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7  
 8 **IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF ARIZONA**

9 Strong Communities Foundation of  
 Arizona, Inc., and Yvonne Cahill,

No.: CV-24-02030-PHX-SMB

10 Plaintiffs,

**MOHAVE COUNTY  
 DEFENDANTS' RESPONSE TO  
 PLAINTIFFS' MOTION FOR A  
 TEMPORARY RESTRAINING  
 ORDER AND PRELIMINARY  
 INJUNCTION**

11 vs.

12 Stephen Richer in his official capacity as  
 Maricopa County Recorder; *et al.*,

13 Defendants.  
 14

15 MOHAVE COUNTY and MOHAVE COUNTY RECORDER LYDIA DURST,  
 16 collectively referred to herein as the Mohave County Defendants, by and through  
 17 undersigned counsel, hereby respond to Plaintiff's Motion for a Temporary Restraining  
 18 Order and Preliminary Injunction:

19 **INTRODUCTION**

20 Plaintiffs' 165 page (26 pages of substantive arguments and 139 pages of exhibits  
 21 and a certificate of service) Motion for a Temporary Restraining Order and Preliminary  
 22 Injunction (Plaintiff's Motion) can be distilled and summarized into two issues: (1) Does

1 Arizona and federal law require the Arizona Recorders to submit immigration status  
2 requests about Federal-Only Voters to the Department of Homeland Security for  
3 confirmation of citizenship status using only a person's name and date of birth, and (2):  
4 Are the Arizona Recorders required to transmit to the Arizona Attorney General a list of  
5 every registered voter in their respective counties who have failed to provide  
6 documentary proof of U.S. Citizenship. The Mohave County Defendants' position on  
7 these two issues is as follows: the Mohave County Defendants adhere and abide by voter  
8 maintenance requirements, and should this Court order the Defendants to contact DHS  
9 as requested by Plaintiff, the Mohave County Defendants will do so.

10 **I. The Mohave County Recorder complies with Arizona and Federal Law Voter**  
11 **List Maintenance Requirements.**

12 **A. A.R.S. §§ 16-121.01 and 16-165 voter list maintenance requirements**

13 Arizona Revised Statute § 16-121.01(D) requires the County recorder to use "all  
14 available resources to verify the citizenship status" of voter registration applicants.  
15 Further, section 16-121.01(D) explains that the Recorder must, at a minimum, compare  
16 the information available on the application for voter registration to various identified  
17 databases, "provided the county has access" to them. Mohave County Recorder Durst  
18 follows this statutory requirement.

19 Notably, A.R.S. § 16-121.01(D) does not identify the Department of Homeland  
20 Security's person centric query system database as one of those databases that the  
21 Recorder, at a minimum, must utilize. Further, nothing in A.R.S. § 16-121.01(D)  
22 explicitly identifies 8 U.S.C. § 1373(c) and 8 U.S.C. § 1644 as the means by which the

1 Recorder shall contact the Department of Homeland Security (DHS) to conduct voter list  
2 maintenance.

3 The same can be said about the Recorder's A.R.S. § 16-165(K) duties. Pursuant  
4 to A.R.S. § 16-165(K), the Recorder shall review relevant city, town, county, state and  
5 federal databases to which the Recorder has access to confirm citizenship status, but  
6 only "to the extent practicable." Again, Recorder Durst follows this statutory  
7 requirement, and as with A.R.S. § 16-121.01(D), there is no reference to an affirmative  
8 obligation for the Recorder to contact DHS to search its person centric query system  
9 database.

10 The Mohave County Defendants agree with Plaintiffs that voter list maintenance  
11 is an important duty to ensure that only citizens are registered to vote, and the  
12 Defendants are open to accessing databases to which they have legal access and that will  
13 not violate any other laws or rights.

14 **B. National Voter Registration Act, 52 U.S.C. § 20507**

15 The National Voter Registration Act (NVRA) requires state voter maintenance  
16 roll programs to be uniform, nondiscriminatory, and in compliance with the Voting  
17 Rights Act. 52 U.S.C. § 20507(b)(1). Recorder Durst maintains the voter registration  
18 rolls in a uniform, nondiscriminatory manner by adhering to her statutory duties as well  
19 as the procedures outlined in the State of Arizona Elections Procedures Manual. To the  
20 extent that Plaintiffs argue otherwise, the Mohave County Defendants respectfully  
21 disagree and will be prepared to defend their actions.

1 A private citizen may enforce the NVRA by providing “written notice of the  
2 violation to the chief election official of the state involved,” and if the violation is not  
3 corrected within 90 days after receipt of the notice (or within 20 days after receipt of the  
4 notice if the violation occurred within 120 days before the date of a federal election), the  
5 person may bring a civil action for declaratory or injunctive relief. 52 U.S.C. § 20510(b).

6 Recorder Durst is not the “chief election official” of the state. The Secretary of  
7 State is the chief election official of the state of Arizona. Plaintiffs have not provided  
8 any evidence that they mailed the required notice to the Arizona Secretary of State.  
9 Further, if the Plaintiffs were seeking relief under the NVRA, it should seek relief  
10 against the Secretary of State, not the Recorders.

11 Furthermore, while the Plaintiffs’ proposal to require the Recorders to submit to  
12 DHS a letter requesting confirmation of the citizenship or immigration status of every  
13 registered voter in the County who has failed to provide documentary proof of U.S.  
14 citizenship may sound “simple”, its practical effect certainly is not. If the Recorder were  
15 to mail a letter, the Recorder wants to ensure that taking this action does not violate federal  
16 law. 52 U.S.C. § 20507(c)(2)(A) prohibits the state from completing, not later than 90  
17 days prior to the date of a primary or general election for federal office, any program the  
18 purpose of which is to systematically remove the names of ineligible voters from the  
19 official lists of eligible voters. Mohave County Recorder Durst is reviewing Plaintiffs’  
20 proposal to ensure that it complies with federal law.

1 **II. Arizona law does not require the Mohave County Recorder to transmit to the**  
2 **Arizona Attorney General a list of every registered voter in the County who failed**  
3 **to provide documentary proof of U.S. citizenship.**

4 In its request for relief, Plaintiffs request this Court to order the Recorders to  
5 transmit to the Arizona Attorney General a list of every registered voter in the County  
6 who failed to provide documentary proof of U.S. citizenship. In support of this request,  
7 Plaintiffs cite A.R.S. § 16-143(A) as the legal authority obligating the Recorders to  
8 transmit this information. Contrary to Plaintiffs' argument, A.R.S. § 16-143 does not  
9 provide the authority they think it provides.

10 A.R.S. § 16-143(A) states:

11 The secretary of state and each county recorder shall make available to the  
12 attorney general a list of all individuals who are registered to vote and who  
13 have not provided satisfactory evidence of citizenship pursuant to section  
14 16-166 and shall provide, on or before October 31, 2022, the applications  
15 of individuals who are registered to vote and who have not provided  
16 satisfactory evidence of citizenship pursuant to section 16-166.

17 As the plain language of the statute indicates, the recorder "shall make available  
18 to the attorney general" the list of persons who have not provided satisfactory evidence  
19 of citizenship. "Make available" is very different than "transmit" or "mail" or  
20 "provide". The Mohave County Recorder **makes available** to the attorney general the  
21 list, in compliance with Arizona law.

22 Further, A.R.S. § 16-143(A) states that the Recorder "shall provide", on or before  
23 October 31, 2022, the application of individuals who are registered to vote and who have  
24 not provided satisfactory evidence of citizenship. That date has come and gone. It is

1 impossible for the Recorders to abide by that deadline. Finally, upon information and  
2 belief, that statute went into effect after the October 31<sup>st</sup> deadline.

3 **III. There is no need for Mohave County to be identified as a Defendant in this**  
4 **lawsuit, and therefore the Counties should be dismissed.**

5 Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction  
6 make clear that there is no need for the counties to be named as Defendants in this  
7 action, and they should be dismissed.

8 Plaintiffs' motion is solely focused on the actions (or lack of action) of the  
9 Recorders, not the Counties themselves. Plaintiffs do not allege illegal activity on the  
10 part of the Counties. Further, their proposed Order only directs the Recorders to take  
11 action, not the Counties. If the plaintiffs succeed on their motion, it will have zero  
12 effect, at all, on the Counties. Instead, only the Recorders will be directed to take action.

13 Accordingly, the Mohave County Defendants requests that Mohave County be  
14 dismissed from the case.

15 **IV. Mohave County Defendants defer to the Court as to questions of standing,**  
16 **latches, and the Purcell Doctrine**

17 Mohave County Defendants note that the Maricopa County Recorder (along with  
18 defendants who have joined him) argue that the case should be dismissed for lack of  
19 standing, latches, and the *Purcell* Doctrine. Mohave County Defendants do not take a  
20 position on these issues. This position should not be considered a waiver or an  
21 admission that the Court has jurisdiction over the parties. Instead, Mohave County  
22 Defendants defer to the arguments of the parties and will defer to the Court's rulings on  
23 these matters. In the event the Court finds a lack of standing or that plaintiffs amended  
24

1 complaint may not move forward because of latches or the *Purcell Doctrine*, the case  
2 will be dismissed as to all parties, including the Mohave County Defendants.

3 **CONCLUSION**

4 Mohave County Defendants follow the law. They maintain the voter registration  
5 lists as required by law. Mohave County Defendants also have an interest in ensuring  
6 that these lists are accurate, and that non-citizens are properly removed from the list.  
7 Mohave County Defendants are prepared to access available databases, to the extent  
8 practicable and if they are accessible to the Recorder, and so long as they comply with  
9 federal and state law.

10  
11 RESPECTFULLY SUBMITTED THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024.

12 MOHAVE COUNTY ATTORNEY  
13 MATTHEW J. SMITH

14 By: /s/ Ryan Esplin  
15 CHIEF CIVIL DEPUTY COUNTY ATTORNEY  
16 RYAN ESPLIN  
17 *Attorney for Mohave County Defendants*

18 By: /s/ Jason Mitchell  
19 CIVIL DEPUTY COUNTY ATTORNEY  
20 JASON MITCHELL  
21 *Attorney for Mohave County Defendants*

22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on the October 3, 2024, I electronically transmitted the foregoing  
24 document to the Clerk's Office using CM/ECF system for filing and transmittal of a  
Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Ryan Esplin*