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12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF ARIZONA**

14  
15 1789 Foundation Inc., d/b/a Citizen AG,  
and Lindsey Graham,

16  
17 Plaintiffs,

18 v.

19 Adrian Fontes, in his official capacity as  
20 Arizona Secretary of State,

21 Defendant.

No. CV-24-02987-PHX-SPL

**ARIZONA SECRETARY OF  
STATE'S RESPONSE IN  
OPPOSITION TO MOTION FOR  
TEMPORARY RESTRAINING  
ORDER OR, IN THE  
ALTERNATIVE, PRELIMINARY  
INJUNCTION**

## INTRODUCTION

1  
2 Plaintiffs 1789 Foundation, Inc. and Lindsey Graham seek a temporary restraining  
3 order or preliminary injunction requiring the Arizona Secretary of State to produce public  
4 records regarding potentially more than a million voters and direct Arizona's county  
5 recorders to remove certain voters from the voter registration rolls less than a week  
6 before the November 5, 2024 General Election. Plaintiffs make this demand even though  
7 they made their public records request mere weeks before the election, then waited three  
8 weeks after the Secretary directed them to county recorders to obtain the requested  
9 records to file this action. More importantly, Plaintiffs ask this Court to order that the  
10 Secretary remove voters from the registration rolls after early voting has been underway  
11 for 23 days and more than a million ballots have been tabulated.

12 Plaintiffs have tried to manufacture urgency where the usual time frames for  
13 litigating a claim related to provision of records regarding Arizona's compliance with the  
14 National Voter Registration Act ("NVRA") will suffice. Indeed, they timed their public  
15 records request to the Secretary so close to the election that they could avoid providing  
16 notice to the Secretary of their claim of a NVRA violation, thus eliminating the  
17 Secretary's ability to clarify the request and potentially provide responsive records. But,  
18 as shown below, it is far too close to the election to provide the relief Plaintiffs seek on  
19 the schedule they demand.

20 As explained more fully below, this Court should deny Plaintiffs' motion for a  
21 mandatory injunction for myriad reasons. First, the *Purcell* principle cautions federal  
22 courts from ordering changes to election procedures immediately before an election.  
23 Second, laches bars Plaintiff's demands because they unreasonably delayed this action,  
24 which will prejudice the Secretary, other election officials throughout the state, Arizona  
25 voters, and the administration of justice. Third, Plaintiffs do not have standing to demand  
26 the removal of registered voters from the rolls. Finally, the balance of hardships and the  
27 public interest weigh strongly against the relief sought. In particular, in view of  
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1 Plaintiffs' request that the Secretary require county recorders to cancel certain voter  
2 registrations, but only if those voters have not already voted, raises a strong possibility of  
3 an equal protection violation.

## 4 **FACTUAL BACKGROUND**

### 5 **A. The National Voter Registration Act**

6 The National Voter Registration Act of 1993 ("NVRA") was enacted to "increase  
7 the number of eligible citizens who register to vote in elections for Federal office" and  
8 "enhance[] the participation of eligible citizens as voters." 52 U.S.C. § 20501(b)(1)-(2).  
9 Pursuant to federal law, states may only remove voters from registration rolls: (1) at the  
10 voter's request; (2) if a voter becomes ineligible as a result of criminal conviction or an  
11 adjudication of mental incapacity; (3) if the voter has died; or (4) if the voter has moved  
12 out of the jurisdiction. 52 U.S.C. § 20507(a)(3)-(4). States are required to "conduct a  
13 general program that makes a reasonable effort to remove the names of ineligible voters  
14 from the official lists of eligible voters by reason of [death and change of address]." 52  
15 U.S.C. § 20507(a)(3)-(4). There is some lag between when voters become ineligible by  
16 moving out of the jurisdiction and when NVRA permits their removal from the voter  
17 rolls. *See* 52 U.S.C. § 20507(d) (providing a state "shall not remove the name of a  
18 registrant . . . on the ground that the registrant has changed residence unless the  
19 registrant" does not take certain required steps for two consecutive election cycles).

20 NVRA programs to remove voters who have changed residence prohibit  
21 immediate removal, and require states to take the following steps before removal. When  
22 a county recorder receives notice that a registrant has moved out of a jurisdiction, the  
23 county recorder must send a notice to the registrant. 52 U.S.C. § 20507(d)(1)(B), (d)(2).  
24 If the registrant does not respond to the NVRA notice, *and* does not appear to vote in the  
25 next two federal general elections, that voter may be removed from the rolls. 52 U.S.C. §  
26 20507(d)(1)(B).

1 The federal government has been tracking voter registration and list maintenance  
2 through the Election Administration and Voting Survey (“EAVS”) since 2004.  
3 Following each general election, the EAVS report compiles data from around the country  
4 in a readable, reliable, and uniform format to ensure compliance with NVRA. “The  
5 EAVS provides the most comprehensive source of state and local jurisdiction-level data  
6 about election administration in the United States.” (Doc. 2-1, Ex. 3 at i). The EAVS  
7 plays a “vital role” in “identify[ing] trends,” deciding where to “invest resources to  
8 improve election administration” and “secure U.S. election infrastructure.” *Id.* It  
9 provides, however, just a snapshot of past conduct and does not capture ongoing voter  
10 registration list maintenance activities.

11 **B. Arizona’s List Maintenance Program.**

12 Arizona conducts regular voter registration list maintenance, removing convicted  
13 felons, people who have died, and other ineligible registrants from the voting rolls.  
14 Arizona sent out nearly one million confirmation notices, and removed 432,498 voters  
15 from registration rolls in 2022 alone. (*Id.* at 182, 188). Arizona removed 8.9%  
16 registrants, as a percentage of the state’s total number of active registered voters in 2022.  
17 This is a bit higher than, but generally consistent with, the national average removal rate  
18 of approximately 8.5% of registrants. (*Id.* at 188-89). In fact, Arizona’s rate of removal  
19 in 2022 that was higher than twenty-eight other states. (*Id.*). The EAVS data  
20 demonstrate that Arizona maintains an active program to remove voters who have moved  
21 out of the jurisdiction (18.9%), died (25.0%), failed to return a confirmation notice  
22 (40.5%), at the voter’s request (11.6%), and upon felony conviction (3.5%). (*Id.* at 188,  
23 190). Arizona’s data indicates that the state’s list maintenance program is at least as  
24 active, and in many cases *more active*, in removing ineligible voters from the rolls than  
25 the rest of the country. In short, Arizona removes ineligible voters from its registered  
26 voter list in compliance with the law.

1 In addition to state and federal statutes, Arizona elections officials must follow the  
2 Elections Procedures Manual (“EPM”), which carries with it the force of law. A.R.S. §  
3 16-452(A), (D).<sup>1</sup> The EPM provides fifty-five pages of guidance on processing and  
4 validating voter registration, including a thirteen-page subsection titled “Voter  
5 Registration List Maintenance.” EPM, at 36-48. This directs how and when to verify  
6 and cancel registrants who are deceased, felons, incapacitated, or moved. *Id.* For  
7 example, when a county recorder receives notification that a voter has moved, through  
8 the United States Postal Service’s (“USPS”) National Change of Address (“NCOA”)   
9 service, returned mail, or through other mechanisms, the county recorder must send non-  
10 forwardable official election mail to that registrant’s address. *Id.* at 46. If that mail is  
11 returned undeliverable, the recorder must send a second notice (the “Final Notice”) to the  
12 new address, if the USPS provides one, or the address on record if no forwarding address  
13 is available within twenty-one days of the mail being returned to the county. *Id.* The  
14 Final Notice must notify the registrant that they have thirty-five days to update their  
15 record or they will be put in “inactive” status. *Id.* If the registrant does not update their  
16 voter registration record or appear to vote in the “four years from the date of the Final  
17 Notice or following the second general election after the Final Notice,” the registrant’s  
18 record will be canceled. *Id.* at 47. This procedure is set forth in detail in the EPM, and a  
19 violation of these provisions is a class 2 misdemeanor. A.R.S. § 16-452(D).

20 Plaintiff’s allegations in this action that the Secretary has failed to comply with his  
21 list maintenance obligations seem to turn in large part on their assumption that each  
22 notice mailed out corresponds to a unique registered voter. (*See* Doc. 1, ¶¶ 43-45). But  
23 as the process described above shows, county recorders send multiple notices to each  
24 voter. Accordingly, the main premise of Plaintiffs’ argument that the Secretary is not  
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28 <sup>1</sup> The Secretary publishes the EPM in fully-searchable format on his website:  
[https://apps.azsos.gov/election/files/epm/2023/20231230\\_EPM\\_Final\\_Edits\\_406\\_PM.pdf](https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf)

1 complying with his duties under NVRA is seriously undermined by this flaw in their data  
2 analysis.<sup>2</sup>

3 **C. The Relevant Timeline.**

4 Plaintiffs filed this action six days before the November 5, 2024 General Election.  
5 They seek extraordinary relief on a highly expedited basis. Because the availability of  
6 that relief turns, in part, on whether Plaintiffs acted diligently to bring this action within a  
7 reasonable time, set forth below are several relevant dates.

8 1. June 29, 2023: the EAC published the 2022 EAVS. Accordingly, as of  
9 that date, 16 months before they filed the Complaint, all of the EAVS reports on which  
10 Plaintiffs rely were available.

11 2. Friday, October 4, 2024: Plaintiffs allege that they submitted a public  
12 records request to the Secretary for the records that are the subject of this action. October  
13 4 was 32 days before the November 5, 2024 general election.<sup>3</sup>

14 3. Sunday, October 6, 2024, at 7:02 pm: the Secretary's automated public  
15 records request system received Plaintiffs' public records request. October 6 was 30 days  
16 before the general election. (See Ex. 1).

17 4. Monday, October 7, 2024: the Secretary's office informed Plaintiffs that  
18 the records they sought are in the custody and control of Arizona's 15 counties and  
19 closed the request. October 7 was 29 days before the general election.

20 5. October 9, 2024: early voting began, and early ballots were mailed to  
21 approximately 80% of Arizona voters.

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23  
24 <sup>2</sup> In view of the extremely compressed time frame that Plaintiffs have sought to impose in  
25 this action, the Secretary has not had the opportunity to conduct a thorough analysis of  
26 Plaintiff's list maintenance claims. The Secretary anticipates further developing this  
27 analysis in support of a forthcoming dispositive motion.

28 <sup>3</sup> While Plaintiffs assert that they submitted their public records request on Friday,  
October 4, 2024, they provide only a screenshot from Muckrock, a website that may be  
used to "file, track, and share public records requests." <https://www.muckrock.com/>. It  
is not clear that the request was actually sent on October 4, and the Secretary did not  
receive it until October 6, 2024. (See Ex. 1).

1           6.       October 30, 2024: Plaintiffs filed this action and, at 5:36 pm, requested that  
 2 the Secretary accept service. October 30 was 23 days after the Secretary responded to  
 3 Plaintiffs' public records request.

#### 4                               **ARGUMENT**

##### 5       **I.       The *Purcell* Principle Prohibits the Relief Plaintiffs Ask this Court to Order.**

6           In election matters, "time is of the essence." *Harris v. Purcell*, 193 Ariz. 409, 412,  
 7 ¶ 15, 973 P.2d 1166, 1169 (1998). Moreover, "[c]onfidence in the integrity of our  
 8 electoral processes is essential to the functioning of our participatory democracy."  
 9 *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). And "[c]ourt orders affecting elections . . .  
 10 can themselves result in voter confusion and consequent incentive to remain away from  
 11 the polls." *Purcell*, 549 U.S. at 4-5. The risk of voter confusion only increases "[a]s an  
 12 election draws closer." *Id.* For that reason, courts generally will not alter election rules  
 13 or procedures on the eve of an election. *See id.* at 5; *Lake v. Hobbs*, 623 F. Supp. 3d  
 14 1015, 1027 (D. Ariz. 2022), *aff'd sub nom.*, 83 F.4th 1199 (9th Cir. 2023), *cert. denied*,  
 15 144 S. Ct. 1395 (Apr. 22, 2024).

16           Indeed, relying in part on the *Purcell* principle, the Arizona Supreme Court  
 17 recently declined to order the Secretary to require county recorders to alter voters'  
 18 registration status "where there is so little time remaining before the beginning of the  
 19 2024 General Election." *See Richer v. Fontes*, No. CV-24-0221-SA, 2024 WL 4299099,  
 20 at \*3 (Ariz. Sept. 20, 2024) (unpublished disposition) (citing *Purcell* and *Republican*  
 21 *Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020)). The *Richer*  
 22 decision was issued on September 20, 2024. Six weeks later, there is even less time  
 23 before the end of the 2024 General Election and *Purcell* cautions this Court against  
 24 changing voters' registration status at this late date.

##### 25       **II.       Laches Bars the Preliminary Injunctive Relief that Plaintiffs Seek.**

26           Plaintiffs ask this court to enter a mandatory injunction two days after filing this  
 27 action, in advance of an election that is now four calendar days away, but their  
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1 unexplained and unreasonable delay and manipulation of the calendar to avoid NVRA's  
2 notice requirement will prejudice the Secretary, county election officials throughout the  
3 state, and Arizona voters. Laches bars a claim when the plaintiff unreasonably delayed in  
4 filing the action and the delay caused prejudice to the defendant or the administration of  
5 justice. *See Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 922 (D. Ariz. 2016).  
6 "In the context of election matters, the laches doctrine seeks to prevent dilatory conduct  
7 and will bar a claim if a party's unreasonable delay prejudices the opposing party or the  
8 administration of justice." *Id.* (citations omitted). Here, all three elements are present—  
9 Plaintiffs' delay was unreasonable, and in view of the demand for immediate relief, it will  
10 prejudice both the Secretary and the administration of justice.

11 To determine whether Plaintiffs' delay was unreasonable, this Court should  
12 consider "the justification for the delay, the extent of the plaintiff's advance knowledge  
13 of the basis for the challenge, and whether the plaintiff exercised diligence in preparing  
14 and advancing his case." *Id.* at 923. Here, the facts show that Plaintiffs unreasonably  
15 delayed. Plaintiffs allege that they "learned of the violations upon which this action is  
16 based" on October 3, 2024. (Doc. 2-1, at ¶ 15). But the last of the EAVS reports on  
17 which Plaintiffs rely for their claims—the 2022 EAVS Report—has been posted on the  
18 Election Assistance Commission's website since June 29, 2023. *See*  
19 <https://www.eac.gov/research-and-data/studies-and-reports>. Plaintiffs provide no  
20 explanation for why they waited to make a public records request to the Secretary until  
21 the last business day before the 30-day window set forth in 52 U.S.C. § 20510(b)(3), after  
22 which they would not be required to provide a notice of violation to the Secretary—a  
23 notice that could have facilitated resolving this matter without litigation. The Secretary  
24 responded less than 24 hours after Plaintiffs' request. (*See* Ex. 1). But Plaintiffs then  
25 waited 23 days before filing this action. They provide no explanation whatsoever for that  
26 delay.



1 Plaintiffs’ delay, coupled with their demand for injunctive relief requiring the  
2 Secretary to produce voluminous records and “strike from the voter rolls before the  
3 November 5, 2024 election” certain registered voters within three business days of that  
4 election prejudices the Secretary.<sup>4</sup> (Doc. 2-2, at 2). Indeed, “[d]efendants are entitled to  
5 reasonable time to consider and develop their case including ‘the opportunity to develop  
6 and present their own evidence, hire an expert, or prepare their cross-examination.’ *Ariz.*  
7 *Libertarian Party*, 189 F. Supp. at 923 (cleaned up). But as the Secretary enters the last  
8 days before an election that has been called potentially the most consequential of our  
9 time, Plaintiffs’ demand for immediate relief deprives the Secretary of a reasonable  
10 opportunity to respond to this action.

11 The prejudice to the administration of justice is even greater. “To determine  
12 whether delay has prejudiced the administration of justice, a court considers prejudice to  
13 the courts, candidates, citizens who signed petitions, election officials, and voters.” *Id.*  
14 (citations omitted). Plaintiffs failure to file this action sooner and their demand for relief  
15 in less than a week “prejudice[s] the administration of justice ‘by compelling the court to  
16 steamroll through . . . delicate legal issues in order to meet’” Plaintiffs’ manufactured  
17 deadline. *Id.* (cleaned up).

18 In addition to depriving this Court “of the ability to fairly and reasonably process  
19 and consider the issues,” Plaintiffs’ failure to file this case sooner will prejudice election  
20 officials and voters. *Id.* Plaintiffs are asking this Court to order voters be removed from  
21 the voter registration rolls just days before the election for which election officials have  
22 been preparing for more than a year. But Arizona’s 15 county recorders have already  
23 prepared the lists of registered voters—both active and inactive—to be used at polling  
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25 <sup>4</sup> Plaintiffs also request immediate, mandatory, injunctive relief directing the Secretary to  
26 “coordinate the state’s removal” of those registrants who do not fall within the group that  
27 they call the “Excepted Registrants,” (*i.e.*, those who cannot be removed from the voter  
28 registration rolls within 90 days of a federal election) “immediately upon the conclusion  
of the election.” (Doc. 2-2, at 2). But the next federal election after the 2024 General  
Election will be in August 2026. Petitioners do not explain why those voters’ removal  
must be “immediate.”

1 places on election day. *See* A.R.S. § 16-168(A), -583; EPM, at 313. Counties have  
2 packed up the e-pollbooks that contain that information for delivery to hundreds of  
3 polling places around the state this weekend. *See* EPM, at 314. It is simply too late to  
4 change the list of registered voters in advance of Tuesday’s election.

### 5 **III. Plaintiffs Have Not Met Their Burden to Obtain Injunctive Relief.**

6 Plaintiffs seek a mandatory injunction—“one that goes beyond simply maintaining  
7 the status quo and orders the responsible party to take action pending the determination of  
8 the case on its merits.” *Doe v. Snyder*, 28 F.4th 103, 111 (9th Cir. 2022). Accordingly,  
9 they must meet a particularly high burden of showing that “extreme or very serious  
10 damage will result.” *Id.* Plaintiffs have not made the required showing and this Court  
11 should deny their motion.

#### 12 **A. The Individual Plaintiff Is Not Injured by the Secretary’s Conduct.**

13 Underpinning Plaintiffs’ demand that this Court order the Secretary to facilitate  
14 the removal of voters from the registration rolls is their assertion claim that maintaining  
15 voters on the registration rolls who should have been removed dilutes the vote of Plaintiff  
16 Graham. But speculative allegations regarding vote dilution do not establish standing,  
17 and Plaintiffs therefore cannot establish a likelihood of success on the merits or  
18 irreparable injury for their claims related to voter registration list maintenance.

19 To have standing under U.S. Const. Art. III, a plaintiff must allege an injury in fact  
20 that is “concrete and particularized and actual or imminent, not conjectural or  
21 hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up).  
22 Graham did not submit the public records request to the Secretary that is the basis for the  
23 first two counts of the Complaint, as such she is not a person aggrieved by the Secretary’s  
24 actions. *See* 52 U.S.C. § 20510(b). With respect to the third count, Graham alleges only  
25 that her “fundamental right to vote is being undermined directly and proximately” by the  
26 Secretary’s alleged noncompliance with the NVRA. (Doc. 1, ¶ 6). And Plaintiffs further  
27  
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1 argue that they are acting to “protect the right to voter of every Arizona citizen.” (Doc. 2,  
2 at 11).

3 This vote dilution claim, however, is nothing more than a generalized grievance.  
4 A “particularized” injury must be personal, not a “generalized grievance.” *Iten v. Cnty.*  
5 *of Los Angeles*, 81 F.4th 979, 984 (9th Cir. 2023) (citation omitted). A claim that is  
6 “undifferentiated and common to all members of the public” is insufficient to  
7 demonstrate standing. *Lujan*, 504 U.S. at 575 (1992) (quoting *United States v.*  
8 *Richardson*, 418 U.S. 166, 176-77 (1974)). “[N]o matter how sincere” a generalized  
9 grievance cannot support standing. *Wood v. Raffensperger*, 981 F. 3d 1307, 1314 (11th  
10 Cir. 2020) (citing *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013)).

11 Even if Plaintiffs are correct that the Secretary has not complied with the NVRA  
12 voter registration list maintenance requirements, thereby diluting the votes of those who  
13 remain on the registration rolls, such alleged vote dilution is not a cognizable injury.  
14 “The crux of a vote dilution claim is inequality of voting power—not diminishment of  
15 voting power *per se*.” *Election Integrity Project Ca. v. Weber*, 113 F.4th 1072, 1087 (9th  
16 Cir. 2024). “Vote dilution in the legal sense occurs only when disproportionate weight is  
17 given to some votes over others within the same electoral unit.” *Id.* (citing *Short v.*  
18 *Brown*, 893 F.3d 671, 678 (9th Cir. 2018) (concluding that vote dilution theory failed  
19 because “[a]ssuming that some invalid [vote by mail] ballots have been mistakenly  
20 counted . . . any diminishment in voting power that resulted was distributed across all  
21 votes equally . . . because any ballot—whether valid or invalid—will always dilute the  
22 electoral power of all other votes in the electoral unit equally”); *see also Republican Nat’l*  
23 *Comm. v. Aguilar*, No. CV-24-00518-CDS-MDC, 2024 WL 4529358, at \*3-4 (D. Nev.  
24 Oct 18, 2024) (concluding that vote dilution claim arising from allegedly ineligible voters  
25 on registration rolls was both too generalized and too speculative to establish standing);  
26 *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 711 (D. Ariz. 2020) (vote dilution “is a very  
27 specific claim that involves votes being weighed differently and cannot be used generally  
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1 to allege voter fraud”); *see also Wood v. Raffensperger*, No. 1:20-cv-5155-TCB, 2020  
2 WL 7706833, at \*3 (N.D. Ga. Dec. 28, 2020) (“Courts have consistently found that a  
3 plaintiff lacks standing where he claims that his vote will be diluted by unlawful or  
4 invalid ballots.”) (collecting cases).

5 In addition, Plaintiffs’ purported injury is too speculative. A “threatened injury  
6 must be certainly impending to constitute injury in fact and that allegations of possible  
7 future injury are not sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409  
8 (2013). Plaintiffs’ vote dilution theory depends on (1) ineligible voters remaining on the  
9 voter registration rolls, and (2) those voters actually voting. But Plaintiffs have not even  
10 alleged the second prong. As such, their claim of injury is far too speculative to support  
11 standing.

12 Nor does the NVRA’s inclusion of a private right of action constitute the requisite  
13 injury to demonstrate standing. “Courts must afford due respect to Congress’s decision  
14 to . . . grant a plaintiff a cause of action to sue over the defendant’s violation of that  
15 statutory prohibition or obligation.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425  
16 (2021). But, “an injury in law is not an injury in fact.” *Id.* at 427. The Supreme Court  
17 has squarely rejected the proposition that “a plaintiff automatically satisfies the injury-in-  
18 fact requirement whenever a statute grants a person a statutory right and purports to  
19 authorize that person to sue to vindicate that right.” *Spokeo, Inc. v. Robbins*, 578 U.S.  
20 330, 341 (2016); *see also Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997) (“It is settled that  
21 Congress cannot erase Article III’s standing requirements by statutorily granting the right  
22 to sue to a plaintiff who would not otherwise have standing.”).

23 **B. The Organizational Plaintiff Cannot Establish Standing Based on**  
24 **Expending Resources to Investigate the Secretary’s NVRA**  
**Compliance.**

25 Under the recent rulings in *Food & Drug Admin. v. Alliance for Hippocratic*  
26 *Medicine*, 602 U.S. 367 (2024) and *Arizona Alliance for Retired Americans v. Mayes*,  
27 117 F.4th 1165 (2024), Plaintiff 1789 Foundation’s allegations of injury are woefully  
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1 insufficient to establish an independent basis for standing. The the Ninth Circuit  
2 explained in *Mayes* that an organization asserting it has standing based on its own alleged  
3 injures must meet “the traditional Article III standing requirements—meaning it must  
4 show (1) that it has been injured or will imminently be injured, (2) that the injury was  
5 caused or will be caused by the defendant’s conduct, and (3) that the injury is  
6 redressable.” *Mayes*, 117 F. 4th at 1172. Plaintiff must allege more than “a frustrated  
7 mission and diverted resources.” *Id.* at 1178. Instead, the challenged actions must  
8 directly harm the organization’s “pre-existing core activities.” *Id.* Yet Plaintiff alleges  
9 that it “commenced a nationwide program to monitor state and local election officials’  
10 compliance with their list maintenance obligations.” (Doc. 1, ¶ 65). Far from harming  
11 1789 Foundation’s core activities, it seems that suing states for alleged non-compliance  
12 with the NVRA is its core activity.

13 **C. The Balance of Hardships and Public Interest Tip Sharply in the**  
14 **Secretary’s Favor.**

15 When the government is the party opposing a preliminary injunction, the balance  
16 of hardships and public interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435  
17 (2008). As explained above, the 2024 General Election is well underway. Millions of  
18 early ballots have been mailed to voters, and millions of those ballots have been returned,  
19 signature verified, and tabulated. Moreover, in the last few days before November 5,  
20 county election officials and thousands of temporary workers are making last minute  
21 preparations for the final day of voting. This year, they are doing so under the closest of  
22 scrutiny and are dealing with additional challenges such as a two-page ballot in many  
23 counties. Election officials throughout the state cannot simply put off their many  
24 obligations associated with conducting the ongoing election to research whether there are  
25 voters on the registration rolls who should have been removed earlier.

26 Against this backdrop, Plaintiffs have provided no credible evidence to identify  
27 even a single voter who should have been removed from the registration rolls but was  
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1 not. Instead, they draw unwarranted conclusions from EAVS data and ask that the Court  
2 bar certain voters from voting in the 2024 General Election “if they have not already  
3 voted.” (Doc. 1, at 23). This request in particular raises grave equal protection concerns.  
4 Applying different rules to similarly situated voters is a quintessential equal protection  
5 problem. *See Bush v. Gore*, 531 U.S. 98, 106-07 (2000) (requiring “sufficient guarantees  
6 of equal treatment” of voters).

7 Simply put, adding tasks to election officials’ to do lists at a time when their sole  
8 focus should be on conducting an accessible, safe, secure, and accurate election is  
9 inimical to the public interest and militates strongly against Plaintiffs’ requested  
10 injunctive relief.

11 **CONCLUSION**

12 For the foregoing reasons, this Court should deny Plaintiffs’ Motion for  
13 Temporary Restraining Order or, in the Alternative, Preliminary Injunction.

14  
15 RESPECTFULLY SUBMITTED this 1st day of November, 2024:

16 Kristin K. Mayes  
17 Attorney General

18 /s/ Karen J. Hartman-Tellez

Karen J. Hartman-Tellez

19 Kara Karlson

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20 Kyle Cummings

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21 *Attorneys for Arizona Secretary of*

22 *State Adrian Fontes*

**CERTIFICATE OF SERVICE**

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I HEREBY CERTIFY that on the 1st day of Novembr, 2024, I filed the forgoing document electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing

/s/Karen J. Hartman-Tellez

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