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13  
14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

16 Public Interest Legal Foundation, Inc., a  
17 Virginia non-stock non-profit corporation,

18 Plaintiff,

19 v.

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

22 Defendant.

No. CV-25-02722-MTL

**ARIZONA SECRETARY  
OF STATE'S MOTION TO  
DISMISS**

**(Oral Argument Requested)**

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1 Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendant  
2 Arizona Secretary of State Adrian Fontes moves to dismiss the Complaint filed by  
3 Plaintiff Public Interest Legal Foundation, Inc., a Virginia-based non-profit, because  
4 Plaintiff’s claims are insufficient to invoke federal jurisdiction and fail to state a claim  
5 for which relief can be granted. The Complaint should be dismissed.

6 **INTRODUCTION**

7 The National Voter Registration Act of 1993 (“NVRA”) encourages the right to  
8 vote, while codifying procedures to maintain voter rolls that had often been left to bloat  
9 by adding voters but inconsistently or never removing voters who later became  
10 ineligible. Congress’ stated purpose in enacting NVRA was to “increase the number of  
11 eligible citizens who register to vote in elections for Federal office” and “enhance[] the  
12 participation of eligible citizens as voters.” 52 U.S.C. § 20501(b)(1)-(2). As part of the  
13 process of passing NVRA into law, Congress worked together to include provisions  
14 regarding the removal of people who were verified as no longer eligible to vote.  
15 Congress charged the states with identifying the public official(s) who would be tasked  
16 with carrying out the NVRA’s list maintenance procedures. In Arizona, the Secretary is  
17 that individual elected official, who works with the fifteen independently elected county  
18 recorders and county supervisors, to ensure the voter rolls are accurate and up-to-date.  
19 A.R.S. § 16-142. One of the many processes that the Secretary and the counties use to  
20 update voter registration records are death records, directly from the Arizona department  
21 of vital records and through the multi-state shared Electronic Record Information Center  
22 (“ERIC”). In this action, Plaintiff seeks a list of individual names and personal  
23 information obtained by the Secretary through ERIC, which comes from the Social  
24 Security Administration (“SSA”).

25 Plaintiff lacks standing to bring this claim, but struggles mightily to manufacture  
26 it. The out-of-state non-profit claims that it needs the list of specific voters and their  
27 private information to “assist Arizona in carrying out its voter list maintenance programs  
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1 and activities and help ensure Arizona’s voter roll is accurate and current.” (DE 1 at ¶  
2 52). But Arizonans elect public officials at the state and county level to do just that.  
3 And they do. It is inappropriate for an out-of-state entity with no connection to  
4 Arizona—and no accountability to Arizona voters—to invoke federal jurisdiction to  
5 override the decisions of local, elected public officials who are ultimately accountable to  
6 Arizonans. The Plaintiff’s other alleged harms are likewise too weak to provide a “case”  
7 or “controversy” for this Court to hear, and the Complaint should be dismissed pursuant  
8 to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

9 Even if Plaintiff can satisfy Article III standing requirements—which are  
10 necessary bulwarks to ensure federal courts are not tasked with policy-making for the  
11 states—they fail to state a claim for which relief can be granted. The only document the  
12 Secretary withheld is a list of certain voters and their private information, and the  
13 Secretary is prohibited by federal law from producing to non-certified entities. Plaintiff  
14 seeks ERIC Retraction Reports, alleging that “[a]ny Arizona statute, regulation, practice,  
15 or policy that conflicts” with NVRA must fall to NVRA. (DE 1 at ¶¶ 63, 72). However,  
16 the Secretary informed Plaintiff that it is the federal statutes and regulations governing  
17 the Death Master File (“DMF”) that prevents the disclosure of this information to the  
18 Plaintiff. The Secretary and his staff are prohibited from releasing the information from  
19 the SSA to unauthorized organizations; the unauthorized release of SSA information,  
20 including data from the DMF, is punishable as a felony. 42 U.S.C. § 405(r)(9)(F). Even  
21 if Plaintiff could demonstrate it has standing (it cannot), it does not state a claim for  
22 which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
23 Procedure.

## 24 **BACKGROUND**

### 25 **I. List Maintenance.**

26 NVRA ensures eligible voters are able to vote, while also requiring regular  
27 removals of ineligible voters when they move out of a jurisdiction, become ineligible  
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1 due to a felony conviction or incompetence, or because they die. 52 U.S.C. §  
2 20507(a)(1), (4), (c)-(g). The states are allowed to engage in additional list maintenance,  
3 so long as those procedures are “uniform, nondiscriminatory, and in compliance with the  
4 Voting Rights Act,” and do not remove voters solely because they have failed to vote in  
5 fewer than two consecutive federal election cycles. *Id.* at (b).

6 Arizona engages in list maintenance that goes above and beyond the minimum  
7 described in NVRA. One of those additional list maintenance activities the Secretary  
8 participates in is ERIC. A.R.S. § 16-166(E) (allowing the counties to use information  
9 from the post office and “electronic voter registration information center to identify  
10 registrants whose addresses may have changed.”). ERIC was founded in 2012 as a  
11 group of states that created “a non-profit, nonpartisan membership organization created  
12 by and comprised of state election officials from around the United States.”<sup>1</sup> Because it  
13 is a voluntary organization, the number of member states has changed over the last  
14 twelve years, beginning with seven states in 2012, and growing to include more than half  
15 the states in the country at its peak before 2020. Currently, ERIC includes twenty-six  
16 states and the District of Columbia, from Alaska to Georgia, and as politically diverse as  
17 Hawaii and New Jersey to Utah and Kentucky. Arizona joined ERIC in 2018.

18 ERIC receives information from a variety of sources and creates four list  
19 maintenance reports: Cross-State Movers Report, In-State Movers Report, Duplicate  
20 Report, and Deceased Report. Relevant to the request here, the Deceased Report  
21 “Identifies voters who have died using voter registration data and Social Security death  
22 data known as the Limited Access Death Master File.” ERIC is “certified to use official  
23 death data from the Social Security Administration.”<sup>2</sup> The Secretary is allowed to  
24 receive this data under federal law. *See* 42 U.S.C. §§ 405(r)(7), 1306b. Plaintiff is not  
25 certified to receive “information” from the SSA’s DMF.

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28 <sup>1</sup> Electronic Reg. Info. Ctr., What is Eric? *available at* <https://ericstates.org/about/>.

<sup>2</sup> Electronic Reg. Info. Ctr., ERIC Security *available at* <https://ericstates.org/security/>.



1 standing is on the party asserting federal jurisdiction. *Indus. Tectonics, Inc. v. Aero*  
2 *Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990). While this Court need not consider matters  
3 outside the pleadings to determine that Plaintiffs in this case do not have standing, this  
4 Court is not confined to Plaintiffs’ characterizations of the facts to determine whether  
5 federal jurisdiction exists; to do so would strip Article III’s separation-of-powers  
6 mandate. *See Lujan*, 504 U.S. at 560.

7 **A. Plaintiff Asserts No Injury Sufficient to Provide Standing.**

8 Article III standing requires a plaintiff to show “concrete and particularized”  
9 injury in fact, a causal connection between the injury and harm, that is traceable to the  
10 defendant’s actions rather than the actions of a third party, and that is redressable by a  
11 favorable decision. *Lujan*, 504 U.S. at 560. The Supreme Court has explained that to  
12 satisfy Article III, the injury must be “‘concrete,’ meaning that it must be real and not  
13 abstract.” *FDA*, 602 U.S. at 381. Additionally, the injury must affect the plaintiff  
14 personally and in an individualized way. *Id.* “Article III standing screens out plaintiffs  
15 who might have only a general legal, moral, ideological, or policy objection to a  
16 particular government action [and prohibits suits] based only on an ‘asserted right to  
17 have the Government act in accordance with law.’” *FDA*, 602 U.S. at 381. The out-of-  
18 state organization that has filed suit here is the “concerned bystander[.]” with no concrete  
19 harm that Article III prohibits from invoking federal jurisdiction “whenever [it] believes  
20 that the government is acting contrary to the Constitution or other federal law.” *Id.* at  
21 382.

22 Plaintiffs allege four ways that the Secretary purportedly has harmed its interests,  
23 but none of them provides the individualized harm that Article requires. *See id.* (“Article  
24 III does not contemplate a system where 330 million citizens can come to federal court  
25 whenever they believe that the government is acting contrary to the Constitution or other  
26 federal law.”). Plaintiff claims that its out-of-state non-profit organization has standing  
27 to sue the Secretary in federal court because it has: 1) a purported interest in “evaluating  
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1 Arizona’s compliance with state and federal voter list maintenance obligations, including  
2 the requirement to remove deceased registrants;” (DE 1 at ¶ 51); 2) a purported interest  
3 in “assist[ing] Arizona in carrying out its voter list maintenance programs and activities  
4 and help ensure Arizona’s voter roll is accurate and current.” (*id.* at ¶ 52); 3) withholding  
5 specific voter information prevents the organization from “speaking (and educating)  
6 about matters of public importance” (*id.* at ¶ 53); and 4) “frustrates the [Plaintiff’s]  
7 accumulation of current and timely institutional knowledge upon which it depends to  
8 operate effectively and accurately.” (*id.* at ¶ 54). None of these allegations provide the  
9 concrete, real, particularized, and individualized harm necessary to establish standing in  
10 federal court.

11 The first two issues—whether Arizona complies with the removal requirements of  
12 the NVRA and the Virginia-based non-profit’s purported desire to “help ensure”  
13 Arizona’s elected officials comply with the law—fall directly within the forms of  
14 generalized harm that cannot form the basis for federal standing under Article III.  
15 Indeed, this Court recently dismissed a similar case brought by Arizona voters and  
16 political activists for lack of standing. *See Mussi v. Fontes*, CV-24-01310-DWL, 2024  
17 WL 4988589 (Dec. 5, 2024) (dismissing complaint because plaintiffs could not  
18 demonstrate a “concrete and particularized injury that is actual and imminent” even  
19 though Arizona voters alleged that they would be required to expend resources educating  
20 the public about election-integrity issues, and “persuad[e] elected officials to improve  
21 list maintenance.”). The *Mussi* plaintiffs, as Arizona voters and political activists,  
22 claimed injuries more direct to themselves than the Plaintiff here. And the *Mussi*  
23 plaintiffs’ purported desire to ensure compliance with NVRA and educate Arizona  
24 policy-makers is very similar to the Virginia Plaintiff here that wants to “ensure”  
25 compliance with federal law and discuss policies with lawmakers. (DE 1 at ¶¶ 51-52.)  
26 *Mussi* was correctly decided; a contrary decision finding an out-of-state organization has  
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1 standing to sue for the same reasons would be inconsistent and contrary to Article III’s  
2 standing requirements. *FDA*, 602 U.S. at 381-82.

3 Any injury must be one in which Plaintiff has a personal stake. Here, a non-  
4 voting, out-of-state organization cannot be injured by Arizona’s list maintenance,  
5 whether it is the most rigorous or least rigorous system in the country. Federal courts are  
6 not “an open forum for citizens ‘to press general complaints about the way in which  
7 government goes about its business.’” *FDA*, 602 U.S. 367, 379 (2024) (collecting cases).  
8 But even if this Plaintiff could claim an injury based on the alleged failure to comply  
9 with the statutory minimum list maintenance procedures in NVRA, they certainly cannot  
10 claim a federally-cognizable injury based on the alleged failure of Arizona to comply  
11 with additional list maintenance procedures it has voluntarily undertaken through ERIC.

12 Plaintiff claims an interest in ensuring Arizona complies with NVRA and to  
13 “assist Arizona” in its list maintenance programs. This is just a general interest in  
14 ensuring the law is followed, but that desire is insufficient to provide a plaintiff with  
15 standing. *See FDA*, 602 U.S. at 379 (“[F]ederal courts [do not] operate as an open forum  
16 for citizens ‘to press general complaints about the way in which government goes about  
17 its business.’”). If “a citizen may not sue based only on an ‘asserted right to have the  
18 Government act in accordance with the law,’” then that entity must also lack standing to  
19 sue in federal court when the state exceeds the requirement in federal law. *Id.* at 381.  
20 Plaintiff’s vision of standing would allow federal court intervention into the internal  
21 policy-making of states, well outside “the Judiciary’s proper—and properly limited—  
22 role in our constitutional system.” *United States v. Texas*, 599 U.S. 670, 675-76 (2023).  
23 This would allow federal judicial oversight of state policy whenever a state engaged in  
24 additional, voluntary programs, like Arizona’s participation in ERIC.

25 The third purported interest is an allegation that the Secretary’s failure to provide  
26 information that is prohibited from disclosure under federal law prevents the Plaintiff  
27 from speaking about Arizona’s list maintenance. As an initial matter, the Secretary  
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1 promptly released all non-confidential materials related specifically to the issue about  
2 which Plaintiff wishes to speak. The Secretary’s refusal to disclose legally-protected  
3 documents does not (and cannot) create a First Amendment violation, any more than  
4 other common confidentiality requirements, like the Health Insurance Portability  
5 Accountability Act (“HIPAA”) or preventing the Internal Revenue Service from  
6 disclosing Personally Identifying Information (“PII”) restricts the First Amendment  
7 rights of groups who may be interested in the physical or financial health of an  
8 individual or groups of people. Plaintiff’s fourth allegation of harm, apparently a “catch  
9 all” standing provision to allow Plaintiff to “accumulate[e] . . . institutional knowledge”  
10 is just as infirm, and significantly more nebulous, than the other three allegations of  
11 harm. (DE 1 at ¶ 54.) Simply put, Plaintiff does not have standing to pursue this claim.

12 The failure to produce legally-protected personally-identifiable and private  
13 information does not prevent or inhibit the Plaintiff’s speech. This is not like *American*  
14 *Encore v. Fontes*, 152 F.4th 1097 (9th Cir. 2025), where the Ninth Circuit upheld an  
15 injunction entered by this Court against provisions that the *American Encore* plaintiffs  
16 argued criminalized their speech. In *American Encore*, the plaintiff argued that  
17 statements in Arizona’s Elections Procedures Manual (“EPM”) that provided examples  
18 of speech that could be considered intimidating violated their First Amendment rights.  
19 The Ninth Circuit agreed that the challenged EPM provisions could chill speech because  
20 the EPM provided specific examples that may dissuade plaintiffs “from engaging in their  
21 intended speech.” *Id.* at 1118.

22 Here, the Secretary has done nothing to restrict Plaintiff’s speech in any way.  
23 Plaintiff has access to the number of people removed due to death through regular EAVS  
24 reports, or via a NVRA or Public Records Request. For example, before the 2024  
25 election, Arizona removed 104,426 deceased voters.<sup>3</sup> Indeed, the records that were  
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27 <sup>3</sup> EAVS 2024 Report Voter Reg. Table 5: Voter List Maintenance—Removal Actions  
28 *available at* [https://www.eac.gov/sites/default/files/2025-06/2024\\_EAVS\\_Report\\_508c.pdf](https://www.eac.gov/sites/default/files/2025-06/2024_EAVS_Report_508c.pdf).

1 produced to the Plaintiff explain that the death retractions are lists from the SSA, not  
2 ERIC, and not the Secretary. Critically, *Congress* limited what States and certified  
3 entities can do with the information Plaintiff seeks, not the Secretary.

4 Plaintiff's inability to obtain the specific information it seeks does not injure the  
5 Plaintiff's ability to speak about "erroneous disenfranchisement of voters and voter roll  
6 accuracy" and "providing policy advice." (DE 1 at ¶ 53.) This is a request for  
7 information, not any restriction on speech or conduct created by the Secretary. Plaintiff  
8 can use the responsive documents already produced by the Secretary, including  
9 electronic correspondence regarding the DMF and retracted files, to discuss these issues.  
10 Plaintiff's inability to receive everything in the DMF short of the social security number,  
11 for people who the SSA initially reported as deceased but now reports are alive, does not  
12 restrict their right to speak. The Secretary's compliance with federal law that protects  
13 this sensitive data does not create a restriction on Plaintiff's speech, and thus this  
14 purported justification also fails to provide a cognizable injury for standing purposes.

15 Indeed, it is squarely within the Plaintiff's ability to rectify this asserted injury.  
16 Plaintiffs could receive the DMF, as many other users do, by completing the certification  
17 process required by the SSA. 15 C.F.R. § 1110.102. Any harm Plaintiff suffers from  
18 not receiving this information is therefore not traceable to the actions of the Secretary,  
19 but federal law and the Plaintiff's own conduct and its refusal or inability to comply with  
20 the federal regulations that would allow it to obtain this information.

21 For these reasons, Plaintiffs have not demonstrated the individualized harm  
22 necessary to invoke federal jurisdiction as required by the Constitution.

### 23 **B. The Secretary's Actions Are Not Causing Plaintiff Any Harm.**

24 To demonstrate the requisite causation necessary to sustain standing, a plaintiff  
25 must show that the defendant caused plaintiff's injuries, but Plaintiff cannot make this  
26 showing. For example, the Supreme Court found plaintiff Diamond Alternative Energy,  
27 LLC had standing to challenge a federal rule promulgated by the Environmental  
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1 Protection Agency (“EPA”) that allowed California (and other states) to enforce more  
2 stringent fleet-wide emissions standards and require electrification by car manufacturers,  
3 because it would reduce the amount of fossil fuels consumed. *Diamond Alternative*  
4 *Energy, LLC v. Environmental Protection Agency*, 606 U.S. ---, 145 S.Ct. 2121, 2135  
5 (2025). The *Diamond* plaintiffs alleged the EPA’s rule allowing a major market to enact  
6 stricter emission requirements would harm it financially. This is the kind of causative  
7 link the Constitution requires to establish standing.

8 A Virginia-based non-profit is not—and never can be—the Arizona Secretary of  
9 State, who is the public official charged by state and federal law with compliance with  
10 the NVRA after being elected by Arizona voters. Because Plaintiff is not charged with  
11 protecting the integrity of the voter rolls, the Secretary’s inability to provide the Plaintiff  
12 with the DMF due to federal privacy law does not prevent Plaintiff from “evaluating  
13 Arizona’s compliance with state and federal voter list maintenance obligations,”  
14 “assist[ing] Arizona in carrying out its voter list maintenance programs and activities,”  
15 or depriving it of “accumulate[ing] current and timely institutional knowledge.” (Compl.  
16 ¶¶51-52, 54). Simply put, the Secretary has not *caused* Plaintiff any harm by refusing to  
17 supply protected data to an entity that does not do the things that it claims to want to do  
18 here.

### 19 **C. The Plaintiff’s Requested Order Will Not Redress Its Grievances.**

20 The Plaintiff bears the burden to demonstrate each element of standing. *Lujan*,  
21 504 U.S. at 561. This includes the requirement that the alleged harm will be redressed  
22 by judicial intervention. *Id.* at 562. Plaintiff must, at an “irreducible constitutional  
23 minimum” demonstrate it has standing before it is allowed to try to use NVRA to access  
24 private personal information about other Americans. *See, e.g. Spokeo, Inc. v. Robins*,  
25 578 U.S. 330, 338 (2016). Plaintiff cannot make this showing.

26 Even if Plaintiff is provided the information it seeks in this litigation, this  
27 information will not redress its grievances. For example, Plaintiff claims that it needs  
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1 the information to “evaluat[e] Arizona’s compliance with state and federal voter list  
2 maintenance obligations, including the requirement to remove deceased registrants from  
3 the voter roll.” (DE 1 at ¶ 51.) However, Plaintiff requests information for voters who  
4 are *living*. (DE 1 at ¶¶ 27-28.) This information cannot possibly further Plaintiff’s  
5 asserted desire to determine if the Secretary is removing *deceased* voters. For similar  
6 reasons, the individual identities of those voters cannot enable Plaintiff to “assist Arizona  
7 in carrying out its voter list maintenance programs,” “prevent[] the Foundation from  
8 speaking (and educating) about matters of public importance . . . [and providing] advice  
9 to state officials,” or “frustrate the Foundation’s accumulation of current and timely  
10 institutional knowledge.” (DE 1 at ¶¶ 51-54.) Simply put, the individual identities of  
11 people who are alive, not deceased, cannot assist the Plaintiff in any of its purported  
12 goals for this information.

13 Finally, this Court should dismiss this case for lack of standing, without leave to  
14 amend, as any amendment would do no more than “assert a ‘generalized interest in  
15 seeing that the law is obeyed,’ an interest that ‘is neither concrete nor particularized.’”  
16 *Lake*, 83 F.4th at 1203. No amendment would cure these standing defects, so dismissal  
17 without leave to amend is warranted. *United States v. Corinthian Colleges*, 655 F.3d  
18 984, 995 (9th Cir. 2011). Plaintiff does not have standing; its claim should be  
19 dismissed.

## 20 II. Plaintiffs Fail to State a Claim for which Relief Can be Granted.

21 Alternatively, if this Court determines Plaintiff has standing (it does not),  
22 Plaintiff’s claims still would not survive a motion to dismiss. Rule 12(b)(6) requires the  
23 dismissal of a complaint that fails to state a claim for which relief can be granted. “To  
24 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted  
25 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.  
26 662, 678 (2009) (quotation omitted) (quotation omitted). However, “when the  
27 allegations in a complaint, . . . could not raise a claim of entitlement to relief, this basic  
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1 deficiency should . . . be exposed at the point of minimum expenditure of time and  
2 money by the parties and the court.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558  
3 (2007). Well-pleaded factual allegations must be accepted as true unless they  
4 “contradict matters properly subject to judicial notice or by exhibit.” *Sprewell v. Golden*  
5 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *see also Tellabs, Inc. v. Makor Issues*  
6 *& Rts., Ltd.*, 551 U.S. 308, 322 (2007) (instructing courts to “consider matters of which a  
7 court may take judicial notice” and exhibits to the complaint when deciding a motion to  
8 dismiss under Rule 12(b)(6)).

9 In this case, the parties appear to agree on the basic background facts. The  
10 Secretary is required by state and federal law to conduct general, uniform procedures to  
11 ensure that the State’s voter rolls are accurate. 52 U.S.C. § 20507(c)-(g) (providing  
12 various mechanisms for the State to remove ineligible voters and requiring the removal  
13 of certain groups of voters within specific parameters); A.R.S. § 16-142 (identifying the  
14 Secretary as the officer responsible for NVRA coordination). This duty includes the  
15 responsibility to remove people who are registered, but who should no longer be  
16 registered, for a number of specific reasons provided by law. The removal provisions of  
17 NVRA operate as the minimum that a State must do to maintain its rolls. Arizona  
18 exceeds NVRA’s requirements to ensure accurate voter registration rolls. *See, e.g.*  
19 A.R.S. § 16-166(F) (requiring documentation of citizenship to register to vote).

20 One of the ways in which Arizona exceeds NVRA’s list maintenance  
21 requirements was by joining ERIC and continuing to be an ERIC Member State. ERIC  
22 is a multi-state clearinghouse of data that is obtained from the Member states, public  
23 databases, and certain proprietary or confidential information. One of those sources of  
24 private information is the DMF and the Retracted Death List from the Social Security  
25 Administration (“SSA”). Congress prohibits the disclosure of “information contained on  
26 the Death Master File with respect to any deceased individual at any time during the 3-  
27 calendar-year period beginning on the date of the individual’s death” unless that person  
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1 is certified to receive that information. Pub. L. 113-67 § 203 (Dec. 26, 2013), 127 Stat.  
2 1165, 1178. The SSA is allowed to share “applicable information”—defined by 42  
3 U.S.C. § 405(r)(9)(D) as the name, social security number, date of birth, and whether  
4 that individual is deceased—with state governments and certified entities. ERIC is  
5 certified to receive and store confidential SSA data; Plaintiff is not.

6 The SSA Commissioner is allowed to share certain information from the DMF  
7 with a State and its agents or employees, but no one else. DMF information “shall be  
8 considered as strictly confidential” and any state official, contractor, or employee “who,  
9 without the written authority of the Commissioner, publishes or communicates any  
10 applicable information in such individual’s possession . . . shall be guilty of a felony and  
11 upon conviction thereof shall be fined or imprisoned, or both . . .” 42 U.S.C. §  
12 405(r)(9)(F). This information is also exempt from disclosure under 5 U.S.C. § 552,  
13 more commonly known as the Freedom of Information Act (“FOIA”). *Id.* at (6). All  
14 information “furnished [to the Commissioner by the states] or maintained by the  
15 Commissioner under this subsection” is protected from dissemination “to protect the  
16 information from unauthorized use or disclosure.” *Id.* at (5).

17 The Commissioner has promulgated rules related to decedent information that is  
18 collected by the SSA. The DMF includes “the name, social security account number,  
19 date of birth, and date of death of deceased individuals maintained by the Commissioner  
20 . . .” 15 C.F.R. § 1110.2. The Limited Access DMF “includes DMF with respect to any  
21 deceased individual at any time during the three-calendar-year period beginning on the  
22 date of the individual’s death.” *Id.* “Any Person desiring access to the Limited Access  
23 DMF must certify in accordance with this part [and once certified] will be entered into  
24 the publicly available list of Certified Persons maintained by NTIS, and will be eligible  
25 to access the Limited Access DMF made available by NTIS through subscription.” *Id.* at  
26 § 1110.100(a). All Persons who apply for certification to access the Limited Access  
27 DMF must certify that their access “has a legitimate business purpose,” including  
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1 “systems, facilities, and procedures in place to safeguard the accessed data. *Id.* at §  
2 1110.101.

3 Congress is presumed to know what the law was when it passes new laws. So,  
4 when Congress passed the Privacy Act of 2013, this Court must construe the terms of the  
5 Privacy Act with NVRA, which was passed two decades earlier. If there is a conflict  
6 between the older, more generic NVRA, and the newer, more specific Privacy Act, the  
7 Privacy Act controls. NVRA is the more generic statute here because it requires the  
8 production of “all records concerning the implementation of programs and activities  
9 conducted for the purpose of ensuring the accuracy and currency of official lists of  
10 eligible voters.” 52 U.S.C. § 20507(i). The Privacy Act refers to more limited data,  
11 “information contained on the Death Master File with respect to any deceased  
12 individual” from a more limited source “[t]he Secretary of Commerce.” 42 U.S.C. §  
13 1306c(a). These statutes can be harmonized by recognizing that the Secretary must  
14 produce the records regarding the procedure for obtaining and utilizing the DMF records,  
15 which he did, while recognizing that the Secretary is also prohibited from disclosing the  
16 “information contained” on the DMF. *See Pub. Interest Legal Found., Inc. v.*  
17 *Dahlstrom*, 673 F. Supp. 3d 1004 (D. Alaska, May 17, 2023) (explaining that the  
18 Bipartisan Budget Act of 2013 prevented disclosure of data from the DMF for three  
19 years from the date of death). The Secretary did exactly that.

20 The need to overlay the restrictions of the more recently-enacted statute is  
21 particularly important here, where the Plaintiff seeks to obtain information that did not  
22 exist at the time of NVRA’s passage, because of technology that NVRA did not  
23 contemplate. This is evident from the plain terms of 52 U.S.C. § 20507(i), which uses  
24 outdated language like “photocopying.” Specifically, NVRA requires the chief election  
25 official to “make available for public inspection and, where available, photocopying at a  
26 reasonable cost,” NVRA-related records. The Eleventh Circuit recently explained why  
27 NVRA does not require the production of records in electronic form, but only via in-

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1 person review or by photocopying, after comparing NVRA’s plain language to the FOIA  
2 modernization act passed in 1996, only three years after NVRA. Unlike NVRA, the  
3 FOIA modernization act allowed documents to be produced by “computer  
4 telecommunications” or “other electronic means.” *Greater Birmingham Ministries v.*  
5 *Sec’y of State for Ala.*, 105 F.4th 1324, 1332-35 (11th Cir. 2024). The Plaintiff seeks to  
6 obtain information from the SSA and ERIC through the Secretary, but nothing like ERIC  
7 existed when NVRA was passed. Arizona should not be subject to heightened disclosure  
8 requirements because it undertakes voluntary list maintenance, and should not be  
9 required to produce digital data that NVRA never contemplated because it only exists in  
10 digital form. *See id.* (explaining that “[a]n electronic database is not ‘printed or graphic  
11 material,’” and thus not a photocopy and outside the disclosure requirements of NVRA).

12 The Plaintiff’s public record response tries to obfuscate the clear, statutory  
13 prohibition on producing data from the DMF for three years after the person dies, by  
14 asserting that it only wants information about people who are alive. (DE 6 at 39.)  
15 Unfortunately, however, the information Plaintiff seeks still comes from the SSA  
16 through the DMF, or the States themselves. And, because Plaintiff seeks the data of  
17 people who are not yet deceased, the deadline on the confidentiality provisions, which  
18 does not expire until the end of the “3-calendar-year period beginning on the date of the  
19 individual’s death,” has not expired. 42 U.S.C. § 1306c(a). Information on the DMF is  
20 protected from public disclosure, and there is no way for Plaintiff to craft a request for  
21 this specific information that does not require the violation of this section of the 2013  
22 law, which by the statute’s express terms was passed to protect the private information of  
23 Americans.

24 The fact that a person may improperly listed on the DMF does *not* remove their  
25 private information from the protection from disclosure. As an initial matter, it would be  
26 absurd to provide more protection to the private information of a living person than  
27 someone who died. All of the information provided to the SSA to augment the DMF  
28

1 with data from the states is “strictly confidential” pursuant to the original SSA statutes.  
2 42 U.S.C. § 405(r)(9)(F). And the 2013 Privacy Act added additional protections and  
3 penalties for the disclosure of information that the SSA maintains. *See* 42 U.S.C. §  
4 1306c.

5 Even if Plaintiff could satisfy the constitutional standing requirements (it does  
6 not), its claims still fail. As a matter of federal law, the Secretary is prohibited from  
7 providing the names and identifying information of still-living voters that Plaintiff seeks  
8 because federal law prohibits the disclosure of this information to parties who are not  
9 certified to protect it. Plaintiff does not state a claim upon which relief can be granted,  
10 and its Complaint should be dismissed for failure to state a claim.

11 **CONCLUSION**

12 Plaintiff cannot satisfy the Constitution’s standing requirement, and even if it did,  
13 Plaintiff still fails to state a claim for which relief can be granted. Plaintiff’s Complaint  
14 should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1), or alternatively (b)(6).

15  
16 Respectfully submitted this 20th day of October, 2024.

17 Kristin K. Mayes  
18 Attorney General

19 /s/ Kara Karlson  
20 Kara Karlson  
21 Karen J. Hartman-Tellez  
22 Senior Litigation Counsel  
23 Kyle Cummings  
24 Assistant Attorney General  
25 *Attorney for Defendant Arizona Secretary of*  
26 *State Adrian Fontes*  
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**CERTIFICATE OF CONFERRAL**

I certify that counsel for the Plaintiff and Defendant Arizona Secretary of State met and conferred in good faith via video and teleconference, as required by L.R. Civ. P. 12.1(c) before this Motion was filed. After discussing the arguments raised in the Motion, the conferees were unable to agree that the Plaintiff’s pleading was curable by amendment.

DATED this 20th day of October, 2025.

/s/ Kara Karlson

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of October, 2025, 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/Monica Quinonez

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