

Alexander Kolodin (AZ #030826)
Veronica Lucero (AZ #030292)
DAVILLIER LAW GROUP, LLC
4105 North 20th Street Suite 110
Phoenix, Arizona 85016
Tel: (602) 730-2985
akolodin@davillierlawgroup.com
vlucero@davillierlawgroup.com
phxadmin@davillierlawgroup.com (file copies)

Nicole C. Pearson* (CA #265350)
Rachel L. Dreher * (FL #32092)
CITIZEN AG
111 NE 1st Street, 8th Floor
Miami, FL 33132
Tel: (442) 272-5526
nicole@citizenag.org
rachel@citizenag.org
**pro hac vice forthcoming*

Attorneys for Plaintiffs

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

1789 FOUNDATION INC., d/b/a
CITIZEN AG, and LINDSEY GRAHAM,

Plaintiffs,

v.

ADRIAN FONTES, in his official
capacity as Secretary of State,

Defendant.

Case No. _____

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER OR, IN THE
ALTERNATIVE, PRELIMINARY
INJUNCTION**

Oral Argument Requested

1 Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs 1789
2 Foundation, Inc. d/b/a Citizen AG, together with Lindsey Graham (collectively,
3 “Plaintiffs”), move this Court for entry of a Temporary Restraining Order or,
4 alternatively, Preliminary Injunction: (i) Requiring the pre-election production of public
5 records responsive to Plaintiffs’ October 4, 2024 open records request as required
6 pursuant to 52 U.S.C. § 20507, (ii) ordering the Secretary to immediately coordinate the
7 state’s removal of the categories of Excepted Registrants set forth in 52 U.S.C. § 2057
8 (c)(2)(B)(i)¹ from the rolls, and (iii) ordering the Secretary to coordinate the state’s
9 removal of the other registrants set forth in 52 U.S.C. § 2057(c) immediately upon the
10 conclusion of the election. (“Motion”). In support thereof, Plaintiffs submit the following
11 Memorandum of Points and Authorities and the declaration of Eric Scharfenberger,
12 which is being filed concurrently herewith. A proposed order is also attached.

13 Plaintiffs respectfully request oral argument.

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 The National Voter Registration Act of 1993 (“NVRA” or “Act”) was enacted for
16 four stated purposes: (1) “increase the number of eligible citizens who register to vote”;
17 (2) “enhance[]” their “participation ... as voters in elections for Federal office”; (3)
18 “protect the integrity of the electoral process”; and (4) “ensure that accurate and current
19 voter registration rolls are maintained.” 52 U.S.C. § 20501(b). Ensuring election integrity
20 and accurate, current voter rolls is governed by Section 8 of the Act, which is the subject
21 of this lawsuit. 52 U.S.C. § 20507.

22 **I. FACTUAL BACKGROUND**

23 **A. The Secretary of State Has a Non-Discretionary, Affirmative Duty to 24 Remove Ineligible Voters.**

25 Section 8 of the NVRA requires Defendant to “conduct a general program that
26 makes a reasonable effort to remove the names of ineligible voters from the official lists

27 ¹ Criminal conviction resulting in the removal of civil rights, mental incapacity,
28 death of the registrant, or where the registrant has asked to be removed.

1 of eligible voters by reason of” a registrant’s death or change in residence. *Id.* §
2 20507(a)(4). It also requires a state-designated “chief State election official to be
3 responsible for coordination of State responsibilities” required by the Act. *Id.* § 20509.
4 Pursuant to A.R.S. § 16-142, the Secretary is “[t]he chief state election officer who is
5 responsible for coordination of state responsibilities under the national voter registration
6 act” and is this person contemplated by section 20507(a)(4).

7 The NVRA provides that registrants may be removed from the official list of
8 eligible voters at any time at the request of the registrant, by reason of criminal
9 conviction, mental incapacity, or death of the registrant. 52 U.S.C. § 20507(a)(3). This
10 includes removal of these individuals during the 90 days prior to an election for Federal
11 office (hereinafter “Excepted Registrants”). *See* 52 U.S.C. § 20507(c)(2)(B)(i). These
12 Excepted Registrants are not deemed to be “inactive” and are not subject to any waiting
13 period. They are deemed ineligible immediately and, as such, must be removed from
14 voter rolls *post haste*.

15 The NVRA also provides for the removal of registrants by reason of the
16 registrant’s having moved out of a jurisdiction. This occurs when the registrant either (a)
17 confirms his or her change of address in writing, 52 U.S.C. § 20507(d)(1)(A), or (b) is
18 sent a “postage prepaid and pre-addressed return card” by forwardable mail asking them
19 to confirm their address (the “Confirmation Notice”), then fails to respond to it, **and**
20 subsequently does not “vote or appear to vote” for two general federal elections which
21 is a period of roughly four years. 52 U.S.C. § 20507(d)(1)(B) & (d)(2). Registrants who
22 fall under scenario (b) are designated as “inactive” for the duration of the pre-removal
23 statutory waiting period of two general federal elections but **remain registered on voter**
24 **rolls** and are **not** prohibited from voting during that period. *See* 52 U.S.C. § 20507(e);
25 C.F.R. 9428.2(d).

26 In the event an inactive registrant votes during the statutory waiting period, the
27 registrant’s voter registration status is switched from “inactive” back to “active” and the
28

1 registrant is no longer subject to the NVRA’s removal process. *Ibid.* Conversely, if an
2 inactive registrant does not respond to the Confirmation Notice or appear to vote prior
3 to the expiration of the statutory waiting period of two general federal elections, the
4 NVRA requires Arizona to remove the inactive, ineligible registrant from the State’s
5 voter rolls. **Arizona has no discretion concerning its NVRA-imposed removal**
6 **obligation.** “[F]ederal law makes this removal **mandatory.**” *Husted v. A. Philip*
7 *Randolph Inst.*, 584 U.S. 756, 767 (2018) (citations omitted, emphasis added).

8 **B. The Secretary of State Has a Non-Discretionary, Affirmative Duty to**
9 **Maintain Voter Records, and to Produce Them When Requested.**

10 In furtherance of the NVRA’s goal of ensuring accurate voter rolls, States are
11 required to retain and make available for inspection “all records concerning the
12 implementation of programs and activities conducted for the purpose of ensuring the
13 accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i). The
14 NVRA does not recite every single record that this might include; however, it does set
15 forth one specific example: “lists of the names and addresses of all persons to whom
16 [Confirmation Notices] are sent, and information concerning whether or not each such
17 person has responded to the notice ...” *Id.* at § 20507(i)(2). Another example of records
18 the NVRA requires States to maintain includes “voter history records,” including those
19 that reflect whether any inactive registrant who has not yet been removed votes or
20 otherwise reactivates his or her registration by contacting the registrar at any time during
21 the statutory waiting period. *Id.* § 20507(d)(2)(A); *see, e.g., Voter Reference Foundation,*
22 *LLC v. Torrez*, 2024 WL 1347204 at *139 (D.N.M. Mar. 29, 2024) (holding Secretary
23 of State’s Office violated the NVRA by failing to produce “[c]urrent voter registration
24 data, **including voter history**, for all active, inactive, suspended, and cancelled status
25 voters.”) (emphasis added).

26 **C. Plaintiffs Discover Defendant’s Violations of Law and File Suit.**

1 An aggrieved party may bring a civil suit for violation of the NVRA after 90 days'
2 written notice to a state's chief election official, unless the violation occurs (a) within
3 120 days of a federal election, in which case only 20 days' notice is required, 52 U.S.C.
4 § 20510(b)(1) & (2), or (b) within 30 days of a federal election, in which case no notice
5 is required at all. *Id.* § 20510(b)(3). Here, as discussed in greater detail, below, as well
6 as in Plaintiffs' complaint filed concurrently herewith, Plaintiffs were aggrieved by
7 Defendant's NVRA violation on October 7, 2024, less than 30 days away from the
8 November 5 election. Accordingly, Plaintiffs were not required to give Defendant notice
9 of his violations of law, or of this impending lawsuit. *Ibid.* Specifically, Defendant (1)
10 violated section 52 U.S.C. § 20507 of the NVRA on October 7, 2024 when he closed
11 Citizen AG's open records request, seeking records covered and required to be made
12 available for inspection under 52 U.S.C. § 20507(i); (2) failed to maintain such records
13 for a minimum period of two years under 52 U.S.C. § 20507(i); and (3) failed to remove
14 the names of ineligible voters who have neither responded to Arizona's Confirmation
15 Notices, nor appeared to vote in the last two federal elections, as required under 52
16 U.S.C. § 20507(d). As a direct and proximate result of Defendant's failure to comply
17 with his non-discretionary affirmative duties to maintain and produce voting records and
18 to remove ineligible voters from the voter rolls, Plaintiffs have been harmed by, *inter*
19 *alia*, being deprived of the opportunity to inspect and review records concerning voter
20 list maintenance to ensure transparency and accountability in the administration of
21 Arizona's elections, and having their votes diluted by the votes of ineligible registrants.

22 The support for these allegations derives primarily from Defendant's own
23 admissions in response to the Election Administration and Voting Survey ("EAVS"), a
24 report to Congress he is required to provide by law. *See* Decl. of Eric Scharfenberger at
25 ¶¶ 10-13 (referencing Decl. Ex.'s 1-3); *see also* 52 U.S.C. § 20508(a)(3); 11 C.F.R. §
26 9428.7. Plaintiffs additionally rely on Secretary Fontes' October 7, 2024 statements,
27 which he directly, or indirectly through his agents, employees, officers, or other officials,
28

1 made in response to Plaintiffs' October 4, 2024 open records request. Decl. at ¶¶ 14-17
2 (referencing Decl. Exs. 4-5).

3 Due to the impending and rapidly approaching federal election on November 5,
4 2024, and the need to protect the fundamental right to vote in Arizona, Plaintiffs seek
5 this emergency relief.

6 **II. LEGAL STANDARD**

7 The standards governing temporary restraining orders and preliminary injunctions
8 are "substantially identical." *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir.
9 2017) (citation omitted). A plaintiff seeking preliminary injunction relief must ordinarily
10 show that (1) he or she is likely to succeed on the merits and (2) likely to suffer
11 irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips
12 in his or her favor; and (4) that an injunction is in the public's interest. *See Winter v.*
13 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). However, where plaintiffs
14 establish a likelihood of irreparable injury, and the balance of harms tips sharply toward
15 the plaintiff, courts are directed to grant a preliminary injunction, even if serious
16 questions on the merits exist. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
17 1132, 1139 (9th Cir. 2011).

18 **III. ARGUMENT**

19 **A. Plaintiffs Are Entitled to Injunctive Relief.**

20 Counts I and II of Plaintiffs' Verified Complaint arise out of the NVRA's public
21 inspection provision, which states in pertinent part:

22 Each State shall maintain for **at least 2 years** and shall make
23 available for public inspection and, where available, photocopying
24 at a reasonable cost, **all** records concerning the implementation of
25 programs and activities conducted for the purpose of ensuring the
26 accuracy and currency of official lists of eligible voters, except to
27 the extent that such records relate to a declination to register to vote
28 or to the identity of a voter registration agency through which any
particular voter is registered.

1 See 52 U.S.C. § 20507(i)(1) (emphasis added). More specifically, **Count I** is brought
2 based upon Defendant’s failure to “make available for public inspection . . . all records
3 concerning the implementation of programs and activities conducted for the purpose of
4 ensuring the accuracy and currency of official lists of eligible voters . . .”, and **Count II**
5 is lodged because Defendant has admitted to violating the NVRA by failing to “maintain
6 for at least 2 years . . . all records concerning the implementation of programs and
7 activities . . .”. *Id.* (emphasis added). **Count III**, is brought pursuant to Section 8 of the
8 NVRA which, among other things, requires that registrants be removed from the voter
9 rolls where they fail to respond to a Confirmation Notice and to appear to vote in two
10 federal elections. Compl. ¶¶ 93-94; 52 U.S.C. §§ 20501(b)(3), (4);

11 There is no question as to whether Defendant violated Counts I and II, as
12 Defendant has provided no records in response to Plaintiffs’ October 4, 2024 open
13 records request seeking documents reflecting the number of Arizona registrants who did
14 not respond to confirmation notices and voted in either the 2020 General Election or
15 2022 Midterm Election, admitting that such records “do not exist.” Scharfenberger Decl.
16 at ¶ 16-17 (referencing Decl. Ex.’s 4-5). Accordingly, Plaintiffs will succeed on the
17 merits of Counts I and II. Similarly, with respect to Count III, Plaintiffs will succeed on
18 the merits because Defendant has produced no documents to disprove their calculations
19 (based upon EVAC reports available to the public) that over 1.2 million ineligible voters
20 remain on Arizona’s voter rolls.

21 If Plaintiffs are not granted the relief sought herein to prevent Defendant from
22 continuing to violate his non-discretionary, affirmative duties under federal law, and to
23 order him to perform them, Plaintiffs will suffer irreparable harm by not having their
24 valid votes afforded their full weight in the 2024 general election. There is no amount of
25 money that can compensate for this loss. Moreover, rulings supporting Plaintiffs’ right
26 to fully enjoy their fundamental right to vote is a significant public interest that has been
27
28

1 – and should continue to be – vigorously protected by law. Accordingly, Plaintiffs’
2 Motion should be granted.

3 i. Plaintiffs are likely to succeed on the merits of their Public Inspection
4 Claims (Counts I and II).

5 As explained, above, and supported by the evidence in the declarations submitted
6 in support hereof, it is not subject to reasonable dispute that Plaintiffs will succeed on
7 the merits of Counts I and II alleging Defendant has violated the NVRA’s public
8 inspection provision. Specifically, Plaintiffs submitted an open records request on
9 October 4, 2024 that requested the following records:

- 10 1. Records and/or data that reflect the total number of confirmation notices
11 sent to Arizona voters from November 7, 2018 through November 3, 2020;
- 12 2. Records and/or data that reflect the total number of responses to the
13 aforesaid notices you or the State of Arizona received confirming the
14 recipient is an eligible voter;
- 15 3. Records and/or data that reflect the total number of voters who were sent
16 confirmation notices between November 7, 2018 and November 3, 2020
17 who did not respond to the notice;
- 18 4. Records and/or data that reflect the total number of voters who were sent
19 confirmation notices between November 7, 2018 and November 3, 2020
20 who did not respond to the notice but voted on November 3, 2020;
- 21 5. Records and/or data that reflect the total number of voters who were sent
22 confirmation notices between November 7, 2018 and November 3, 2020
23 who did not respond to the notice and did not vote on November 3, 2020,
24 but did vote on November 8, 2022.
- 25 6. Records and/or data that reflect the total number of voters who were sent
26 confirmation notices between November 7, 2018 and November 3, 2020
27 who did not respond to the notice, did not vote on November 3, 2020, and
28 did not vote on November 8, 2022.

1 7. Records and/or data that reflect the total number of voters who were sent
2 confirmation notices between November 7, 2018 and November 3, 2020
3 who did not respond to the notice, did not vote on November 3, 2020, did
4 not vote on November 8, 2022, and have been removed from Arizona's
5 voter rolls at any time from November 9, 2022 through present.

6 8. Records and/or data that reflect the total number of voters who were sent
7 confirmation notices between November 7, 2018 and November 3, 2020
8 who did not respond to the notice, did not vote on November 3, 2020, did
9 not vote on November 8, 2022, and have been not been removed from
10 Arizona's voter rolls as of present.

11 Scharfenberger Decl. at ¶ 14 (referencing Decl. Ex.'s 4). On October 7, 2024, Defendant
12 responded by informing Plaintiffs that no responsive records were provided or made
13 available and that their records request had been closed . *Id.* at ¶¶ 16-17 (referencing
14 Decl. Ex.'s 4-5). Defendant concluded his October 7 response by stating, "The Secretary
15 of State's Office does not have any records responsive to your request." *Id.*

16 Based on the above admissions, alone, there is no question that Plaintiffs are
17 substantially likely to prevail on the merits of Counts I and II. Defendant did not produce
18 or make available for inspection any responsive voting records in response to Plaintiff's
19 request, and admits that records relating to the 2022 elections, which occurred less than
20 2 years ago, do not exist or have not been maintained as required by 52 U.S.C. §
21 20507(i)(1). Accordingly, Plaintiffs have met the first prong of the court's balancing test.

22 ii. Plaintiffs are likely to succeed on the merits of their Section 8
23 Removal Claim (Count III).

24 The NVRA expressly requires states to maintain accurate voter registration lists
25 and make related records available for public inspection, including those related to voter
26 list maintenance activities. Plaintiffs allege that Arizona has failed to comply with both
27 obligations by retaining ineligible voters on its rolls and denying access to requested
28 records (see above). Specifically, Defendant must automatically and immediately
remove registrants who he discovers have died, been adjudicated incompetent, convicted

1 in a criminal proceeding resulting in a forfeiture of civil rights, or who have requested
2 removal. Defendant must also remove voters who have not responded to Confirmation
3 Notices or appeared to vote in two election cycles. Despite this, it appears through
4 Plaintiffs' review of public EAVS reports based upon Arizona's self-reported data to the
5 EAC (not Defendant's response to Plaintiff's records request) that Arizona has not
6 removed over 1.2 million inactive and ineligible voters who failed to respond to
7 confirmation notices and did not vote in two subsequent federal elections, as required by
8 law. Because these facts are derived from statements made by Arizona to the EAC in its
9 preparation of federal elections reports and data, Defendant cannot claim that he acted in
10 compliance with *Husted* or the black-letter law of the NVRA. *Husted, supra*, 584 U.S.
11 at 767 ("federal law makes this removal mandatory.").

12 United States Supreme Court precedent supports Plaintiffs' claims that Defendant
13 was obligated to remove the inactive—and statutorily ineligible – voters in question. At
14 its core, the only manner in which the Secretary can prevail or otherwise defend the
15 allegations lodged against him is if he can show where more than 1.2 million voters on
16 its rolls reside inside Arizona. If he cannot do that, Defendant has violated the NVRA.
17 Presumably, had the Secretary been able to produce documents demonstrating his
18 compliance with the NVRA, he would have done so. Since he has not, the only means
19 of preventing Defendant from further violating the NVRA is through granting the
20 emergency relief requested herein.

- 21 iii. Plaintiffs will suffer irreparable harm if Defendant is not
22 restrained from further violating their constitutionally-protected,
23 fundamental and federal rights to vote.

24 "In actions to enjoin continued violations of federal statutes, once a movant
25 establishes the likelihood of prevailing on the merits, irreparable harm to the public is
26 presumed." *Current-Jacks Fork Canoe Rental Ass'n v. Clark*, 603 F. Supp. 421, 427
27 (E.D. Mo. 1985). Whereas, here, Plaintiffs are likely to win on the merits of their claims,
28 this second prong is met and Plaintiffs' Motion should be granted. In the event the court

1 disagrees, Plaintiffs still satisfy this prong when seeking to protect the fundamental right
2 to vote of every Arizona citizen.

3 While Arizona's use of Confirmation Notices is intended to serve as a shield that
4 protects its voters, Defendant's failure to follow through with full compliance in
5 accordance with the NVRA's mandates has turned these Notices into a sword slashing
6 away Plaintiffs' fundamental right to vote, a right the United States Supreme Court holds
7 in the highest regard. Justice Hugo Black's majority opinion in *Wesberry v. Sanders*
8 underscores this:

9
10 No right is more precious in a free country than that of having a voice in the
11 election of those who make the laws under which, as good citizens, we must live.
12 **Other rights, even the most basic, are illusory if the right to vote is
undermined.**

13 *Wesberry v. Sanders*, 376 U.S. 1, 2 (1964) (emphasis added); *Reynolds v. Sims*, 377 U.S.
14 533, 560 (1964). In this context, the Supreme Court has explicitly held that anything that
15 weakens or subverts the right to vote – no matter how gradually – renders even the most
16 basic remaining rights illusory. *Wesberry, supra*, 376 U.S. at 2. Diminishing the strength
17 or value of even just one American vote through dilution is unequivocally prohibited due
18 to the grave consequences that flow therefrom.

19 Here, the EAVS data shows that 2,480,620 confirmation notices that were sent
20 prior to the 2020 General Election and 1,654,865 registrants did not respond to these
21 notices. *See* Decl. of Eric Scharfenberger at ¶¶ 19-20 (referencing Decl. Ex.'s 1-3). Of
22 these 1.65 million registrants, only 175,284 voters were removed from Arizona's rolls
23 based on failure to respond to a confirmation notice after two federal elections. *Id.* at ¶
24 21.² This figure is starkly lower than the 1,654,865 registrants who failed to respond to
25

26 ² The relevant numbers are found in the 2020 EAVS page 159 and 2022 EAVS
27 page 188.

1 confirmation notices before the 2020 election, suggesting that the majority of these
2 individuals were not subsequently removed from the voter rolls as required. This gap
3 raises concerns about compliance with Section 8 of the NVRA, which mandates the
4 removal of voters who fail to respond to confirmation notices and do not engage in
5 further voting activity within two federal elections.

6 Plaintiffs do not seek the removal of eligible voters. Therefore, definitionally, they
7 are not seeking to deprive anyone of their right to vote. To the contrary, Ms. Graham and
8 millions of other eligible Arizona just like her will have their fundamental right to vote
9 undermined, absent the injunctive relief requested herein. The harm is irreparable once
10 the election is over.

11 iv. The balance of equities weighs sharply in favor of plaintiffs in the
12 millions of eligible voters whose rights to vote they seek to
13 protect.

14 The balance of equities tips sharply in favor of Plaintiffs and the millions of
15 similarly situated Arizona voters whose fundamental right Plaintiffs are trying to protect.
16 As made clear throughout the Verified Complaint and this Memorandum, Plaintiffs do
17 not seek to remove any eligible voter's ability to vote in the November 5 election. Rather,
18 this Motion is filed to protect Arizonans properly included on the rolls. Active or
19 inactive, eligible or even those Plaintiffs submit are ineligible based on change-of-
20 residence grounds, Plaintiffs merely ask that this Court enjoin Defendant from further
21 violating the provisions of the NVRA's public inspection provision; compel Defendant
22 to produce or make available for inspection the records Citizen AG requested on October
23 4, 2024; further enjoin Defendant from destroying or otherwise failing to maintain any
24 election or voter-related records for a period of at least two years; and compel Defendant
25 to satisfy his affirmative statutory obligation to remove ineligible voters. This is not a
26 burden but rather simple statutory compliance with well-established federal law.
27
28

1 In short, it is likely that millions of Arizonans' fundamental right to vote will be
2 undermined absent the injunctive relief requested and Plaintiffs merely ask this Court to
3 enforce the law Defendant has chosen to ignore.

4 v. Injunctive relief to protect the fundamental right to vote is in the
5 public's interest.

6 Protecting the integrity of elections is a matter of public concern, as it ensures that
7 all eligible voters' rights are preserved and that the electoral system functions fairly.
8 Public interest favors transparent and accurate voter rolls, which this injunction seeks to
9 enforce through compliance with the NVRA's requirements.

10 By ensuring that voter registration records are publicly available and accurately
11 maintained, the injunction promotes transparency, accountability, and public confidence
12 in the election process. This confidence is essential for encouraging voter participation
13 and ensuring fair representation in the democratic process. Allowing ineligible voters to
14 remain on the rolls could undermine the principle of "one person, one vote," a
15 fundamental tenet of democratic governance that injunctive relief aims to protect. The
16 relief requested not only addresses the plaintiffs' concerns but also advances broader
17 public policy interests, ensuring fair and lawful elections.

18 Counts I and II of the Complaint do not seek to immediately remove any voter
19 from the rolls but rather aim to secure to Plaintiffs the production of election-related
20 documents to which they are statutorily entitled *prior* to the election. As to Count III,
21 Congress has provided the applicable public policy considerations, statutorily decreeing
22 that, though public policy is generally opposed to systemic voter roll cleanup within 90
23 days of an election, 52 U.S.C. § 2057(c)(2)(A), it is critical enough to the public interest
24 that the categories of registrants set forth in (c)(2)(B)(i) (i.e. registrants asking to be
25 removed, criminals, and the mentally incapacitated) be removed from the rolls as to
26 vitiate this 90 day exclusion.³ And, though the Secretary has refused to produce any

27 ³ Count III also seeks the removal of other categories of registrants, but not their
28 pre-election removal.

1 records showing that he has ensured Arizona’s compliance with these duties, supposing
2 he has, then no inconvenience will attend an order requiring him to do what he has
3 already done.

4 This precaution protects the principle of “one person, one vote” and ensures that
5 the fundamental right to vote is not undermined by the presence of ineligible voters who
6 remain on the rolls due to non-compliance with statutory requirements. Preserving this
7 integrity aligns with established Supreme Court precedent, which has emphasized the
8 need to maintain public confidence in the electoral process to encourage citizen
9 participation in democracy.

10 Furthermore, accurate voter rolls reduce administrative burdens on election
11 officials, ensuring smoother election administration, particularly in high-turnout
12 elections. When voter rolls are current and correct, election resources are better allocated,
13 minimizing potential delays, confusion, or errors at polling places. Thus, the requested
14 injunction serves the broader interests of fair, lawful, and efficient elections.

15 Granting the injunctive relief requested and entering a temporary restraining order
16 not only serves to protect the rights of Plaintiffs, but Arizona voters at-large, and also
17 furthers public policy by ensuring efficient, lawful elections, reinforcing the democratic
18 process, and upholding the public’s trust in the electoral system. As such, the public
19 interest strongly favors granting the relief requested.

20 vi. Once a vote by an ineligible voter has been cast, remediation is a
21 virtual impossibility.

22 The relief sought directly redresses the irreparable harm the Plaintiffs will suffer
23 in the absence of a temporary restraining order. Without intervention, the general election
24 is at the risk of continuing to proceed under conditions that allow ineligible voters to
25 remain on the rolls, thereby diluting the votes of eligible voters and compromising the
26 election’s integrity. This harm cannot be remedied by initiating an action post-election,
27 making immediate relief essential. *See e.g., Tilson v. Mofford*, 153 Ariz. 468, 470 (1987)

1 (“the procedures leading up to an election ... must be challenged before the election is
2 held.”). Additionally, Plaintiffs have demonstrated just cause and substantial evidence
3 of the NVRA violations by way of Defendant’s own statements, underscoring the
4 necessity of immediate judicial action. The relief sought, which focuses on transparency
5 and the maintenance of accurate voter records, is narrowly tailored to address these
6 imminent harms without causing undue disruption to the electoral process. Thus,
7 granting the temporary restraining order is both necessary and appropriate to protect the
8 plaintiffs' rights and the integrity of the upcoming election.

9 **B. The Pre-Lawsuit Notice Requirement Is Waived.**

10 Based on the urgency and exigent nature of this type of action, Congress explicitly
11 waived any pre-suit notice requirements that impose conditions precedent to lawfully
12 maintaining the underlying action for violations of the NVRA occurring less than 30
13 days before a federal election. 52 § 20510(b)(3). On October 7, 2024, Defendant
14 informed Plaintiffs that the State would not be providing any records requested by
15 Plaintiffs in their October 4, 2024 open records request for records relating to the federal
16 election less than two years ago in violation of section 20507(i) of the NVRA, which
17 makes it unequivocally clear that “**all** records” must be made available for public
18 inspection and records must be kept for **at least** two years. *See* Scharfenberger Decl. ¶
19 15-17 (citing to Exh. 5). Because October 7, 2024 is within thirty (30) days of this year’s
20 federal election on November 5, Plaintiffs were not required to give Defendant notice of
21 this lawsuit.

22 **CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully request that this Honorable Court
24 issue a temporary restraining order or preliminary injunction: (i) requiring the immediate
25 production of the requested records, (ii) ordering the Secretary to immediately coordinate
26 the state’s removal of the categories of Excepted Registrants set forth in 52 U.S.C. §
27 2057 (c)(2)(B)(i) from the rolls, and (iii) ordering the Secretary to coordinate the state’s
28

1 removal of the other registrants set forth in 52 U.S.C. § 2057(c) immediately upon the
2 conclusion of the election. A copy of the proposed order is attached hereto.

3
4 Dated: October 30, 2024

5 Respectfully submitted,

6 By: /s/Alexander Kolodin

7 DAVILLIER LAW GROUP, LLC

8 Alexander Kolodin (AZ # 030826)

9 akolodin@davillierlawgroup.com

10 Veronica Lucero (AZ # 030292)

11 vlucero@davillierlawgroup.com

12 CITIZEN AG

13 Nicole C. Pearson* (CA #265350)

14 Rachel L. Dreher * (FL #32092)

15 nicole@citizenag.org

16 rachel@citizenag.org

17 **pro hac vice* forthcoming

18 *Attorneys for Plaintiffs*