 may provide and a postage prepaid preaddressed return envelope. If the
12 person registered does not provide satisfactory evidence within thirty-five
13 days, the county recorder shall cancel the registration and notify the county
14 attorney and attorney general for possible investigation.

9 A.R.S. § 16-165(A)(10). H.B. 2243 § 2 directs county recorders to consult “relevant city,
10 town, county, state and federal databases to which the county recorder has access to
11 confirm information obtained that requires cancellation of registrations pursuant to this
12 section.” § 16-165(K).

13 **5. Sources of Arizona Election Law Guidance**

14 The Elections Procedures Manual (“EPM”) is a set of election rules prescribed by
15 the Arizona Secretary of State and approved by the Governor and Attorney General every
16 two years. *See* A.R.S. § 16-452. The EPM is binding on county recorders and “ensure[s]
17 election practices are consistent and efficient throughout Arizona.” *McKenna v. Soto*, 481
18 P.3d 695, 699–700 ¶¶ 20–21 (Ariz. 2021). The EPM serves a “gap-filling function” to
19 address election matters not specifically addressed by statute. (Petty Tr. 25:3–5.) The
20 current operative EPM was approved by the Arizona Secretary of State, Governor, and
21 Attorney General on December 30, 2023 (“2023 EPM”). (Doc. 699, (“2023 EPM”).)
22 Colleen Connor is Arizona’s Elections Director and oversees the elections division of the
23 Secretary of State’s office. (Connor Tr. 305:15–19, 307:9–13.) Ms. Connor guides the
24 development of the EPM. (*Id.* 307:14–25.)

25 The Voter Registration Advisory Committee (“VRAC”) consists of Arizona’s 15
26 county recorders and the Secretary of State’s office. (Petty Tr. 26:8–12.) The VRAC
27 addresses voter registration matters not addressed by statute or the EPM. (*Id.* 26:13–18.)
28 Specifically, the VRAC may unanimously approve “VRAC papers,” which act as non-

1 binding guidance to maintain uniform election administration practices. (*Id.* 27:11–28:2.)
2 The VRAC has not yet approved any VRAC papers to guide county recorders on the
3 implementation of the Voting Laws.

4 The Court will consider the Voting Laws in the context of the 2023 EPM. Though
5 the parties’ arguments at trial relied on the 2019 version of the EPM, the Court finds it
6 appropriate to consider the Voting Laws based on the current and binding 2023 EPM.
7 (*Compare* 2023 EPM, with Ex. 6, (“2019 EPM”).)

8 **B. Voter Registration and List Maintenance Procedures**

9 The Arizona Voter Registration Database (“AVID”) is Arizona’s state-wide voter
10 registration and election management database. (Connor Tr. 333:5–9.) Thirteen counties
11 use AVID directly for voter registration, while Maricopa County and Pima County each
12 operate their own voter registration databases that sync with AVID. (*Id.* 333:15–25.)
13 Maricopa County’s system is referred to as “VRAS” and Pima County’s system is “Voter.”
14 (Petty Tr. 28:7–13; Hiser Tr. 2021:8–14.) The following describes the Voting Laws’ impact
15 on Arizona’s existing voter registration and list maintenance procedures.

16 **1. Databases Referenced in the Voting Laws**

17 Before the Voting Laws, Arizona retrieved information from MVD and SAVE to
18 verify the citizenship status of voters, in addition to receiving reports of non-citizenship
19 from juror questionnaires. (*See* 2019 EPM at PX 006-20 to -25, -50 to -51; LULAC
20 Consent Decree at PX 024-8 to -10, -13.) H.B. 2492 and H.B. 2243 supplement these
21 databases with SSA and NAPHSIS checks. §§ 16-121.01(D), 16-165(G)–(J). According to
22 Ms. Petty, county recorders currently do not have access to NAPHSIS or the SSA database.
23 (Petty Tr. 38:16–39:1, 68:19–69:16.) Ms. Petty also testified that the Secretary of State has
24 not offered county recorders any guidance on what criteria to use to match voters to the
25 databases required by the Voting Laws, nor how to address situations where multiple
26 databases return conflicting citizenship information. (*Id.* 79:18–80:10.) The Court
27 addresses the utility and reliability of each database in turn.

28

1 **i. MVD Database**

2 MVD issues two types of “credentials”: Arizona driver licenses and Arizona
3 identification cards. United States citizens and non-citizens may obtain an MVD credential,
4 so long as an individual can show proof of “authorized presence” in the United States.
5 (Doc. 679-1, Ex. 2, 30(b)(6) Dep. of ADOT (“ADOT Dep.”) 27:21–25, 30:18–31:8.) MVD
6 categorizes credentials as either non-foreign or foreign based on an individual’s authorized
7 presence status, as stated in the authorized presence documentation. (Pls.’ Stip. No. 88; Ex.
8 231, (“MVD Credential Documents List”) at PX 231-4 (listing forms of documentation).)
9 MVD issues non-foreign credentials to U.S. citizens, including naturalized citizens, and
10 foreign-type credentials to non-citizens. A naturalized citizen seeking to obtain a non-
11 foreign credential must show an official copy of their naturalization certificate. (MVD
12 Credential Documents List at PX 231-3; ADOT Dep. 72:25–73:10.)

13 An “original credential” is the first issuance of a specific MVD credential, while a
14 “duplicate credential” is a new version of an existing credential. (Pls.’ Stip. No. 84;
15 Jorgensen Tr. 555:22–556:4.) Credentials may be REAL ID-compliant or non-REAL ID.
16 (Jorgensen Tr. 543:1–21 (explaining REAL ID), 553:17–22, 554:16–20 (explaining a non-
17 travel ID or “non-TID” is a non-REAL ID); MVD Credential Documents List at PX 231-
18 2 (listing requirements to obtain a travel ID or non-travel ID).) REAL IDs expire after eight
19 years, whereas non-REAL IDs may not expire for more than ten years. (ADOT Dep. 60:21–
20 61:6.) In addition, a foreign-type credential expires based on the individual’s provided
21 foreign authorized presence documentation. (*Id.* 62:24–63:3; Ex. 233 at PX 233-1; Ex. 434,
22 at PX 434-3.) For example, if a non-citizen submits a permanent resident card that is valid
23 for five more years to show authorized presence, that individual will receive a foreign-type
24 credential that expires when the permanent resident card expires. (*See, e.g.*, ADOT Dep.
25 63:4–14.)

26 Naturalized citizens are not required to update authorized presence status with MVD
27 when they become a citizen, meaning some citizens may still possess an unexpired foreign-
28 type credential. (Pls.’ Stip. No. 93; Jorgensen Tr. 560:2–14.) An individual with a non-

1 REAL ID, foreign-type credential is also not required to provide proof of authorized
2 presence when they renew that credential or obtain a duplicate credential after a change to
3 the individual's address, name change after marriage, or losing the credential. (Jorgensen
4 Tr. 544:2–18, 545:17–546:1, 556:5–24, 558:1–12, 559:17–560:1.) In these circumstances,
5 MVD may possess outdated authorized presence information for naturalized citizens with
6 a foreign-type credential. Dr. McDonald determined that 6,048 Full-Ballot Voters who
7 provided DPOC have a foreign-type credential and would be identified as non-citizens in
8 the MVD database. (McDonald Tr. 1088:16–1089:5.) In addition, Dr. Jesse Richman¹⁴
9 found that MVD records indicate that 65 Federal-Only Voters possess a foreign-type
10 credential, with 31 of these voters receiving the credential at the same time or after
11 registering to vote. (Richman Tr. 1927:11–15; Ex. 930, (“MVD Non-Citizen Records”).)
12 There are also 112 Federal-Only Voters that MVD records indicate are citizens. (Richman
13 Tr. 1915:24–1916:5.)

14 ADOT reports an overall internal record error rate of approximately 10 to 15%.
15 (Jorgensen Tr. 548:12–21; Pls.’ Stip. No. 115.) But an MVD representative “would have
16 to make multiple errors” to mistakenly enter a credential applicant’s incorrect citizenship
17 status into the MVD database. (Jorgensen Tr. 584:14–585:1.) While AVID has on at least
18 one occasion experienced system error when retrieving citizenship information from
19 MVD, the parties’ experts nevertheless agree that Arizona’s MVD data is generally
20 reliable. (McDonald Tr. 1189:24–1190:1; Richman Tr. 1907:2–16; *see* Hiser Tr. 2025:3–
21 2027:13; Exs. 207, 220, 226 (explaining AVID mistakenly identified hundreds of voters as
22 lacking DPOC).) The Court finds that while MVD may possess outdated citizenship
23 information on some Arizonans, MVD typically obtains and maintains accurate
24 information on each Arizona credential-holder.

25 **ii. SAVE**

26 The U.S. Citizenship and Immigration Services (“USCIS”) administers the SAVE

27 ¹⁴ Dr. Richman is a professor of political science and international studies with a focus on
28 American politics and elections in addition to research methodology, modeling, and
simulation. (Richman Tr. 1903:1–8.) The Court found Dr. Richman’s testimony credible
and affords his opinions considerable weight.

1 system, which is used to retrieve immigration and citizenship data from different
2 Department of Homeland Security agencies. (Pls.’ Stip. Nos. 116–17; Doc. 679-3, Ex. 19,
3 30(b)(6) Dep. of USCIS (“USCIS Dep.”) 25:1–16, 38:12–13.) Arizona’s county recorders
4 and the Secretary of State access SAVE pursuant to a memorandum of agreement between
5 the Secretary of State and USCIS (“SAVE MOA”). (Ex. 266, (“SAVE MOA”) at PX 266-
6 2.) The SAVE MOA permits county recorders to verify citizenship information of
7 naturalized and derived U.S. citizens¹⁵ only “when they register to vote.” (*Id.*) Arizona
8 currently may not use SAVE for any other purpose. (*Id.* at PX 266-4.) At least one state
9 uses SAVE for “voter list maintenance.” (USCIS Dep. 170:15–171:20.) The SAVE system
10 can only verify the citizenship status of naturalized or derived U.S. citizens by searching
11 the individual’s immigration number¹⁶ and contains no information on native-born citizens.
12 (*Id.* 27:22, 28:8–11; Pls.’ Stip. Nos. 121–122, 131.) Naturalized citizens rarely include their
13 immigration numbers on the State Form, and the Federal Form does not include a space for
14 registrants to provide this information. (Petty Tr. 57:15–58:1; *see generally* Federal Form.)

15 USCIS considers SAVE to be generally reliable, but recognizes that data integrity
16 issues can arise, including data entry errors. (USCIS Dep. 37:19–25, 112:5–12, 114:5–16,
17 209:12–23.) While one or two-day delays are possible, SAVE can typically return updated
18 naturalization records within 24 hours of an individual’s naturalization. (*Id.* at 37:19–25,
19 39:20–41:4; *see* 2023 EPM at ECF-25 (cautioning county recorders to be aware of possible
20 delays in SAVE when registering voters close to an election).) USCIS also explained that
21 SAVE may not immediately return updated naturalization records if an individual is
22 naturalized prior to a weekend or a federal holiday. (USCIS Dep. 41:1–19.) Unlike with
23 MVD, which could possess outdated information about naturalized citizens years after
24 naturalization, the Court finds that Plaintiffs have failed to adduce evidence that SAVE is
25 unreliable or contains severely inaccurate or outdated citizenship information. And to the

26 ¹⁵ A derived citizen is an individual born abroad who derives U.S. citizenship at birth from
27 a U.S. parent or automatically acquires U.S. citizenship as a minor under specific
28 provisions of U.S. naturalization law. (Ex. 274, at PX 274-I n.1.)

¹⁶ An immigration number is a numeric identifier from a government-issued immigration
document and includes an Alien Number, Certificate of Naturalization Number, or
Certificate of Citizenship Number. (Ex. 271, (“SAVE Guide”) at PX 271-13.)

1 extent that SAVE does occasionally contain temporarily outdated citizenship information
 2 following an individual’s naturalization, the 2023 EPM adequately informs county
 3 recorders of how to address these circumstances.

4 **iii. SSA**

5 Arizona’s county recorders check SSA records to “confirm[] the registrant’s identity
 6 and help[] ensure integrity of registration rolls.” (2023 EPM at ECF-40; Petty Tr. 37:22–
 7 38:15.) County recorders may access the SSA database by conducting a “HAVA Check”¹⁷
 8 through MVD but lack direct access to SSA records. (Petty Tr. 38:16–39:1.) According to
 9 reports in the 2000s, the error rate for data in the SSA database is approximately six percent.
 10 (McDonald Tr. 1093:6–8.) The SSA database returns “soft” record matches based on the
 11 last four digits of a social security number, meaning a SSA check could return multiple
 12 matches. (*Id.* 1092:16–1093:5.)

13 Approximately one quarter of SSA records lack citizenship information. (McDonald
 14 Tr. 1091:10–13.) An individual who was issued a social security number before obtaining
 15 U.S. citizenship has no duty to update her citizenship information with the Social Security
 16 Administration. (Pls.’ Stip. No. 150.) Setting aside these data issues, the Court finds that it
 17 is impracticable for county recorders to obtain citizenship information from the SSA
 18 database pursuant to the Voting Laws’ Citizenship Verification or List Maintenance
 19 Procedures, as the federal government does not allow access to this information. (Petty Tr.
 20 66:19–67:5; McDonald Tr. 1090:13–1091:6.) And Plaintiffs offered no evidence
 21 suggesting that Arizona could eventually access additional SSA information for these
 22 purposes.

23 **iv. NAPHSIS**

24 NAPHSIS is a national nonprofit organization that compiles vital records, including
 25 birth certificates, for individuals born in the United States. (McDonald Tr. 1099:16–25,
 26 1100:21–1101:4.) NAPHSIS does not provide information about individuals born outside

27
 28 ¹⁷ The Help America Vote Act (“HAVA”) requires first-time voters to prove identity before
 voting in federal elections if the voter registered by mail or through a third-party
 registration drive. *See* 52 U.S.C. § 21083(b)(1)–(3).

1 of the United States. (Richman Tr. 1941:11–21 (explaining this is a “key limitation[]” to
2 NAPHSIS).) Arizona’s county recorders currently do not have access to NAPHSIS, nor
3 are county recorders familiar with the database. (*See, e.g.*, Petty Tr. 68:19–70:16.) But the
4 evidence indicates Arizona could request access to the NAPHSIS database with relative
5 ease. (McDonald Tr. 1101:2–4; Richman Tr. 1934:1–14.) And according to Dr. Richman,
6 the U.S. Election Systems Commission recommends that states use NAPHSIS for election
7 administration. (Richman Tr. 1914:15–1915:2.) Plaintiffs did not adduce evidence
8 establishing that NAPHSIS is unreliable for the purpose of determining the citizenship
9 status of native-born citizens.

10 v. Jury Summary Reports

11 H.B. 2243 requires Arizona’s jury administrators to provide county recorders and
12 the Secretary of State with jury summary reports that contain the prospective jurors who
13 stated that they were not a U.S. citizen or resident of that county. *See* A.R.S. § 16-314(F).
14 Matthew Martin, the Jury Administrator for the Maricopa County Judicial Branch,
15 described Maricopa County’s juror selection procedures. (Ex. 970, (“Martin Decl.”) ¶ 2.)
16 Specifically, the jury office maintains a master list of potential jurors that includes names
17 from VRAS and MVD records. (*Id.* ¶¶ 6–9.) The jury office receives the full name, address,
18 and birthdate of the individuals on each list but does not obtain citizenship information.
19 (*Id.* ¶¶ 7–8.) Because non-citizens may obtain a foreign-type credential, the master list
20 includes non-citizens from the MVD database. The jury office randomly selects individuals
21 from the master list to issue summonses for jury duty. (*Id.* ¶ 9.) After receiving a jury
22 summons, a prospective juror can inform the jury office that she is a non-citizen by
23 submitting an online pre-screen questionnaire, or by submitting a written statement directly
24 to the jury office. (*Id.* ¶¶ 12–16.)

25 The jury summary reports may contain only as much information as is necessary for
26 county recorders to identify the prospective juror in the voter registration database. A.R.S.
27 § 21-314(F); (*see* 2023 EPM at ECF-57 (requiring county recorders to match the individual
28 to a registered voter to “confirm” non-citizenship).) Plaintiffs presented no evidence

1 indicating that the jury summary reports would erroneously report jurors' self-attestation
2 of non-citizenship. (*See* Connor Tr. 393:7–394:16.) Moreover, county recorders have
3 historically received reports of non-citizenship from juror questionnaires without issue.
4 (Petty Tr. 104:17–105:11; *see* 2019 EPM at PX 006-50 to -51 (describing past use of jury
5 questionnaires).)

6 H.B. 2243 also mandates the Secretary of State to inform the Legislature each
7 quarter of the number of individuals who stated on a juror questionnaire that the individual
8 is not a United States citizen. § 16-165(M)(3). In the first half of 2023, 1,324 individuals
9 reported that they were not U.S. citizens. (Ex. 805, at AZSOS-563798; Ex. 806, at AZSOS-
10 563800.) The State does not know how many of these individuals are registered to vote,
11 nor how many misrepresented their citizenship status to avoid jury duty. (*See* Connor Tr.
12 393:7–22 (recalling 11 prosecutions where persons falsely stated they were non-citizens
13 on a juror questionnaire); Hiser Tr. 2004:4–2005:1 (recalling instances where registered
14 voters declared themselves as non-citizens on juror questionnaires to avoid jury duty).)
15 And in counties like Maricopa that collect prospective juror information from MVD to
16 include lawfully present non-citizens, these quarterly reports do not correlate to the
17 incidence of non-citizens registered to vote.

18 2. HAVA Checks

19 Election officials conduct a HAVA Check each time an individual submits a new
20 voter registration or updates an existing voter registration. (*See* Morales Tr. 611:16–19,
21 614:17–615:14; *see* 2023 EPM at ECF-42.) A HAVA Check compares the applicant's
22 voter registration in AVID to the information available in the MVD database to validate
23 the applicant's identity and check for DPOC. (Morales Tr. 614:17–615:6, 615:11–14; Petty
24 Tr. 33:15–34:4.) When a voter registration is entered into AVID, the database will first
25 compare the registration to existing records to identify duplicate registrations.¹⁸ (2023 EPM

26
27 ¹⁸ When the Maricopa County Recorder's office receives a physical voter registration form,
28 the county recorder manually enters the registrant's information into VRAS, which first
checks for existing records in VRAS before automatically comparing the registrant's
information to AVID. (Petty Tr. 30:8–15, 31:11–32:9; *see also* Pima Dep. 21:11–17,
63:12–64:14, 66:16–67:6 (describing some of the process of using Voter).)

1 at ECF-40.) Then, to conduct the HAVA Check, AVID submits a request to ADOT to
2 return any MVD records that match the information provided on the voter registration.
3 (Pls.’ Stip. Nos. 100, 102–104.) AVID uses matching criteria to return either a “hard”
4 match, “soft” match, or no match with MVD records. These matching criteria include an
5 applicant’s last name, first three characters of first name, last four digits of a social security
6 number (“SSN4”), date of birth, and MVD credential number. (Ex. 935, (“MVD
7 Verification Criteria”).)

8 A HAVA Check returns a “soft” match in four scenarios: when AVID and MVD
9 records match the registrant’s (1) last name, first three characters of first name, and SSN4;
10 (2) last name, first three characters of first name, and date of birth; (3) first name, date of
11 birth, and SSN4; or (4) MVD credential number. (*Id.* at AZSOS-564548; *see* McDonald
12 Tr. 1082:9–1083:1.) A soft match may return up to 50 MVD records, after which county
13 recorders exercise “some level of discretion” to determine which MVD record matches the
14 voter registration. (Petty Tr. 36:5–37:11; Morales Tr. 611:1–4, 611:20–612:10; Jorgensen
15 Tr. 563:5–7.) The HAVA Check returns a “hard” match when a combination of at least
16 four of these datapoints return an exact match between AVID and the MVD database.
17 (MVD Verification Criteria at AZSOS-564548.) AVID will “acquire” a missing MVD
18 credential number upon a match with MVD records. (2023 EPM at ECF-40.) The HAVA
19 Check will return no match if the applicant does not possess an unexpired Arizona
20 credential. (Petty Tr. 34:11–35:12.) In that case, the HAVA Check will compare the
21 registrant’s information with the SSA database to verify the individual’s identity. (*Id.*
22 37:22–38:5; Ex. 594; 2023 EPM at ECF-40, -42.)

23 3. Verifying a Voter Registrant’s Citizenship Status

24 County recorders use MVD and SAVE to verify the citizenship of Arizonans who
25 provide an Arizona credential number or immigration number when registering to vote.
26 Applicants who do not provide an Arizona credential number, immigration number, or
27 tribal identification number must provide a physical copy of another form of DPOC to
28 register as a Full-Ballot Voter. *See generally* § 16-166(F). County recorders must retain

1 copies of a voter's DPOC for two years. (2023 EPM at ECF-26; *see* Petty Tr. 56:4–8.)

2 **i. MVD Records**

3 County recorders also use the HAVA Check to verify the citizenship of applicants
4 who provide an Arizona MVD credential number as DPOC. (2023 EPM at ECF-40;
5 Morales Tr. 611:16–19.) AVID contains a “citizenship verified” field, which identifies
6 whether a voter is a U.S. citizen. (*See* Morales Tr. 613:15–24.) If a HAVA Check returns
7 a match from MVD, the county recorder will obtain a voter's citizenship status as it exists
8 in the MVD records at the time of the check. (*Id.* 612:23–613:3; Petty Tr. 36:15–22; Doc.
9 622-1, Ex. A, (“County Recorder Testimony Stip.”) No. 5.) An individual's citizenship
10 status is automatically transmitted from MVD and into AVID's “citizenship verified” field.
11 (Morales Tr. 613:15–19; Petty Tr. 39:7–14.) If AVID returns a match with MVD records
12 that indicate U.S. citizenship, AVID will code that voter's citizenship as verified and the
13 county recorder will register the individual as a Full-Ballot Voter. (Morales Tr. 613:20–24,
14 617:2–7; Petty Tr. 41:7–11.)

15 If the HAVA Check matches the applicant with MVD records indicating that the
16 applicant has a foreign-type credential, AVID will automatically mark the “no” box under
17 the “citizenship verified” field. (Morales Tr. 613:25–614:3.) County recorders must then
18 manually override the citizenship field for voters who provide a different form of DPOC.
19 (*Id.* 613:25–614:3, 616:2–14; *see* Hiser Tr. 2019:24–2020:25 (explaining that separate
20 DPOC “is the controlling factor” to determine citizenship when a citizen has a foreign-type
21 credential).) The parties adduced no evidence of the rate at which county recorders
22 erroneously override or fail to override the citizenship field for registrants with a foreign-
23 type credential. For registrants with a foreign-type credential who *do not* provide a different
24 form of DPOC, the 2023 EPM directs county recorders to indicate in the applicant's
25 registration file that the registrant is “not eligible” due to “invalid citizenship proof,” and
26 notify the registrant that she must provide DPOC in order to be eligible to vote. (2023 EPM
27 at ECF-22; *see* Petty Tr. 41:16–42:19 (explaining that a registration may be put in
28

1 “suspense” status for lack of DPOC).¹⁹ Arizona’s State Form requests individuals who
 2 become a citizen after receiving a foreign-type credential to provide a different form of
 3 DPOC, such as the individual’s immigration number. (State Form at PX 027-3.) If the
 4 HAVA Check returns no match with MVD records and the applicant provides no other
 5 DPOC, the county recorder must register the individual as a Federal-Only Voter. (2023
 6 EPM at ECF-21; Morales 617:8–13.) County recorders send these voters notice of their
 7 federal-only status and explain that the voters must provide DPOC to register for a full
 8 ballot. (2023 EPM at ECF-22.)

9 **ii. SAVE Verification**

10 The 2023 EPM directs county recorders to use SAVE to verify citizenship
 11 information when an applicant provides an immigration number as DPOC, including a
 12 citizenship certificate number, naturalization certificate number, or alien registration
 13 number. (*Id.* at ECF-23 to -24; *see also* Morales Tr. 616:15–24.) When a county recorder
 14 searches the SAVE system, SAVE can return a match with citizenship verified, a match
 15 with citizenship not verified, or no match. (Petty Tr. 58:2–8.) SAVE cannot conclusively
 16 “confirm” non-citizenship. (USCIS Dep. 152:19–153:6.) A SAVE match with citizenship
 17 verified establishes that the applicant is a naturalized or derived U.S. citizen, after which a
 18 county recorder will register the applicant as a Full-Ballot Voter. (2023 EPM at ECF-24;
 19 Petty Tr. 58:17–59:13.) If SAVE returns a match with citizenship not verified, the applicant
 20 must provide DPOC to be registered to vote. (2023 EPM at ECF-24.) If SAVE returns no
 21 match, the applicant will be registered as a Federal-Only Voter. (*Id.* at ECF-24 to -25.) In
 22 a case of citizenship not verified or no match, the SAVE MOA obligates county recorders
 23 to initiate additional verification procedures with SAVE for these individuals unless
 24 Arizona “has alternative processes upon which to base its decision.” (SAVE MOA at PX
 25 266-4; SAVE Guide at PX 271-10.) Arizona’s county recorders do not typically initiate the
 26 additional verification procedures, but Plaintiffs adduced no evidence that county recorders

27 ¹⁹ A registration is in “suspense” when a county recorder determines that additional
 28 information is necessary to confirm that the applicant is qualified to vote in Arizona, such
 as by verifying citizenship or residency. (*See, e.g.*, Petty Tr. 42:9–15; McDonald Tr.
 1110:11–19.)

1 do not use “alternative processes” to confirm the eligibility of these registrants. (*See Ex.*
2 268 (county recorders initiating 154 additional verifications of the 2502 SAVE searches
3 requiring additional verification from 2020 to 2022).)

4 **iii. Verifying Citizenship without DPOC**

5 For applicants who do not provide any form of DPOC, county recorders must apply
6 H.B. 2492’s Citizenship Verification Procedures by consulting the MVD, SAVE, SSA, and
7 NAPHSIS databases to retrieve citizenship information. § 16-121.01(D). However,
8 because SAVE requires an immigration number, county recorders will be unable to search
9 SAVE to verify the citizenship of registrants who do not have or provide an immigration
10 number as DPOC in the first place. (*See Petty Tr.* 57:15–58:1 (testifying few naturalized
11 citizens provide an immigration number).) Nor can county recorders retrieve citizenship
12 information from the SSA database. In cases where county recorders are unable to conduct
13 the relevant database searches or if a county recorder’s investigation does not match an
14 applicant to information establishing citizenship or non-citizenship, the county recorder
15 must register that applicant as a Federal-Only Voter. § 16-121.01(E).

16 The Voting Laws require county recorders to forward registrations of applicants
17 matched to information of non-citizenship to the Attorney General, but the 2023 EPM has
18 interpreted this provision to first require county recorders to provide applicants with an
19 opportunity to provide DPOC. *See id.*; (2023 EPM at ECF-17.) Specifically, for applicants
20 who do not provide DPOC, “[i]f the database checks affirmatively show the applicant is a
21 non-citizen, the County Recorder must (1) not register the applicant, (2) notify the
22 applicant, and (3) *if the applicant does not timely provide DPOC in response*, forward the
23 application to the County Attorney and Attorney General.” (2023 EPM at ECF-27
24 (emphasis added); *see id.* at ECF-22 (describing similar process when a HAVA Check
25 indicates the applicant possesses a foreign-type credential).) Regardless of whether the
26 county recorder matches the applicant to evidence of non-citizenship in the MVD database
27 or SAVE, an applicant has until “the Thursday before the next regular election” to submit
28 DPOC and be registered to vote in that election. (*Id.* at ECF-22, -24.)

1 Taken together, Arizona’s voter registration procedures utilize reliable methods to
2 verify the citizenship status of registrants. For registrants who provide an Arizona
3 credential number or an immigration number, the MVD and SAVE checks will generally
4 return accurate citizenship information. The 2023 EPM also provides registrants who
5 county recorders match to affirmative information indicating non-citizenship with
6 sufficient time to provide DPOC to register to vote and avoid potential investigation by the
7 Attorney General. And registrants will be appropriately registered as Federal-Only Voters
8 when county recorders do not identify affirmative information establishing citizenship or
9 non-citizenship.

10 4. Birthplace Information

11 Arizona has long collected birthplace information from individuals registering to
12 vote. *See* 1913 A.R.S. § 2885. Since 1979, Arizona has required the State Form to include
13 a field for a registrant to include her “state or country of birth.” (*See* State Form at PX 027-
14 1); 1979 Ariz. Laws ch. 209, § 3 (adopting A.R.S. § 16-152 to mandate the inclusion of the
15 birthplace field on the State Form). But prior to the Voting Laws, an individual’s birthplace
16 was not *mandatory* for an individual to register to vote. *See, e.g.*, 1993 Ariz. Laws ch. 98,
17 § 10 (adopting § 16-121.01, which specifies the minimum information required to be
18 presumed properly registered to vote).

19 An individual’s place of birth is not dispositive of citizenship status, as individuals
20 born outside the U.S. may be derived or naturalized citizens. County recorders do not use
21 birthplace information to determine an applicant’s eligibility to vote, nor do county
22 recorders need birthplace to verify an applicant’s identity. (Connor Tr. 311:22–312:17;
23 Petty Tr. 100:21–101:9, 102:10–103:1 (explaining use in Maricopa County); Hiser Tr.
24 2055:18–2056:8 (Pima County).) Instead, the HAVA Check matches AVID and MVD
25 records to confirm a person’s identity for purposes of voter eligibility. (Petty Tr. 32:19–
26 33:14, 103:2–7; *see* MVD Verification Criteria at AZSOS-564548 (listing first and last
27 name, date of birth, Arizona credential number, and SSN4 as matching criteria for duplicate
28 records).) AVID also does not use birthplace as matching criteria to match duplicate

1 registrations in the MVD database. (*See* MVD Verification Criteria at AZSOS-564547.)
2 However, Ms. Petty and Ms. Hiser testified that a county recorder could use birthplace to
3 identify duplicate registrations in VRAS or Voter if an applicant has the same name and
4 other identifying information as an existing registered voter. (Petty Tr. 132:2–8; Hiser Tr.
5 2000:19–2002:23.)

6 County recorders may collect birthplace in some circumstances related to voter
7 registration.²⁰ Specifically, if a registrant submits a birth certificate as DPOC that lists a
8 different name than the registrant’s current legal name but cannot provide supporting
9 documentation verifying the different last name, the 2023 EPM instructs county recorders
10 to accept the birth certificate as DPOC if the registrant’s first and middle names, birthplace,
11 date of birth, and parents’ names match that on the voter registration. (2023 EPM at ECF-
12 19.) Maricopa County may also send notices requesting additional information to process
13 applicants’ registration forms. These notices request personal identifying information that
14 the county recorder can use to “uniquely identify” the applicant’s registration, including
15 the applicant’s birthplace, occupation, phone number, and father’s name or mother’s
16 maiden name, though the county recorder will accept notices returned with incomplete
17 information. (Ex. 85, at PX §5-1; Ex. 773, at MC 002990; Petty Tr. 168:1–12.)

18 County recorders may also use birthplace alongside additional personal identifying
19 information that could be used as a security question to verify a voter’s identity over the
20 phone.²¹ (Petty Tr. 101:10–14, 102:1–5; Connor Tr. 390:20–391:21; Hiser Tr. 2002:21–
21 2004:3; 2023 EPM at ECF-229 (verifying birthplace when a voter calls to confirm

22
23 ²⁰ Voters can submit a photocopy of the “pertinent pages” of a U.S. passport as DPOC,
24 which the 2023 EPM states includes “the photo, passport number, name, nationality, date
25 of birth, gender, place of birth, and signature” of the applicant. § 16-166(F)(3); (2023 EPM
26 at ECF-19.) The United States requires birthplace on passport applications because it “is
27 an integral part of establishing an individual’s identity. It distinguishes that individual from
28 other persons with similar names and/or dates of birth, and helps identify claimants
attempting to use another person’s identity.” (Ex. 941, at 6.) Defendants ask the Court to
take judicial notice of this provision of the U.S. Department of State’s Foreign Affairs
Manual. But the fact that the United States requires birthplace information for an
international travel document is irrelevant to whether birthplace is useful to county
recorders when verifying the identity of prospective voters.

²¹ Other personal identifying information could include a voter’s date of birth or SSN4.
(Petty Tr. 102:1–20, 166:10–167:3; Hiser 2003:20–2004:3.)

1 provisional ballot status).) But birthplace alone is generally not sufficient to distinguish
 2 between voters for identity verification. (*See* Hiser Tr. 2056:18–2057:10, 2058:17–21.) In
 3 addition, ballot-by-mail request forms must contain a field for the voter’s “State or country
 4 of birth, *or another piece of information* that, if compared to the voter’s record, would
 5 confirm the voter’s identity (such as the AZDL/ID# or SSN4, father’s name, or mother’s
 6 maiden name).” (2023 EPM at ECF-70 to -71 (emphasis added)); *see* A.R.S. § 16-542(A)
 7 (requiring a voter to provide her birthplace “or other information” that can be used to
 8 confirm her identity). And county recorders may use birthplace when available to match
 9 deceased voters with the correct voter record and cancel registrations. (2023 EPM at ECF-
 10 52 (“A County Recorder should match as much information as possible (including first
 11 name, last name, maiden name (if applicable), year of birth, place of birth, and city or town
 12 of residence)”))

13 Dr. Eitan Hersh²² analyzed the efficacy of birthplace information to uniquely
 14 identify voters. (Hersh Tr. 647:2–12, 649:23–650:14.) Dr. Hersh noted several data issues
 15 with the birthplace information Arizona possesses for currently registered voters.
 16 Specifically, approximately one-third of existing voter registrations in Arizona lack
 17 birthplace information. (*Id.* 659:13–21.) Another 200,000 registrations list the United
 18 States as the voter’s country of birth. (*Id.* 677:23–25.) Moreover, county recorders
 19 manually enter an applicant’s birthplace (when provided) exactly as it appears on the State
 20 Form, resulting in non-uniform birthplace information for existing registered voters. (*Id.*
 21 651:25–652:19, 677:20–22, 678:24–679:2; Petty Tr. 99:4–25; Connor Tr. 313:21–314:15.)
 22 Some birthplace designations are unclear, such as “CA,” which could refer to either
 23 California or Canada. (Hersh Tr. 651:25–652:19.) And despite the State Form’s request
 24 that applicants include “state or country of birth,” applicants occasionally write their city
 25 or county instead, which in some cases can refer to multiple locations.²³ (*Id.* 652:20–653:4;

26
 27 ²² Dr. Hersh is a Professor Political Science at Tufts University with a background in U.S.
 28 elections and election administration. (Hersh Tr. 642:24–643:18.) The Court credits Dr.
 Hersh’s testimony and affords his opinions significant weight.

²³ For example, Dr. Hersh testified that “San Luis” is a city in Arizona and twelve other
 countries. (Hersh Tr. 652:20–653:1.)

1 Petty Tr. 100:2–15.)

2 To Ms. Connor’s knowledge, county recorders are unable to confirm the accuracy
 3 of an applicant’s birthplace. (Connor Tr. 316:3–6; *see* Petty Tr. 103:21–104:5 (explaining
 4 Maricopa County is unable to confirm birthplace).) There is no evidence that Arizona plans
 5 to establish parameters to standardize the collection of birthplace information for new
 6 voters or to collect missing birthplace information from currently registered voters. (*See*
 7 *generally* 2023 EPM (lacking any guidance about how to collect birthplace information on
 8 a voter registration).) And despite county recorders’ *potential* uses of birthplace,
 9 defendants adduced no evidence that county recorders have ever encountered challenges
 10 determining the identity or eligibility of the one-third of voters for whom Arizona lacks
 11 this information. Dr. Hersh also opined that standardized birthplace information would still
 12 not meaningfully help to identify voters. (Hersh Tr. 677:20–679:7.) Specifically, he
 13 determined that of the nearly 4.7 million active and inactive voter records in Arizona, only
 14 2,734 records cannot be uniquely identified based on the voter’s name and date of birth.²⁴
 15 (*Id.* 658:20–659:11.) Most of these remaining records can be uniquely identified with the
 16 individual’s SSN4 or Arizona credential number. (*Id.* 659:13–665:12 (explaining that an
 17 ID number can confirm whether two records are for the same or two separate individuals
 18 in nearly all ambiguous cases); *see* Ex. 972 (illustrating possible identification scenarios).)
 19 And for those records that lack an ID number, Dr. Hersh found that birthplace alone would
 20 not sufficiently resolve the identity of two voter records. (Hersh Tr. 665:17–668:1.)

21 The Court finds that while county recorders can sometimes use birthplace in
 22 Arizona’s voter registration process, birthplace is of little utility in nearly all cases.

23
 24
 25 ²⁴ Dr. Hersh did not use the matching criteria from the HAVA Check to conduct his
 26 analysis, but instead treated registration records as identical only if the names matched
 27 exactly. (Hersh Tr. 684:12–687:14.) By contrast, Dr. McDonald calculated 12,051
 28 “instances” of indeterminate record matches from the HAVA Check’s soft matching
 criteria, which Plaintiffs offered as evidence of the unreliability of the MVD database for
 determining citizenship. (McDonald Tr. 1071:14–23, 1084:12–1085:8, 1102:23–1103:1.)
 The Court finds it unnecessary to ascertain the most likely correct figure, as these analyses
 both indicate that county recorders would seldom have a reason to consult birthplace to
 verify a soft match and identify a voter.

1 **5. Registration List Maintenance**

2 H.B. 2243 § 2’s List Maintenance Procedures require county recorders to conduct
3 recurring database checks to verify voters’ citizenship status. § 16-165(G)–(J). And
4 pursuant to the Cancellation Provision, county recorder must cancel a voter registration
5 after the county recorder “obtains” and “confirms” information that the voter is a non-
6 citizen, notifies the voter, and that voter fails to provide DPOC within 35 days. § 16-
7 165(A)(10), (K). Except for listing various databases, the Voting Laws do not specifically
8 describe how county recorders are to “obtain” or “confirm” information that a voter is a
9 non-citizen, but the 2023 EPM provides some additional guidance.

10 **i. Obtaining Information of Non-Citizenship**

11 Prior to the Voting Laws, county recorders were required to cancel a voter’s
12 registration if that voter had indicated on a juror questionnaire that they were not a U.S.
13 citizen, the county recorder did not find the voter’s DPOC on file, and the voter failed to
14 provide DPOC within 35 days. (2019 EPM at PX 006-50 to -51.) The Voting Laws expand
15 on this system by mandating the use of jury summary reports to cancel the registrations of
16 all voters who attest to non-citizenship on a jury questionnaire. §§ 16-165(A)(10), 21-
17 314(F). This is one method for county recorders to “obtain” information of non-citizenship
18 of registered voters. (2023 EPM at ECF-57.)

19 Since December 2022, ADOT has furnished the Secretary of State a monthly
20 “customer extract” file containing the authorized presence status of all individuals with an
21 MVD credential to comply with H.B. 2243 § 2. (Pls.’ Stip. Nos. 101, 105, 107, 108, 112;
22 Ex. 234 at PX 234-1 to -2.) H.B. 2243 § 2 directs the Secretary of State to compare the
23 customer extract file to AVID, identify voters who MVD indicates are not U.S. citizens,
24 and notify county recorders of these individuals.²⁵ § 16-165(G); (*see also* 2023 EPM at
25 ECF-54 (interpreting § 16-165(G) as requiring the Secretary of State to notify county
26 recorders of individuals who are “not a United States citizen according to the [MVD]

27 _____
28 ²⁵ Though the Secretary of State has not yet used the customer extract file for any purpose,
the court finds it reasonable that the Secretary of State will do so to comply with the Voting
Laws. (Jorgensen Tr. 566:24–573:19; Connor Tr. 376:6–15; Morales Tr. 622:5–623:6.)

1 database”).) The customer extract marks a “non-citizen” field with “Y” when an
2 individual’s MVD records indicate that the individual possesses a foreign-type credential
3 and leaves the field blank for individuals with a non-foreign-type credential. (Pls.’ Stip.
4 No. 106; Ex. 234 at PX 234-1.) Because MVD records reflect only that information
5 provided to MVD when an individual receives a new or duplicate credential, the customer
6 extract file may contain outdated citizenship information for naturalized citizens who still
7 possess an unexpired foreign-type credential or are awaiting SAVE verification to obtain
8 a new credential. (Jorgensen Tr. 571:21–572:15; ADOT Dep. 137:20–138:15.) And
9 because native-born citizens cannot be issued a foreign-type credential, the Secretary of
10 State’s use of the customer extract file to conduct monthly MVD checks will only ever
11 misidentify naturalized citizens as non-citizens.

12 The 2023 EPM states that it is not currently “practicable” for county recorders to
13 obtain information of non-citizenship from SAVE because county recorders lack access to
14 SAVE for list maintenance purposes. (2023 EPM at ECF-24, -57); § 16-165(I). But the
15 evidence suggests that USCIS would consider expanding Arizona’s use of SAVE under an
16 amended or new MOA. (USCIS Dep. 59:14–23, 62:20–63:7, 70:8–23, 170:15–171:20
17 (explaining at least one state is authorized to use SAVE for list maintenance).) Moreover,
18 because the Voting Laws direct county recorders to use SAVE for list maintenance, it is
19 reasonable that Arizona would seek authorization for this purpose.²⁶ H.B. 2243 § 2
20 instructs county recorders to consult SAVE each month for voters lacking DPOC and
21 voters who the county recorder has “reason to believe” are non-citizens. § 16-165(I). The
22 Voting Laws do not specify what constitutes a “reason to believe” and Ms. Connor testified
23 that county recorders will likely exercise discretion to make this determination. (Connor
24 Tr. 372:11–23.) Regardless of any county recorder discretion, only naturalized citizens will
25 ever be subject H.B. 2243’s SAVE checks under the Reason to Believe Provision because

26 ²⁶ The Voting Laws also require the Secretary of State to provide the Attorney General
27 access to SAVE to investigate voters lacking DPOC, but the SAVE MOA does not
28 authorize this sort of use. A.R.S. § 16-143(C); (USCIS Dep. 58:13–25 (explaining that the
Attorney General’s office would need its own MOA to use SAVE); *see generally* SAVE
MOA.) The Court finds it similarly probable that Arizona would seek authorization from
USCIS to use SAVE for investigative purposes.

1 SAVE contains no information on native-born citizens.

2 The Voting Laws and 2023 EPM provide county recorders with well-defined
3 procedures by which county recorders could “obtain” information that a voter is a non-
4 citizen. However, given the limitations of the data accessible from MVD and SAVE, the
5 Court finds that the Voting Laws’ List Maintenance Procedures’ MVD checks and the
6 Reason to Believe Provision’s SAVE checks will cause county recorders to “obtain”
7 information of non-citizenship predominately for naturalized citizens.

8 ii. Confirming Information of Non-Citizenship

9 If a county recorder obtains information that a voter is a non-citizen, the county
10 recorder must “confirm” this information. § 16-165(A)(19). The county recorder “shall
11 first verify that the person at issue is a true match to a person listed on [AVID].” (2023
12 EPM at ECF-57.) When there is a “true match” and AVID records indicate that the voter
13 has previously provided DPOC, the county recorder “shall not cancel” the voter’s
14 registration. (*Id.*) If AVID indicates that the voter has not provided DPOC (i.e., Federal-
15 Only Voters), county recorders must, when practicable, review databases to which the
16 county recorder has access, and may communicate directly with the voter. (*Id.* (citing § 16-
17 165(K).) If a county recorder “confirms” that a voter not a U.S. citizen, the county recorder
18 must notify the individual by forwardable mail that the individual must provide DPOC
19 within 35 days to avoid having her registration canceled.²⁷ (*Id.*) “The notice shall include
20 a list of documents the person may provide as DPOC and a postage prepaid pre-addressed
21 return envelope.” (*Id.* at ECF-58.) County recorders must complete any systematic
22 cancellation of voter registrations based upon the receipt of a jury summary report or MVD
23 records at least 90 days before an election. (*Id.* at ECF-62; *see* 09/14/2023 Order at 34.)

24 Dr. McDonald opined that the 6,084 naturalized voters whose MVD records reflect
25 outdated citizenship information could become stuck in a “loop” where MVD will flag the
26 voter as a non-citizen after each monthly check. (McDonald Tr. 1071:24–1072:5, 1089:23–

27 ²⁷ Plaintiffs offered evidence that Arizona counties provide notice letters only in English,
28 Spanish, Native languages, and Braille, and that no county issues notice letters in AANHPI
languages. (Petty Tr. 162:2–16.) But Plaintiffs do not claim that Arizona is failing to satisfy
the Voting Rights Act’s voting materials language requirements. *See* 52 U.S.C. § 10503.

1 1090:8.) According to Dr. McDonald, these voters must then repeatedly provide DPOC to
2 county recorders to avoid cancellation and referral to the Attorney General. (*Id.* 1075:3–
3 1077:9.) Dr. McDonald’s theory is unpersuasive considering the 2023 EPM’s directive that
4 county recorders must first check whether the voter has previously submitted DPOC. (2023
5 EPM at ECF-57.) Dr. McDonald also opined that the “anomalies” in the distribution of
6 Federal-Only Voters and voter registration cancellations and suspensions among counties
7 “suggest” that county recorders do not uniformly implement DPOC procedures.
8 (McDonald Tr. 1107:12–22, 1113:17–25.) For example, Pima County reported zero
9 canceled or suspended registrations for invalid DPOC despite being the second-largest
10 county. (*See* Ex. 334 (“Registration Cancellation Rates”); Ex. 335 (“Registration
11 Suspension Rates”).) But Dr. McDonald adduced no explanation of the cause of this
12 discrepancy except that the Pima County Recorder registers applicants without DPOC as
13 Federal-Only Voters, just as the LULAC Consent Decree requires. (McDonald Tr.
14 1108:23–1109:6; *see also id.* 1111:19–1112:20 (describing Maricopa County’s small
15 number of suspended registrations), Doc. 679-1, Ex. 4, 30(b)(6) Dep. of Pima County
16 Recorder (“Pima Dep.”) 143:5–12.) These county registration cancellation, suspension,
17 and Federal-Only Voter rates hold little persuasive value.

18 **6. Investigation by the Attorney General**

19 As outlined above, the Voting Laws require county recorders to refer for
20 investigation the voter registrations of all (1) Federal-Only Voters as part of the Attorney
21 General Referral Provision; (2) applicants who a county recorder “matches” with
22 information indicating non-citizenship and do not submit DPOC; and (3) registered voters
23 who a county recorder “confirms” are non-citizens and do not submit DPOC (collectively,
24 the “Criminal Investigation Procedures”). *See* §§ 16-121.01(E), 16-143(A), 165(A)(10);
25 (2023 EPM at ECF-17, -22.) County recorders refer these registrations to their respective
26 county attorneys in addition to the Arizona Attorney General.

27 Bill Knuth, a lead special agent with the Attorney General’s office, investigates
28 election integrity matters. (Knuth Tr. 2107:25–2108:11.) Mr. Knuth explained that the

1 Attorney General’s office currently handles election-related referrals from county
2 recorders for further investigation on a case-by-case basis. (*Id.* 2124:4–16, 2130:23–
3 2131:4.) Specifically, the Election Integrity Unit assesses referrals and determines whether
4 allegations of non-citizenship warrant a more thorough investigation. (*Id.* 2134:18–
5 2135:5.) H.B. 2492 § 7 mandates that the Attorney General’s office “use all available
6 resources to verify the citizenship status” of Federal-Only Voters. § 16-143(B). At
7 minimum, this includes consulting SAVE, the MVD and SSA databases, and any other
8 databases to which the county recorders have access. *Id.*

9 Mr. Knuth primarily consults the MVD database and various law enforcement
10 databases for his own investigations and testified that he can retrieve limited information
11 from the SSA database. (Knuth Tr. 2114:4–2117:1, 2117:18–2118:10.) He was unfamiliar
12 with SAVE. (*Id.* 2111:6–12.) An MVD search will yield the subject’s credential type, but
13 neither the MVD nor SSA database provide the Attorney General’s office with direct
14 citizenship information. (*Id.* 2115:12–21.) The Attorney General’s office may also speak
15 directly to the subject of an investigation of illegal voting, but Mr. Knuth has never
16 contacted an alleged non-citizen during an investigation. (*Id.* 2131:5–17, 2138:19–
17 2139:14.) Mr. Knuth testified that he would forward a case to prosecutors upon finding
18 probable cause that a non-citizen had registered to vote or voted but he could not recall
19 ever referring such a case for prosecution. (*Id.* 2132:13–2133:2, 2133:17–2134:3.)

20 C. State Interests in Enacting the Voting Laws

21 The State offers two purported interests in the Voting Laws: (1) preventing voter
22 fraud and limiting voting to individuals eligible to vote, and (2) improving public
23 confidence in Arizona’s elections.

24 1. Preventing Ineligible Individuals from Registering to Vote or 25 Voting in Arizona

26 It is a felony to knowingly register oneself or another person to vote, “knowing”
27
28

1 that the registrant is not eligible to vote. § 16-182. Dr. Lorraine Minnite²⁸ opined that voter
 2 fraud is exceedingly rare nationally and in Arizona. (Minnite Tr. 1578:13–1582:7.) Dr.
 3 Minnite and Dr. Mark Hoekstra²⁹ agreed, however, that voter fraud can be difficult to
 4 detect. (Minnite Tr. 1565:23–1566:8, 1567:14–22; Hoekstra Tr. 1747:3–1748:2.) As part
 5 of her “mixed methods”³⁰ approach, Dr. Minnite analyzed prosecution data from the U.S.
 6 Attorney General’s office. Between 2002 and 2005, 200 million votes were cast in federal
 7 elections. (Minnite Tr. 1579:4–13.) During this time, the U.S. Attorney General began its
 8 “Ballot Access and Voting Integrity Initiative” to identify voter intimidation and voter
 9 fraud. (*Id.* 1578:13–25.) The U.S. Attorney General’s office indicted 40 individual voters
 10 for voter fraud from 2002 to 2005 through the initiative, with only 15 indictments for non-
 11 citizen voting. (Minnite Tr. 1578:13–1580:1.) In addition, nearly one billion votes were
 12 cast from 2000 to 2017, but U.S. Attorney offices initiated less than 200 election-related
 13 cases. (*Id.* 1580:19–1581:21.)

14 The Arizona Attorney General’s office maintains a list of all election-related
 15 prosecutions. According to this list, there have been 38 total prosecutions related to illegal
 16 voting by the Attorney General since 2008, none of which involved a charge of non-citizen
 17 voting. (Ex. 292 at PX 292-1 to -6; Lawson Tr. 1688:3–1690:7.) The Attorney General’s
 18 office is aware of two current indictments against alleged non-citizen voters, both which
 19 involve individuals who engaged in systematic identity theft. (Lawson Tr. 1691:11–15,
 20 1707:8–1708:4.) These cases are sealed and were not known to the Arizona Legislature at
 21

22 ²⁸ Dr. Minnite is an associate professor at Rutgers University and has studied the incidence
 23 of voter fraud in U.S. elections for 20 years. (Minnite Tr. 1555:19–1556:9.) Dr. Minnite is
 24 the author of a leading book regarding the incidence of voter fraud, which the United States
 Government Accountability Office has recognized as scientifically reliable. (*Id.* 1557:13–
 1559:13.) The Court found Dr. Minnite credible and affords substantial weight to her
 opinions.

25 ²⁹ Dr. Hoekstra is a professor of economics at Baylor University. (Hoekstra Tr. 1640:20–
 26 21.) Dr. Hoekstra has published one paper on the impact of photo identification laws. (*Id.*
 1642:20–24.) Defendants offered Dr. Hoekstra’s testimony to rebut Dr. Burch’s, Dr.
 McDonald’s, and Dr. Minnite’s opinions regarding issues of the Voting Laws’ correlation
 to, among other things, disparate registration and voting outcomes. (*Id.* 1654:7–9.) The
 Court found Dr. Hoekstra credible and affords his opinions only some weight.

27 ³⁰ The mixed methods approach combines quantitative data and qualitative sources to
 28 identify patterns in the research and infer a conclusion from this information. (Minnite Tr.
 1564:6–1565:22, 1570:12–1571:4.)

1 the time it enacted the Voting Laws. (Lawson Tr. 1708:14–23.) The Attorney General’s
2 office also receives complaints from the public that non-citizens are voting in Arizona,
3 including allegations regarding specific voters, though these allegations have never led to
4 any prosecutions. (Knuth Tr. 2109:6–2110:2, 2120:11–2121:9; Ex. 286, Ex. 287.) Dr.
5 Minnite identified 13 prosecutions for non-citizen voting in Maricopa County between
6 2007 and 2008. (Minnite Tr. 1588:3–23.)

7 Aside from prosecutions, Ms. Petty could recall “one or two instances” in which the
8 Maricopa County Recorder’s office confirmed that a registered voter was a non-citizen
9 after receiving notice from the jury office that a potential juror self-reported non-
10 citizenship. (Petty Tr. 105:24–107:24.) Other county recorders reported being unaware of
11 the prevalence of non-citizens registering to vote or voting. (*See* Pima Dep. 241:14–242:11;
12 Doc. 679-3, Ex. 17, 30(b)(6) Dep. of Pinal County Recorder (“Pinal Dep.”) 114:19–115:1.)
13 In addition, county recorders often receive faulty voter registration forms from third-party
14 registration drives. For example, both Maricopa County and Pima County reported a
15 marked increase in these forms during the 2022 election cycle. (Petty Tr. 137:21–24; Hiser
16 Tr. 1995:7–1996:19.) But Defendants adduced no evidence indicating that these forms
17 were submitted in an attempt to register non-citizens. (*See, e.g.*, Hiser Tr. 1995:21–1998:15
18 (Pima County receiving registration forms purported to be for deceased voters); Johnston
19 Tr. 2083:6–2085:5 (Yuma County receiving registration forms containing falsified or
20 incorrect birth date, SSN4, or residence information).) Nor is there evidence that any of
21 Arizona’s Federal-Only Voters are non-citizens.

22 The Court finds that though it may occur, non-citizens voting in Arizona is quite
23 rare, and non-citizen voter fraud in Arizona is rarer still. But while the Voting Laws are
24 not likely to meaningfully reduce possible non-citizen voting in Arizona, they could help
25 to *prevent* non-citizens from registering or voting. (*See* Minnite Tr. 1563:3–14 (opining the
26 Voting Laws will not “reduce” voting fraud “further”).)

27 **2. Voter Confidence**

28 Evidence at trial indicates that members of the public have expressed concerns about

1 election integrity in Arizona, specifically as it relates to non-citizens voting in federal
 2 elections. (Knuth Tr. 2121:12–23; Lawson Tr. 1696:18–25; Quezada Tr. 877:8–878:17.)
 3 For example, when drafting the 2023 EPM, the Secretary of State received public
 4 comments for two weeks, approximately one-quarter of which were “form” letters
 5 commenting that “voters should be citizens” or should prove their citizenship. (Connor Tr.
 6 382:12–383:25.)

7 According to Dr. Hoekstra, the Voting Laws could reduce perceptions of voter fraud
 8 by persuading voters that Arizona is taking precautions to make it more difficult for non-
 9 citizens to vote. (Hoekstra Tr. 1751:18–1752:9, 1870:2–16; *see also* Richman Tr. 1933:10–
 10 18, 1934:16–23, 1935:14–17 (opining that the Voting Laws “should” improve voter
 11 confidence).) Dr. Hoekstra cited a study that found “a couple percentage points” increase
 12 in voter confidence among individuals who were notified before an election that their state
 13 had a voter identification law. (*Id.* 1752:15–1753:16.) However, measuring improved voter
 14 confidence typically requires voters to be well-informed about the election law, and
 15 Defendants adduced no evidence quantifying the likelihood that Arizonans will become
 16 aware of the Voting Laws and their purported impacts on preventing voter fraud in Arizona.
 17 (*See id.* 1797:18–1800:16, 1866:4–1867:25.)

18 No party offered direct evidence predicting the expected effects of the Voting Laws
 19 on Arizonans’ confidence in the State’s elections.

20 **D. Intent and Effects of the Voting Laws**

21 **1. Evidence of Discrimination**

22 **i. History of Discrimination in Arizona**

23 Plaintiffs offered the expert testimony of Dr. Orville Burton and Dr. Derek Chang
 24 to illustrate the Voting Laws in the context of Arizona’s history of discrimination. Plaintiffs
 25 offered Dr. Burton as “an expert in American history, voting behavior, discrimination,
 26 socioeconomic status and equality and historical intent.”³¹ (Burton Tr. 1403:20–22.)

27 _____
 28 ³¹ Overall, the Court affords Dr. Burton’s opinions some weight but questions the reliability
 of some of his testimony regarding Arizona history. For example, Dr. Burton testified that

1 Plaintiffs offered Dr. Chang as an expert on historical patterns between the Voting Laws
2 and other discriminatory laws.³² (Chang Tr. 1335:17–24.)

3 Before statehood, Arizona banned intermarriage between Asians and White people.
4 (Chang Tr. 1346:19–1347:15, *see id.* 1337:24–1338:19 (describing the “Period of
5 Immigration”).) Though Arizona historically banned interracial marriage, an Arizona state
6 court ruled this to be unconstitutional before *Loving v. Virginia*, 388 U.S. 1 (1967); (Burton
7 Tr. 1415:1–21, 1504:6–24.) Arizona also passed an “alien land law” in 1921 that barred
8 immigrants who were ineligible to become U.S. citizens—specifically, people of Asian
9 descent—from owning land. (Chang Tr. 1349:16–1350:5.) In 1953, Arizona courts ordered
10 the full desegregation of schools. (Burton Tr. 1421:19–1422:2, 1507:25–1508:17.)
11 Following desegregation, however, Arizona continued to require English-only classroom
12 instruction, thereby producing disparate educational outcomes particularly for Native
13 Americans and Spanish speakers. (*Id.* 1422:3–7, 1423:5–23.) Arizonans also amended the
14 Arizona Constitution in 1988 to mandate that all political subdivisions of Arizona act only
15 in English, but the Arizona Supreme Court ruled this unconstitutional. *See Ruiz v. Hull*,

16
17 Arizona had been deemed the “twelfth star of the Confederacy,” but it was unclear whether
18 he understood this to refer to the former territory that encompassed both Arizona and New
19 Mexico at the time, or what would become Arizona following statehood. (Burton Tr.
20 1491:16–1493:23, *see also id.* 1496:14–24 (failing to consider Arizona’s history of
21 supporting the Union), 1498:17–1500:23 (Arizona’s prohibition of slavery).) Dr. Burton
22 also lacked a strong understanding of existing Arizona election law. (*See, e.g., id.* 1528:8–
23 1529:20 (incorrectly believing voters removed for non-citizenship were not notified under
24 previous Arizona law), 1536:4–16 (unaware if polling locations are open past 5:00 PM).)
25 And Dr. Burton did not consider it necessary to consult the legislative history of the Voting
26 Laws in forming his opinions. (*Id.* 1542:12–24.)

27 ³² The Court affords Dr. Chang’s opinions little weight. Dr. Chang did not review the
28 legislative history of the Voting Laws because he did not believe it would have been
particularly useful when comparing the Voting Laws to broader historical patterns of
discrimination. (Chang Tr. 1342:8–12, 1382:8–19.) Dr. Chang informed most of his
opinion by considering the history of the Asian American and Pacific Islander (“AAPI”)
community from a national perspective. (*See id.* 1345:20–1346:3 (discussing the federal
Page Act), 1348:1–23 (discussing the Federal Chinese Exclusion Act of 1882).) As for
some of the history of discrimination against the AAPI community in Arizona, Dr. Chang’s
opinions were incomplete or misleading. For example, he opined that a recent House Bill
was like Arizona’s 1921 “alien land law,” but he had not read the bill in its entirety, which
prohibits land sales and leases to specific foreign governments or companies. (*Id.* 1375:14–
1377:14); H.B. 2376, 56th Leg., 1st Sess. (Ariz. 2023). Dr. Chang also asserted that
Phoenix experienced a 50% increase in anti-Asian violence from 2019 to 2020, which
while correct, was an increase from just two reports of violence in 2019 to three in 2020.
(Chang Tr. 1383:2–1384:24, 1385:3–9.)

1 957 P.2d 984, 998, 1000 (Ariz. 1998).

2 Arizona also has a well-documented history of voting discrimination. For example,
3 the territorial government imposed a literacy test as a prerequisite to voting to limit the
4 “ignorant Mexican vote,” which Arizona renewed in 1912 after statehood. (Burton Tr.
5 1429:1–1431:22.) And while Native Americans were granted citizenship in 1924, Arizona
6 courts only recognized their right to vote in 1948. (*Id.* 1432:16–1434:1, 1513:2–8); *see*
7 Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253 (codified at 8 U.S.C.
8 § 1401(b)). However, Arizona’s literacy requirement stood until 1972, meaning many
9 Native Americans were, for all intents and purposes, still unable to vote. (Burton Tr.
10 1432:16–1434:1); *see Oregon v. Mitchell*, 400 U.S. 112 (1970) (finding amendment to the
11 Voting Rights Act banning literacy tests constitutional). In the 1970s and 1980s, Arizona
12 conducted “total” voter roll purges that required individuals to re-register to vote, but fewer
13 minority voters would re-register compared to White voters. (Burton Tr. 1435:3–10,
14 1436:3–11.) Dr. Burton also cited at least one example of a Maricopa County election
15 official requesting DPOC around this time even though DPOC was not required by law.
16 (*Id.* 1435:10–20.) And for forty years, Arizona was subject to section 5 of the Voting Rights
17 Act, which required Arizona to seek “preclearance of changes affecting voting.”³³ 28
18 C.F.R. pt. 51, App. (2012).

19 Plaintiffs offered evidence that disparate socioeconomic outcomes remain pervasive
20 for communities of color. The median household income for Black, Native Indian and
21 Alaska Native, and Latino individuals is approximately \$9,000 to \$21,000 less than the
22 household average. (Doc. 672-3, Ex. 28, (“ACS Household Income”) at ECF-59.) Non-
23 White Arizonans are also more likely than White Arizonans to live in a household with an
24 income falling below the poverty line. (Pls.’ Judicial Notice ¶ 27.) For example, 19.2% of
25 Latino Arizonans live in a household below the poverty line, compared to 9.6% of White
26 Arizonans, although naturalized citizens are less likely than native-born citizens to live in

27
28 ³³ In *Shelby County, Alabama v. Holder*, the Supreme Court held that the formula for
determining “covered jurisdictions” that were required to seek preclearance was
unconstitutional. 570 U.S. 529, 556–57 (2013).

1 poverty. (Doc. 672-3, Ex. 27, (“ACS Poverty Rates”) at ECF-51, -53.) Moreover,
 2 approximately 72% of voting-age Latino and 78% of American Indian or Alaska Native
 3 Arizonans have earned a high school diploma or equivalent, compared to 95% of White
 4 Arizonans. (Doc. 672-3, Ex. 29, (“ACS Educational Attainment”) at ECF-71, -74.)

5 ii. The Voting Laws’ Legislative History

6 Arizona’s November 2020 presidential election was decided in favor of President
 7 Biden by a margin of 10,457 votes. (Pls.’ Stip. No. 154.) Former President Trump falsely
 8 claimed that non-citizens had illegally cast more than 36,000 ballots in the election.
 9 (Minnite Tr. 1597:5–11.) President Trump’s attorney Rudolph Giuliani also stated that tens
 10 of thousands of “illegal aliens” voted in Arizona, which a New York state appellate court
 11 found “false and misleading.” *In the Matter of Rudolph W. Giuliani*, 146 N.Y.S. 3d 266,
 12 268, 279–80 (N.Y. App. Div. 2021). Against this backdrop, the Arizona Senate established
 13 a committee to audit the 2020 election, which revealed no evidence of voter fraud.
 14 (Quezada Tr. 824:15–825:9.)

15 Prior to passing the Voting Laws, the Arizona Legislature did not establish that any
 16 non-citizens were registered to vote in Arizona. (Doc. 679-1, Ex. 6, (“Toma Dep.”) 99:20–
 17 22, 100:1–5, 102:7–21; Doc. 679-2, Ex. 7, (“Petersen Dep.”) 84:15–85:5.) Neither Speaker
 18 Toma nor President Petersen could recall the Legislature being presented with or
 19 considering evidence of non-citizen voter fraud in Arizona. (Toma Dep. 99:12–18;
 20 Petersen Dep. 95:6–8, 95:11–96:10, 184:18–185:4.)

21 H.B. 2492 was introduced to the Arizona House of Representatives on January 24,
 22 2022. (Pls.’ Stip. No. 42.) Representative Jake Hoffman was the prime sponsor of H.B.
 23 2492 and the Arizona Free Enterprise Club³⁴ helped draft the substance of the bill. (Toma
 24 Dep. 139:19–20; Peterson Dep. 158:7–13, 159:19–160:7; *see* Ex. 54, (“H.B. 2492 House
 25 Gov. Comm. Tr.”) at PX 054-5 to -7.) In support of H.B. 2492’s DPOC Requirement,
 26 Representative Hoffman explained during a House Government and Elections Committee

27
 28 ³⁴ The Free Enterprise Club is a conservative lobbying group that advocated for the Voting
 Laws to address “how more illegals started voting in AZ.” (Ex. 602 (email from Arizona
 Free Enterprise Club to Senator Petersen).)

1 meeting that following the LULAC Consent Decree, more than 11,600 individuals had
2 registered to vote in federal elections without DPOC. (H.B. 2492 House Gov. Comm. Tr.
3 at PX 054-3 to -4.) On February 22, 2022, a majority of the House Rules Committee voted
4 in favor of H.B. 2492 over the concerns of the Committee’s counsel that the NVRA likely
5 pre-empted the bill’s DPOC Requirement for Federal Form applicants. (*See generally* Ex.
6 57.) The Arizona House of Representatives passed the bill. (*See generally* Exs. 58, 59.)

7 The Arizona Senate Judiciary Committee met on March 10, 2022 to discuss the bill.
8 (*See generally* Ex. 61.) In explaining his vote against H.B. 2492 during the committee
9 meeting, then-Senator Martin Quezada indicated that the bill would disproportionately
10 “target[]” people of color, leading Senator Petersen to call a recess after the audience began
11 to audibly react. (*Id.* at PX 061-34 to -36.) The Senate passed H.B. 2492 on March 23,
12 2022, which then-Governor Doug Ducey signed into law. (Ex. 62, at PX 062-22; Pls.’
13 Stip. No. 43.) H.B. 2492 took effect January 1, 2023. (Pls.’ Stip. Nos. 44–45.) The
14 legislative history indicates that the legislators in favor of the bill were concerned
15 specifically with the increase of Federal-Only Voters in Arizona who had not provided
16 DPOC. (*See, e.g.*, H.B. 2492 House Gov. Comm. Tr. at PX 054-3.)

17 H.B. 2243 was first introduced in the Arizona Legislature in January 2022. (*See*
18 *generally* Ex. 68.) As originally drafted, H.B. 2243 amended only § 16-152 to require a
19 notice on the State Form informing the voter that her registration would be cancelled if the
20 voter moved permanently to a different state. (*See generally* Exs. 705, 707.) On January
21 31, 2022, H.B. 2617 was introduced, which would have required county recorders to cancel
22 a voter’s registration if the county recorder “confirms” either that the voter is a non-citizen
23 or was issued an out-of-state identification, and the voter failed to furnish “satisfactory
24 evidence that the person is qualified” within 90 days of receiving notice of cancellation.³⁵

25 ³⁵ As discussed *supra* Section I(B)(5)(i), county recorders previously provided a voter with
26 35 days to submit DPOC if that voter had indicated on a juror questionnaire that they were
27 not a U.S. citizen, and voter’s registration file lacked DPOC. Also, before the introduction
28 of H.B. 2617, voters were also entitled to a 35-day final notice to update the voter’s address
and avoid being placed into inactive status if official election mail was returned to county
recorders as undeliverable. (2019 EPM at PX 006-52 (describing the process to satisfy the
NVRA); *see also id.* at PX 006-52 to -53 (describing similar process when a county
recorder receives information from USPS’s National Change of Address Service).)

1 (Ex. 4, (“H.B. 2617 Text”) at PX 004-2 to -3; *see generally* Ex. 67, (“H.B. 2617 Bill
2 History”).) House Representative Joseph Chaplik was the Primary Sponsor of H.B. 2617,
3 and the Arizona Free Enterprise Club helped draft the bill. (H.B. 2617 Bill History at PX
4 067-1; Petersen Tr. 238:4–8.) On May 25, 2022, the Arizona Legislature passed H.B. 2617.
5 (See H.B. 2617 Bill History at PX 067-3; *see also* Exs. 490, 491, 494, 495, 497, 498.)
6 Governor Ducey vetoed the bill, noting that H.B. 2617 was “vague and lack[ed] any
7 guidance for how a county recorder would” determine whether a person was a “qualified
8 elector.” (Ex. 53, (“H.B. 2617 Veto Letter”) at PX 053-1; *see* H.B. 2617 Text at PX 004-2
9 to -3 (requiring county recorder to cancel voter registration when the county recorder
10 confirms that a voter is “not a qualified elector”).)

11 Following Governor Ducey’s veto of H.B. 2617, Representative Toma and
12 Representative Chaplik decided to include an amended version of H.B. 2617 into H.B.
13 2243. (See Toma Dep. 235:7–23, 240:2–3, 246:23–247:6, 257:13–17.) Senator Petersen
14 sponsored the amendment in the Senate, and on the last day of the legislative session,
15 proposed a floor amendment³⁶ in the Committee of the Whole to incorporate H.B. 2617
16 into H.B. 2243. (Ex. 708; Petersen Dep. 247:10–20, 268:6–22, 269:2–10.) Senators
17 Quezada and Petersen, and Representative Toma all agreed that last-minute amendments
18 commonly occur at the end of the legislative session, though Senator Quezada testified that
19 it was abnormal for “significant” amendments to be introduced so late in the legislative
20 session. (See Quezada Tr. 860:9–861:16; Toma Dep. at 237:8–239:3; Petersen Dep. at
21 319:3–24.)

22 Senator Petersen characterized the amendments to H.B. 2243 as essentially
23 “identical to” H.B. 2617, except for some “additional notice requirements.” (Ex. 499 at PX
24 499-3.) But H.B. 2243 provides voters with 35 days to furnish DPOC instead of the 90
25 originally in H.B. 2617. (Compare H.B. 2243 Text at PX 002-5 to -6, with H.B. 2617 Text
26 at PX 004-3.) H.B. 2243 also differs from H.B. 2617 by requiring county recorders to place

27
28 ³⁶ A floor amendment allows a legislator to include the substance of a bill that has changed
after leaving its assigned committees into a separate “germane” bill within the same section
or title of the Arizona Revised Statutes. (Petersen Dep. 270:3–10.)

1 a voter’s registration into inactive status instead of cancelling the registration if the voter
 2 fails to attest (instead of providing “satisfactory evidence”) that she is an Arizona resident
 3 within 90 days. (*Compare* H.B. 2243 Text at PX 002-6, *with* H.B. 2617 Text at PX 004-3.)
 4 There is no explanation for these changes in the legislative record except that H.B. 2243 as
 5 amended “addresses the [Governor’s] veto letter.” (Ex. 499 at PX 499-3.) The Committee
 6 of the Whole adopted Senator Petersen’s floor amendment. (*Id.* at PX 499-6.) The Arizona
 7 Legislature then passed H.B. 2243, which Governor Ducey signed into law.³⁷ (*See* Exs. 68,
 8 500.)

9 Nothing in the legislative history of H.B. 2492 or H.B. 2243 reflects an intent to
 10 suppress voter registrations of members of minority groups or naturalized citizens.³⁸ (*See*
 11 *generally* H.B. 2492 House Gov. Comm. Tr.; Exs. 57, 58, 61, 490, 491, 494, 495, 497–
 12 500.) The evidence indicates that concerns of reinforcing election integrity in response to
 13 the increase in Federal-Only Voters drove the Legislature’s enactment of the Voting Laws.
 14 (*See, e.g.*, H.B. 2492 House Gov. Comm. Tr. at PX 054-3.) Plaintiffs did not adduce
 15 evidence challenging the sincerity of some Arizonans’ beliefs that non-citizens had voted
 16 in the 2020 election. And while there is no evidence that Federal-Only Voters may be non-
 17 citizens, the Legislature’s decision to scrutinize these voters does not ring of
 18 discrimination. In addition, the justification for the Birthplace Requirement came from a
 19 representative for the Arizona Free Enterprise Club, who explained that birthplace could
 20 help identify voters in the databases enumerated in the Voting Laws, such as NAPHSIS.
 21 (Ex. 61 at PX 061-24 to -26.) The legislative record lacks any indicia of a nefarious motive.
 22 And despite Dr. Chang and Dr. Burton’s account of Arizona’s history of discrimination,
 23 neither expert articulated a persuasive factual nexus between this history and the Fifty-
 24 Fifth Legislature’s enactment of the Voting Laws.

25 ³⁷ H.B. 2243 supersedes H.B. 2492 § 8, which would have directed county recorders to
 26 cancel the registrations of voters who county recorders “confirm[.]” are not U.S. citizens,
 27 without first providing notice or an opportunity for voters to furnish DPOC. (*See* H.B. 2492
 28 § 8.)

³⁸ Plaintiffs make much of ongoing discriminatory comments Senator Borelli purportedly
 made to Senator Quezada during Senator Quezada’s time in the Senate, but regardless of
 what Senator Borelli may have expressed, Plaintiffs cannot impute his beliefs or motives
 to the entire Arizona Legislature.

1 **2. Effect of the Voting Laws on Voters**

2 Most of H.B. 2243 requires no action on the part of voters. Its List Maintenance
3 Procedures impose obligations on county recorders and the Secretary of State to ensure
4 that all registered voters are U.S. citizens. *See* § 16-165(G)–(J). Only if a county recorder
5 “confirms” a voter is a non-citizen must that voter produce DPOC within 35 days to avoid
6 having her registration cancelled and referred to the attorney general for investigation. *Id.*
7 § 16-165(A)(10). H.B. 2492’s Citizenship Verification Procedures and Attorney General
8 Referral Provision similarly require county recorders and the attorney general to investigate
9 the citizenship status of registrants and voters without DPOC. §§ 16-121.01(D), 16-143(B).

10 Dr. Traci Burch³⁹ applied the “rational choice” framework to analyze the burdens
11 the Voting Laws would impose on Arizona voters. The rational-choice framework weighs
12 the perceived probable rewards of an action against the probable corresponding costs to
13 predict the likelihood that an individual will perform the action. (Burch Tr. 931:20–
14 932:11.) The three primary costs are: (1) learning costs, such as learning how to register to
15 vote; (2) compliance costs, such as the cost to obtain the information necessary to register
16 to vote; and (3) psychological costs, or the emotional burdens associated with performing
17 the action and the resulting effects of that action. (*Id.* 933:13–17, 934:10–25, 935:15–
18 936:7.) Individuals of higher socioeconomic status are typically better positioned to bear
19 these costs as compared to individuals of lower socioeconomic status. (*Id.* 940:23–941:24,
20 942:19–944:12.)

21 Dr. Burch opined that requiring DPOC to register to vote and avoid removal from
22 the voter rolls will increase compliance costs for Arizona voters, particularly those who
23 lack ready access to DPOC. (*Id.* 969:5–9.) Plaintiff representatives testified that some
24 citizens residing in Arizona may lack ready access to the information that constitutes
25 DPOC in Arizona. (*See, e.g.*, Nitschke Tr. 469:8–470:3 (explaining out-of-state students

26 _____
27 ³⁹ Dr. Burch is an associate professor of political science at Northwestern University and a
28 research professor at the American Bar Foundation. (Burch Tr. 923:23–25.) Dr. Burch
testified to the burdens the Voting Laws may impose on individuals in attempting to vote.
(*Id.* 927:16–18, 928:16–929:3.) The Court found Dr. Burch credible and affords her
opinions considerable weight.

1 may keep records with parents); Tiwamangkala Tr. 1273:22–1274:3 (explaining that
2 Equity Coalition’s partner organization helps AANHPI individuals obtain citizenship
3 documentation to apply for government benefits.) Estimates suggest that around seven
4 percent of all U.S. citizens lack ready access to proof of citizenship. (Hoekstra Tr. 1838:24–
5 1839:10.) But Plaintiffs adduced no evidence estimating the number of Federal-Only
6 Voters who lack all acceptable forms of DPOC. Nor did Plaintiffs show that naturalized
7 citizens or people of color are more likely than their White counterparts to lack DPOC.
8 And assuming *all* of Arizona’s Federal-Only Voters did not possess DPOC at the time of
9 registration, this would account for less than half a percent of the State’s registered voters.
10 (See Ex. 336; Pls.’ Stip. No. 26 (19,439/4,198,726=0.4%).)

11 Aside from Federal-Only Voters, Dr. McDonald testified that county recorders
12 cancelled 1,290 Arizona voter registrations for “Invalid Citizenship Proof,” and suspended
13 5,555 additional voter registrations for this same reason. (McDonald Tr. 1106:25–11,
14 1111:13–21; *see* Registration Cancellation Rates; Registration Suspension Rates.) Dr.
15 McDonald did not, however, opine on whether these were citizens who did not possess or
16 could not provide DPOC, but instead offered these figures as evidence that county
17 recorders historically have not uniformly implemented Arizona’s election laws.
18 (McDonald Tr. 1107:12–22, 1232:2–1234:13.) For example, Cochise County appears to
19 have placed voter registrations in suspense status for lacking DPOC, rather than registering
20 these registrants as Federal-Only Voters. (*See, e.g.*, Ex. 510.) Dr. Richman noted that most
21 of these voters did not match with any MVD file containing citizenship information, in
22 which case county recorders could not have relied on stale MVD data to cancel or suspend
23 these registrations. (Richman Tr. 1954:12–1956:3; MVD Non-Citizen Records (indicating
24 lack of MVD matches for 858 of 1,290 cancelled registrations and 5,010 of 5,555
25 suspended registrations but listing 77 cancelled registrations for lack of DPOC and 253
26 suspended registrations for “Invalid Citizenship Proof” in MVD).) Dr. Richman also
27 explained that AVID’s coding system to suspend and cancel voter registrations for “Invalid
28 Citizenship Proof” contained “overlapping codes.” (*See, e.g.*, Richman Tr. 1917:11–

1 1919:11 (explaining citizenship cancellation codes include voluntary and involuntary
2 cancellation); *see also* Ex. 796, (listing an “Invalid Citizenship Proof” code for registrants
3 who are “Not Eligible,” but lacking any similar code for cancelled or suspended
4 registrants.) The Court finds that Arizona’s cancellation and suspension of approximately
5 7,000 voter registrations for “Invalid Citizenship Proof” is not probative of the number of
6 qualified Arizonans unable to provide DPOC when registering to vote.

7 Plaintiffs did offer evidence that obtaining DPOC could impose a financial burden
8 on low-income voters. For example, the cost of obtaining a copy of an Arizona birth
9 certificate is 35 dollars.⁴⁰ (Doc. 672-7, Ex. 50.) The fee to replace a naturalization
10 certificate is significantly greater, costing \$555.⁴¹ (Doc. 672-7, Ex. 53.) However,
11 naturalized citizens are less likely than native-born citizens to live in a household with
12 income below the poverty line, and furthermore, naturalized citizens need only provide an
13 immigration number as DPOC if they do not possess a naturalization certificate. § 16-
14 166(F)(4). Furthermore, while approximately 19% of Latino individuals live in a household
15 below the poverty line, 82% of Arizona’s Latino citizens are native-born, meaning most
16 Latinos will not be burdened by the considerably higher costs associated with obtaining
17 new naturalization documents.

18 Dr. Burch opined that requiring voters to provide DPOC and subjecting voters who
19 cannot provide DPOC to potential investigation could also impose psychological costs.
20 (Burch Tr. 946:12–947:9, 969:5–9, 972:14–23, 993:6–17.) Specifically, Latino and
21 AANHPI voters may fear drawing attention to their families, particularly voters who live
22 with non-citizens in mixed-status households. (*Id.* 993:18–994:7; *see also* Tiwamangkala
23 Tr. 1274:19–1275:3 (chilling effect among AANHPI community); Guzman Tr. 480:9–
24 481:18 (chilling effect among Latino community).) For instance, pursuant to H.B. 2243’s

25 _____
26 ⁴⁰ Plaintiffs ask the Court to take judicial notice of the cost of obtaining a passport. But a
27 U.S. citizen must provide proof of U.S. citizenship to obtain a passport or pay an additional
28 150-dollar fee for the United States to conduct a search for a previously issued passport.
The Court gives little weight to the burden of obtaining a passport because an individual
may obtain a new birth certificate for substantially less and in less time. (*Compare* Doc.
672-7, Ex. 50, *with* Doc. 672-7, Ex. 51, at ECF-13, 16.)

⁴¹ It can take up to eight months to receive a replacement certificate. (Doc. 672-7, Ex. 54.)

1 mandate that the Secretary of State compare AVID to the MVD database each month, the
2 MVD customer extract will flag all individuals with a foreign-type credential as non-
3 citizens, despite that this information will be outdated for the 6,084 naturalized Full-Ballot
4 Voters who still possess an unexpired foreign-type credential. And because MVD does not
5 issue foreign-type credentials to native-born citizens, only naturalized citizens will ever be
6 misidentified as non-citizens. H.B. 2243’s Reason to Believe Provision will similarly affect
7 only naturalized citizens because SAVE cannot search for native-born citizens. The Latino
8 and AANHPI communities may associate these procedures with Arizona’s history of
9 discriminatory treatment against people of color. (*See supra* Section I(D)(1)(i).)

10 The Court finds that the compliance and psychological costs associated with the
11 Voting Laws’ DPOC Requirements⁴² and investigative procedures would predominately
12 impact voters of lower socioeconomic status and naturalized citizens. Plaintiffs did not,
13 however, quantify the scope of this impact, given the lack of evidence regarding the
14 distribution of voters who do not possess or would be unable to obtain DPOC. As for the
15 Voting Laws’ Birthplace Requirement, Plaintiffs did not adduce any evidence that voters
16 would be unable to include birthplace information. However, the evidence shows that
17 Latino and AANHPI voters could be deterred from registering to vote due to fears of
18 investigation.

19 **E. Plaintiffs Sue for Relief**

20 Following the passage of the Voting Laws, the United States and a collection of
21 nonpublic entities (collectively, “Plaintiffs”) filed several lawsuits seeking injunctive
22 relief. (*See, e.g.*, Doc. 1, 2:22-cv-00519-SRB; Doc. 1, 2:22-cv-01124-SRB.) The Court
23 consolidated the Plaintiffs’ eight lawsuits into the instant case. (*See* Docs. 39, 48, 69, 79,
24 91, 164, 193.) Together, Plaintiffs claim the Voting Laws, among other things, (1) violate
25 the Civil Rights Act of 1964, the NVRA, and the Voting Rights Act; (2) place an undue
26 burden on the right to vote; and (3) violate the due process and equal protection guarantees

27 ⁴² The Court uses “DPOC Requirements” to refer to H.B. 2492 § 4’s mandate that all voter
28 registrations include DPOC to be registered as a Full-Ballot Voter, as well as H.B. 2492
§ 4 and H.B. 2243 § 2’s requirement that a registrant or voter provide DPOC if a county
recorder matches that individual to information of non-citizenship.

1 of the U.S. Constitution. (*See* Doc. 304.) The Republican National Committee (“RNC”),
2 Arizona Senate President Warren Petersen, and Arizona House of Representatives Speaker
3 Ben Toma, intervened as defendants. (Doc. 18, 2:22-cv-01369-SRB; Doc. 363.)

4 The Voting Laws have not yet been enforced, but many non-US Plaintiffs have
5 already shifted their operations to mitigate the anticipated impacts of the laws, while other
6 non-US Plaintiffs anticipate doing so if the Voting Laws take effect. All non-US Plaintiffs
7 assert an interest in maximizing voter turnout among certain communities, including
8 Latinos, Native Americans, AANHPI individuals, Black Americans, students, young
9 people, the elderly, and Democratic voters generally.

10 **1. Mi Familia Vota**

11 Mi Familia Vota is a national, nonprofit civic engagement organization that seeks
12 to increase civic participation in the Latino community and “ensure that as many people as
13 possible can participate in the democratic process, including members of the Latino
14 community.” (Rodriguez-Greer Tr. 780:20–25, 781:22–782:2). At trial, Carolina
15 Rodriguez-Greer, Mi Familia Vota’s State Director for Arizona, testified that Mi Familia
16 Vota engages in “year-round” voter engagement efforts and has a reputation as a “trusted
17 community resource” on voting and civic participation. (*Id.* 780:14–17, 782:14–18). Mi
18 Familia Vota’s voting-related activities include providing election resources in Spanish,
19 hosting voter education workshops, assisting permanent legal residents with the citizenship
20 application process, and registering voters by tabling at events and with paid canvassers.
21 (*Id.* 781:22–782:24, 785:4–17.) Mi Familia Vota provides in-depth training to its
22 canvassers on the voter registration forms and on how to engage with potential voters in
23 the communities that the organization serves. (*Id.* 783:25–784:7.) Mi Familia Vota has
24 registered over 30,000 voters in Arizona since 2021. (*Id.* 780:18–19, 784:12–14.)

25 Mi Familia Vota claims that the Birthplace Requirement will impact its voter
26 registration efforts because the community members it serves are often hesitant to share
27 personal information with the government, including their place of birth. (*Id.* 786:12–
28 787:3, 787:15–788:8.) Rodriguez-Greer testified that she observed this fear among

1 naturalized citizens growing up in Tucson, Arizona, which is less than 100 miles from the
2 U.S.-Mexico border. (*Id.* 786:12–787:3.) Mi Familia Vota does not have additional
3 resources to devote to mitigate the anticipated effects of the Voting Laws, so it expects that
4 it will need to “go into crisis mode” and redirect existing funds toward new voter education
5 initiatives. (*Id.* 791:16–792:4, 809:24–810:1.) For example, Mi Familia Vota anticipates
6 redirecting staff members from its ambassadors program, which is designed educate voters
7 about basic election issues, to a new effort that addresses community members’ confusion
8 about the Voting Laws and educates them about the changes to the registration and voting
9 process. (*Id.* 791:16–792:23.) Mi Familia Vota also expects to adjust its voter registration
10 program and reallocate its staff’s efforts to developing a new training program for
11 canvassers. (*Id.* 792:24–793:12.) Mi Familia Vota spent approximately \$1.5 million on its
12 voter engagement efforts in 2023, and it expects that its budget for voter engagement will
13 be “significantly higher” in 2024. (Rodriguez-Greer Tr. 781:13–15, 784:19–22.)

14 2. Voto Latino

15 Voto Latino is a 501(c)(4) nonpartisan, nonprofit social welfare organization that
16 aims to “educate and empower a new generation of Latino voters in Arizona.” (Patel Tr.
17 217:4–11.) Voto Latino’s voting-related work includes voter registration, increasing voter
18 turnout among low-propensity voters, and advocacy. (*Id.* 216:16–17, 217:12–218:5.) Voto
19 Latino’s voter registration efforts include “chase programming,” by which Voto Latino
20 follows up with individual voters who did not complete their voter registration or may not
21 have successfully submitted their registration to be placed onto the voter rolls. (*Id.* 221:20–
22 223:14.) Since 2012, Voto Latino has registered over 60,000 voters in Arizona. (*Id.*
23 220:25–221:6.)

24 Voto Latino claims that the Birthplace Requirement will disproportionately impact
25 the Latino community, which is more likely to be born outside of the United States. (*Id.*
26 227:10–25.) Voto Latino’s Managing Director Ameer Patel testified that Voto Latino
27 expects to expend additional resources on its chase programming to successfully register
28 the same number of voters as it did in the 2020 election cycle as a result of the Voting

1 Laws. (*Id.* 229:17–231:8.) Voto Latino claims that this will “take away” resources from
2 the organization’s advocacy and turnout efforts. (*Id.* 238:17–23.) Voto Latino also claims
3 that H.B. 2492’s Citizenship Verification Procedures and Attorney General Referral
4 Provision will have a chilling effect on prospective Latino voters, which will hinder Voto
5 Latino’s voter registration and voter turnout efforts and require the organization to
6 reallocate resources to educate voters about the investigation provisions. (*Id.* 236:9–237:8.)
7 After H.B. 2492 was passed, Voto Latino spent resources and devoted staff time to create
8 new content, including videos, infographics, one-pagers, and a press release to educate
9 voters about the impact of the bill. (*Id.* 237:9–19, 253:22–254:22.)

10 **3. Southwest Voter Registration Education Project**

11 Southwest Voter Registration Education Project (“SVREP”) is a 501(c)(3)
12 nonpartisan, nonprofit organization committed to empowering Latino communities
13 through their vote. (Camarillo Tr. 729:10–14, 730:4–13, 732:17–21.) SVREP’s voting
14 activities include educating and registering voters, “turning out the vote,” and training
15 candidates who run for nonpartisan offices. (*Id.* 727:14–16, 730:7–11.) SVREP has
16 registered 15,000 Latino voters in Arizona since 2022. (*Id.* 736:9–17.) In 2024, SVREP
17 plans to register voters by engaging high schools and community colleges, meeting
18 individuals door-to-door, and conducting voter registration sites. (*Id.* 735:24–736:4.)
19 SVREP is also planning to turn out the vote in 2024 by contacting voters through door-to-
20 door visits, phone banking, and digital messaging, along with continuing its voter education
21 efforts. (*Id.* 737:4–15, 738:5–11.) At trial, SVREP President Lydia Camarillo testified that
22 SVREP anticipates reallocating funding and staff time from its voter registration, voter
23 education, and voter turnout efforts to help voters who receive the 35-day notice letter
24 obtain DPOC and assist voters who are removed from the voter rolls pursuant to H.B. 2243.
25 (*Id.* 740:9–19, 741:6–742:6, 742:21–743:12, 743:21–745:4.)

26 **4. Promise Arizona**

27 Promise Arizona is a community nonprofit organization that seeks to increase the
28 participation of Latino communities from Maricopa County and throughout Arizona in the

1 electoral process. (Falcon Tr. 1307:3–7, 1307:24–1308:14.) Promise Arizona is a
2 membership organization with 1,043 dues-paying members as of November 2023. (*Id.*
3 1306:22–23, 1308:15–23.) Promise Arizona’s members include voters who are naturalized
4 citizens. (*Id.* 1321:23–1322:3.) The primary services that Promise Arizona’s members
5 receive are adult education and assistance with the naturalization application process. (*Id.*
6 1306:20–23, 1308:24–1309:4.) Promise Arizona’s core activities include registering
7 voters, educating voters, and turning out the vote, all of which are carried out by paid staff
8 members and volunteers. (*Id.* 1308:7–14; 1309:5–23, 1313:15–17, 1314:11–1315:1.) Over
9 the past ten years, Promise Arizona has registered around 63,000 voters in Arizona. (*Id.*
10 1314:7–10.) In 2024, Promise Arizona expects to continue its voter turnout efforts for the
11 primary and general elections. (*Id.* 1316:18–1317:1.)

12 At trial, Petra Falcon, Promise Arizona’s Founding Executive Director, testified that
13 H.B. 2243 will “undo a lot of the work” the organization has done over the past decade.
14 (*Id.* 1321:8–20.) For example, Promise Arizona claims that H.B. 2243’s List Maintenance
15 Procedures will cause some of its members to “feel penalized.” (*Id.* 1321:8–1322:14) And
16 if one of its members is removed from the voter rolls pursuant to H.B. 2243, Promise
17 Arizona claims that members “would not have trust in the system.” (*Id.* 1322:21–1323:10.)
18 Promise Arizona expects to prepare its field organizers and volunteers for the
19 implementation of H.B. 2243, which it anticipates will require new training on the effects
20 of the law. (*Id.* 1320:21–1321:20, 1328:8–1329:20) Promise Arizona also anticipates
21 redirecting the use of its staff members and volunteers to assist registrants who receive a
22 notice to provide DPOC under H.B. 2243. (*Id.* 1318:24–1319:20, 1320:3–1321:20,
23 1322:20–1323:3.) In addition, Promise Arizona plans to update its literature and its website
24 to reflect the changes to Arizona’s voting laws. (*Id.* 1329:8–20.)

25 **5. Arizona Asian American Native Hawaiian Pacific Islander for** 26 **Equity Coalition**

27 Arizona Asian American Native Hawaiian Pacific Islander for Equity Coalition
28 (“Equity Coalition”) is a statewide, nonprofit, nonpartisan organization that strives for

1 equity and justice on behalf of its AANHPI constituents. (Tiwamangkala Tr. 1265:11–23.)
2 Equity Coalition pursues its mission by increasing civic engagement, organizing
3 communities, and developing young leaders. (*Id.* 1265:18–23.) Equity Coalition conducts
4 its voting-related activities—which include voter education, registration, and
5 mobilization—through its Civic Engagement Program. (*Id.* 1265:1–2, 1267:21–1268:1.)
6 Equity Coalition registers voters using digital and print advertisements, phone and text
7 banking, and in person at Asian cultural festivals, Asian businesses, and religious
8 organizations. (*Id.* 1269:10–1270:3.) Equity Coalition also provides voter registration
9 instructions in six AANHPI languages on its website. (*Id.* 1270:4–14.)

10 At trial, Equity Coalition’s Advocacy Director Matine Tiwamangkala testified that
11 after the Voting Laws were passed, Equity Coalition “had to take a pause” on its voter
12 registration efforts to discern how the laws would impact the registration process. (*Id.*
13 1274:12–18.) Equity Coalition hired a new employee to allow its “Democracy Defender
14 Director” to focus on voting rights. (*Id.* 1281:2–17.) Equity Coalition claims the AANHPI
15 community is fearful of H.B. 2243’s List Maintenance Procedures and Cancellation
16 Provision because some may be escaping government persecution. (*Id.* 1274:19–1275:3,
17 1275:15–21.) Equity Coalition expects to retrain its canvassers, volunteers, subgrantees,
18 and fellows on how to register voters and address these fears of the AANHPI community.
19 (*Id.* 1275:15–1276:1) Equity Coalition also plans to expand the services of one of its
20 subgrantees to assist voters who receive the 35-day notice and need to obtain DPOC. (*Id.*
21 1275:16–23.) In addition, the organization expects to update the voter registration
22 instructions on its website and translate each set of instructions, which costs 25 cents per
23 word. (*Id.* 1270:18–21, 1275:16–1276:1.) Because Equity Coalition does not currently
24 have the resources to complete these tasks, Equity Coalition plans to “shift [its] priorities”
25 toward assisting the AANHPI community to obtain DPOC and educating its community
26 members and volunteers about the effects of the Voting Laws. (*Id.* 1275:16–1276:19.)
27 Equity Coalition claims that this shift in priorities will impact its other initiatives—
28 including the organization’s actual collection of voter registration forms—and will harm

1 its mission. (*Id.* 1276:4–18.) Equity Coalition decided to reduce its voter registration goals
2 in response to the Voting Laws, which it claims led to a decrease in the organization’s
3 funding since its funding is “tied” to its registration goals. (*Id.* 1274:12–18, 1275:4–8,
4 1278:20–1279:7.)

5 **6. Poder Latinx**

6 Poder Latinx is an organization that aims to “engage the Latinx community to be
7 civil participants through their vote.” (Herrera Tr. 1285:5–10.) Poder Latinx serves
8 marginalized communities, primarily “Black, Indigenous, people of color,” with a focus
9 on the environment, economic justice, and immigration justice. (*Id.* 1285:11–16, 1285:24–
10 1286:5.) The organization’s elections-related work promotes voter engagement, voter
11 participation, and voter protection. (*Id.* 1284:11–13, 1285:5–10.) For example, Poder
12 Latinx engages voters by canvassing in communities, translating election information, and
13 conducting campaigns across multiple content mediums. (*Id.* 1286:6–14, 1286:6–1287:4.)
14 Poder Latinx set a goal of registering 4,600 new voters in 2023 and seeks to register 9,000
15 new voters in 2024. (*Id.* 1286:19–23.) Poder Latinx plans to meet its registration goals by
16 conducting outreach with on-the-ground canvassers and through social media, television,
17 and radio. (*Id.* 1286:24–1287:4.) Poder Latinx calculates that it costs around \$50 to register
18 each individual voter. (*Id.* 1288:6–8.)

19 Poder Latinx claims that the Citizenship Verification Procedures and List
20 Maintenance Procedures in H.B. 2492 and H.B. 2243 will remove qualified registered
21 voters from the voter rolls and will unlawfully deny new voter applicants. (*Id.* 1290:4–15.)
22 Poder Latinx also claims that naturalized citizens will be fearful of the database checks,
23 which will make them less likely to participate in elections. (*Id.* 1290:16–1291:7.) Nancy
24 Herrera, Poder Latinx’s Arizona State Program Director, testified that the Voting Laws’
25 database checks will harm the organization’s reputation, as community members who
26 receive support from Poder Latinx and who are later removed from the voting rolls or
27 denied registration will lose trust in the organization. (*Id.* 1300:23–1302:4.) To mitigate
28 these anticipated effects, Poder Latinx claims it will need to “restructure” its “entire

1 program” and allocate additional time and funding to its voter engagement efforts. (*Id.*
2 1290:16–1291:12.) The organization plans to add additional canvassers, translate new
3 voting materials, and contact community members who are removed from the voter rolls
4 or those whose applications are denied. (*Id.* 1291:8–25, 1299:10–1300:20.) Poder Latinx
5 also plans to conduct new campaigns utilizing social, digital, television, and print media,
6 accounting for an anticipated increase in spending. (*Id.* 1300:6–22.) Poder Latinx estimates
7 that these strategies will cost an additional \$10 to \$20 for each voter it registers or re-
8 registers and expects to reallocate funding from its issue-based campaigns. (*Id.* 1299:10–
9 1300:5, 1302:15–23.) It also anticipates that these additional costs will detract from the
10 organization’s ability to register new voters. (*Id.* 1291:20–25.)

11 7. Chicanos Por La Causa

12 Chicanos Por La Causa, Inc. is a 501(c)(3) community development nonprofit
13 organization with a mission to “empower[] lives” by engaging Latino communities in the
14 political process. (Garcia Tr. 176:16–20, 178:24–179:5; Guzman Tr. 478:2–6, 16–21.)
15 Chicanos Por La Causa Action Fund is a 501(c)(4) nonprofit advocacy organization that
16 aims to support the mission of Chicanos Por La Causa, Inc. (Garcia Tr. 175:19–20, 177:18–
17 22.) The core activities of Chicanos Por La Causa, Inc. and Chicanos Por La Causa Action
18 Fund (collectively, “CPLC”) include helping eligible people to register to vote and follow
19 up to make sure they actively vote, in part by targeting “low propensity voters” through its
20 “Latino Loud” initiative. (*Id.* 179:6–22, 180:10–18; Guzman Tr. 478:22–479:17.) Joseph
21 Garcia, vice president of public policy at Chicanos Por La Causa and executive director of
22 Chicanos Por La Causa Action Fund, testified that CPLC has a reputation as “a trusted
23 name within the Latino community.” (Garcia Tr. 186:8–19; *see also* Guzman Tr. 485:20–
24 486:3.)

25 CPLC claims that the Voting Laws’ Citizenship Verification Procedures and List
26 Maintenance Procedures regarding voters lacking DPOC will have a chilling effect on
27 voters in the Latino community. (Garcia Tr. 190:19–25, 199:14–200:16; Guzman Tr.
28 480:9–481:18.) These new procedures would harm CPLC’s reputation if members of the

1 Latino community attribute the effects of the Voting Laws to CPLC’s inability to
2 effectively register individuals to vote. (Garcia Tr. 191:1–7, 194:7–195:4, 206:24–207:15;
3 Guzman Tr. 486:4–487:2.) During the 2022 midterm election cycle, CPLC registered
4 37,000 new voters and spent \$5.7 million on canvassing and registering people to vote.
5 (Garcia Tr. 180:10–18, 203:4–8.) CPLC anticipates reallocating approximately 20 to 30%
6 of its election budget specifically to address the effects of the Voting Laws on its voter
7 programming by increasing its staffing to educate voters about the Voting Laws and
8 assisting those who are removed from the voting rolls. (Garcia Tr. 191:8–194:6, 203:4–23,
9 204:3–22.)

10 **8. Arizona Coalition for Change**

11 Arizona Coalition for Change is a 501(c)(3) nonprofit organization based in
12 Arizona, and its mission is to empower individuals in underserved communities to impact
13 their community through civic engagement and collaboration. (Bolding Tr. 258:3–25.)
14 Arizona Coalition for Change operates in Maricopa, Pima, and Pinal Counties and
15 primarily serves Black, Brown, and Indigenous communities, women, and young people.
16 (*Id.* 258:16–25.) Arizona Coalition for Change hosts leadership development programs for
17 youth and college students, leads community organizing efforts, and conducts voter
18 registration and voter education programs as part of its civic engagement activities. (*Id.*
19 259:9–17, 265:8–11.) Arizona Coalition for Change registers voters by tabling at events
20 and at “hot spots,” which are high-traffic locations such as grocery stores, libraries, and
21 small businesses. (*Id.* 267:7–268:1, 268:15–25.) The organization staffs its registration
22 drives with paid staff members and volunteers. (*Id.* 261:9–12, 268:2–14.) Arizona
23 Coalition for Change also hosts voter education events to inform individuals about voting,
24 changes to Arizona election law, and the various offices that are up for election. (*Id.* 260:3–
25 261:8, 262:25–263:9.) Organizing, marketing, and hosting each voter education event
26 requires, at a minimum, ten hours of labor. (*Id.* 261:13–25.) Arizona Coalition for Change
27 also pays to advertise its voter education events through social media, digital, and print
28 communications. (*Id.* 262:1–24.)

1 Arizona Coalition for Change claims that the Voting Laws will pose a “significant
2 challenge” for individuals registering to vote. (*Id.* 265:4–17, 279:11–19.) For example,
3 many individuals will incorrectly believe they are registered to vote when they are not. (*Id.*
4 272:22–273:3.) Arizona Coalition for Change’s President Reginald Bolding testified that
5 Arizona Coalition for Change plans to host new voter education events and create new,
6 paid advertisements about the Voting Laws. (*Id.* 265:4–266:16.) Arizona Coalition for
7 Change also expects to change its voter registration program by hiring additional
8 community organizers, implementing new training for its staff members and volunteers,
9 and hosting “office hours” to assist community members with the registration process. (*Id.*
10 270:20–273:17, 274:20–275:23.) Arizona Coalition for Change anticipates reallocating
11 time and resources from its civil leadership development program to implement these new
12 voter registration efforts. (*Id.* 273:25–274:18.)

13 **9. Arizona Students’ Association**

14 Arizona Students’ Association (“ASA”) is a nonprofit, nonpartisan organization
15 based in Arizona that advocates for affordable and accessible higher education for Arizona
16 university and college students. (Nitschke Tr. 447:18–449:2.) ASA advances its mission
17 by advocating at the state and local level, developing student leaders, and registering
18 students to vote. (*Id.* 445:23–25, 447:18–449:2.) According to ASA, its members include
19 all students at Arizona’s public universities, community colleges, and Grand Canyon
20 University, totaling approximately 500,000 students. (*Id.* 446:17–21.) This student
21 population includes Latinos and naturalized citizens. (*Id.* 446:17–447:1.) ASA’s primary
22 beneficiaries are its members, and ASA receives input from its members through polling
23 and various on-campus events. (*Id.* 473:15–25.)

24 ASA conducts its voter registration efforts through online platforms year-round and
25 by tabling at various campus locations during the beginning of every fall semester. (*Id.*
26 448:14–449:13.) Since the passage of the Voting Laws, ASA has spent time updating its
27 training materials, conducting additional training for its volunteers and paid staff members,
28 and following up with the organization’s Federal-Only Voters to ensure they become Full-

1 Ballot Voters. (*Id.* 452:4–23, 453:12–17.) ASA estimates that its regional organizers and
2 executive staff have spent roughly 100 hours conducting the new trainings. (*Id.* 452:14–
3 23, 453:12–17.) ASA also estimates that it has spent between \$150 and \$210 to provide
4 updated training materials to its staff members and volunteers. (458:17–25, 467:20–467:6.)

5 At trial, Kyle Nitschke, co-Executive Director for ASA, testified that the DPOR
6 Requirement would impact ASA’s ability to help Federal-Only Voters on college campuses
7 become Full-Ballot Voters, since many Federal-Only Voters do not have an in-state ID, a
8 utility bill, or another form of DPOR. (*Id.* 453:18–454:8, 462:8–463:2.) ASA further claims
9 that the DPOR requirement would require ASA to spend additional time checking each
10 student’s application documents, which would “really slow down the registration process”
11 and may lead to ASA turning away students who do not have readily accessible DPOR.
12 (*Id.* 454:9–24.) ASA expects that it will continue to reallocate resources from its other
13 initiatives, including its youth empowerment summit, to train its staff, pay for upgraded
14 document scanning software to help students upload DPOR and DPOC, and check the voter
15 database to determine the effect the Voting Laws are having on students. (*Id.* 456:8–457:7,
16 458:9–16, 459:1–16., 460:20–461:5.) ASA also claims that students will choose not to
17 register to vote for fear of H.B. 2492’s investigation procedures. (*Id.* 461:21–462:7.)

18 **10. Democratic National Committee and Arizona Democratic Party**

19 The Democratic National Committee (“DNC”) is the national arm of the Democratic
20 Party. (Reid Tr. 422:10–12.) The DNC coordinates the Democratic Party’s operations
21 across all fifty states with the goal of electing Democrats “up and down the ballot,”
22 including federal, state, and local offices in Arizona. (*Id.* 422:13–19, 24–25.) The DNC is
23 comprised of formal voting members along with grassroots Democratic supporters. (*Id.*
24 434:10–435:5.) The Arizona Democratic Party (“ADP”) is the operating arm of the
25 Democratic Party in Arizona. (Dick Tr. 508:1–3.) The ADP also works to elect Democrats
26 in federal, state, and local elections in Arizona. (*Id.*) The ADP’s membership is comprised
27 of Democratic voters and supporters. (*Id.* 519:12–520:5.) In Arizona, there are
28 approximately 1.26 million registered Democrats. (*Id.* 508:9–10.) The DNC and the ADP

1 both work to persuade citizens to vote for Democratic candidates and help Democratic
2 supporters register to vote and cast a ballot. (*Id.* 509:13–24; Reid Tr. 423:21–424:10.)

3 At trial, Ramsey Reid, DNC’s Director of States, and Morgan Dick, ADP’s
4 Executive Director, both testified that H.B. 2492’s Criminal Investigation Procedures
5 would deter Democratic supporters from registering to vote for fear of potentially
6 subjecting themselves or a family member to scrutiny by law enforcement or prosecution.
7 (Reid Tr. 421:8–13, 430:1–23; Dick Tr. 506:25–507:4, 516:22–517:11.) As a result, Reid
8 and Dick testified that these provisions would impact the ability of Democratic candidates
9 to successfully compete in Arizona elections. (Reid Tr. 433:9–23, Dick Tr. 518:18–21.) To
10 address the anticipated impact of H.B. 2492, the DNC is planning to reallocate resources
11 from its work in other states to find new potential registrants and further train its staff and
12 volunteers on how to communicate with potential voters about the Voting Laws. (Reid Tr.
13 430:24–432:25.) The ADP is also planning reallocating resources from other endeavors to
14 make up the “lost ground” of voters that the ADP could have registered and mobilized to
15 vote. (Dick Tr. 517:12–518:8.)

16 11. Tribal Plaintiffs

17 San Carlos Apache Tribe (“Tribe”) is a federally recognized Indian Tribe. (Pls.’
18 Stip. No. 1.) The San Carlos Apache Reservation (“Reservation”) spans across Gila,
19 Graham, and Pinal Counties in southeastern Arizona and is the tenth largest reservation in
20 the United States. (*Id.* Nos. 2, 4; Rambler Tr. 996:10–17.) Approximately 13,000 to 14,000
21 of the Tribe’s 17,300 members live on the Reservation. (Rambler Tr. 996:18–21.) Roughly
22 half of the Tribe members that live on the Reservation are over sixty years old, and many
23 of them speak Apache and are not fluent in English. (*Id.* 1005:16–23.)

24 At trial, Tribe Chairman Terry Rambler testified that voting in federal, state, and
25 local elections is very important to the Tribe and its members. (*Id.* 995:14–18, 1003:22–
26 1004:19.) The Tribe claims that the DPOR Requirement would make it more difficult for
27 Tribe members—especially those who are elderly and not fluent in English—to register to
28 vote because the Reservation does not have a uniform mapping system. (*Id.* 999:24–

1 1000:5, 1005:12–23, 1008:11–21.) For example, residences on the Reservation typically
 2 do not have street names or building numbers, and Tribe members receive mail at post
 3 office boxes on the Reservation. (*Id.* 996:22–997:4, 997:7–11.) Tribe identification cards
 4 list post office box numbers instead of residential addresses. (*Id.* 998:11–16.) In addition,
 5 not all Tribe members have an Arizona credential, and those Tribal members with Arizona
 6 credentials may list the nearest highway mile marker on their credential, as opposed to a
 7 residential address. (*Id.* 997:12–998:1, 999:10–12.) Some Tribe members, including those
 8 who are temporarily living with a family member or those who are experiencing
 9 homelessness, do not have a permanent residence.⁴³ (*Id.* 998:17–22.)

10 Tohono O’odham Nation is a federally recognized Tribe. (Pls.’ Stip. No. 5.)
 11 According to the 2020 Census, approximately 6,713 voting-age individuals live on Tohono
 12 O’odham lands. (*Id.* No. 6.) Gila River Indian Community is a federally recognized Tribe.
 13 (*Id.* No. 7.) According to the 2020 Census, approximately 9,628 voting-age individuals live
 14 on the Gila River Reservation.⁴⁴ (*Id.* No. 8.)

15 II. CONCLUSIONS OF LAW

16 The Court previously ruled on several of Plaintiffs’ claims in its Order addressing
 17 the parties’ motions for summary judgment. (*See generally* 09/14/2023 Order.) The parties
 18 presented evidence on the following remaining issues at trial:

- 19 • Whether the non-US Plaintiffs have standing to bring each of their claims.
- 20 • Whether H.B. 2492 § 4’s Birthplace Requirement for State Form users
 21 violates the Civil Rights Act (“CRA”), 52 U.S.C. § 10101, section 2 of the
 22 Voting Rights Act (“VRA”), 52 U.S.C. § 10301 et seq., or the Equal
 23 Protection Clause, or imposes an undue burden on the right to vote. *See*
 24 A.R.S. § 16-121.01(A).

25 _____
 26 ⁴³ The remaining “LUCHA Plaintiffs”—namely, Living United for Change in Arizona,
 27 League of United Latin American Citizens, Arizona Democracy Resource Center Action,
 and Inter Tribal Council of Arizona, Inc.—did not present any evidence at trial regarding
 their standing to bring this action.

28 ⁴⁴ The remaining Tohono O’odham Plaintiffs—namely, Alanna Siquieros, Keanu Stevens,
 and LaDonna Jacket—did not provide any evidence at trial regarding their standing to bring
 this action.

- 1 • Whether H.B. 2492 § 4’s citizenship verification and criminal investigation
2 referral procedures for registrations lacking DPOC violates section 2 of the
3 VRA, procedural due process, or the Equal Protection Clause, or imposes an
4 undue burden on the right to vote. *See* § 16-121.01(D), (E).
- 5 • Whether H.B. 2492 § 5’s DPOR requirement for State Form users violates
6 the NVRA or the Equal Protection Clause or imposes an undue burden on
7 the right to vote. *See* § 16-123; *see also* § 16-121.01(A).
- 8 • Whether H.B. 2492 § 7’s referral, citizenship verification, and prosecution
9 procedures for registered voters without DPOC violate the NVRA, section 2
10 of the VRA, or the Equal Protection Clause, or imposes an undue burden on
11 the right to vote. *See* § 16-143.
- 12 • Whether H.B. 2492 § 8’s cancellation of a voter registration upon
13 “confirm[ing]” a person’s non-citizenship violates the NVRA, section 2 of
14 the VRA, procedural due process, or the Equal Protection Clause, or imposes
15 an undue burden on the right to vote. *See* § 16-165(A)(10), *amended by* H.B.
16 2243 § 2.
- 17 • Whether H.B. 2243 § 2’s citizenship verification, registration cancellation,
18 and criminal investigation referral procedures violate the NVRA, section 2
19 of the VRA, procedural due process, the Equal Protection Clause, or imposes
20 an undue burden on the right to vote. *See* § 16-165(A)(10), (G)–(K).
- 21 • Whether H.B. 2243 § 2’s Reason to Believe Provision violates the CRA, the
22 NVRA, section 2 of the VRA, or the Equal Protection Clause *See* § 16-
23 165(I).
- 24 • Whether the Voting Laws were enacted with a discriminatory intent.

25 Under the principles of preemption, “when federal and state law conflict, federal
26 law prevails and state law is preempted.” *Knox v. Brnovich*, 907 F.3d 1167, 1173 (9th Cir.
27 2018) (quoting *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 471 (2018)).
28 Because the Voting Laws have not yet been implemented, Plaintiffs are bringing a facial

1 challenge to the Voting Laws’ legality. To succeed on a facial challenge, Plaintiffs must
2 establish “that ‘no set of circumstances exists under which the Act would be valid.’” *Puente*
3 *Ariz. v. Arpaio*, 821 F.3d 1098, 1104 (quoting *United States v. Salerno*, 481 U.S. 739, 746
4 (1987)). The Court “must be careful not to go beyond the statute’s facial requirements and
5 speculate about ‘hypothetical’ or ‘imaginary’ cases.” *Wash. State Grange v. Wash. State*
6 *Republican Party*, 552 U.S. 442, 450 (2008).

7 **A. Subject Matter Jurisdiction**

8 **1. Standing**

9 Defendants argue that all non-U.S. Plaintiffs lack standing because non-U.S.
10 Plaintiffs have not demonstrated that their organizations, or a specific member of their
11 organizations, will suffer an actual or imminent, concrete, and particularized injury due to
12 any challenged provision of the Voting Laws.

13 Under Article III of the United States Constitution, a plaintiff has standing if it can
14 show (1) an “injury in fact” that is concrete and particularized and actual or imminent, not
15 hypothetical; (2) that the injury is fairly traceable to the challenged action of the defendant;
16 and (3) that it is likely, as opposed to merely speculative, that the injury will be redressed
17 by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). In
18 cases for prospective injunctive relief, “past wrongs do not in themselves amount to that
19 real and immediate threat of injury necessary to make out a case or controversy.” *City of*
20 *Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983). Rather, a plaintiff’s “standing to seek the
21 injunction requested depend[s] on whether he [is] likely to suffer future injury.” *Id.* at 105.
22 When addressing behavior that is alleged to increase the risk of future injury, the future
23 injury must be “certainly impending.” *Clapper v. Amnesty Int’l*, 568 U.S. 398, 409 (2013);
24 *see also Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 839 (9th Cir. 2014)
25 (“Whether we view injury in fact as a question of standing or ripeness, ‘we consider
26 whether the plaintiff[] face[s] a realistic danger of sustaining a direct injury as a result of
27 the statute’s operation or enforcement’” (alterations in original) (citation omitted));
28 *Common Cause Ind. v. Lawson*, 937 F.3d 944, 950 (7th Cir. 2019) (“[O]rganizations may

1 rely on not only actual, but imminent harm for standing, including by challenging laws pre-
2 enforcement if the organization can show a substantial threat of injury.”).

3 “Only one plaintiff needs to have standing when only injunctive relief is sought.”
4 *DNC v. Reagan*, 329 F. Supp. 3d 824, 841 (D. Ariz. 2018) (citing *Crawford v. Marion*
5 *Cnty. Election Bd.* (“*Crawford I*”), 472 F.3d 949, 951 (7th Cir. 2007)) (finding standing
6 where Arizona Democratic Party and additional private plaintiffs requested injunctive and
7 declaratory relief against Arizona election law), *aff’d sub nom. DNC v. Hobbs*, 9 F.4th
8 1218, 1219 (9th Cir. 2021) (Mem.); *Mecinas v. Hobbs*, 30 F.4th 890, 897 (9th Cir. 2022)
9 (“In a suit with multiple plaintiffs, generally only one plaintiff need have standing for the
10 suit to proceed.”). However, at least one plaintiff must establish standing “for each claim
11 for relief.” *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct.
12 2367, 2379 n.6 (2020).

13 An organization can have direct standing by “claim[ing] that it suffered an injury in
14 its own right” or representational standing by asserting “standing solely as the
15 representative of its members.” *Students for Fair Admissions, Inc. v. President & Fellows*
16 *of Harvard Coll.*, 600 U.S. 181, 199 (2023) (citation omitted). “[A]n organization has direct
17 standing to sue where it establishes that the defendant’s behavior has frustrated its mission
18 and caused it to divert resources in response to that frustration of purpose.” *E. Bay*
19 *Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) (citing *Fair Hous. of*
20 *Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002)). Organizations cannot “manufacture
21 the injury by incurring litigation costs,” but they can show standing when they “would have
22 suffered some other injury had they not diverted resources to counteracting the problem.”
23 *Id.* (internal quotations omitted). “The fact that the added cost has not been estimated and
24 may be slight does not affect standing, which requires only a *minimal showing of injury*.”
25 *Crawford I*, 472 F.3d at 951 (emphasis added), *aff’d*, 553 U.S. 181 (2008); *see also See E.*
26 *Bay Sanctuary Covenant*, 993 F.3d at 664 (“Organizations are not required to demonstrate
27 some threshold magnitude of their injuries . . .”).

28 To invoke representational standing, an organization must show that “(a) its

1 members would otherwise have standing to sue in their own right; (b) the interests it seeks
2 to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor
3 the relief requested requires the participation of individual members in the lawsuit.”
4 *Students for Fair Admissions*, 600 U.S. at 199 (citation omitted). “Implicit in the first prong
5 of this test is the requirement that an organization must generally have ‘members’ to bring
6 suit on their behalf.” *Or. Moms Union v. Brown*, 540 F. Supp. 3d 1008, 1013 (D. Or. May
7 20, 2021). However, a non-membership organization may also have representational
8 standing if it possesses “indicia of membership” such that it is “sufficiently identified with
9 and subject to the influence of those it seeks to represent as to have a ‘personal stake in the
10 outcome of the controversy.’” *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096 (9th
11 Cir. 2021) (quoting *Or. Advoc. Ctr. v. Mink*, 322 F.3d 1101, 1111 (9th Cir. 2003)). For
12 example, in *Oregon Advocacy Center v. Mink*, the Ninth Circuit held that a non-
13 membership organization had associational standing because it served a “specialized
14 segment” of a community, who were the “primary beneficiaries” of the organization’s
15 activities. 322 F.3d at 1111.

16 **i. Challenges to the Birthplace Requirement**

17 Mi Familia Vota’s testimony demonstrates that the Birthplace Requirement poses a
18 “substantial threat of injury,” which frustrates Mi Familia Vota’s mission and will require
19 it to divert resources to counteract its effects, constituting an injury-in-fact. *Common*
20 *Cause*, 937 F.3d at 950; see, e.g., *Crawford I*, 472 F.3d at 951 (“[T]he new law injures the
21 Democratic Party by compelling the party to devote resources to getting to the polls those
22 of its supporters who would otherwise be discouraged by the new law from bothering to
23 vote.”); *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014) (“[O]rganizations
24 can establish standing to challenge election laws by showing that they will have to divert
25 personnel and time to educating potential voters on compliance with the laws and assisting
26 voters who might be left off the registration rolls on Election Day.”); *One Wis. Inst., Inc.*
27 *v. Thomsen*, 198 F. Supp. 3d 896, 909–10 (W.D. Wis. 2016) (finding that nonprofit
28 plaintiffs had suffered an injury-in-fact where plaintiffs presented evidence that they

1 “devoted money, staff time, and other resources away from their other priorities to educate
2 voters about the new laws”), *rev’d in part on other grounds sub nom. Luft v. Evers*, 963
3 F.3d 665 (7th Cir. 2020). This injury is traceable to the Birthplace Requirement and
4 redressable by the injunction sought by Mi Familia Vota. *See Common Cause*, 937 F.3d at
5 950.

6 Defendants argue that Mi Familia Vota has not identified any individual who is
7 likely to be injured by the Birthplace Requirement. But to have standing based on a future
8 injury, a plaintiff need not identify specific individuals who are likely to be harmed by the
9 challenged conduct, so long as the future injury alleged is “certainly impending.” *Clapper*,
10 568 U.S. at 409. Defendants further argue that Mi Familia Vota “cannot predict the
11 financial impact” of the Birthplace Requirement and that its anticipated expenses to
12 counteract the provision are speculative. However, a plaintiff need not estimate the cost of
13 their injury to demonstrate standing. *See Crawford I*, 472 F.3d at 951. The Court concludes
14 that Mi Familia Vota has direct standing.

15 **ii. Challenges to H.B. 2492’s Citizenship Verification**
16 **Procedures and Criminal Investigation Procedures**

17 The Court concludes that the Democratic National Committee and the Arizona
18 Democratic Party have direct standing. The organizations’ testimony demonstrates that
19 H.B. 2492’s Criminal Investigation Procedures pose a substantial threat of injury, which
20 frustrates the DNC’s and the ADP’s missions and will require them to divert resources to
21 respond to its effects. *See Common Cause*, 937 F.3d at 950; *Arcia*, 772 F.3d at 1341. The
22 diversion-of-resources constitutes injuries-in-fact, which is traceable to the H.B. 2492’s
23 Criminal Investigation Procedures and redressable by the injunctive relief sought by the
24 DNC and the ADP.

25 The Court also concludes that the Democratic National Committee and the Arizona
26 Democratic Party have representational standing. First, the DNC’s and the ADP’s members
27 would have standing to sue in their own right. Given the impending enforcement of the
28 Voting Laws, both organizations’ members face a “realistic danger of sustaining a direct

1 injury” due to H.B. 2492’s Criminal Investigation Procedures. *Bowen*, 752 F.3d at 839.
2 This constitutes an injury-in-fact, which is traceable to H.B. 2492 and redressable by an
3 injunction preventing their enforcement. Second, the DNC and the ADP seek to protect
4 voting rights of its members, which is germane to the purposes of both organizations. And
5 third, the organizations’ claims and requested relief do not require the participation of its
6 members in this litigation. In addition, because it is “relatively clear” that at least one of
7 each organization’s members will be impacted by H.B. 2492’s Criminal Investigation
8 Procedures, and because defendants need not know the identity of any particular DNC or
9 ADP member to respond to their claims, it is not necessary for the DNC or the ADP to
10 identify any specific member who will be injured by the challenged provisions. *Nat’l*
11 *Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

12 In addition, Poder Latinx’s testimony demonstrates that H.B. 2492’s Citizenship
13 Verification Procedures pose a substantial threat of injury, which frustrates Poder Latinx’s
14 mission and will require it to divert resources to counteract its effects. *See Common Cause*,
15 937 F.3d at 950; *Arcia*, 772 F.3d at 1341. This constitutes an injury-in-fact, which is
16 traceable to H.B. 2492’s and H.B. 2243’s database checks and redressable by the injunctive
17 relief sought by Poder Latinx. Defendants assert that the costs of increasing its community
18 outreach efforts does not amount to injury-in-fact because informing voters about the
19 electoral process is part of the organization’s “regular mission.” This argument is also
20 misplaced, as an organization can have standing where it “diverts its resources to achieve
21 its typical goal in a different or *amplified manner*.” *Fair Fight Action, Inc. v. Raffensperger*,
22 634 F. Supp. 3d 1128, 1178 (N.D. Ga. 2022) (emphasis added). The Court concludes that
23 Poder Latinx has direct standing.

24 Lastly, Voto Latino’s testimony demonstrates that H.B. 2492’s Citizenship
25 Verification Procedures and Criminal Investigation Procedures frustrate Voto Latino’s
26 mission. As a result, Voto Latino has diverted and anticipates further diversion of resources
27 to counteract its effects, which constitutes an injury-in-fact. *See Crawford I*, 472 F.3d at
28 951. This injury is traceable to H.B. 2492’s criminal prosecution procedures and

1 redressable by the injunctive relief sought by Voto Latino. Though Defendants argue that
2 Voto Latino did not adduce evidence that the educational content it has created specifically
3 addresses the bill’s prosecution procedures, the standing inquiry does not require such
4 minute specificity. Rather, it is sufficient that Voto Latino presented evidence that it
5 “devoted money, staff time, and other resources away from their other priorities to educate
6 voters about the new laws.” *One Wis. Inst., Inc.*, 198 F. Supp. 3d at 909–10. The Court
7 concludes that Voto Latino has direct standing.

8 **iii. Challenges to the List Maintenance Procedures and**
9 **Cancellation Provision**

10 The Court concludes that Promise Arizona has direct standing to challenge H.B.
11 2243’s List Maintenance Procedures and Cancellation Provision. H.B. 2243’s database
12 checks and notice and investigation procedures pose a substantial threat of injury, which
13 frustrates Promise Arizona’s mission and will require it to divert resources to counteract
14 its effects. *See Common Cause*, 937 F.3d at 950; *Arcia*, 772 F.3d at 1341. This constitutes
15 an injury-in-fact, which is traceable to H.B. 2243’s database checks and notice and
16 investigation procedures and redressable by the injunctive relief sought by Promise
17 Arizona.

18 Promise Arizona also has representational standing. First, Promise Arizona’s
19 members would have standing to sue in their own right. Given the impending enforcement
20 of the Voting Laws, and because H.B. 2243’s database checks would apply to all registered
21 voters in Arizona, Promise Arizona’s members face a “realistic danger of sustaining a
22 direct injury” due to H.B. 2243. *Bowen*, 752 F.3d at 839 (*see* Connor Tr. 371:15–372:2
23 (testifying the Secretary of State will implement the Voting Laws); Petty Tr. 160:3–15
24 (testifying Maricopa County Recorder’s office will implement the Voting Laws).) This
25 threat of future injury constitutes an injury-in-fact that is traceable to H.B. 2243 and
26 redressable by an injunction preventing its enforcement. Second, Promise Arizona seeks to
27 protect voting rights of its members, which is germane to the organization’s purpose. And
28 lastly, Promise Arizona’s claim and requested relief do not require the participation of its

1 members in this litigation.

2 Defendants argue that Promise Arizona has not identified any specific member who
3 has been or is likely to be injured by H.B. 2243's database checks and notice and
4 investigation procedures. However, to demonstrate representational standing, an
5 organization is not required to identify of any member who is or will be injured "[w]here
6 it is relatively clear, rather than merely speculative, that one or more members have been
7 or will be adversely affected by a defendant's action," and where the defendant does not
8 need to know "the identity of a particular member to understand and respond to an
9 organization's claim of injury." *Nat'l Council of La Raza*, 800 F.3d at 1041; *see also Fla.*
10 *State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1160 (11th Cir. 2008) ("When the
11 alleged harm is prospective, we have not required that the organizational plaintiffs name
12 names because every member faces a probability of harm in the near and definite future.").

13 The Court also concludes that Equity Coalition, CPLC, and SVREP, and Poder
14 Latinx have direct standing. Tiwamangkala's, Garcia's, Camarillo's, and Herrera's
15 testimony demonstrates that H.B. 2243's List Maintenance Procedures and Cancellation
16 Provision pose a substantial threat of injury, which frustrates the organizations' missions
17 and will require the diversion of resources to respond to its effects. *See Common Cause*,
18 937 F.3d at 950; *Arcia*, 772 F.3d at 1341. This constitutes an injury-in-fact, which is
19 traceable to H.B. 2243 and is redressable by the injunctive relief.

20 **iv. Challenges to the DPOR Requirement**

21 The Court concludes that the San Carlos Apache Tribe has representational standing
22 to challenge the DPOR Requirement. First, the Tribe's members would have standing to
23 sue in their own right. Given the impending enforcement of the Voting Laws, the Tribe's
24 members face a "realistic danger of sustaining a direct injury" due to the DPOR
25 Requirement. *Bowen*, 752 F.3d at 839. This constitutes an injury-in-fact, which is traceable
26 to H.B. 2492 and redressable by an injunction preventing their enforcement. Second, the
27 Tribe seeks to protect voting rights of its members, which is germane to the Tribe's
28 purpose. And third, the Tribe's claim and requested relief do not require the participation

1 of its members in this litigation. In addition, because it is “relatively clear” that at least one
2 of the Tribe’s members will be impacted by the DPOR requirement, and because
3 defendants need not know the identity of any particular Tribe member to respond to the
4 Tribe’s claims, it is not necessary for the Tribe to identify any specific member who will
5 be injured by the challenged provisions.⁴⁵ *Nat’l Council of La Raza*, 800 F.3d at 1041.

6 **2. Ripeness**

7 Defendants argue that Plaintiffs’ claims regarding the Voting Laws are
8 constitutionally and prudentially unripe because Plaintiffs have not shown whether or how
9 these provisions will be implemented, or how they will be affected by their implementation.

10 “[T]he ripeness inquiry contains both a constitutional and a prudential component.”
11 *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en
12 banc) (citation omitted). Like the standing analysis, a claim is constitutionally ripe when
13 “plaintiffs face ‘a realistic danger of sustaining a direct injury as a result of the statute’s
14 operation or enforcement.’” *Id.* at 1139 (quoting *Babbitt v. United Farm Workers Nat.*
15 *Union*, 442 U.S. 289, 298 (1979)); see *Coons v. Lew*, 762 F.3d 891, 897 (9th Cir. 2014)
16 (“When addressing the sufficiency of a showing of injury-in-fact grounded in potential
17 future harms, . . . the analysis for both standing and ripeness is essentially the same.”
18 (citations omitted)), *as amended* (Sept. 2, 2014). Generally, Courts apply three factors to
19 evaluate whether a pre-enforcement challenge is constitutionally ripe: (1) whether
20 “plaintiffs have articulated a concrete plan to violate the law in question,” (2) “whether the
21 prosecuting authorities have communicated a specific warning or threat to initiate
22 proceedings,” and (3) “the history of past prosecution or enforcement under the challenged
23 statute.” *Thomas*, 220 F.3d at 1138 (internal quotations and citation omitted). However,
24 where the plaintiffs “are not the target of enforcement,” the Ninth Circuit has determined
25 that “the familiar pre-enforcement analysis articulated in *Thomas* does not apply,” and has
26

27
28

⁴⁵ Because the Court finds that a Plaintiff has standing for each claim for relief, the Court need not determine whether remaining Plaintiffs have standing.

1 limited its ripeness analysis to the prudential component.⁴⁶ *San Luis & Delta-Mendota*
2 *Water Auth. v. Salazar*, 638 F.3d 1163, 1173 (9th Cir. 2011). In addition, the Ninth Circuit
3 “appl[ies] the requirements of ripeness and standing less stringently in the context of First
4 Amendment claims.” *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1174 (9th Cir. 2022).

5 The Court concludes that Plaintiffs’ claims are constitutionally ripe. The Voting
6 Laws target individual voters, rendering the *Thomas* pre-enforcement factors inapplicable
7 to nearly all Plaintiffs. *See Salazar*, 638 F.3d at 1173. Regardless, the organizational
8 Plaintiffs have shown that Arizona’s enforcement of the Voting Laws will imminently
9 harm their missions and/or their members. (*See supra* Section II(A)(1)); *Bowen*, 752 F.3d
10 at 839 (pre-enforcement action is ripe “if the alleged injury is ‘reasonable’ and ‘imminent,’
11 and not merely ‘theoretically possible’” (citation omitted)). Defendants emphasize that the
12 Voting Laws are not currently being enforced, it is unclear how the Voting Laws will be
13 enforced, and that Plaintiffs have not proven that any person will be injured by the Voting
14 Laws. But Ms. Connor testified that the Secretary of State will implement the Voting Laws
15 once the Court determines their legality. (Connor Tr. 371:15–372:2.) And the county
16 recorders have indicated their intent to implement the Voting Laws after receiving
17 guidance from the Secretary of State or the Court.⁴⁷ (*See, e.g.*, Petty Tr. 160:3–15; Ex. 111,
18 at PX 111-3 to -5; Ex. 118, at PX 118-4 to -5; Ex. 121, at PX 121-2 to -3; *see also* Exs.
19 123, 127, 136, 146, 151, 156, 174, 175.) Plaintiffs’ injuries are not just “theoretically
20 possible,” but “imminent.” *See Bowen*, 752 F.3d at 839.

21 The Court also finds that Plaintiffs’ claims are prudentially ripe. A claim is
22 prudentially ripe when “the fitness of the issues for judicial decision and the hardship to
23 the parties of withholding court consideration” both weigh toward hearing the case. *See*
24 *Ass’n of Irrigated Residents v. EPA*, 10 F.4th 937, 944 (9th Cir. 2021) (citing *Abbott Labs.*
25 *v. Gardner*, 387 U.S. 136, 149 (1967)). First, the issues are fit for review “because further

26 ⁴⁶ The third pre-enforcement factor in *Thomas*—the history of past enforcement—is also
27 inapplicable where, as here, the statutes at issue are new. *See Wolfson v. Brammer*, 616
28 F.3d 1045, 1060 (9th Cir. 2010).

⁴⁷ At least one county has already begun implementing certain provisions of the Voting
Laws. (Doc. 679-2, Ex. 8, 30(b)(6) Dep. of Cochise County Recorder (“Cochise Dep.”) at
26:16–27:10, 28:12–19, 30:8–18, 80:5–81:24; *see also* Exs. 507–510.)

1 factual development would not ‘significantly advance [the Court’s] ability to deal with the
2 legal issues presented.’” *Salazar*, 638 F.3d at 1173 (quoting *Nat’l Park Hosp. Ass’n v.*
3 *Dep’t of Interior*, 538 U.S. 803, 804 (2003)). Second, as the Court previously ruled,
4 “delaying review until after certain Plaintiffs have already been unlawfully removed from
5 Arizona’s voting rolls and prevented from voting would make any review ‘too late to
6 redress the injuries suffered by [Plaintiffs’] members.’” (Doc. 304, 02/16/2023 Order at 19
7 (quoting *Ass’n of Irrigated Residents*, 10 F.4th at 944).)

8 **B. Civil Rights Act**

9 Plaintiffs claim that the Birthplace Requirement and the Reason to Believe
10 Provision violate the Civil Rights Act.

11 **1. Private Right Under the CRA**

12 Defendants argue that § 10101 does not confer a private right, and alternatively, that
13 non-U.S. Plaintiffs may not enforce § 10101 under § 1983. Section 10101 provides:

14 (2) No person acting under color of law shall—

15 (A) in determining whether an individual is qualified under State law
16 or laws to vote in any election, apply any standard, practice, or procedure
17 different from the standards, practices, or procedures applied under such law
18 or laws to other individuals within the same county, parish, or similar
19 political subdivision who have been found by State officials to be qualified
20 to vote;

18 (B) deny the right of any individual to vote in any election because of
19 an error or omission on any record or paper relating to any application,
20 registration, or other act requisite to voting, if such error or omission is not
21 material in determining whether such individual is qualified under State law
22 to vote in such election[.]

21 52 U.S.C. § 10101(a)(2)(A)–(B). The statute does not expressly create a private right of
22 action but empowers the U.S. Attorney General to bring “a civil action or other proper
23 proceeding for preventive relief, including an application for a permanent or temporary
24 injunction, restraining order, or other order.” § 10101(c). The Ninth Circuit has not decided
25 whether private citizens may enforce § 10101, though the Fifth and Eleventh Circuits have
26 found in the affirmative. *Vote.Org v. Callanen*, 89 F.4th 459, 473–76 (5th Cir. 2023)
27 (finding federal right under § 10101(a)(1) and (a)(2)(B)); *Schwier v. Cox*, 340 F.3d 1284,
28 1296 (11th Cir. 2003) (finding federal right under § 10101(a)(2)(B)); *see also Davis v.*

1 *Commonwealth Election Comm'n*, No.: 1-14-CV-00002, 2014 WL 2111065, at *9–10 (D.
2 N. Mar. I. May 20, 2014); *but see McKay v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000)
3 (finding no private right of action).

4 To enforce § 10101 under § 1983, non-U.S. Plaintiffs must show that Congress
5 intended to “unambiguously confer[] ‘individual rights upon a class of beneficiaries’ to
6 which [Plaintiffs] belong[.]” *Health and Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S.
7 166, 183 (2023) (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 285–86 (2002)); *see also*
8 *Gonzaga Univ.*, 536 U.S. at 283–84 (applying implied right of action caselaw to analyze
9 whether a statute confers a private federal right enforceable under § 1983). “[F]all[ing]
10 within the general zone of interest that the statute is intended to protect’ is not enough.”
11 *All. of Nonprofits for Ins., Risk Retention Grp. v. Kipper*, 712 F.3d 1316, 1326 (9th Cir.
12 2013) (second alteration in original) (quoting *Gonzaga Univ.*, 536 U.S. at 283). If a statute
13 confers a federal right, that right is “presumptively enforceable” under § 1983 because
14 “§ 1983 generally supplies a remedy for the vindication of rights secured by federal
15 statutes.” *Gonzaga Univ.*, 536 U.S. at 284; *see* 42 U.S.C. § 1983 (providing remedy for the
16 deprivation of “rights, privileges, or immunities secured by the Constitution and laws” of
17 the United States).

18 **i. Section 10101 Confers a Federal Private Right**

19 When determining whether a statute creates an enforceable federal right, the Court
20 “considers whether the statute: (1) is intended to benefit a class of individuals of which the
21 Plaintiff is a member; (2) sets forth a standard, clarifying the nature of the right, that makes
22 the right capable of enforcement by the judiciary; and (3) is mandatory, rather than
23 precatory in nature.” *Crowley v. Nevada ex rel. Nev. Sec’y of State*, 678 F.3d 730, 735 (9th
24 Cir. 2012) (citing *Blessing v. Freestone*, 520 U.S. 329, 340–41 (1997)).

25 The Court agrees with the courts that have found a federal right under the
26 “Materiality Provision,” under which “[n]o person acting under color of law shall . . . deny
27 *the right of any individual* to vote in any election.” § 10101(a)(2)(B) (emphasis added);
28 *see, e.g., Schwier*, 340 F.3d at 1296; *Davis*, 2014 WL 2111065, at *10. First, “[t]he subject

1 of the sentence is the person acting under color of state law, but the focus of the text is
2 nonetheless the protection of each individual’s right to vote.” *Schwier*, 340 F.3d at 1296;
3 *see also Talevski*, 599 U.S. at 185 (“[I]t would be strange to hold that a statutory provision
4 fails to secure rights simply because it considers, alongside the rights bearers, the actors
5 that might threaten those rights (and we have never so held).”); *Gonzaga Univ.*, 536 U.S.
6 at 284 (explaining statutes “phrased ‘with an unmistakable focus on the benefited class’”
7 have been found to create private rights (quoting *Cannon v. Univ. of Chi.*, 441 U.S. 677,
8 691 (1979)) (emphasis omitted)). For example, *Gonzaga University* cited Title VI of the
9 Civil Rights Act and Title IX of the Education Amendments as examples of clear rights-
10 creating language, which provide that “[n]o person in the United States shall . . . be
11 subjected to discrimination.” 536 U.S. at 284 n.3 (quoting 42 U.S.C. § 2000d and 20 U.S.C.
12 § 1681(a)). The Materiality Provision is similar. Second, the Materiality Provision
13 specifically and unambiguously protects an individual’s right to vote notwithstanding an
14 immaterial error or omission on her voter registration, which courts are readily capable of
15 enforcing. *See Schwier*, 340 F.3d at 12696–97. And lastly, the Materiality Provision is
16 mandatory, rather than precatory: “[n]o person acting under color of law shall . . . deny the
17 right of any individual to vote.” § 10101(a)(2)(B) (emphasis added).

18 The Court is unaware of any case analyzing whether § 10101(a)(2)(A) also creates
19 a federal right, under which “[n]o person acting under color of law shall . . . in determining
20 whether any individual is qualified under State law or laws to vote” apply any standard or
21 procedure different than those standards or procedures applied to individuals found
22 qualified to vote (“Different Practices Provision”). Like the Materiality Provision, “[t]he
23 subject of the sentence is the person acting under color of state law,” but the Different
24 Practices Provision does not contain similarly clear and “paradigmatic rights-creating
25 language.” *Schwier*, 340 F.3d at 1296; *Sanchez v. Johnson*, 416 F.3d 1051, 1058 (9th Cir.
26 2005) (citing *Gonzaga Univ.*, 536 U.S. at 287). However, the Ninth Circuit has instructed
27 that a court “should not be limited to looking for those precise phrases” and may consider
28 “other indicia so unambiguous that [it is] left without any doubt that Congress intended to

1 create an individual, enforceable right.” *Ball v. Rodgers*, 492 F.3d 1094, 1106 (9th Cir.
2 2007) (quoting *Sanchez*, 416 F.3d at 1058).

3 Here, by use of the term “shall,” the Different Practices Provision mandates that
4 Arizona officials refrain from applying differential standards or procedures to “any
5 individual.” Section 10101(a)(2)(A) does not have an “‘aggregate’ focus” or “speak only
6 in terms of institutional policy and practice,” but unambiguously benefits a specific class
7 of individuals. See *Gonzaga Univ.*, 536 U.S. at 288 (first quoting *Blessing*, 520 U.S. at
8 343). And “no gap exists” between the provision’s proscribed conduct “and the persons
9 whose interests are at stake”: any individual seeking to vote. *Colon-Marrero v. Valez*, 813
10 F.3d 1, 19 (1st Cir. 2016); compare *id.* (finding enforceable right under HAVA
11 § 303(a)(4)(A), because its “proscription—‘no registrant may be removed’ [from the voter
12 rolls]—directly and explicitly protects individual voters” (quoting 52 U.S.C.
13 § 21083(a)(4)(A))), with *Gonzaga Univ.*, 536 U.S. at 287–91 (finding no private right in
14 the Family Educations Rights and Privacy Act, because the provision’s prohibition on
15 providing funds to any educational institution with a policy of releasing education records
16 without parental consent “is two steps removed from the interests of individual students
17 and parents”). Finally, forbidding state actors from applying any different “standard,
18 practice, or procedure” to determine if an individual is qualified to vote is “not so ‘vague
19 and amorphous’ that its enforcement would strain judicial competence.” *Blessing*, 520 U.S.
20 at 340–41) (citation omitted). The Court finds that § 10101(a)(2)(A) creates a private right.

21 Defendants contend that non-U.S. Plaintiffs may not enforce § 10101 because the
22 statute is not intended to benefit organizations, which are unable to vote. A party generally
23 may assert only “his own legal rights and interests, and cannot rest his claim to relief on
24 the legal rights or interests of third parties.” *Warth v. Seldin*, 422 U.S. 490, 499 (1975). But
25 so long as the Court has subject matter jurisdiction, there may be circumstances in which
26 a plaintiff may rest its claim on the legal rights of another. *Id.* at 500–01. The Fifth Circuit
27 recently concluded that an organization with organizational standing could assert
28 individual voters’ rights under the Materiality Provision. *Vote.Org*, 89 F.4th at 471–73.

1 Specifically, the organization Vote.org could assert § 10101 claims of voters because
2 “Vote.org’s position as a vendor and voting rights organization is sufficient to confer third-
3 party standing.” *Id.* at 472; *see also La Union del Pueblo Entero v. Abbott*, 618 F. Supp.
4 3d 388, 431–32 (W.D. Tex. 2022) (“*LUPE P*”) (finding organizational plaintiffs could
5 enforce § 10101); *Tex. Democratic Party v. Hughs*, 474 F. Supp. 3d 849, 858 (W.D. Tex.
6 2020) (holding that organizational plaintiffs could sue under § 1983 for violations of
7 § 10101 because “[t]he same facts that establish organizational and associational standing
8 . . . also demonstrate standing to sue for voting rights violations under [§ 10101]”), *rev’d*
9 *and remanded on other grounds*, 860 F. App’x 874 (5th Cir. 2021). The Court concludes
10 that non-U.S. Plaintiffs may similarly assert the rights of Arizona voters under the CRA.

11 **ii. Plaintiffs May Enforce § 10101 Under § 1983**

12 Because § 10101 creates a federal right, Plaintiffs may presumably enforce the
13 provisions of § 10101 under § 1983. *Gonzaga Univ.*, 536 U.S. at 283–84. Defendants may
14 rebut this presumption by showing that “Congress shut the door to private enforcement
15 either expressly, through specific evidence from the statute itself, or impliedly, by creating
16 a comprehensive enforcement scheme that is incompatible with individual enforcement
17 under § 1983.” *Id.* at 284 n.4 (citations and internal quotations omitted); *see Talevski*, 599
18 U.S. at 187. The text of § 10101 does not explicitly preclude a § 1983 remedy, so the
19 question is whether Congress created a comprehensive enforcement mechanism
20 incompatible with enforcement under § 1983. *Migliori v. Cohen*, 36 F.4th 153, 160–61 (3d
21 Cir. 2022), *cert. granted, judgment vacated sub nom. Ritter v. Migliori*, 143 S. Ct. 297
22 (2022).⁴⁸ A remedy under § 1983 is foreclosed “when Congress creates a right by enacting
23 a statute but at the same time limits enforcement of that right through a specific remedial
24 scheme that is narrower than § 1983.” *Stilwell v. City of Williams*, 831 F.3d 1234, 1244
25 (9th Cir. 2016).

26 ⁴⁸ A vacated decision may still be considered for its persuasive effect. *See Orhorhaghe v.*
27 *I.N.S.*, 38 F.3d 488, 493 n.4 (9th Cir. 1994) (citing as persuasive authority a decision
28 vacated by the Supreme Court as moot); *In re Taffi*, 68 F.3d 306, 310 (9th Cir. 1995) (citing
as persuasive authority a decision vacated by the Supreme Court on other grounds). Though
the Supreme Court vacated *Milgori* as moot, this did not disrupt the Third Circuit’s
underlying analysis of § 10101.

1 Section 10101 does not include a comprehensive enforcement scheme incompatible
 2 with enforcement under § 1983. First, district courts have jurisdiction over “proceedings
 3 instituted pursuant to [§ 10101] and shall exercise the same without regard to whether the
 4 *party aggrieved* shall have exhausted any administrative or other remedies that may be
 5 provided by law.” 52 U.S.C. § 10101(d) (emphasis added). *Schwier* explained that because
 6 private citizens sued to enforce § 10101 before Congress granted the Attorney General
 7 authority to initiate an action in 1957, “this language could not have applied to the Attorney
 8 General and thus was meant to remove roadblocks for the previously authorized private
 9 rights of action.”⁴⁹ 340 F.3d at 1295–96 (cleaned up); *see also Migliori*, 36 F.4th at 160
 10 (explaining that § 10101(d) “specifically contemplates an aggrieved party (i.e., private
 11 plaintiff) bringing this type of claim in court”); H.R. Rep. No. 85-291 (1957). And when
 12 Congress amended § 10101 authorizing the Attorney General to enforce the statute, it did
 13 so as a “means of *further securing* and protecting the civil rights of persons within the
 14 jurisdiction of the United States.” H.R. Rep. No. 85-291, at 1966 (1957) (emphasis added).
 15 This “demonstrates an intense focus on protecting the right to vote and does not support
 16 the conclusion that Congress meant merely to substitute one form of protection for
 17 another.”⁵⁰ *Schwier*, 340 F.3d at 1295 (citing H.R. Rep. No. 85-291).

18 In addition, § 10101 lacks the “panoply of enforcement options, including
 19

20 ⁴⁹ Though several district courts and the Sixth Circuit have found no federal right under
 21 § 10101, the *Schwier* Court noted that these decisions rely almost exclusively on *Good v.*
 22 *Roy*, which concluded, without elaboration, that the “unambiguous language” of § 10101
 23 precluded the court from implying a private right of action because “subsection (c) provides
 24 for enforcement of the statute by the Attorney General with no mention of enforcement by
 25 private persons.” *Schwier*, 340 F.3d at 1294 (quoting *Good*, 459 F. Supp. 403, 405–06 (D.
 26 Kan. 1978)); *see McKay*, 226 F.3d at 756 (citing *Willing v. Lake Orion Cmty. Schs. Bd. of*
 27 *Trs.*, 924 F. Supp. 815, 820 (E.D. Mich. 1996)); *Willing*, 924 F. Supp at 820 (citing *Good*,
 28 459 F. Supp. at 405). Defendants cite to *Northeast Ohio Coalition for the Homeless v.*
Husted, for further support, but there a panel of the Sixth Circuit only noted that *McKay*
 remained binding in the absence of any Sixth Circuit en banc or Supreme Court decision
 holding to the contrary. 837 F.3d 612, 630 (6th Cir. 2016).

⁵⁰ The Attorney General’s potential enforcement of § 10101 in and of itself does not
 foreclose a private remedy. *See Schwier*, 340 F.3d at 1294–95 (citing *Allen v. State Bd. of*
Elections, 393 U.S. 544, 556–57 (1969) (holding enforcement by the Attorney General did
 not preclude private citizens from enforcing section 12(f) of the VRA and noting that the
 goals of the VRA “could be severely hampered . . . if each citizen were required to depend
 solely on litigation instituted at the discretion of the Attorney General”)); *Migliori*, 36 F.4th
 at 162 (noting that § 10101(d) does not *mandate* enforcement by the Attorney General).

1 noncompliance orders, civil suits, . . . criminal penalties,” and “several” private
2 enforcement options that are characteristic of statutory remedies found incompatible with
3 § 1983. *Migliori*, 36 F.4th at 161 (quoting *Blessing*, 520 U.S. at 347). And though “any
4 person of such race or color” may apply for “an order declaring him qualified to vote” if
5 the court finds a “pattern or practice” of § 10101 violations, this entitlement to a judicial
6 determination merely “complement[s], rather than supplant[s], § 1983.” § 10101(e); *Isabel*
7 *v. Reagan*, 394 F. Supp. 3d 966, 977 (D. Ariz. 2019) (quoting *City of Rancho Palos Verdes*
8 *v. Abrams*, 544 U.S. 113, 122 (2005)) (finding plaintiff must sue directly under the NVRA
9 instead of § 1983 because, among other things, the NVRA creates an express private right
10 of action that requires a plaintiff to first give notice of a violation and explicitly allows only
11 declaratory and injunctive relief, while § 1983 lacks any notice requirement and allows
12 suits for damages). The Court finds that Defendants have failed to rebut the presumption
13 of an enforceable right under § 1983. Non-US Plaintiffs may enforce the rights conferred
14 by § 10101 pursuant to § 1983.

15 2. H.B. 2492 § 4’s Birthplace Requirement

16 Plaintiffs claim that the Birthplace Requirement violates the Materiality Provision
17 of the Civil Rights Act. *See* § 10101(a)(2)(B). The Materiality Provision prohibits the State
18 from denying an individual her right to vote “because of an error or omission on any record
19 or paper relating to any application, registration, or other act requisite to voting, if such
20 error or omission is not material in determining whether such individual is qualified under
21 State law to vote in such election.” *Id.* The Materiality Provision was “intended to address
22 the practice of requiring unnecessary information for voter registration with the intent that
23 such requirements would increase the number of errors or omissions on the application
24 forms, thus providing an excuse to disqualify potential voters.” *Schwier*, 340 F.3d at 1294.

25 Defendants do not dispute that an applicant’s failure to include her birthplace is an
26 “error or omission on any record or paper relating to” a requisite to voting. *See*
27 § 10101(a)(2)(B). And Arizona’s refusal to register an individual who omits birthplace is
28 a denial of that individual’s right to vote. The question is whether an individual’s failure to

1 provide birthplace is material to determining that individual’s eligibility to vote. To vote
2 in Arizona, a person must be a United States citizen, a resident of Arizona, and at least
3 eighteen years of age, who has not been adjudicated incapacitated or convicted of a felony.
4 Ariz. Const. art. VII, § 2; *see also* A.R.S. § 16-121. An individual’s birthplace cannot be
5 used to directly verify that individual’s citizenship or place of residence. (*See, e.g.*, Connor
6 Tr. 311:22–312:17; County Recorder Testimony Stip. No. 1.) Instead, Defendants claim
7 that the Birthplace Requirement can be used to verify an individual’s identity, which is an
8 integral component of determining eligibility.

9 Materiality “signifies different degrees of importance in different legal contexts.”
10 *Fla. State Conf. of N.A.A.C.P.*, 522 F.3d at 1173. The Court previously determined that
11 Congress intended materiality to require “some probability of actually impacting an
12 election official’s” determination of a person’s eligibility to vote. (09/14/2023 Order at 26.)
13 The erroneous or omitted information need not be essential to determining a person’s
14 eligibility to vote, but it must be more than useful or minimally relevant. (*See id.* at 25–
15 26).

16 The Court concludes that an individual’s birthplace is not material to determining
17 her eligibility to vote. First, H.B. 2492 § 4 is not retroactive, meaning approximately one-
18 third of current voter registrations will lack the voter’s birthplace until that voter submits a
19 new registration while an additional 200,000 registrations will continue to identify
20 birthplace generally as the United States. That Arizona has determined these voters are
21 qualified to vote notwithstanding the lack of any meaningful birthplace information
22 strongly indicates birthplace is immaterial. Moreover, the Voting Laws do not mandate
23 county recorders to verify an individual’s birthplace or reject State Forms with an incorrect
24 birthplace. *See* § 16-121.01(A); (Petty Tr. 103:21–104:5; Connor Tr. 316:3–6, 326:13–16.)
25 “If the substance of the [birthplace field] does not matter, then it is hard to understand how
26 one could claim that this requirement has any use in determining a voter’s qualifications.”
27 *Migliori*, 36 F.4th at 164 (finding omitting the date on a ballot immaterial in part because
28 “ballots were only to be set aside if the date was *missing*—not incorrect” (emphasis in

1 original)). And HAVA Checks do not use birthplace as matching criteria for AVID and
2 MVD records to verify an applicant’s identity for voter eligibility. (Petty Tr. 32:19–33:14,
3 103:2–7; *see generally* MVD Verification Criteria.)

4 Nor does the fact that Arizona can use birthplace for other administrative purposes
5 render birthplace material in determining a voter’s eligibility. Specifically, county
6 recorders’ use of birthplace as one of several security questions to verify the identity of a
7 *registered voter* does not make birthplace material because that voter has already been
8 identified and found eligible to vote. (*See, e.g.*, 2023 EPM at ECF-70 (including field for
9 birthplace on ballot-by-mail request form,), ECF-229 (using birthplace to verify caller
10 inquiring about status of provisional ballot).) “Once election officials have determined an
11 applicant or voter’s identity, additional requirements that confirm identity are not material
12 to determining whether the applicant or voter is qualified to vote or vote by mail and
13 compounds the chance for error and disenfranchisement.” *La Union del Pueblo Entero v.*
14 *Abbott*, 5:21-CV-0844-XR, 2023 WL 8263348, at *18 (W.D. Tex. Nov. 29, 2023) (“*LUPE*
15 *II*”); *see Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1309 (N.D. Ga. 2018) (“[W]ith respect
16 to the absentee ballots rejected solely on a year of birth error or omission . . . the
17 qualifications of the absentee voters are not at issue because . . . election officials have
18 already confirmed such voters’ eligibility through the absentee ballot application
19 process.”). And the evidence indicates that county recorders can nevertheless reliably
20 verify the identity of registered voters without birthplace when necessary, especially
21 considering the one-third of all voters who have never provided birthplace information
22 when registering to vote. (*See, e.g.*, Petty Tr. 168:1–12 (explaining Maricopa County
23 accepts registration deficiency notices without birthplace information); Hiser Tr. 2056:18–
24 2057:10 (explaining birthplace alone is insufficient to verify a voter’s identity via phone).)

25 The Court concludes that the Birthplace Requirement violates the Materiality
26 Provision of the Civil Rights Act.

27 3. H.B. 2243 § 2’s Reason to Believe Provision

28 Plaintiffs claim that H.B. 2243’s Reason to Believe Provision will cause county

1 recorders to apply different standards, practices, and procedures to voters who county
2 recorders suspect lack U.S. citizenship than those standards, practices, and procedures
3 applied to voters not suspected of lacking citizenship. *See* § 10101(a)(2)(A). Specifically,
4 H.B. 2243 requires county recorders to search SAVE only for naturalized voters who
5 county recorders suspect are not U.S. citizens. *See* § 16-165(I).

6 While the Voting Laws purport to confirm the citizenship status of all voters,
7 because SAVE requires an immigration number, county recorders can only ever conduct
8 SAVE checks on naturalized citizens who county recorders have “reason to believe” are
9 non-citizens. Naturalized citizens will always be at risk of county recorders’ subjective
10 decision to further investigate these voters’ citizenship status, whereas the Reason to
11 Believe Provision will never apply to native-born citizens. This violates the Different
12 Practices Provision. *C.f. U.S. Student Ass’n Found. v. Land*, 585 F. Supp. 2d 925, 949–50
13 (E.D. Mich. 2008) (“[The Different Practices Provision] simply requires that if Michigan
14 wishes to impose unique procedural requirements on the basis of a registrant’s original
15 voter ID being returned as undeliverable, it must impose those requirements on *everyone*
16 whose original ID is returned as undeliverable.” (emphasis in original)); *Frazier v.*
17 *Callicutt*, 383 F. Supp. 15, 18–19 (N.D. Miss. 1974) (finding violation of § 10101 where
18 registrar summarily referred the registration of every Black student whose registration may
19 have indicated lack of residency to the board of election commissioners for appeal but
20 approved nearly all non-student registrations that similarly indicated lack of residency);
21 *Shivelhood v. Davis*, 336 F. Supp. 1111, 1115 (D. Vmt. 1971) (explaining that “the Board
22 of Civil Authority must use its best efforts to insure that any questionnaire [concerning
23 domicile] is equally relevant to all applicants and not designed only to apply to student
24 applicants” in order to comply with § 10101(a)(2)(A)); *see also Whatley v. Clark*, 482 F.2d
25 1230, 1232–33 (5th Cir. 1973) (finding equal protection violation where Texas law
26 requiring residency was substantively the same for all voters but applied differently to
27 students by creating a presumption of non-residency for students).

28 Arizona is entitled to investigate the citizenship status of registered voters to ensure

1 that only qualified individuals are registered to vote. Holding otherwise “would raise
 2 serious constitutional doubts if [the Different Practices Provision] precluded a State from
 3 obtaining the information necessary to enforce its voter qualifications.” *ITCA*, 570 U.S. at
 4 17. For example, County recorders must check SAVE and/or NAPHSIS for all voters
 5 without DPOC, *i.e.*, Federal-Only Voters. § 16-165(I), (J). But because the application of
 6 H.B. 2243’s Reason to Believe Provision subjects *only* naturalized citizens to database
 7 checks, this provision violates § 10101.

8 C. National Voter Registration Act

9 1. Sections 6 and 7 of the NVRA

10 i. H.B. 2492 § 5’s DPOR Requirement

11 The Court previously ruled that section 6 of the NVRA preempts H.B. 2492 § 5’s
 12 requirement that Federal Form users submit DPOR to register for federal elections. (*See*
 13 09/14/2023 Order at 9.) Plaintiffs claim that the DPOR Requirement violates section 6 of
 14 the NVRA to the extent that Arizona must accept Federal Forms lacking DPOR under the
 15 Court’s summary judgment ruling but will continue to reject State Forms lacking DPOR
 16 and refuse to register otherwise eligible voters for federal elections.

17 Section 6 of the NVRA permits Arizona to register eligible voters for federal
 18 elections with a State Form that “meets all of the criteria stated in” section 9 of the NVRA.
 19 52 U.S.C. 20505(a)(2). Specifically, as stated in section 9 of the NVRA, the State Form
 20 “may require only such identifying information . . . and other information . . . as is
 21 necessary to enable the appropriate State election official to assess the eligibility of the
 22 applicant and to administer voter registration and other parts of the election process.” *Id.*
 23 § 20508(b)(1). Though the State Form “may require information the Federal Form does
 24 not,” Arizona must abide by section 6 and section 9 and show that the information required
 25 on the State Form is “necessary” to determine the eligibility of the applicant.⁵¹ *ITCA*, 570

26
 27 ⁵¹ In *Fish v. Kobach* (“*Fish P*”), the Tenth Circuit analyzed the necessity of information
 28 under section 5 of the NVRA, which requires states to include a voter registration as part
 of the application process for state driver’s licenses and identifications. 840 F.3d 710, 733–
 39 (10th Cir. 2016). This registration “may require only the *minimum amount* of

1 U.S. at 12, 18; §§ 20505(a)(2), 20508(b).

2 Defendants failed to do so. In fact, the Voting Laws indicate otherwise, as voters
3 who obtain an out-of-state license or identification and receive a notice from the county
4 recorder requesting confirmation of residency must only attest under penalty of perjury that
5 the voter is still a resident of Arizona. § 16-165(E). The Court cannot reconcile why DPOR
6 would be *necessary* for new applicants when an attestation is *sufficient* to determine the
7 eligibility of registered voters who subsequently obtain an out-of-state identification.
8 Section 6 of the NVRA preempts the DPOR Requirement as to State Form users for federal
9 elections.

10 Plaintiffs also claim that Arizona’s differential treatment of State Form and Federal
11 Form applications lacking DPOR violates section 7 of the NVRA, which requires public
12 assistance agencies to distribute the Federal Form or an “equivalent” form. 52 U.S.C.
13 § 20506(a)(6) (citing § 20508(a)(2)); *Id.* § 20506(a)(2). The Secretary of State supplies
14 public assistance agencies with the State Form to register individuals. The “plain meaning
15 of a statute controls where that meaning is unambiguous.” *Khatib v. County of Orange*,
16 639 F.3d 898, 902 (9th Cir. 2011) (en banc). Section 7 is clear: if the Secretary of State
17 supplies the State Form to public assistance agencies, the State Form must be “equivalent,”
18 or “virtually identical” to the Federal Form. Black’s Law Dictionary (11th ed. 2019)
19 (defining equivalent as “equal in value, force, amount, effect, or significance,” or “virtually
20 identical”).

21 Moreover, the Court does “not look at individual subsections in isolation” but reads
22 “words in their context and with a view to their place in the overall statutory scheme.”
23 *Tovar v. Sessions*, 882 F.3d 895, 901 (9th Cir. 2018); *id.* (quoting *King v. Burwell*, 576
24 U.S. 473, 486 (2015)). As discussed above, states may develop “a *mail voter registration*

25 _____
26 information necessary” to determine the applicant’s eligibility. 52 U.S.C. § 20504(c)
27 (emphasis added). The *Fish I* Court held “that section 5’s ‘only the minimum amount of
28 information necessary’ is a stricter principle than section 9’s ‘such identifying information
... as is necessary’” and that the information enumerated in section 5 is the “presumptive
minimum” a state may require. 840 F.3d at 734. Assuming section 9 is an easier standard
than section 5, the Court concludes that Defendants must still show the information on the
State Form is necessary.

1 *form* that meets all of the criteria stated in section [9]” which allows states to include
 2 information necessary to determining voter eligibility that may not otherwise be on the
 3 Federal Form. §§ 20505(a)(2) (emphasis added), 20508(b)(1). By its terms, section 7 does
 4 not afford states this same discretion regarding forms made available at public assistance
 5 agencies. § 20506(a)(6). This is buttressed by the fact that Congress required public
 6 assistance agencies to provide voter registration services specifically in an effort to target
 7 the registration of persons with disabilities and low-income individuals who are more likely
 8 to receive public assistance. H.R. Rep. No. 103-66, 19 (1993) (Conf. Rep.). Requiring
 9 public assistance agencies to use an “equivalent” to the Federal Form “guarantees that a
 10 simple means of registering to vote in federal elections will be available” for these
 11 individuals. *ITCA*, 570 U.S. at 12. Because the Voting Laws require a State Form to include
 12 DPOR, the State Form is not “equivalent” to the Federal Form. Arizona may not reject
 13 State Forms lacking DPOR and must register these applicants as Federal-Only Voters.

14 **ii. H.B. 2243 § 2’s List Maintenance Procedures and**
 15 **Cancellation Provision**

16 Section 6 of the NVRA also mandates that states “accept and use” the Federal Form
 17 “for the registration of voters” for federal elections. § 20505(a). The Federal Form requires
 18 that applicants attest under penalty of perjury that they are eligible to vote, which includes
 19 being a U.S. citizen. (*See* Federal Form.) The Court previously ruled that section 6
 20 preempts H.B. 2492 § 5, which requires Federal Form users to provide DPOC to vote in
 21 presidential elections and vote by mail. (09/14/2023 Order at 9–14.) Plaintiffs claim that
 22 section 6’s “accept and use” mandate also preempts H.B. 2243 § 2. Specifically, the
 23 Secretary of State and county recorders must conduct monthly database checks to verify
 24 the citizenship of voters who do not provide DPOC, namely, Federal-Only Voters. *See*
 25 § 16-165(I), (J). If the county recorder “confirms” that the voter is a non-citizen, the voter
 26 must then provide DPOC to avoid having her voter registration cancelled. § 16-165(A)(10).
 27 Plaintiffs claim that Arizona is not “using” the Federal Form because this regime requires
 28 county recorders to investigate and confirm a Federal-Only Voter’s citizenship status with

1 information not contained on the Federal Form.

2 H.B. 2243 § 2 does not violate section 6 of the NVRA. *ITCA* held that section 6’s
3 “accept and use” mandate preempted Arizona’s DPOC requirement for Federal Form users.
4 570 U.S. at 4, 15. The Supreme Court rejected Arizona’s argument that section 6 only
5 required Arizona to “receive the [Federal Form] willingly and use it *somehow* in its voter
6 registration process.” *Id.* at 9–10 (emphasis in original). “[T]he Federal Form provides a
7 backstop: No matter what procedural hurdles a State’s own form imposes, the Federal Form
8 guarantees that a simple means of registering to vote in federal elections will be available.”
9 *Id.* at 12. But the Supreme Court noted that “while the NVRA forbids States to demand
10 that *an applicant submit additional information* beyond that required by the Federal Form,
11 it does not preclude States from ‘deny[ing] registration based on information in their
12 possession establishing the applicant’s ineligibility.’” *Id.* at 15 (emphasis added) (quoting
13 § 20508(b)(1), which allows the Federal Form to include only that information “necessary
14 to . . . assess the eligibility of the applicant”).

15 Arizona must accept the Federal Form as *prima facie* proof of an applicant’s
16 eligibility to vote but the NVRA does not preclude Arizona from independently
17 determining that an applicant or voter is ineligible. The monthly database checks require
18 county recorders to consult information available to Arizona; applicants do not submit any
19 “additional information.” *Id.*; *see* § 16-165(I), (J). And a county recorder may cancel a
20 registration only if the county recorder “confirms” from that information that the voter is
21 not a citizen. § 16-165(A)(10). This is not “‘inconsistent with’ the NVRA’s mandate that
22 States ‘accept and use’ the Federal Form.” *ITCA*, 570 U.S. at 15 (citation omitted); *see id.*
23 (“The NVRA clearly contemplates that not every submitted Federal Form will result in
24 registration.”).

25 Nor do the investigation and additional DPOC requirements “create[] an
26 unacceptable obstacle to the accomplishment and execution of the full purpose and
27 objectives of Congress.” *Chamber of Com. v. Bonta*, 62 F.4th 473, 482 (9th Cir. 2023)
28 (citation and internal quotations omitted) (describing conflict preemption). “What is a

1 sufficient obstacle is a matter of judgment, to be informed by examining the federal statute
2 as a whole and identifying its purpose and intended effects. . . .” *Crosby v. Nat’l Foreign*
3 *Trade Council*, 530 U.S. 363, 373 (2000). One of the NVRA’s purposes is to “enhance[]
4 the participation of *eligible citizens* as voters in elections for Federal office.” 52 U.S.C.
5 § 20501(b)(2) (emphasis added); *see id.* § 20507(a)(1) (states must “ensure that any
6 *eligible applicant* is registered to vote” (emphasis added)). Arizona is entitled to cancel the
7 registrations of ineligible voters “based on information in [its] possession establishing the
8 applicant’s ineligibility”; it need not take a voter at her word. *ITCA*, 570 U.S. at 15.

9 Were the Court to embrace Plaintiffs’ theory that section 6 prohibited a county
10 recorder from requesting information not contained on the Federal Form after confirming
11 non-citizenship, Arizona seems left with no apparent means to request proof of eligibility
12 before cancelling a registration. The Court is unaware of any caselaw interpreting the
13 NVRA in this manner and, considering *ITCA*, declines to do so here. Section 6 does not
14 preempt H.B. 2243’s mandate that a voter submit DPOC to avoid cancellation after the
15 county recorder confirms the voter’s non-citizenship.

16 2. Section 8 of the NVRA

17 Plaintiffs claim that the Voting Laws’ post-registration citizenship investigation
18 provisions violate section 8(b) of the NVRA. Specifically, under H.B. 2492 § 7’s Attorney
19 General Referral Provision, the Secretary of State and county recorders “shall” provide the
20 Attorney General with the names of registered voters who have not provided DPOC, who
21 must then investigate these registered voters by, “at a minimum,” consulting the MVD,
22 SSA, SAVE, and NAPHSIS databases. § 16-143. Similarly, H.B. 2243’s List Maintenance
23 Procedures direct county recorders to investigate the citizenship status of registered voters
24 with a foreign-type license, voters lacking DPOC, and voters who county recorders have
25 “reason to believe” are non-citizens. § 16-165(G)–(J). County recorders must then cancel
26 the registrations of confirmed non-citizens. § 16-165(A)(10), (K). Section 8(b) of the
27 NVRA, in relevant part, provides that “[a]ny State program or activity to protect the
28 integrity of the electoral process by ensuring the maintenance of an accurate and current

1 voter registration roll for elections for Federal office . . . shall be uniform,
 2 nondiscriminatory, and in compliance with the Voting Rights Act of 1965” (“Uniformity
 3 Provision”). 52 U.S.C. § 20507(b)(1). Plaintiffs claim that the Voting Laws are non-
 4 uniform and discriminatory specifically as applied to naturalized citizens and voters who
 5 do not provide DPOC.

6 **i. H.B. 2243 § 2’s Reason to Believe Provision**

7 For the same reasons that H.B. 2243’s Reason to Believe Provision violates the Civil
 8 Rights Act, discussed above, the Court concludes that this provision violates section 8(b)
 9 of the NVRA. Only naturalized citizens would be subject to scrutiny under the Reason to
 10 Believe Provision, who if “confirmed” as non-citizens, would be required to provide
 11 DPOC. This would have a non-uniform and discriminatory impact on naturalized citizens.
 12 *See United States v. Florida*, 870 F. Supp. 2d 1346, 1350–51 (N.D. Fla. 2012) (finding
 13 secretary of state’s list maintenance program “probably ran afoul” of section 8 because its
 14 “methodology made it likely that the properly registered citizens who would be required to
 15 respond and provide documentation would be primarily newly naturalized citizens. The
 16 program was likely to have a discriminatory impact on these new citizens.”).

17 **ii. H.B. 2243 § 2’s List Maintenance Procedures and H.B.**
 18 **2492 § 7’s Attorney General Referral Provision**

19 Plaintiffs claim that H.B. 2492 § 7 and H.B. 2243 § 2 violate section 8(b) of the
 20 NVRA by requiring county recorders to investigate the citizenship status of select groups
 21 of voters, specifically, registered voters without DPOC and naturalized citizens. In *Husted*
 22 *v. A. Philip Randolph Institute*, the Supreme Court reviewed a challenge to Ohio’s list
 23 maintenance procedures to remove voters who became ineligible due to a change in
 24 residence. 584 U.S. 756, 764–66 (2018). Specifically, Ohio would send voters who had not
 25 voted for two years a notice requesting verification of the voter’s address and remove
 26 voters who failed to respond to the notice. *Id.* at 765–66. The plaintiffs claimed that this
 27 procedure was unlawful under the NVRA in part because Ohio sent notices “without
 28 having any ‘reliable indicator’ that the addressee ha[d] moved.” *Id.* at 776. In rejecting this

1 argument, the Supreme Court explained in part that “[s]o long as the trigger for sending
 2 such notices is ‘uniform, nondiscriminatory, and in compliance with the Voting Rights
 3 Act,’ § 20507(b)(1), States can use whatever plan they think best.” *Id.* at 776–77.

4 Like in *Randolph Institute*,⁵² H.B. 2243 § 2 does not violate section 8 of the NVRA
 5 because the “trigger” for county recorders to investigate the citizenship status of applicants
 6 is uniform and nondiscriminatory: the voter has not submitted DPOC proving her
 7 citizenship. The same is true for H.B. 2492 § 7’s mandate that county recorders provide
 8 the Attorney General with the names of registered voters lacking DPOC. These provisions
 9 necessarily require that county recorders first review the registration files of *all* registered
 10 voters before further investigating those individuals who have not submitted DPOC.⁵³ *C.f.*
 11 *Florida*, 870 F. Supp. 2d at 1350–51. Regardless of whether Arizona “overestimated the
 12 correlation between” not submitting DPOC and non-citizenship, the NVRA does not
 13 prohibit the State from using this methodology to ensure that only eligible individuals are
 14 registered to vote. *Randolph Institute*, 584 U.S. at 776; 52 U.S.C. § 20507(a)(1). In
 15 addition, no party presented evidence of a comprehensive database of all U.S. citizens, and
 16 it is not unreasonable for the Voting Laws to mandate consulting multiple sources that may
 17 contain citizenship information. Specifically, voters who have not submitted DPOC will
 18 be subject to MVD, NAPHSIS, *and* SAVE checks, if practicable.⁵⁴ A.R.S. §§ 16-143,

19 _____
 20 ⁵² While Plaintiffs in *Randolph Institute* did not assert a claim under § 20507(b)(1), the
 21 majority noted that the dissent had not identified any evidence that Ohio’s program was
 22 tarnished by discriminatory intent. 584 U.S. at 779.

23 ⁵³ Plaintiffs claim that H.B. 2492 § 7 and H.B. 2243 § 2 confer county recorders with
 24 discretion to arbitrarily implement these provisions. But the Voting Laws unequivocally
 25 *mandate* that county recorders investigate or refer to the Attorney General for investigation
 26 all voters lacking DPOC. Additionally, the Voting Laws prescribe the frequency with
 27 which county recorders and the Secretary of State must conduct citizenship checks. A.R.S.
 28 16-165(G) (requiring Secretary of State to conduct monthly MVD database comparisons),
 (I)–(J) (requiring county recorders to conduct monthly checks); *c.f. Common Cause Ind. v.*
Lawson, 327 F. Supp. 3d 1139, 1153 (S.D. Indiana 2018) (concluding that the
 implementation of a voting law was likely to be non-uniform based on evidence that co-
 directors of the secretary of state’s election division “provid[ed] *differing guidance* to
 county officials on how to determine whether a particular registered voter is a duplicate
 registered voter in a different state” (emphasis added)), *aff’d on other grounds*, 937 F.3d
 944.

⁵⁴ SAVE checks are *not* practicable because SAVE requires an immigration number,
 meaning neither the Attorney General nor county recorders can conduct these checks on

1 165(I), (J); *c.f. Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 703 (N.D. Ohio 2006)
2 (concluding Ohio's law that required only compensated voter registration workers to pre-
3 register with the Secretary of State and undergo “online-only” training applied to only “a
4 selected class of persons” because, among other things, “they [did] not apply to everyone
5 involved in the process”).

6 Plaintiffs further claim that H.B. 2492 § 7 and H.B. 2243 § 2 violate section 8
7 because the additional List Maintenance Procedures and Cancellation Provision will
8 discriminatorily impact naturalized voters due to stale citizenship information in SAVE
9 and the MVD database. *See* A.R.S. §§ 16-143(B)(3), 16-165(I). Assuming it were
10 somehow practicable for county recorders or the Attorney General to conduct SAVE
11 checks on Federal-Only Voters (notwithstanding the current limitations of the SAVE MOA
12 and the lack of immigration numbers for these voters), plaintiffs adduced no evidence that
13 SAVE is so unreliable as to erroneously flag naturalized citizens as non-citizens each
14 month. SAVE typically returns an individual’s naturalization status within 24 hours of
15 naturalization, except for the occasional one or two-day delay. (*See* USCIS Dep. 39:20–
16 41:19.) Even if SAVE may periodically return stale citizenship information, Plaintiffs have
17 not shown that naturalized citizens will be disproportionality required to submit additional
18 DPOC compared to other voters. Section 8 of the NVRA does not preempt the Voting
19 Laws’ SAVE checks.

20 Nor does the NVRA preempt the Voting Laws’ MVD checks. The Attorney General
21 must review the citizenship information of Federal-Only Voters in the MVD database.
22 § 16-143(B)(1). In addition, the Secretary of State must notify county recorders of all
23 registered voters who are “not a United States citizen according to the [MVD] database.”
24 (2023 EPM at ECF-54); § 16-165(G). Under the Voting Laws, the only voters who may be
25 flagged as non-citizens in the MVD database are naturalized citizens who still possess a
26 foreign-type credential after naturalization. (2023 EPM at ECF-54; Jorgensen Tr. 560:2–
27 any Federal-Only Voters who have not provided any form of DPOC. A.R.S. § 16-143(A)
28 (citing § 16-166); (*see* 2023 EPM at 26–27; Petty Tr. 57:15–58:1 (explaining most voters
do not provide an immigration number).) For this reason, there will be no non-uniform use
of SAVE on naturalized, Federal-Only Voters.

1 14; *see* Pls.’ Stip. No. 93.)

2 In *United States v. Florida*, the secretary of state compiled a list of voters that
3 included any person who obtained a state license as a non-citizen, became a naturalized
4 citizen, and registered to vote, but had not renewed their driver’s license and had not
5 updated motor vehicle records to reflect their new citizenship status. 870 F. Supp. 2d at
6 1347–48. The district court found that this methodology “probably” violated section 8
7 because “the Secretary’s program identified many properly registered citizens as potential
8 noncitizens” and discriminatorily burdened naturalized citizens with proving citizenship.
9 *Id.* at 1350. Citing *Florida*, the court in *Texas League of United Latin American Citizens*
10 *v. Whitley* (“*Texas LULAC*”), came to a similar conclusion regarding the Texas Secretary
11 of State’s “proactive process using tens of thousands of Department of Public Safety driver
12 license records matched with voter registration records.” No. SA-19-CA-074-FB, 2019
13 WL 7938511, at *1 (W.D. Tex. Feb. 27, 2019). There, the court found that the Secretary’s
14 program imposed a burden on “perfectly legal naturalized Americans” while “[n]o native
15 born Americans were subjected to such treatment.” *Id.* Unlike in *Florida* and *Texas*
16 *LULAC*, however, Arizona requires that *all voters* submit DPOC or be subject to additional
17 citizenship investigation procedures. §§ 16-121.01(D)–(E), 16-165(G).

18 Moreover, for naturalized citizens that provide DPOC when registering to vote
19 (Full-Ballot Voters), MVD’s records of non-citizenship will not materially affect these
20 voters’ registration status. The 2023 EPM explicitly directs county recorders to “confirm”
21 reports of non-citizenship from the Secretary of State, which includes “deterimin[ing]
22 whether the voter has previously provided DPOC.” (2023 EPM at ECF-57; *see id.* at ECF-
23 27 n.10 (warning county recorders that MVD records may return outdated citizenship
24 information for naturalized citizens registering to vote); Morales Tr. 613:25–614:3
25 (explaining the process of overriding a voter’s non-citizenship status in AVID when the
26 voter has provided proof of naturalization as DPOC but MVD indicates non-citizenship).)
27 Aside from Dr. McDonald’s “loop” theory, which the Court found unpersuasive, Plaintiffs
28 have not adduced evidence that county recorders would ignore a voter’s DPOC on file and

1 burden naturalized citizens with requiring new proof of citizenship. (See McDonald Tr.
2 1071:24–1072:5.) And for those who have not provided DPOC (the 65 Federal-Only
3 Voters with a foreign-type credential), the Court concluded *supra* Section II(C)(2) that
4 Arizona may lawfully request proof of citizenship when it obtains and confirms
5 information in its possession that a Federal-Only Voter is a non-citizen. (See 2023 EPM at
6 ECF-57 (“If a person has not previously provided DPOC, confirmation also includes
7 reviewing relevant government databases . . . to the extent practicable” and may include
8 “direct communication with the registrant.”)); *ITCA*, 570 U.S. at 17 (“[I]t would raise
9 serious constitutional doubts if a federal statute precluded a State from obtaining the
10 information necessary to enforce its voter qualifications.”).

11 Except for the Reason to Believe Provision, section 8 of the NVRA does not
12 preempt H.B. 2492 § 7 nor H.B. 2243 § 2.

13 **D. Section 2 of the Voting Rights Act**

14 Under section 2 of the VRA, States are prohibited from imposing any law, practice,
15 or procedure “which results in a denial or abridgement of the right of any citizen of the
16 United States to vote on account of race or color” or language-minority status. 52 U.S.C.
17 §§ 10301(a), 10303(f)(2). A law violates section 2 if:

18 [B]ased on the totality of circumstances, it is shown that the political
19 processes leading to nomination or election in the State or political
20 subdivision are not equally open to participation by members [protected by
21 section 2] in that its members have less opportunity than other members of
the electorate to participate in the political process and to elect
representatives of their choice.

22 *Id.* § 10301(b). “The essence of a § 2 claim . . . is that a certain electoral law, practice, or
23 structure interacts with social and historical conditions to cause an inequality in the
24 opportunities of minority and non-minority voters to elect their preferred representatives.”
25 *Brnovich v. Democratic Nat’l Comm.* (“DNC”), 141 S. Ct. 2321, 2333 (2021) (cleaned up);
26 *see also Smith v. Salt River Project Agr. Imp. & Power Dist.*, 109 F.3d 586, 594 (9th Cir.
27 1997) (“Section 2 requires proof only of a discriminatory result, not of discriminatory
28 intent.”).

1 The Supreme Court has enumerated a non-exhaustive set of “guideposts” for courts
2 to consider: (1) “the size of the burden imposed by the challenged voting rule”; (2) “the
3 degree to which a voting rule departs from what was standard practice when § 2 was
4 amended in 1982”; (3) “[t]he size of any disparities in a rule’s impact on members of
5 different racial or ethnic groups”; (4) “the opportunities provided by a State’s entire system
6 of voting”; and (5) “the strength of the state interests served by [the] challenged voting
7 rule.” *DNC*, 141 S. Ct. at 2338–39. Courts may also consult the “Senate” factors identified
8 in *Thornburg v. Gingles*, 478 U.S. 30 (1986), though “their relevance is much less direct”
9 when applied outside the vote-dilution context. *DNC*, 141 S. Ct. at 2340.

10 Plaintiffs claim that H.B. 2492 §§ 4 and 7, and H.B. 2243 § 2 violate section 2 of
11 the VRA.

12 1. Size of the Burden

13 Most of the Voting Laws’ challenged provisions impose a de minimis burden on
14 voters. The Citizenship Verification Procedures, Attorney General Referral Provision, and
15 List Maintenance Procedures’ database checks impose obligations related to election
16 administration on county recorders and the Attorney General to confirm the eligibility of
17 applicants and registered voters. *See DNC*, 141 S. Ct. at 2338 (focusing on the “effort and
18 compliance” required by voters to determine whether a burden exists); § 16-121.01(D)
19 (verifying citizenship of applicants without DPOC); § 16-143 (investigating citizenship of
20 Federal-Only Voters); § 16-165(G)–(K) (investigating citizenship of registered voters).
21 But assuming that the psychological impacts of being referred to the Attorney General for
22 investigation is a burden on voting, Plaintiffs did introduce evidence that Latino and
23 AANHPI voters, particularly those from mixed-status households, may fear exposing their
24 families to increased government oversight.

25 Only if a county recorder establishes that an applicant or registered voter is a non-
26 citizen must that voter then provide DPOC. §§ 16-121.01(E), 16-165(A)(10); (2023 EPM
27 at ECF-27.) For these voters, the Voting Laws’ DPOC Requirements may impose a modest
28 burden on a subset of socioeconomically disadvantaged voters because of the potential

1 monetary and temporal costs associated with obtaining DPOC. Moreover, the money and
2 time necessary to obtain a birth certificate for native-born citizens pales in comparison to
3 the cost of obtaining a naturalization certificate. *Cf. Crawford v. Marion Cnty. Election*
4 *Bd.* (“*Crawford IP*”), 553 U.S. 181, 198–99 (2008) (plurality opinion) (finding that the
5 evidence “indicate[d] that a somewhat heavier burden may be placed on a limited number
6 of persons . . . who because of economic or other personal limitations may find it difficult
7 either to secure a copy of their birth certificate or to assemble the other required
8 documentation to obtain a state-issued identification”); § 16-165(A)(10) (affording 35 days
9 to provide DPOC before registration is cancelled); (*but see* 2023 EPM at ECF-22, -24
10 (allowing new registrants until the Thursday before election day to supply DPOC to be
11 registered to vote).)

12 Arizona’s election laws mitigate this burden by allowing voters to provide numerous
13 forms of DPOC, ranging from physical documents to writing an identification number on
14 the registration form, which has worked for 99.5% of Arizona’s registered voters. *See* § 16-
15 166. And Plaintiffs were unable to provide evidence quantifying the number of Arizonans
16 qualified to vote that may be unable to provide *any* form of DPOC or that have been or will
17 be deterred from registering to vote because of Arizona’s DPOC Requirements.
18 Considering the discrete burden on particularly disadvantaged voters who do not possess
19 DPOC however, the Court finds that this guidepost weighs slightly in favor of finding a
20 section 2 violation.

21 **2. Alternative Means of Registering**

22 “[W]here a State provides multiple ways to vote, any burden imposed on voters who
23 choose one of the available options cannot be evaluated without also taking into account
24 the other available means.” *DNC*, 141 S. Ct. at 2339. Practically speaking, the Voting Laws
25 do not afford Arizonans “multiple ways” to register to vote. Individuals must provide
26 DPOC when registering to vote or subject themselves to citizenship verification procedures
27 that may later necessitate proof of citizenship. Specifically, while an applicants can register
28 as Federal-Only Voters without DPOC, the Voting Laws’ Citizenship Verification and List

1 Maintenance Procedures may eventually require these voters to submit DPOC to remain
2 registered. This guidepost weighs in favor of finding a section 2 violation. *C.f. DNC*, 141
3 S. Ct. at 2344 (citing the various methods Arizona allows voters to vote as mitigating
4 evidence regarding the State’s mandate that voters vote in their assigned precinct on
5 election day).

6 3. Disparate Impact

7 As discussed *supra* Section I(A)(1), Arizona currently lacks DPOC for less than half
8 a percent of its voters. Approximately one-third of a percent of Arizona’s White voters are
9 Federal-Only Voters, and a little more than two-thirds of a percent of minority voters are
10 Federal-Only Voters. (*See Ex. 338.*) In *DNC*, the district court had found that
11 approximately one percent of minority voters had cast ballots in the wrong precinct, while
12 a half a percent of White voters did so. *DNC*, 141 S. Ct. at 2345. The Supreme Court
13 rejected the Ninth Circuit’s interpretation of these statistics that “minority voters in Arizona
14 cast [out-of-precinct] ballots at twice the rate of White voters,” and instead concluded that
15 “[p]roperly understood, the statistics show only a small disparity that provides little support
16 for” finding a disparate impact. *Id.* (first alteration in original). “A policy that appears to
17 work for 98% or more of voters to whom it applies—minority and non-minority alike—is
18 unlikely to render a system unequally open.” *Id.* at 2344–45 (concluding the policy’s racial
19 disparity was “small in absolute terms”); *see also Fair Fight Action*, 634 F. Supp. 3d at
20 1244 (finding no disparate impact where citizenship checks affected “less than one percent
21 of any minority group”). As in *DNC*, any disparate impact regarding the Voting Laws’
22 Citizenship Verification Procedures and List Maintenance Procedures is markedly small.⁵⁵

23 More precisely for naturalized citizens,⁵⁶ 65 Federal-Only Voters, or *one-third of a*
24 *percent* of the 19,439 Federal-Only Voters, possess a foreign-type credential. (MVD Non-

25 ⁵⁵ Relatedly, for voters who are called upon to furnish DPOC pursuant to the Voting Laws,
26 economically disadvantaged voters might encounter more financial challenges when
27 obtaining DPOC. But the cost of obtaining DPOC alone is insufficient for the Court to
28 measure how the Voting Laws’ DPOC Requirements will disproportionately impact
minority groups without first assuming that these voters in fact lack all forms of DPOC.

⁵⁶ As discussed above, these voters will not be subject to recurring SAVE checks and risk
being erroneously flagged as a non-citizen unless they have previously provided county
recorders with an immigration number.

1 Citizen Records.) The Voting Laws’ MVD checks will flag these voters as non-citizens,
 2 thereby triggering additional investigation by county recorders or the Attorney General and
 3 possibly requiring DPOC, while all other Federal-Only Voters will not be subject to these
 4 procedures.⁵⁷ §§ 16-143(B)(1), 16-165(A)(10), (G). But given the very few circumstances
 5 that a voter will be called upon to provide DPOC, the Voting Laws’ impact on naturalized
 6 citizens who may not possess DPOC is negligible and weighs against finding a section 2
 7 violation.

8 **3. Laws and Practices in 1982**

9 United States citizenship has always been a qualification to vote in Arizona. *See*
 10 *Ariz. Const. art. VII, § 2*. While the State Form has included “[a] statement that the
 11 registrant is a citizen of the United States” since 1980, no laws analogous to the Voting
 12 Laws’ DPOC Requirements existed in Arizona in 1982. *See* 1979 *Ariz. Sess. Laws ch. 209,*
 13 *§ 3* (adopting A.R.S. § 16-152 to require contents of the State Form). Nevertheless, Arizona
 14 has already required DPOC for two decades, and the Voting Laws’ additional citizenship
 15 verification procedures reinforce the State’s longstanding limitation of the right to vote to
 16 citizens. *See Fair Fight Action*, 634 F. Supp. 3d at 1243 (“The use of a birth certificate as
 17 a means of establishing identification—and citizenship—speaks to the State’s policy of
 18 trying to enforce the citizenship requirement prior to 1982.”). This weighs against finding
 19 a section 2 violation.

20 **4. State Interests**

21 Arizona has a legitimate interest in preventing voter fraud and ensuring that only
 22 eligible Arizonans are registered to vote. *See DNC*, 141 S. Ct. at 2340 (“One strong and
 23 entirely legitimate state interest is the prevention of fraud.”); *Crawford II*, 553 U.S. at 196
 24 (“There is no question about the legitimacy or importance of the State’s interest in counting
 25 only the votes of eligible voters.”). “Section 2 does not require a State to show that its
 26 chosen policy is absolutely necessary or that a less restrictive means would not adequately

27
 28 ⁵⁷ On the opposite end of the scale, Dr. Richman identified 112 Federal-Only Voters for whom MVD has DPOC on record and would be eligible to vote as a Full-Ballot Voter. It is unclear, however, whether these voters are naturalized or native-born citizens.

1 serve the State’s objectives.” *DNC*, 141 S. Ct. at 2345–46. Consulting government
2 databases that may contain information about a voter’s citizenship status, and subsequently
3 requiring DPOC when a voter’s citizenship is seriously in question, serves this interest.
4 *Fair Fight Action*, 634 F. Supp. 3d at 1245 (finding state’s interest in preventing voter
5 fraud served by the state’s “citizenship flag” that is triggered “when there is affirmative
6 evidence that someone who registered has a noncitizen driver’s license”). And while voter
7 fraud in Arizona is incredibly rare, the State “may take action to prevent election fraud
8 without waiting for it to occur and be detected within its own borders.” *DNC*, 141 S. Ct. at
9 2348 (finding Arizona’s justification for third-party ballot-collection restrictions legitimate
10 despite “no evidence that fraud in connection with early ballots had occurred in Arizona”).
11 This weighs against finding a section 2 violation.

12 5. Senate Factors

13 The Supreme Court in *DNC* noted that beyond the Senate factors’ original purpose
14 in vote-dilution cases, their “only relevance . . . is to show that minority group members
15 suffered discrimination in the past (factor one) and that effects of that discrimination persist
16 (factor five).” 141 S. Ct. at 2340 (citing *Gingles*, 478 U.S. at 36–37).

17 Plaintiffs’ experts established that Arizona has a long history of race-based
18 discrimination against Latino, AANHPI, and Native American individuals. Animus
19 permeated Arizona’s legal system, from banning interracial marriage and precluding
20 immigrants from owning land, to mandating that classrooms and political subdivisions act
21 only in English. Specific to voting, Arizona imposed literacy tests for 60 years and
22 conducted regular voter purging practices. And Arizona was subject to the VRA’s
23 preclearance requirement until the Supreme Court’s ruling in *Shelby County*. The effects
24 of these discriminatory practices continue to linger, particularly as it relates to educational
25 and economic outcomes for people of color. (*See generally* ACS Household Income; ACS
26 Poverty Rates; ACS Educational Attainment.) However, considering the Voting Laws’
27 limited to modest burdens, the small disparate impact on Federal-Only, minority and
28 naturalized voters, and the state’s interests, the Court concludes that the Voting Laws’

1 citizenship investigation and additional DPOC Requirements do not “result[] in a denial or
2 abridgment” of citizens’ right to vote in Arizona. § 10301(a).

3 **E. *Anderson/Burdick* Claims**

4 Plaintiffs claim that the Voting Laws impose an undue burden on the right to vote
5 in violation of the First and Fourteenth Amendments.⁵⁸ Plaintiffs also claim that the Voting
6 Laws burden voters’ equal protection and procedural due process rights. The
7 *Anderson/Burdick* framework applies to these claims. *See Ariz. Democratic Party v.*
8 *Hobbs*, 18 F.4th 1179, 1194–95 (9th Cir. 2021) (“*ADP III*”) (holding that due process
9 challenges to election laws should be evaluated under the *Anderson/Burdick* framework);
10 *Dudum v. Arntz*, 640 F.3d 1098, 1106 n.15 (9th Cir. 1011) (explaining that the Supreme
11 Court has analyzed due process and equal protection claims under the same framework).
12 Courts evaluate the validity of an election law by balancing the burden the law places on
13 the fundamental right to vote against the state interests served by the law. *See Anderson v.*
14 *Celebrezze*, 460 U.S. 780, 789 (1983). The Court must “consider the character and
15 magnitude of the asserted injury to the rights protected by the First and Fourteenth
16 Amendments that the plaintiff seeks to vindicate”; “identify and evaluate the precise
17 interests put forward by the [s]tate as justifications for the burden imposed by its rule”;
18 “determine the legitimacy and strength of each of those interests”; and “consider the extent
19 to which those interests make it necessary to burden the plaintiff’s rights.” *Id.*; *see ADP*
20 *III*, 18 F.4th at 1187.

21 “[T]he severity of the burden the election law imposes on the plaintiff’s rights
22 dictates the level of scrutiny applied by the court.” *Nader v. Brewer*, 531 F.3d 1028, 1034
23 (9th Cir. 2008) (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). “Regulations
24 imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a
25 compelling state interest. Lesser burdens, however, trigger less exacting review, and a
26 State’s important regulatory interests will usually be enough to justify reasonable,
27 nondiscriminatory restrictions.” *Pierce v. Jacobsen*, 44 F.4th 853, 859–60 (9th Cir. 2022)

28 ⁵⁸ The Court declines to decide Plaintiffs’ constitutional claims for those sections of the Voting Laws that the Court has already ruled unlawful under the CRA, NVRA, or VRA.

1 (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)); see *Dudum*,
2 640 F.3d at 1114 (“[W]hen a challenged rule imposes only limited burdens on the right to
3 vote, there is no requirement that the rule is the only or the best way to further the proffered
4 interests.”). “This is a sliding scale test, where the more severe the burden, the more
5 compelling the state’s interest must be.” *Soltysik v. Padilla*, 910 F.3d 438, 444 (9th Cir.
6 2018).

7 **1. Burden on the Right to Vote**

8 A restriction is “not severe” when it is “generally applicable, even-handed,
9 politically neutral, and . . . protect[s] the reliability and integrity of the election process.”
10 *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1014 (9th Cir. 2002). This balance means
11 that voting regulations are rarely subjected to strict scrutiny. See *Lemons v. Bradbury*, 538
12 F.3d 1098, 1104 (9th Cir. 2008). But in the equal protection context, laws that impose “a
13 particular burden on an identifiable segment’ of voters are more likely to raise
14 constitutional concerns” and demand more exacting review. *ADP III*, 18 F.4th at 1190;
15 *Public Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 n.2 (9th Cir. 2016) (en
16 banc) (“[C]ourts may consider not only a given law’s impact on the electorate in general,
17 but also its impact on subgroups, for whom the burden, when considered in context, may
18 be more severe.” (citing *Crawford II*, 553 U.S. at 199–203)). Plaintiffs must present
19 sufficient evidence for the Court to quantify the burden imposed on a specific subgroup of
20 voters. See *Crawford II*, 553 U.S. at 199–203 (weighing the evidence plaintiffs presented
21 to the district court to determine burdens imposed by Indiana’s photo ID law).

22 As discussed regarding Plaintiffs’ VRA claim, the Voting Laws’ Citizenship
23 Verification Procedures, Attorney General Referral Provision, and List Maintenance
24 Procedures primarily impose burdens on county recorders and the Attorney General, not
25 voters. See §§ 16-121.01(D), 16-143, 16-165(G)–(K). The “burden” of an election law is
26 measured by the cost of compliance, not the “consequence of noncompliance.” *ADP III*,
27 18 F.4th at 1188–89 (quoting *Ariz. Democratic Party v. Hobbs* (“*ADP I*”), 485 F. Supp. 3d
28 1073, 1087 (D. Ariz. 2020), *vacated on other grounds*, *ADP III*, 18 F.4th 1179). In *ADP*

1 *III*, the plaintiffs argued that an election-day deadline to correct a ballot with a missing
2 signature imposed a severe burden on voters who submitted a ballot at the last minute and
3 election officials did not discover the missing signature until after the deadline. *Id.* at 1187–
4 88. In rejecting this argument, the Ninth Circuit explained:

5 The relevant burden for constitutional purposes is the small burden of signing
6 the affidavit or, if the voter fails to sign, of correcting the missing signature
7 by election day. To the extent that the election-day deadline results in voters’
not casting a vote in an election, that result “was not caused by the election-
day deadline, but by their own failure to take timely steps to effect their vote.”

8 *Id.* at 1189 (quoting *Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973)) (cleaned up).

9 *ADP III*’s reasoning applies to this case. The relevant burden is the cost of timely
10 complying with the Voting Laws’ DPOC Requirements when registering to vote or after
11 receiving a notice of non-citizenship from the county recorder. §§ 16-121.01(C), (E), 16-
12 165(A)(10); (2023 EPM at ECF-17, -22, -24, -27.) The Voting Laws’ ongoing database
13 checks, investigations by the Attorney General, and potential rejection or cancellation of a
14 voter’s registration are not burdens, but merely the consequences of not providing DPOC.
15 *ADP III* 18 F.4th at 1188; *see also ADP I*, 485 F. Supp. 3d at 1087–88 (explaining that if
16 burdens were measured by the “consequence of noncompliance” and that consequence is
17 disenfranchisement, that all voting pre-requisites would be subject to strict scrutiny). These
18 provisions remain relevant however, as the frequency at which county recorders might
19 reject or cancel registrations under the Citizenship Verification Procedures and List
20 Maintenance Procedures can serve as an indicator of the severity of the burden DPOC
21 imposes. *See, e.g., Crawford II*, 553 U.S. at 202 (reviewing the frequency of individuals
22 unable to obtain a photo ID in part to identify “how common the problem is”); *Obama for*
23 *America v. Husted*, 697 F.3d 423, 431 (6th Cir. 2012) (affirming district court’s ruling that
24 Ohio’s changes to early voting imposed a “particularly high” burden because “[p]laintiffs
25 introduced extensive evidence that a significant number of Ohio voters will in fact be
26 precluded from voting” as a result of the changes).

27 The Voting Laws DPOC Requirements place a particular burden on individuals for
28 whom, due to socioeconomic factors, the effort required to obtain and provide county

1 recorders with the appropriate documentation is cost or time prohibitive. The Court
2 concluded this was limited to modest in analyzing Plaintiffs’ VRA claim, but
3 *Anderson/Burdick* demands closer scrutiny of the evidence for the Court to determine a
4 more precise magnitude of this burden.⁵⁹ Plaintiffs offered no witness testimony or other
5 “concrete evidence” to corroborate that the Voting Laws’ DPOC Requirements will in fact
6 impede any qualified voter from registering to vote or staying on the voter rolls. *Crawford*
7 *II*, 553 U.S. at 201 (reviewing the “limited evidence” presented to the district court and
8 unable to determine “the magnitude of the impact [a voter ID law] will have on indigent
9 voters”).

10 First, while there are more than 19,000 Federal-Only Voters who have not supplied
11 proof of citizenship, Plaintiffs have not estimated the number of these voters that wholly
12 lack DPOC, nor quantified whether naturalized voters or voters of color are more likely to
13 lack DPOC. *Id.* at 202 n.20 (noting that “nothing in the record establishe[d] the distribution
14 of voters who lack photo identification” or “even a rough estimate of how many indigent
15 voters lack copies of their birth certificates [in order to obtain an ID]”);⁶⁰ *c.f. Ariz.*
16 *Libertarian Party v. Reagan*, 798 F.3d 723, 731 (9th Cir. 2015) (“Without some assessment
17 of how many voters actually use the Registration Form [as opposed to registering under
18 one of three alternative means], we cannot even begin to gauge the impact it may have had
19 on party registration rolls.”). For those voters who possess DPOC but want to avoid the

20
21 ⁵⁹ The Supreme Court’s “size of the burden” guidepost in *DNC* blurs the distinction
22 between the burden on voting rights central to an *Anderson/Burdick* claim and the disparate
23 impact of voting laws central to a section 2 VRA claim. Despite the analyses’ apparent
24 overlap, the foundation of a section 2 claim remains clear: a plaintiff may demonstrate that
25 elections are not “equally open,” *due in part* to the burdens imposed on voters. 52 U.S.C.
26 § 10301(b). By contrast, the crux of an *Anderson/Burdick* claim is the “character and
27 magnitude” of the burden itself. *Burdick*, 504 U.S. at 434.

28 ⁶⁰ In *Harper v. Virginia Board of Elections*, the Supreme Court held that Virginia violated
the Equal Protection Clause by imposing a poll tax on individuals seeking to vote because
the ability to pay the tax was not related to voter qualifications. 383 U.S. 663, 668 (1966).
The plurality in *Crawford II* noted that even if “most voters already possess a . . . form of
acceptable identification” to satisfy Indiana’s photo identification law, this “would not save
the statute under *Harper*, if the State required voters to pay a tax or a fee to obtain a new
photo identification.” 553 U.S. at 198. *Crawford* nevertheless concluded that there was
insufficient evidence to quantify the magnitude of the burden on individuals who could not
afford a birth certificate, which was required to obtain a photo identification. *Id.* at 200–
02. *Crawford*’s reasoning applies here.

1 “inconvenience” of providing it to county recorders, this “does not qualify as a substantial
2 burden on the right to vote.” *Crawford II*, 553 U.S. at 198. Second, even assuming some
3 Federal-Only Voters do not possess DPOC, the evidence does not reliably illustrate the
4 likelihood that voters will encounter obstacles to obtaining this information. The monetary
5 and temporal costs of obtaining DPOC, particularly naturalization documents, can be
6 significant for low-income individuals. But naturalized citizens experience lower levels of
7 poverty than other Arizonans, including native-born citizens, and it bears reiterating that
8 naturalized citizens need only provide an immigration number. And 82% of Arizona’s
9 Latino citizens are native-born, meaning most Latino voters may need to only obtain a new
10 birth certificate. Though the costs of obtaining DPOC may have a greater impact on low-
11 income Arizonans, this burden is nevertheless slight in the context of all Arizonan’s overall
12 ability to register to vote.

13 Turning to Plaintiffs’ related due process claims, the Court’s ruling that the Reason
14 to Believe Provision is unlawful under the CRA and the NVRA dispels Plaintiffs’
15 speculation that county recorders will rely on unfounded suspicions of non-citizenship to
16 cancel voter registrations. Pursuant to H.B. 2243’s remaining provisions, county recorders
17 may still “obtain” information of non-citizenship from SAVE and NAPHSIS for Federal-
18 Only voters and from the MVD database. A.R.S. § 16-165(G), (I), (J). Regarding the
19 Voting Laws’ temporal limitations on the opportunity to cure a voter registration, county
20 recorders must, within ten days of matching an applicant with evidence of non-citizenship,
21 notify the applicant that she has until the Thursday before election day to provide DPOC
22 and be registered to vote.⁶¹ (2023 EPM at ECF-17, -22, -24, -27.) Finding the burden of
23 correcting a missing ballot signature by an election-day deadline to be “limited” in *ADP*
24 *III*, the Ninth Circuit explained that “[t]he deadline does not prohibit voters from voting in
25 any election; they must either sign the affidavit at the outset or correct a missing signature
26 by the deadline of election day.” 18 F.4th at 1189. The Court finds the case instructive here,

27
28 ⁶¹ For this reason alone, Plaintiffs’ argument that H.B. 2492 § 4’s Citizenship Verification Procedures violate voter registrants’ procedural due process rights because registrants are not allowed *any opportunity* to contest a county recorder’s finding of non-citizenship fails.

1 as the 2023 EPM’s Thursday deadline may result in some qualified Arizonans not
 2 becoming registered to vote. While *ADP III* implicated only a missing signature, the burden
 3 of timely obtaining DPOC similarly increases the closer to an election an individual decides
 4 to register to vote without proactively proving citizenship. See *Rosario*, 410 U.S. at 758
 5 (concluding New York’s election law “merely imposed a time deadline on [voters’]
 6 enrollment” and voters who attained voting age before the deadline “clearly could have
 7 registered” in time for the election). And based on the evidence at trial, the Court is left to
 8 speculate as to whether the occurrence of Arizonans who may lack DPOC and be
 9 meaningfully impacted by processing delays when obtaining new citizenship
 10 documentation is sufficiently “frequent as to raise [a] question about the constitutionality”
 11 of the Voting Laws. *Crawford II*, 553 U.S. at 197.

12 Finally, county recorders will in fact “obtain” information of non-citizenship from
 13 MVD’s monthly customer extracts for at least 65 naturalized citizens registered as Federal-
 14 Only Voters who possess a foreign-type license.⁶² But the Court will not assume without
 15 any persuasive evidence that these 65 of Arizona’s 19,439 Federal-Only Voters wholly
 16 lack DPOC such that they would be burdened by the List Maintenance Procedures’ 35-day
 17 deadline.⁶³ Moreover, voters receive notice by forwardable mail that their registration has
 18 been cancelled and instructions regarding how to re-register if the voter is qualified. (2023
 19 EPM at ECF-58.)

20 Plaintiffs cite *Fish v. Schwab* (“*Fish II*”), which held that Kansas’ proof of

21
 22 ⁶² While the Voting Laws’ monthly MVD checks may misidentify naturalized citizens as
 23 non-citizens, the evidence indicates that all but 65 naturalized active voters with a foreign-
 24 type license have already provided county recorders with DPOC. Because county recorders
 must confirm evidence of non-citizenship by reviewing an individual’s voter file, the Court
 concludes that naturalized citizens who possess a foreign-type license but have already
 provided DPOC will not be unduly burdened by the Voting Laws.

25 ⁶³ Plaintiffs argue that Governor Ducey vetoed H.B. 2617 for lacking “sufficient due
 26 process” protections. Plaintiffs point specifically to H.B. 2617’s cancellation provision,
 27 which would have afforded voters 90 days to provide DPOC and avoid cancellation,
 28 instead of the 35 days in H.B. 2243. (*Compare* H.B. 2617 Text, *with* H.B. 2243 Text.) But
 Governor Ducey found that H.B. 2617’s requirement that county recorders cancel
 registrations after “receiv[ing] information that provides the basis for determining that the
 person is not a qualified elector” was “vague and lack[ed] any guidance for how a county
 recorder would confirm such a determination.” (H.B. 2617 Veto Letter at PX 053-1.)
 Governor Ducey did not mention the 90-day cancellation provision.

1 citizenship requirement imposed an undue burden on the right to vote. 957 F.3d 1105,
2 1127–32 (10th Cir. 2020). The Tenth Circuit found the proof of citizenship requirement
3 imposed a “significant” burden “primarily” because the Kansas Secretary of State had
4 suspended or cancelled 31,000 registrations for the voters’ failure to provide proof of
5 citizenship. *Id.* at 1127–28. Here however, Arizona *may not* deny, suspend, or cancel voter
6 registrations when a voter fails to provide DPOC. These individuals will instead be
7 registered as Federal-Only Voters unless county recorders match the registration to
8 information of non-citizenship. A.R.S. § 16-121.01(E). And county recorders may only
9 cancel a registered voter’s registration if the voter is confirmed a non-citizen. § 16-
10 165(A)(10). Without any similar quantifiable evidence regarding how many qualified
11 Arizonans’ registrations without DPOC might be rejected or cancelled under the Voting
12 Laws’ new DPOC Requirements, it would be mere conjecture to conclude that the DPOC
13 Requirements would impose a burden as significant as that in *Fish II*.

14 The Voting Laws do not impose an excessive burden on any specific subgroup of
15 voters raising equal protection concerns. Instead, based on the evidence presented, the
16 Court concludes that the Voting Laws impose only a limited burden on all individuals
17 qualified to vote in Arizona.

18 2. The State’s Interests

19 Because the Voting Laws’ DPOC Requirement imposes a limited burden on the
20 right to vote, the Court conducts a “less exacting review” of Arizona’s interests. *Pierce*, 44
21 F.4th at 859–60. The State offers two justifications for the Voting Laws: preventing non-
22 citizens from voting and promoting voter confidence in Arizona’s elections.

23 Arizona has an indisputably legitimate interest “in counting only the votes of
24 eligible voters,” and the State is entitled to enact prophylactic legislation to prevent the
25 occurrence of non-citizen voting. *Crawford II*, 553 U.S. at 196; *DNC*, 141 S. Ct. at 2348;
26 *see also League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 925 (11th
27 Cir. 2023) (rejecting plaintiffs’ argument that a voting law designed to prevent voter fraud
28 was a “proverbial solution in search of a problem” and a pretext for discrimination because

1 “[t]he Supreme Court has already held that deterring voter fraud is a legitimate policy on
2 which to enact an election law, even in the absence of any record evidence of voter fraud.”
3 (quoting *Greater Birmingham Ministries v. Sec’y of State for State of Ala.*, 992 F.3d 1299,
4 1334 (11th Cir. 2021)). The State “need not offer ‘elaborate, empirical verification’” of
5 non-citizen voting, but it also may not rely on mere “speculative concern[s]” “to justify
6 *any* non-severe voting regulation.” *Soltysik*, 910 F.3d at 448–49 (emphasis in original)
7 (quoting *Timmons*, 520 U.S. at 364).

8 While rare, voter fraud in Arizona does exist. The Arizona Attorney General’s
9 Office initiated 38 prosecutions for illegal voting between 2010 and 2023, albeit with most
10 of these cases concerning voting in more than one jurisdiction, or “double voting.” (Ex.
11 292 at PX 292-1 to -6; Lawson Tr. 1688:3–19, 1689:7–24.) In addition, there are currently
12 two sealed indictments related to non-citizen voting. (Lawson Tr. 1691:11–13, 1692:5–
13 1694:15.) At the local level, Maricopa County initiated 13 prosecutions specifically for
14 non-citizen voting between 2007 and 2008. (Minnite Tr. 1588:3–23.) And to be sure, while
15 deliberate non-citizen voting is but one form of voter fraud, the legislative history indicates
16 that the Legislature was concerned with non-citizen voting more generally. (*See, e.g.*, H.B.
17 2492 House Gov. Comm. Tr. at PX 054-3 to -4; Ex. 61 at PX 061-28 to -30, -39 to -40;
18 Minnite Tr. 1630:13–1632:7.) The State’s interests in preventing voter fraud and
19 unintentional non-citizen voting are both legitimate, as both forms of non-citizen voting
20 can undermine the integrity of Arizona’s elections.

21 The State has a related justification for the Voting Laws: “safeguarding public
22 confidence by eliminating [fraud and] even appearances of fraud.” *Ohio Democratic Party*
23 *v. Husted*, 834 F.3d 620, 633 (6th Cir. 2016) (internal quotations omitted). “[P]ublic
24 confidence in the integrity of the electoral process has independent significance, because
25 it encourages citizen participation in the democratic process.” *Crawford II*, 553 U.S. at
26 197. Setting aside the absence of evidence that Arizona’s 19,439 Federal-Only Voters are
27 non-citizens, the Court is mindful that the “electoral system cannot inspire public
28 confidence if no safeguards exist to deter or detect fraud or to confirm the identity of

1 voters.” *Id.* Arizona is “permitted to respond to potential deficiencies in the electoral
2 process with foresight rather than reactively.” *Munro v. Socialist Workers Party*, 479 U.S.
3 189, 195–96 (1986); *DNC*, 141 S. Ct. at 2348. While Plaintiffs may disagree with the
4 efficacy of this method, “the propriety of doing so is perfectly clear”: it helps ensure that
5 any non-citizens that register to vote, intentionally or mistakenly, do not make it onto or
6 remain on the voter rolls. *Crawford II*, 553 U.S. at 196; *see also Dudum*, 640 F.3d at 1114
7 (“[W]hen a challenged rule imposes only limited burdens on the right to vote, there is no
8 requirement that the rule is the only or the best way to further the proffered interests.”).

9 Considering the evidence as a whole, the Court concludes that Arizona’s interests
10 in preventing non-citizens from voting and promoting public confidence in Arizona’s
11 elections outweighs the limited burden voters might encounter when required to provide
12 DPOC.

13 **F. Remaining Fourteenth and Fifteenth Amendment Claims**

14 The Fourteenth Amendment provides that “[n]o State shall . . . deny to any person
15 within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The
16 Fifteenth Amendment provides that “[t]he right of citizens of the United States to vote shall
17 not be denied or abridged by the United States or by any State on account of race, color, or
18 previous condition of servitude.” U.S. Const. amend. XV, § 1. There are two aspects to the
19 equal protection doctrine: suspect classifications and fundamental rights. “The first strand
20 bars a state from codifying a preference for one class over another,” such as based on race
21 or national origin, while “[t]he second strand bars a state from burdening a fundamental
22 right for some citizens but not for others. Absent some such burden, however, legislative
23 distinctions merit no special scrutiny.” *Short v. Brown*, 893 F.3d 671, 678–79 (9th Cir.
24 2018) (internal citations omitted).

25 **1. *Bush v. Gore* Arbitrary and Disparate Treatment**

26 Non-US Plaintiffs claim that the Voting Laws subject registrants to “arbitrary and
27 disparate treatment,” under the equal protection standard articulated in *Bush v. Gore*, 531
28 U.S. 98, 104–09 (2000) (per curiam). The parties disagree whether *Bush* provides an equal

1 protection analysis independent of the *Anderson/Burdick* framework.

2 *Bush* concerned the application of the one-person, one-vote principle in the context
3 of a court-ordered “statewide recount with minimal procedural safeguards.” 531 U.S. at
4 109. Specifically, the Florida Supreme Court directed election officials to discern the intent
5 of voters for whom their “punchcard” ballots were not “perforated with sufficient precision
6 for a machine to register the perforation.” *Id.* at 105. But the court did not provide election
7 officials with any standards by which to determine voter “intent,” resulting in disparate
8 treatment among similarly situated voters. *Id.* at 105–06. The Supreme Court explained
9 that “[h]aving once granted the right to vote on equal terms, the State may not, by later
10 arbitrary and disparate treatment, value one person’s vote over that of another.” *Id.* 104–
11 05 (citation omitted).

12 The Ninth Circuit has cast doubt on whether *Bush* is “applicable to more than the
13 one election to which the [Supreme] Court appears to have limited it.” *Lemons*, 538 F.3d
14 at 1106; *see Paher v. Cegavske*, 457 F. Supp. 3d 919, 927–28 (D. Nev. 2020) (analyzing
15 claim under *Anderson-Burdick* and rejecting plaintiffs’ claim that Nevada’s all-mail
16 primary would result in “voter disenfranchisement in the form of vote dilution” such that
17 *Bush* should apply). And those cases where the Ninth Circuit has applied *Bush* have
18 similarly focused on the one-person, one-vote principle. *Idaho Coal. United for Bears v.*
19 *Cenarrusa*, 342 F.3d 1073, 1077–78, 1077 n.7 (9th Cir. 2003) (finding that Idaho’s ballot-
20 initiative process violated the one-person, one-vote principle, and citing *Bush*); *Sw. Voter*
21 *Registration Educ. Project v. Shelley*, 344 F.3d 882, 894–95 (9th Cir. 2003) (finding that
22 plaintiffs’ claim “mirror[ed]” that in *Bush*, “that is, whether unequal methods of counting
23 votes among counties constitutes a violation of the Equal Protection Clause”), *rev’d on*
24 *other grounds en banc*, 344 F.3d 914 (9th Cir.) (describing *Bush* as “the leading case on
25 *disputed elections*” (emphasis added)). *Bush* itself emphasized that its “consideration [was]
26 limited to the present circumstances.” 531 U.S. at 109 (noting “the special instance of a
27 statewide recount under the authority of a single state judicial officer”).

28 Assuming *Bush* applied, “[c]ourts have generally found equal protection violations

1 where a lack of uniform standards and procedures results in arbitrary and disparate
2 treatment of [similarly situated] voters.” *Lecky v. Va. State Bd. of Elections*, 285 F. Supp.
3 3d 908, 920 (E.D. Va. 2018). The Voting Laws are not tainted by “varying” or complete
4 “absence of specific standards” that the Supreme Court found problematic with Florida’s
5 recount. *Bush*, 531 U.S. at 106–07. County recorders may reject a voter registration only
6 after matching that registrant to evidence of non-citizenship from the Voting Laws’ list of
7 databases. § 16-121.01(D), (E); (2023 EPM at ECF-56.) Whether an applicant’s
8 registration information “matches” to information of non-citizenship leaves no guesswork
9 to county recorders. The List Maintenance Procedures and Cancellation Provision likewise
10 mandate county recorders to “obtain” and “confirm” information from these same
11 databases before requesting DPOC from the voter. § 16-165(A)(10). Setting aside the
12 occasional match to outdated MVD citizenship information for naturalized citizens, these
13 databases contain objective and readily verifiable information that in nearly all cases will
14 not require county recorders to request DPOC from a registrant or voter. (*See, e.g.*, 2023
15 EPM at ECF-57 (requiring county recorders to match a suspected non-citizen to a voter
16 registration, determine whether that voter has already provided DPOC, and review
17 available government databases before requesting DPOC).) Furthermore, Plaintiffs
18 adduced no evidence that county recorders will act arbitrarily when confirming an
19 individual’s non-citizenship. This is buttressed by the fact that the Court’s ruling prohibits
20 county recorders from investigating the citizenship status of registered voters based on a
21 mere “reason to believe” that a voter is a non-citizen. (*See supra* Sections II(B)(3), (C)(3)(i)
22 (concluding the Reason to Believe Provision is unlawful).)

23 **2. Race & National Origin or Alienage Discrimination**

24 Lastly, Plaintiffs claim that the Voting Laws are facially discriminatory, and in the
25 alternative, were motivated by a discriminatory purpose. Facial unconstitutionality does
26 not require a finding of discriminatory intent. *Mitchell v. Washington*, 818 F.3d 436, 445–
27 46 (9th Cir. 2016) (“When the government expressly classifies persons on the bases of race
28 or national origin . . . its action is ‘immediately suspect’. . . . A plaintiff in such a lawsuit

1 need not make an extrinsic showing of discriminatory animus or a discriminatory effect to
2 trigger strict scrutiny.” (citation omitted)). But a plaintiff must prove discriminatory intent
3 if the challenged law does not expressly classify persons on the bases of race or national
4 origin. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977).

5 The Voting Laws require all voters to provide DPOC or be subject to recurring
6 database checks to validate citizenship. *E.g.*, §§ 16-121.01(D), (E), 16-165(G)–(K).
7 Plaintiffs cite a string of cases to argue that the Voting Laws facially discriminate based on
8 national origin because the databases county recorders must use to verify citizenship can
9 contain outdated citizenship information only for naturalized citizens. But Plaintiffs
10 conflate facial discrimination with discriminatory effects. *Compare Florida*, 870 F. Supp.
11 2d at 1350 (finding law’s use of MVD data “likely” had a “discriminatory impact” on
12 naturalized citizens), *and Texas LULAC*, 2019 WL 7938511, at *1 (citing *Florida* for
13 similar proposition), *with Boustani v. Blackwell*, 460 F. Supp. 2d 822, 824–25 (N.D. Ohio
14 2006) (concluding election law that allowed election workers to challenge the citizenship
15 status of any voter, question whether the voter was “a native or naturalized citizen,” and
16 require naturalized citizens to produce a naturalization certificate, was facially
17 discriminatory). The Voting Laws are facially neutral as to race, ethnicity, and national
18 origin.

19 Because the Voting Laws are facially neutral, Plaintiffs must show that the Voting
20 Laws were “motivated by” a discriminatory purpose. *Vill. of Arlington Heights* 429 U.S.
21 at 265–66; *see Abbott v. Perez*, 585 U.S. 579, 603 (2018) (explaining burden of proof is on
22 the plaintiff). “The central inquiry in any disparate treatment claim under the Equal
23 Protection Clause is whether ‘an invidious discriminatory purpose was a motivating factor’
24 in some government action.” *Ballou v. McElvain*, 29 F.4th 413, 424 (9th Cir. 2022)
25 (quoting *Ave. 6E Invs., LLC v. City of Yuma, Ariz.*, 818 F.3d 493, 504 (9th Cir. 2016)); *see*
26 *Arce*, 793 F.3d at 977 (“A plaintiff does not have to prove that the discriminatory purpose
27 was the sole purpose of the challenged action, but only that it was a ‘motivating factor.’”
28 (quoting *Arlington Heights*, 429 U.S. at 265–66)). The Court considers the following, “non-

1 exhaustive factors” to determine whether the Voting Laws were motivated by a
2 discriminatory purpose:

3 (1) the impact of the official action and whether it bears more heavily on one
4 race than another; (2) the historical background of the decision; (3) the
5 specific sequence of events leading to the challenged action; (4) the
6 defendant’s departures from normal procedures or substantive conclusions;
7 and (5) the relevant legislative or administrative history.

8 *Arce*, 793 F.3d at 977 (citing *Arlington Heights*, 429 U.S. at 266–68). Plaintiffs must
9 overcome the “strong ‘presumption of good faith’” the Court affords to the Arizona
10 Legislature. *United States v. Carrillo-Lopez*, 68 F.4th 1133, 1139 (9th Cir. 2023) (quoting
11 *Miller v. Johnson*, 515 U.S. 900, 916 (1995)); see *Abbott*, 585 U.S. at 603.

12 **i. Historical Background**

13 Beginning with the second *Arlington Heights* factor, Arizona does have a long
14 history of discriminating against people of color. This includes the State’s literacy tests that
15 effectively precluded Native American and Latino voters from voting, in addition to voter
16 roll purges that created barriers for people of color to re-register to vote. But “unless
17 historical evidence is reasonably contemporaneous with the challenged decision, it has
18 little probative value.” *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987). Arizona has
19 not employed literacy tests since the 1970s, and Arizona’s preclearance requirements under
20 section 5 of the VRA is the most recent evidence of voter discrimination that Plaintiffs’
21 experts cite. Despite these examples of past discrimination, the Court continues to presume
22 good faith on behalf of the 55th Legislature because “[p]ast discrimination cannot, in the
23 manner of original sin, condemn governmental action that is not itself unlawful.” *Abbott*,
24 585 U.S. at 603 (citation omitted). More precisely, “[t]he ‘historical background’ of a
25 legislative enactment is ‘one evidentiary source’ relevant to the question of intent.” *Id.* at
26 603–04 (quoting *Arlington Heights*, 429 U.S. at 267) (emphasis added). And neither Dr.
27 Chang nor Dr. Burton identified a persuasive nexus between Arizona’s history of animosity
28 toward marginalized communities and the Legislature’s enactment of the Voting Laws. *C.f.*
League of Women Voters of Fla., 66 F.4th at 923 (disapproving of district court’s overt
reliance on the state’s discriminatory history that was not sufficiently contemporaneous

1 with the legislation at issue).

2 **ii. Events Preceding the Voting Laws and Legislative History**

3 Regarding precipitating events, the Legislature enacted the Voting Laws on the
4 heels of unsubstantiated voter fraud claims following a victory for President Biden in
5 Arizona by a margin of 10,457 votes during the 2020 presidential election. (*See, e.g.,* Pls.’
6 Stip. No. 154; Minnite Tr. 1597:5–11.) The Arizona Senate’s subsequent audit of the
7 election failed to reveal any voter fraud in Arizona, as did the Attorney General’s
8 investigation into allegations of voter fraud. (*See, e.g.,* Minnite Tr. 1589:17–1592:14
9 (recounting the Elections Integrity Unit’s efforts to uncover instances of non-citizen voting
10 in the 2020 election); *see* Ex. 401 (letter explaining Elections Integrity Unit’s inability to
11 find evidence to substantiate allegations of fraudulent ballots in Pima County).)

12 Turning to the Voting Laws’ legislative history, because legislators rarely publicize
13 their discriminatory motives on the record, the Court considers whether legislators have
14 “‘camouflaged’ their intent.” *Arce*, 793 F.3d at 978 (citation omitted). Nothing in the
15 legislative hearings evince a motive to discriminate against voters based on race or national
16 origin. *See Carrillo-Lopez*, 68 F.4th at 1148 (finding no “racist or derogatory language
17 regarding Mexicans or other Central and South Americans” evincing discriminatory intent
18 in a 925-page Senate Report). Instead, the hearings and the substance of the Voting Laws
19 indicate that the Voting Laws are in many ways the progeny of Arizona’s prior effort to
20 require DPOC for all Arizona voters through Proposition 200. The Supreme Court’s
21 decision in *ITCA* and the LULAC Consent Decree curtailed the State’s power to require
22 DPOC for Federal-Only Voters, regardless of whether voters registered with the State Form
23 or Federal Form. *See ITCA*, 570 U.S. at 12; (LULAC Consent Decree at PX 024-8 to -10,
24 -13 to -14.) During the hearings regarding H.B. 2492, legislators supporting the bills
25 vocalized concerns with the marked increase in Federal-Only Voters following the LULAC
26 Consent Decree. (H.B. 2492 House Gov. Comm. Tr. at PX 054-3 to -4.) The Legislature’s
27 passage of the bill attempted to revive the DPOC Requirement for State Form users in light
28 of *ITCA*’s pronouncement that “States retain the flexibility to design and use their own

1 registration forms” and for Federal Form users by first “establishing the applicant’s
2 ineligibility” to side-step the NVRA’s “accept and use” requirement. *ITCA*, 570 U.S. at 12,
3 16; (see H.B. 2492 House Gov. Comm. Tr. at PX 054-9 to -10, -17 to -19.)

4 The Legislature’s concern with Federal-Only Voters paralleled some public
5 sentiment that non-citizens were able to vote by falsely attesting to U.S. citizenship.
6 (Connor Tr. 382:12–383:25 (describing public comments regarding 2023 EPM that “voters
7 should be citizens”); Quezada Tr. 877:14–878:17 (explaining the general public’s
8 “commentary” was that non-citizens were voting).) The public’s concerns regarding non-
9 citizen voting, even if unsubstantiated, does not exhibit “[t]he presence of community
10 animus” for the Court to impute a discriminatory motive to the Legislature. *Ave. 6E Invs.*,
11 818 F.3d at 504; *c.f. SoCal Recovery, LLC v. City of Costa Mesa*, No. SACV 18-1304-
12 JVS(JDEx), 2023 WL 8263377, at *8 (C.D. Cal. Aug. 17, 2023) (noting evidence of
13 community animus where residents cited “mayhem and violence” and “crime and
14 homelessness” to oppose sober living homes, which the city referenced in permit denials).

15 Furthermore, the Free Enterprise Club disseminated lobbying materials by email to
16 Arizona legislators that described how the Voting Laws would prevent “illegals” from
17 voting in Arizona elections. (Ex. 602.) “[T]he use of ‘code words’ may demonstrate
18 discriminatory intent,” and the term “illegals” can evince racial animus for members of the
19 Latino community in Arizona. *Ave. 6E Invs.*, 818 F.3d at 505; (see Quezada Tr. 867:18–
20 868:9 (explaining the term “illegals” in the voting context is typically used to refer to non-
21 citizens from Latin descent and that the term “undocumented” is less offensive for
22 individuals who are not lawfully present in the United States); Burton Tr. 1453:17–1454:25
23 (explaining that the term “illegals” in the voting context can refer to non-citizens, or
24 minorities perceived as untrustworthy).) Because Free Enterprise Club helped author the
25 Voting Laws, the Court weighs the organization’s coded appeals as some evidence of
26 community animus. *Ave. 6E Invs.*, 818 F.3d at 505. But while community animus “*can*
27 support a finding of discriminatory motives by government officials,” Plaintiffs presented
28 no persuasive evidence that the Legislature relied on the Free Enterprise Club’s coded

1 appeals, nor that the Legislature enacted the Voting Laws to prevent anyone other than
 2 non-citizens from voting. *Id.* at 504; *c.f. Gonzalez v. Douglas*, 269 F. Supp. 3d 948, 967
 3 (D. Ariz. 2017) (citing officials’ use of the terms “‘Raza,’ ‘un-American,’ ‘radical,’
 4 ‘communist,’ ‘Aztlan,’ and ‘M.E.Ch.a.’” as code words for Mexican Americans and
 5 “‘concepts of foreignness and political radicalism’” during public debates of a House bill).

6 Plaintiffs contend that Senator Borrelli would frequently make derogatory
 7 comments about Latino voters to Senator Quezada during Senate Judiciary Committee
 8 meetings. Even assuming Senator Borrelli expressed discriminatory remarks, Plaintiffs
 9 may not impute his motives to the other individual legislators or the Arizona Legislature
 10 as a whole. As the Supreme Court has cautioned:

11 Inquiries into congressional motives or purposes are a hazardous matter.
 12 When the issue is simply the interpretation of legislation, the Court will look
 13 to statements by legislators for guidance as to the purpose of the legislature,
 14 because the benefit to sound decision-making in this circumstance is thought
 15 sufficient to risk the possibility of misreading Congress’ purpose. It is
 16 entirely a different matter when we are asked to void a statute that is, under
 well-settled criteria, constitutional on its face, on the basis of what fewer than
 a handful of Congressmen said about it. What motivates one legislator to
 make a speech about a statute is not necessarily what motivates scores of
 others to enact it, and the stakes are sufficiently high for us to eschew
 guesswork.

17 *United States v. O’Brien*, 391 U.S. 367, 383–84 (1968); *see also DNC*, 141 S. Ct. at 2349–
 18 50 (agreeing with district court’s findings that “no evidence [indicated] the legislature as a
 19 whole was imbued with racial motives”). And while Senator Quezada testified as to his
 20 reasons for voting against the Voting Laws, “the concerns expressed by political opponents
 21 during the legislative process are not reliable evidence of legislative intent.” *League of*
 22 *Women Voters of Fla.*, 66 F.4th at 940.

23 **iv. Impact on Minority and Naturalized Voters**

24 Evidence of a law’s disparate impact is generally insufficient alone to evidence a
 25 legislature’s discriminatory motive. *Carrillo-Lopez*, 68 F.4th at 1141 (explaining that a
 26 court may infer a discriminatory motive from disproportionate impacts in the “rare cases”
 27 where the effects of the challenged action are unequivocally related to race). As discussed
 28 in the Court’s section 2 analysis, Plaintiffs have not shown that the Voting Laws will have

1 any significant discriminatory impact based on naturalization status, race, or ethnicity.
2 First, the difference in registration rates by race and ethnicity, with one-third of a percent
3 of White voters and two-thirds of a percent of minority voters registered as Federal-Only
4 Voters, is “small in absolute terms.” *DNC*, 141 S. Ct. at 2345. Second, while it is possible
5 that SAVE and MVD could return outdated citizenship information for a small number of
6 naturalized citizens, these database checks without more do not materially affect Full-
7 Ballot Voters who have already provided DPOC. Of course, 65 naturalized Federal-Only
8 voters will likely be flagged as non-citizens and may be required to produce DPOC, but
9 considering this accounts for just 0.001% of all voters, the impact of these checks is
10 markedly small. (*See MVD Non-Citizen Records.*) Setting aside the racial, ethnic and
11 nationality composition of Federal-Only Voters, Plaintiffs offered testimony to show that
12 minority voters are more likely to lack, and encounter more barriers to furnishing, DPOC
13 than White voters. (*See, e.g., Tiwamangkala Tr. 1273:22–1274:4 (AANHPI community);*
14 *Nitschke Tr. 469:8–470:3 (out-of-state college students).*) But there is no quantifiable
15 evidence regarding the rate at which minority voters both lack *and* are unable to afford
16 DPOC. The same is true for the number of naturalized citizens who lack both their
17 naturalization certificate *and* their immigration number.

18 In addition, Plaintiffs did not show that the Arizona Legislature enacted the Voting
19 Laws *because of* any impact on minority voters or naturalized citizens. For example, it is
20 common sense that the Voting Laws’ MVD checks would be substantially more likely to
21 return information of non-citizenship for naturalized citizens who possess a foreign-type
22 license, as compared to native-born citizens who are ineligible to receive a foreign-type
23 license at all. This result “does not prove that penalizing such individuals was a purpose of
24 this legislation.” *Carrillo-Lopez*, 68 F.4th at 1153 (concluding district court erred in relying
25 on evidence of 8 U.S.C. § 1326’s disparate impact on Mexicans, which criminalizes the
26 reentry of a removed alien, without more evidence of animus because “the clear geographic
27 reason for disproportionate impact on Mexicans and other Central and South Americans
28 undermines any inference of discriminatory motive”).

1 Plaintiffs make much of what the Arizona Legislature did not evaluate when passing
2 the Voting Laws, specifically the impact on voters based on national origin, race, ethnicity,
3 age, or socioeconomic status. Community stakeholders had an opportunity to oppose the
4 Voting Laws on the record, most of whom emphasized the DPOC Requirement’s disparate
5 impacts on Federal-Only Voters and the DPOR Requirement’s impacts on Native
6 American voters. (*See, e.g.*, Ex. 61 at PX 061-8 to -20.) When explaining his vote against
7 H.B. 2492 during the same hearing, Senator Quezada warned the Senators that the bill
8 would have a discriminatory impact on people of color. (*Id.* at PX 061-33 to -35.) But
9 Plaintiffs must show that the Arizona Legislature enacted the Voting Laws “at least in part
10 ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.”
11 *Carrillo-Lopez*, 68 F.4th at 1139 (quoting *Pers. Adm’r. of Mass. v. Feeney*, 442 U.S. 256,
12 279 (1979)). The Legislature’s failure to adequately consider the Voting Laws’ impact on
13 people of color or naturalized citizens or decision to pass the Voting Laws *notwithstanding*
14 the potential impact on these voters is insufficient to show a discriminatory motive. *Id.*

15 **v. Procedural and Substantive Departures**

16 Finally, Plaintiffs adduced no persuasive evidence of procedural departures during
17 the Arizona Legislature’s enactment of H.B. 2492. Plaintiffs contend that the House Rules
18 Committee knowingly passed the bill after the Committee’s attorney opined that the bill
19 was likely unconstitutional and preempted by the NVRA. But the Rules Committee was
20 not bound by this opinion, nor did the Rules Committee attorney indicate that H.B. 2492
21 was unconstitutionally discriminatory as relevant to Plaintiffs’ Fourteenth and Fifteenth
22 Amendment claims. (*See, e.g.*, Toma Dep. 174:3–174:10 (explaining the Rules Committee
23 ultimately decides whether a bill “moves forward”)); *c.f. Ave. 6E Invs.*, 818 F.3d at 507
24 (finding city’s plausible departure from normal procedures by ignoring “the unanimous
25 recommendation” of the city’s Planning and Zoning Commission could evince
26 discriminatory intent “particularly when, as here, that recommendation is consonant with
27 the municipality’s general zoning requirements and plaintiffs proffer additional evidence
28 of animus” (emphasis added)).

1 Regarding H.B. 2243, Governor Ducey vetoed the bill for lacking “sufficient due
2 process” protections. Legislators collaborated with the Governor’s office specifically to
3 address the Governor’s due process concerns. (Toma Dep. 232:19–233:18, 234:14–21,
4 235:7–20.) Senator Petersen then introduced the language of H.B. 2617 into H.B. 2243,
5 albeit with several substantive changes, such as reducing the opportunity to provide DPOC
6 from 90 to 35 days. And while the legislators could not name a separate *voting* bill during
7 their depositions that was successfully amended in a similar manner to HB. 2243,
8 amendments to existing bills are common at the close of a legislative session. (Toma Dep.
9 237:8–239:3 (explaining unsuccessful attempt to pass a different vetoed voting bill through
10 a separate germane bill on the last day of the legislative session); Petersen Dep. 319:3–24,
11 333:17–334:2.) The speed with which the Legislature passed H.B. 2243 as amended was
12 not so abrupt as to infer an improper motive, considering the Legislature had previously
13 passed H.B. 2617 through the ordinary legislative process. *Abbott*, 585 U.S. at 610 & n.23
14 (“[W]e do not see how the brevity of the legislative process can give rise to an inference
15 of bad faith—and certainly not an inference that is strong enough to overcome the
16 presumption of legislative good faith.”).

17 Substantively, Arizona has required DPOC since 2005, and the Voting Laws
18 supplement this requirement to ensure that non-citizens do not register to vote or remain
19 on the voter rolls. This includes expanding county recorders’ existing use of SAVE and the
20 MVD database to also identify existing registered non-citizens. Similarly, H.B. 2243’s 35-
21 day notice procedure is not a departure from prior Arizona law, as it adopts the 2019 EPM’s
22 35-day period for a voter to prove citizenship after attesting to non-citizenship on a juror
23 questionnaire. (2019 EPM at PX 006-50 to -51.) And while the Court concluded above that
24 the Birthplace Requirement violates the Materiality Provision, the Legislature’s decision
25 to mandate birthplace on the State Form is consistent with Arizona’s existing practice of
26 collecting this information from voters, even if providing birthplace was historically
27 optional.

28 Having considered the totality of these factors, the Court concludes that Plaintiffs

1 failed to show that the Voting Laws were enacted with a discriminatory purpose.

2 **III. CONCLUSION**

3 Non-US Plaintiffs may enforce § 10101 of the Civil Rights Act. Requiring
4 individuals who register to vote using the State Form to include the individual’s state or
5 country of birth violates the Materiality Provision of the Civil Rights Act. H.B. 2243’s
6 Reason to Believe Provision also violates the Civil Rights Act, as well as section 8(b) of
7 the NVRA because the provision will result in the investigation of only naturalized citizens
8 based on county recorders’ subjective beliefs that a naturalized individual is a non-citizen.
9 In addition, requiring individuals registering to vote with the State Form to include
10 documentary proof of residence to register for federal elections violates sections 6 and 7 of
11 the NVRA. However, Plaintiffs have not carried their burden to show that the Voting Laws’
12 remaining citizenship investigation procedures, DPOC requirements, and registration
13 cancellation procedures violate the NVRA or the VRA. Nor do these provisions impose an
14 undue burden on the right to vote or violate the equal protection and due process guarantees
15 of the U.S. constitution. Finally, the Court concludes that Plaintiffs failed to show that the
16 Voting Laws were enacted with any discriminatory purpose.


17 **IT IS ORDERED** declaring that A.R.S. § 16-121.01(A) violates § 10101(a)(2)(B)
18 of the Civil Rights Act by denying Arizonans the right to vote based on errors or omissions
19 that are not material to determining Arizonan’s eligibility to vote. Arizona may not reject
20 State Form registrations that lack an individual’s state or country of birth and must register
21 an individual if that individual is found eligible to vote.

22 **IT IS FURTHER ORDERED** declaring that A.R.S. § 16-165(I) violates
23 § 10101(a)(2)(A) of the Civil Rights Act and section 8(b) of the NVRA by subjecting
24 naturalized citizens whom county recorders have reason to believe are non-citizens to
25 SAVE checks, which is a different standard, practice, or procedure than that applied to
26 native-born citizens. Arizona may not conduct SAVE checks on any registered voter whom
27 county recorders have reason to believe are a non-citizen. But Arizona may conduct SAVE
28 checks on registered voters who have not provided DPOC. *See* A.R.S. § 16-165(I).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED declaring that A.R.S. § 16-121.01(A) violates sections 6 and 7 of the NVRA by requiring Arizonans who register with the State Form to provide documentary proof of residence. Arizona may not reject State Form registrations that are not accompanied by documentary proof of residence but must register an individual without proof of residence as a Federal-Only Voter if that individual is otherwise eligible to vote.

Dated this 29th day of February, 2024.



Susan R. Bolton
United States District Judge

RETRIEVED FROM DEMOCRACYDOCS.COM