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

Mi Familia Vota, et al.,  
Plaintiffs,

v.

Adrian Fontes, et al.,  
Defendants.

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

The Court now considers the Motions for Partial Summary Judgment of Defendants State of Arizona (the “State”) (Doc. 364, State Mot.), Defendant Republican National Committee (“RNC”) (Doc. 367, RNC Mot.), and Plaintiff United States of America (“United States”) (Doc. 391, USA Mot.), in addition to Motions and Cross-Motions for Partial Summary Judgment by several non-profit organizations (“Private Plaintiffs”).

**I. BACKGROUND**

The facts of this case were summarized in the Court’s prior Order regarding the State’s Motion to Dismiss. (*See generally* Doc. 304, 02/16/2023 Order.) This case addresses the legality of two Arizona laws, H.B. 2243 and H.B. 2492 (“the Voting Laws”), which amended provisions regulating voter registration under Title 16 of the Arizona Revised Statutes. (Doc. 388, Non-US SOF ¶¶ 4–5.) The Voting Laws, effective January 1, 2023, enable State officials to require heightened proof of citizenship and residency from Arizona applicants and registrants and mandate certain consequences if a

1 registrant does not provide such proof. (*Id.* ¶¶ 2–5, 31, 35–50.) The Voting Laws also  
2 provide for monthly comparisons of certain registered voters to several databases and  
3 cancellation of registrations after those database comparisons. (*Id.* ¶¶ 3–4, 48–50.)

4 **A. Substance of the Voting Laws**

5 An individual seeking to register to vote in Arizona state elections must provide  
6 one of the following forms of “satisfactory evidence of citizenship,” also known as  
7 documentary proof of citizenship or “DPOC”:

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

14 2. A legible photocopy of the applicant’s birth certificate that verifies  
15 citizenship to the satisfaction of the county recorder.

16 3. A legible photocopy of pertinent pages of the applicant’s United States  
17 passport identifying the applicant and the applicant’s passport number or  
18 presentation to the county recorder of the applicant’s United States  
19 passport.

20 4. A presentation to the county recorder of the applicant’s United States  
21 naturalization documents or the number of the certificate of naturalization.  
22 If only the number of the certificate of naturalization is provided, the  
23 applicant shall not be included in the registration rolls until the number of  
24 the certificate of naturalization is verified with the United States  
25 immigration and naturalization service by the county recorder.

26 5. Other documents or methods of proof that are established pursuant to the  
27 Immigration Reform and Control Act of 1986.

28 6. The applicant’s Bureau of Indian affairs card number, tribal treaty card  
number or tribal enrollment number.

Ariz. Rev. Stat. § 16-166(F).

23 In addition to providing applicants a State Form to register for state and federal  
24 elections, Arizona also provides a form created by the United States Election Assistance  
25 Commission, known as the Federal Form, to register for federal elections. *See Gonzales*  
26 *v. Arizona*, 677 F.3d 383, 394 (9th Cir. 2012); (*see generally* Doc. 365-1, Ex. C, Federal  
27 Form at 26; *see* Doc. 365-1, Ex. D, State Form.) Subject to certain limitations, states may  
28 require additional information from applicants seeking to vote in both state and federal

1 elections. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12–13 (2013).

2 In 2018, the Arizona Secretary of State entered into a Consent Decree with  
3 Plaintiff League of United Latin American Citizens (“LULAC”) after the nonprofit sued  
4 Arizona for allegedly discriminating against individuals who submitted the State Form  
5 without providing DPOC. (Non-US SOF ¶¶ 24–25.) The LULAC Consent Decree  
6 mandates that Arizona may not entirely reject an otherwise valid State Form submitted  
7 without DPOC, but rather must register that State Form applicant for federal elections.  
8 (*Id.*; Doc. 388-4, Ex. 12, LULAC Consent Decree at 8–9.) In short, the LULAC Consent  
9 Decree requires Arizona to treat Federal and State Form users the same when registering  
10 applicants for federal elections. The Federal Form and State Form both include a  
11 checkbox for applicants to indicate under penalty of perjury that they are citizens of the  
12 United States. (*See* Federal Form; State Form.)

### 13 1. H.B. 2492

14 H.B. 2492 created additional requirements for individuals using either the Federal  
15 or State Form to show citizenship and Arizona residence. Specifically, “[a] person is  
16 presumed to be properly registered to vote,” only if she, *inter alia*, provides documentary  
17 “proof of location of residence” (“DPOR”), lists her place of birth<sup>1</sup> (“Birthplace  
18 Requirement”), and marks “yes” in the checkbox confirming United States citizenship  
19 (“Checkbox Requirement”). A.R.S. § 16-121.01(A); *see id.* § 16-123. Unlike preexisting  
20 Arizona law, H.B. 2492 contains no exceptions to the DPOR requirement for applicants  
21 who do not have numbered street addresses, but the Secretary of State has since provided  
22 a chart recognizing that certain voters may provide DPOR without a traditional street  
23 address or any address at all. (*See* Non-US SOF ¶¶ 27–34.)

24 H.B. 2492 also provides different DPOC requirements for applicants using the  
25 Federal or State Form:

26 Except for a form produced by the United States Election Assistance  
27 Commission, any application for registration shall be accompanied by  
satisfactory evidence of citizenship as prescribed in Section 16-166,

28 <sup>1</sup> The Federal Form does not include a space to collect an applicant’s birthplace  
information. (*See* Federal Form at 26.)

1 Subsection F, and the county recorder . . . shall reject any application for  
2 registration that is not accompanied by satisfactory evidence of citizenship.

3 A.R.S. § 16-121.01(C)

4 Federal only voters; early ballot; eligibility

5 Notwithstanding any other law:

- 6 1. A person who has registered to vote and who has not provided  
7 satisfactory evidence of citizenship as prescribed by Section 16-166,  
8 Subsection F is not eligible to vote in presidential elections.
- 9 2. A person who has not provided satisfactory evidence of citizenship  
10 pursuant to Section 16-166, Subsection F and who is eligible to vote  
11 only for federal offices is not eligible to receive an early ballot by mail.

12 *Id.* § 16-127(A).

13 The statute places the burden on county recorders to enforce the standards of H.B.  
14 2492. “Within ten days after receiving an application for registration [through the Federal  
15 Form] that is not accompanied by [DPOC], the county recorder or other officer in charge  
16 of elections shall use all available resources to verify the citizenship status of the  
17 applicant.” *Id.* § 16-121.01(D). The statute prescribes a specific verification process:

18 [A]t a minimum, [the election official] shall compare the information  
19 available on the application for registration with the following, provided the  
20 county has access:

- 21 1. The Department of Transportation databases of Arizona driver licenses  
22 or nonoperating identification licenses.
- 23 2. The Social Security Administration databases.
- 24 3. The United States Citizenship and Immigration Services Systematic  
25 Alien Verification for Entitlements program, if practicable.
- 26 4. A National Association for Public Health statistics and information  
27 systems electronic verification of vital events system.
- 28 5. Any other state, city, town, county or federal database and any other  
database relating to voter registration to which the County Recorder . . .  
has access, including an electronic registration information center  
database.

*Id.*

The statute provides for three different outcomes from this verification. First, if the  
election official “matches the applicant with information that verifies the applicant is a  
United States citizen . . . the applicant shall be properly registered.” *Id.* § 16-121.01(E).  
Second, if the election official “matches the applicant with information that the applicant

1 is not a United States citizen, the county recorder . . . shall reject the application, notify  
2 the applicant that the applicant was rejected because the applicant is not a United States  
3 citizen and forward the application to the county attorney and attorney general for  
4 investigation.” *Id.* Third, if the election official “is unable to match the applicant with  
5 appropriate citizenship information, the [official] shall notify the applicant that [her  
6 citizenship could not be verified] and that the applicant will not be qualified to vote in a  
7 presidential election or by mail with an early ballot in any election until [DPOC] is  
8 provided.” *Id.*

9 Lastly, the statute mandates prosecution of certain registrants referred for  
10 investigation. Election officials must “make available to the attorney general a list of all  
11 individuals who are registered to vote and who have not provided satisfactory evidence of  
12 citizenship pursuant to Section 16-166.” *Id.* § 16-143(A). The attorney general must then  
13 use “all available resources to verify the citizenship” of the referred applicants and “at a  
14 minimum shall compare the information available on the application for registration”  
15 with the same databases listed in § 16-121.01(D) of the statute. *Id.* § 16-143(B). “The  
16 attorney general shall prosecute individuals who are found to not be United States  
17 citizens pursuant to § 16-182.” *Id.* § 16-143(D).

## 18 **2. H.B. 2243**

19 H.B. 2243 expands the requirements imposed by H.B. 2492 for the cancellation of  
20 registrations for persons suspected of being non-citizens. Specifically, a county recorder  
21 must cancel a voter registration:

22 When the county recorder obtains information pursuant to this section and  
23 confirms that the person registered is not a United States citizen . . . .  
24 Before the county recorder cancels a registration pursuant to this paragraph,  
25 the county recorder shall send the person notice by forwardable mail that  
26 the person’s registration will be canceled in thirty-five days unless the  
27 person provides satisfactory evidence of United States citizenship pursuant  
28 to § 16-166. The notice shall include a list of documents that person may  
provide and a postage prepaid preaddressed returned envelope. If the person  
registered does not provide satisfactory evidence within thirty-five days, the  
county recorder shall cancel the registration and notify the county attorney  
and attorney general for possible investigation.

*Id.* § 16-165(A)(10). H.B. 2243 also mandates monthly review of voter rolls:

1 To the extent practicable, each month the county recorder shall compare  
2 persons who are registered to vote in that county and who the county  
3 recorder has reason to believe are not United States citizens and persons  
4 who are registered to vote without satisfactory evidence of citizenship as  
5 prescribed by § 16-166 with the systematic alien verification for  
entitlements program maintained by the United States citizenship and  
immigration services to verify the citizenship status of the persons  
registered.

6 *Id.* § 16-165(I). County recorders must conduct similar checks with the Social Security  
7 Administration Database, Verification of Vital Events System, and “relevant city, town,  
8 county, state and federal databases to which the county recorder has access to confirm  
9 information obtained that requires cancellation of registrations pursuant to this section.”  
10 *See id.* § 16-165(G)–(K).

### 11 **B. Procedural History**

12 On March 31, 2022, Mi Familia Vota Plaintiffs<sup>2</sup> filed their Complaint in this  
13 Court. (Doc. 1, 03/31/2022 Mi Familia Vota Compl.) The United States and additional  
14 Private Plaintiffs subsequently filed lawsuits attacking the legality of the Voting Laws  
15 and these lawsuits were consolidated into the instant case. (*E.g.*, Doc. 164, 11/10/2022  
16 Order re: Consolidation.) On March 23, 2023, the parties agreed to brief motions for  
17 summary judgment only regarding issues that could be adjudicated without discovery.  
18 (*See* Doc. 337, Sched. Min. Entry; Doc. 338, Sched. Order.) On May 8, 2023, the State  
19 filed its Motion, moving for partial summary judgment on several of Plaintiffs’ claims  
20 that the Voting Laws are unlawful under the National Voter Registration Act (“NVRA”)  
21 and the Materiality Provision of the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)  
22 (the “Materiality Provision”). (*See generally* State Mot.)

23 Specifically, the State asserts that Section 6 of the NVRA, 52 U.S.C. § 20505  
24 (“Section 6”), preempts H.B. 2492’s requirement that voters provide DPOC to vote in  
25 presidential elections. (*Id.* at 2–3.) The State also concedes that Section 6 precludes  
26 Arizona from requiring DPOR to register for federal elections. (*Id.* at 4, 16–17.) But the

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28 <sup>2</sup> The Court references organizational Plaintiffs that have filed collectively under the  
name of one organization. “LUCHA Plaintiffs,” for example, includes all additional  
Plaintiffs that are named on the briefing with LUCHA.

1 State argues that the Voting Laws’ restriction on mail-in voting is “likely” lawful under  
2 Section 6. (*Id.* at 3–4.) The State further argues that it is entitled to summary judgment on  
3 Plaintiffs’ claims that the Voting Laws violate Section 8 of the NVRA, 52 U.S.C.  
4 § 20507 (“Section 8”) by unlawfully cancelling voter registrations and unlawfully  
5 purging voter rolls. (*Id.* at 5–10.) Regarding Plaintiffs’ claims under the Materiality  
6 Provision, the State contends that the Voting Laws do not run afoul of its prohibition of  
7 denying the right to vote based on immaterial errors or omissions in a person’s  
8 registration. (*Id.* at 10–14.) The State additionally moves for summary judgment on  
9 Plaintiff Promise Arizona’s claim that the Voting Laws are unconstitutionally vague. (*Id.*  
10 at 15–16.)

11 The RNC then filed its Motion on May 15, 2023, cross-moving for summary  
12 judgment regarding Arizona’s power to regulate voting in presidential elections and  
13 arguing additional issues unaddressed by the State. (*See generally* RNC Mot.) Asserting  
14 that the NVRA cannot lawfully regulate presidential elections, the RNC argues that H.B.  
15 2492’s DPOC requirement for presidential elections does not run afoul of Section 6. (*Id.*  
16 at 2–8.) The RNC also underscores that Arizona may require DPOC from mail-in voters.  
17 (*Id.* at 8–9.) Additionally, the RNC moves for summary judgment on Plaintiffs’ claims  
18 that, *inter alia*, Section 8 requires Arizona to register State Form users who register  
19 without DPOC for federal elections.

20 On June 5, 2023, the United States and Private Plaintiffs either cross-moved for  
21 summary judgment or opposed summary judgment on all issues addressed by the State  
22 and the RNC, except that Plaintiffs agreed with the State’s conclusion regarding the  
23 Voting Laws’ DPOR requirement. (*E.g.*, Doc. 391, USA Mot.) Specifically, Plaintiffs  
24 cross-move for summary judgment on all Section 6 claims, arguing that the NVRA  
25 preempts H.B. 2492’s limitations on presidential and mail-in voting, as well as H.B.  
26 2492’s DPOR requirement. (*E.g.*, Doc. 393, DNC Mot. at 5–15; Doc. 390, Tohono  
27 O’odham Mot. at 4–10.) Plaintiffs also argue that the Court should grant summary  
28 judgment to Plaintiffs on their claim that the Voting Laws contravene Section 8 by

1 enabling cancellation of registrations within 90 days of an election.<sup>3</sup> (Doc. 396,  
2 AAANHPI Mot. at 3–7; DNC Mot. at 16.) Mi Familia Vota cross-moves for summary  
3 judgment on its Materiality Provision claims, while the United States and LUCHA argue  
4 that issues of fact preclude summary judgment. (USA Mot. at 16–25; Doc. 394, LUCHA  
5 Mot. at 5–7; Doc. 399, Mi Familia Vota Mot. at 1–9.) Poder Latinx also moves for  
6 summary judgment on its § 10101 claim. (Doc. 397, Poder Latinx Mot. at 1–8.) But  
7 Plaintiffs contend that fact issues preclude summary judgment on their claims that the  
8 Voting Laws violate Section 8 by mandating cancellation for reasons not permitted by the  
9 NVRA; subjecting registrants to nonuniform and discriminatory voter roll maintenance  
10 programs; and failing to ensure all eligible applicants to vote are registered to vote within  
11 30 days of an election. (LUCHA Mot. at 13–15; AAANHPI Mot. at 8–13; Poder Latinx  
12 Mot. at 8–16.) Promise Arizona also opposes summary judgment on its void-for-  
13 vagueness claim. (*See generally* Doc. 395, Promise Arizona Resp.)

14 The State and the RNC responded and replied to Plaintiffs’ filings on July 5, 2023,  
15 to which Plaintiffs replied on July 19, 2023. (Doc. 436, State Reply; Doc. 442, RNC  
16 Reply; Doc. 473, Tohono O’odham Reply; Doc. 474, Poder Latinx Reply; Doc. 475,  
17 DNC Reply; Doc. 476, USA Reply; Doc. 477, AAANHPI Reply; Doc. 478, Mi Familia  
18 Vota Reply.) The Court heard oral argument on all Motions and Cross-Motions on July  
19 25, 2023. (Doc. 479, Min. Entry.)

## 20 **II. LEGAL STANDARDS & ANALYSIS**

21 Under Federal Rule of Civil Procedure 56, summary judgment is properly granted  
22 when: (1) there is no genuine dispute as to any material fact; and (2) after viewing the  
23 evidence most favorably to the non-moving party, the movant is clearly entitled to prevail  
24 as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23  
25 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1288–89 (9th Cir. 1987). A fact  
26 is “material” when, under the governing substantive law, it could affect the outcome of

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27  
28 <sup>3</sup> Plaintiffs also move for summary judgment on their claim that Section 8(a) of the NVRA prevents Arizona for requiring DPOC to vote in presidential elections, but the Court will not reach this claim.



1 the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

2 **A. NVRA**

3 For the following reasons, the Court concludes that Section 6 preempts H.B.  
4 2492's (1) DPOR requirement; (2) restriction on voting in presential elections; and (3)  
5 restriction on mail-in voting. The Court also concludes that Section 8(c) of the NVRA  
6 forecloses enforcement of the Voting Laws' systematic purge provisions within 90 days  
7 of any federal elections. However, with the exception of Plaintiffs' argument that Section  
8 8(b) applies to pre-registration oversight and the parties' arguments regarding registering  
9 State Form users for federal elections, the Court finds that there are genuine issues of  
10 material fact precluding summary judgment regarding whether certain provisions of the  
11 Voting Laws contravene Sections 8(a) and (b) of the NVRA.

12 **1. Section 6**

13 Section 6 of the NVRA requires that states "accept and use" the Federal Form to  
14 register voters in federal elections. 52 U.S.C. § 20505(a)(1); *Inter Tribal*, 570 U.S. at 9.  
15 Certain Plaintiffs and the State contend that H.B. 2492 violates Section 6 by requiring  
16 Federal Form users to submit DPOR. (*See* Doc. 390, Tohono O'odham Mot. at 3–5.) All  
17 parties who briefed this issue agree that Section 6 preempts H.B. 2492's DPOR  
18 requirement. The Court will grant summary judgment on this issue.<sup>4</sup> (*Id.*; State Reply at  
19 14; *see* Doc. 502, Hr'g Tr. at 40:18–41:18.) The parties dispute whether H.B. 2492's  
20 requirements that registrants provide DPOC to vote (1) in presidential elections and (2)  
21 by mail are legal under the NVRA. (*E.g.*, DNC Mot. at 5; RNC Mot. at 2–9.)

22 A state law may be preempted if, *inter alia*, Congress makes an express statement  
23 to displace state law, "it is impossible for a private party to comply with both state and  
24 federal requirements," or a state law "creates an unacceptable obstacle to the  
25 accomplishment and execution of the full purposes and objectives of Congress."  
26 *Chamber of Commerce v. Bonta*, 62 F.4th 473, 482 (9th Cir. 2023) (internal citation and  
27 quotation marks omitted). The Court finds that Section 6 preempts both H.B. 2492's

28 <sup>4</sup> The State also agrees with Tohono O'odham Plaintiffs' requested clarifications about  
the DPOR requirement. (State Reply at 46–50.)

1 requirement that registrants provide DPOC to vote in presidential elections and its  
2 restriction on mail-in voting.<sup>5</sup>

3 **a. Presidential Elections**

4 All Plaintiffs and the State contend that Section 6 preempts H.B. 2492’s  
5 requirement that Federal Form users provide DPOC in order to vote in presidential  
6 elections. (State Mot. at 2; *e.g.*, USA Mot. at 7–10; DNC Mot. at 5–6.) The RNC counters  
7 that such preemption arguments “ignore[] the constitutional constraints on Congress’s  
8 power to regulate presidential elections,” and “applying the NVRA only to congressional  
9 elections gives proper effect to Elections Clause, the Electors Clause, the NVRA, and  
10 H.B. 2492.” (RNC Mot. at 2–6); *see also* U.S. Const. art. II, § 1, cl. 2 (“Electors Clause”)  
11 (“Each State shall appoint, in such Manner as the Legislature thereof may direct,”  
12 presidential electors). The Court agrees with Plaintiffs and the State that Section 6  
13 preempts H.B. 2492’s limitation on voting in presidential elections.

14 The plain language of the NVRA reflects an intent to regulate all elections for  
15 “[f]ederal office,” including for “President or Vice President.” 52 U.S.C. §§ 20507(a),  
16 30101(3); *California Restaurant Ass’n v. City of Berkeley*, 65 F.4th 1045, 1050 (9th Cir.  
17 2023) (“As with any express preemption case, our focus is on the plain meaning of [the  
18 statute].”). And binding precedent indicates that Congress has the power to control  
19 registration for presidential elections. *See* 52 U.S.C. §§ 20502(a), 30101(3) (NVRA sets  
20 criteria for registering for “[f]ederal office”; defining “[f]ederal office” to include office  
21 of the president). In 1934, the United States Supreme Court rejected a narrow framing of  
22 Congress’s power over presidential elections, writing:

23 The only point of the constitutional objection necessary to be considered is  
24 that the power of appointment of presidential electors and the manner of  
25 their appointment are expressly committed by section 1, art. 2, of the  
26 Constitution to the states, and that the congressional authority is thereby  
27 limited to determining ‘the Time of chusing the Electors, and the Day on  
28 which they shall give their Votes; which Day shall be the same throughout  
the United States.’<sup>5</sup> So narrow a view of the powers of Congress in respect  
of the matter is without warrant.

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<sup>5</sup> The Court will not reach Mi Familia Vota Plaintiffs’ related Section 8(a) claim as it applies to Federal Form users. (*See* Mi Familia Vota Mot. at 15 n.12.)

1 *Burroughs v. United States*, 290 U.S. 534, 544 (1934). While *Burroughs* specifically  
2 addressed the constitutionality of a federal statute regulating campaign contributions in  
3 presidential elections, the Supreme Court later wrote that the decision more generally  
4 “recognized broad congressional power to legislate in connection with the elections of the  
5 President and Vice President.” *Buckley v. Valeo*, 424 U.S. 1, 13 n.16 (1976).

6 Drawing on this authority, the Ninth Circuit has recognized Congress’s power to  
7 regulate all federal elections under the NVRA. In *Voting Rights Coalition v. Wilson*, the  
8 Ninth Circuit rejected a challenge to the constitutionality of the NVRA, holding that  
9 because Congress has power under the Elections Clause to “alter state laws pertaining to  
10 the ‘Times, Places and Manner’ of electing Representatives and Senators,” the NVRA  
11 may constitutionally “conscript state agencies to carry out voter registration for the  
12 election of Representatives and Senators. The exercise of that power by Congress is by its  
13 terms intended to be borne by the states without compensation.” 60 F.3d 1411, 1413–15  
14 (9th Cir. 1995) (citing U.S. Const. art. I, § 4, cl. 1 (“Elections Clause”)). And  
15 acknowledging that “the Supreme Court has read the grant of power to Congress in  
16 Article I, section 4 as quite broad,” the Ninth Circuit added that “the broad power given  
17 to Congress over congressional elections has been extended to presidential elections.” *Id.*  
18 at 1414 (citing *Burroughs*, 290 U.S. at 545). The DNC and RNC dispute whether the  
19 latter rationale is dicta. (RNC Reply at 5; DNC Reply at 7–8.) But the DNC persuasively  
20 raises that this “broad” reading of the Elections Clause must have been essential to the  
21 Ninth Circuit’s decision to deem the NVRA constitutional, as the NVRA plainly  
22 regulates congressional and presidential elections. (*See* DNC Reply at 8.)

23 The parties also dispute the impact of *Inter Tribal Council* on whether the NVRA  
24 constitutionally regulates presidential elections. (DNC Mot. at 5–7; RNC Mot. at 2–7;  
25 RNC Reply at 3–4.) Contrary to the RNC’s arguments, *Inter Tribal Council* underscores  
26 that the Elections Clause gives Congress the power to regulate all federal elections, and  
27 that Congress intended to exercise this power through the NVRA to preempt conflicting  
28 state laws. The *Inter Tribal* Court affirmed the states’ power to “establish qualifications

1 (such as citizenship) for voting” on the basis that “the Elections Clause empowers  
 2 Congress to regulate *how* federal elections are held, but not *who* may vote in them.” 570  
 3 U.S. at 16 (emphasis original).<sup>6</sup> And the Court described the full preemptive impact of  
 4 the NVRA:

5       The assumption that Congress is reluctant to pre-empt does not hold when  
 6 Congress acts under that constitutional provision, which empowers  
 7 Congress to “make or alter” state election regulations. Art. I, § 4, cl. 1.  
 8 When Congress legislates with respect to the “Times, Places and Manner”  
 9 of holding congressional elections, it necessarily displaces some element of  
 a pre-existing legal regime erected by the States. Because the power the  
 Elections Clause confers is none other than the power to pre-empt, the  
 reasonable assumption is that the [NVRA’s] text accurately communicates  
 the scope of Congress’s pre-emptive intent.

10 *Id.* at 14. The Supreme Court also foreclosed the Tenth Amendment argument offered by  
 11 the RNC, reasoning that “[u]nlike the States’ historic police powers, States’ role in  
 12 regulating congressional elections—while weighty and worthy of respect—has always  
 13 existed subject to the express qualification that it terminates according to federal law.” *Id.*  
 14 at 15 (internal quotation marks and citations omitted); *see also* 1 Story § 627 (“It is no  
 15 original prerogative of state power to appoint a representative, a senator, or president for  
 16 the union”); (USA Mot. at 14 (citing *Cook v. Gralike*, 531 U.S. 510, 522 (2001)); RNC  
 17 Mot. at 4.) *Inter Tribal Council* and additional controlling authority indicate that H.B.  
 18 2492’s restriction on Federal Form users voting in presidential elections is expressly  
 19 preempted by Section 6.<sup>7</sup>

#### 20                   **b.       Voting by Mail**

21       Plaintiffs also contend that Section 6 preempts H.B. 2492’s requirement that  
 22 Federal Form users provide DPOC in order to vote by mail. (*E.g.*, DNC Mot. at 7.) The

23 \_\_\_\_\_  
 24 <sup>6</sup> The RNC argues that in *Oregon v. Mitchell*, 400 U.S. 112 (1970), “[f]ive Justices took  
 25 the position that the Elections Clause did not confer upon Congress the power to regulate  
 26 voter qualifications in federal elections.” (RNC Mot. at 5 (quoting *Inter Tribal Council*,  
 27 570 U.S. at 16 n.8).) But this assertion has no impact on any Motion, as Section 6 does  
 28 not regulate voter qualifications.

<sup>7</sup> Contending that the Elections Clause was not the only source of congressional power  
 behind the NVRA, the DNC argues that the Fourteenth and Fifteenth Amendments also  
 legitimize the statute’s regulation of presidential elections. (DNC Mot. at 2.) Because the  
 Court concludes that the Elections Clause gives Congress power to regulate presidential  
 elections under the NVRA, it need not reach any argument regarding the Fourteenth and  
 Fifteenth Amendments.

1 RNC counters that the NVRA does not apply to *voting* by mail or the “mechanisms for . .  
2 . . voting,” but only to registering to vote. (RNC Mot. at 4, 4 n.2, 8.) The State similarly  
3 asserts that H.B. 2492’s mail-in voting restriction is “likely not” preempted, as Section 6  
4 pertains to “what states must do ‘for the *registration*’ of voters.” (State Mot. at 3–4  
5 (quoting § 20505(a)(1)) (emphasis in original).) But both the text and purpose of the  
6 NVRA contradict Defendants’ narrow framing of the statute.

7 The text of the NVRA provides for circumstances where a state may limit voting  
8 by mail, implying that a state may not limit absentee voting outside of these prescribed  
9 circumstances. 52 U.S.C. § 20505(c)(1) (permitting states to require first-time voters to  
10 vote in person if those voters registered to vote by mail), (c)(2) (clarifying that paragraph  
11 (c)(1) does not apply to individuals who are otherwise entitled to an absentee ballot under  
12 federal law); (*see also* DNC Mot. at 9.) Had Congress intended to permit states that allow  
13 absentee voting to require in-person voting under additional circumstances—including  
14 when an registrant fails to provide DPOC—it could have said so in the NVRA. *See*  
15 *N.L.R.B. v. SW General, Inc.*, 137 S. Ct. 929, 940 (2017) (explaining that the interpretive  
16 canon *expressio unius est exclusio alterius* applies when “circumstances support a  
17 sensible inference that the term left out must have been meant to be excluded”) (internal  
18 citation and quotation marks omitted). Not only does the statute exclude failure to  
19 provide DPOC among the reasons a state may require an individual to vote in person, but  
20 as explained below, the purpose of the NVRA supports an inference that Congress meant  
21 to limit the number of circumstances in which a state could prevent an individual from  
22 voting by mail.

23 Regarding the purpose of the NVRA, Congress recorded that it enacted the NVRA  
24 not just to “establish procedures that will increase the number of eligible citizens who  
25 register to vote in elections for Federal office,” but also to “to make it possible for  
26 Federal, State, and local governments to implement this chapter in a manner that  
27 *enhances the participation of eligible citizens as voters* in elections for Federal office.”  
28 52 U.S.C. § 20501(b)(1)–(2) (emphasis added). Further, Congress found that

1 “discriminatory and unfair registration laws and procedures can have a direct and  
2 damaging effect on *voter participation in elections* for Federal office and  
3 disproportionately harm voter participation by various groups, including racial  
4 minorities” and it is the duty of “Federal, *State, and local governments* to promote the  
5 exercise of the [fundamental] right” to vote. *Id.* § 20501(a) (emphasis added).

6 Given Congress’s purpose behind the NVRA, the DNC correctly raises not only  
7 that the statute’s DPOC requirement to vote by mail is directly preempted by Section 6,  
8 but also that obstacle preemption bars the statute’s enforcement. (DNC Reply at 2.)  
9 “What is a sufficient obstacle is a matter of judgment, to be informed by examining the  
10 federal statute as a whole and identifying its purpose and intended effects.” *Crosby v.*  
11 *Nat’l Foreign Trade Council*, 530 U.S. 363, 373 (2000). “If the purpose of the act cannot  
12 otherwise be accomplished—if its operation within its chosen field else must be  
13 frustrated and its provisions be refused their natural effect—the state law must yield to  
14 the regulation of Congress within the sphere of its delegated power.” *Id.* (citation  
15 omitted). No party contests that Congress at least has the power to regulate congressional  
16 elections, and the findings and purposes included in the NVRA reflect an intent to  
17 increase voter turnout, largely but not exclusively through diminishing barriers to  
18 registration. Roughly 89 percent of Arizona voters cast ballots by mail in the 2020  
19 election, indicating that most eligible Arizonans choose to vote by mail. (Non-US SOF  
20 ¶ 60.) By offering mail-in voting to registrants who provided DPOC but not to Federal  
21 Form registrants who omitted such documentation, H.B. 2492’s mail-in voting restriction  
22 disadvantages Federal Form users by placing an additional burden—which is not required  
23 by the Federal Form—on federal-only voters to exercise Arizona’s preferred method of  
24 casting a ballot. *See Inter Tribal*, 570 U.S. at 15 (“[A] state-imposed requirement of  
25 evidence of citizenship not required by the Federal Form is ‘inconsistent with’ the  
26 NVRA’s mandate that States ‘accept and use’ the Federal Form.”) H.B. 2492’s limitation  
27 on voting by mail frustrates the purpose of the NVRA, as it impedes Arizona’s  
28 “promot[ion] of the right” to vote. 52 U.S.C. § 20501(a). This limitation presents an

1 “obstacle to the accomplishment of Congress’s full objectives under the” NVRA, and the  
2 Court “find[s] that the state law undermines the intended purpose and ‘natural effect’” of  
3 the NVRA. *Crosby*, 530 U.S. at 373 (citation omitted).

## 4 **2. Section 8**

5 Section 8 of the NVRA mandates that states respect additional requirements when  
6 administering registration and roll maintenance programs. *See generally* 52 U.S.C.  
7 § 20507. The State and the RNC move for summary judgment on Plaintiffs’ claims that  
8 (1) H.B. 2243 unlawfully allows for cancellation of registration within 90 days of an  
9 election; (2) H.B. 2243 allows cancellation for reasons unsanctioned by the NVRA; (3)  
10 the Voting Laws enable nonuniform and discriminatory maintenance procedures; and (4)  
11 H.B. 2492 fails to ensure that all eligible State Form users are registered to vote in federal  
12 elections. (State Mot. at 5–10; RNC Reply at 9–12.) Plaintiffs also move for summary  
13 judgment on H.B. 2243’s cancellation of registration within 90 days of an election, but  
14 oppose summary judgment on all other issues.

### 15 **a. Cancellation Within 90 Days of Election**

16 Section 8(c)(2) mandates that States “shall complete, not later than 90 days prior  
17 to the date of a primary or general election for Federal office, any program the purpose of  
18 which is to systematically remove the names of ineligible voters from the official lists of  
19 eligible voters” (“90-day Provision”). 52 U.S.C. § 20507(c)(2)(A). While states must  
20 pause any such systematic purge within 90 days of a federal election, States may continue  
21 to implement individualized<sup>8</sup> removal programs within this 90-day window. *See Arcia*,  
22 772 F.3d at 1344–45 (discussing whether a program to remove noncitizens from the voter  
23 rolls within 90 days of an election by, *inter alia*, running registrants through the  
24 Systematic Alien Verification for Entitlements system is a systematic program  
25 contravening Section 8). The NVRA enumerates certain exceptions to the prohibition on  
26 removals before an election, which are “criminal conviction or mental incapacity,” “the

27 <sup>8</sup> An “individualized” removal program means one in which a state determines eligibility  
28 to vote with “individualized information or investigation” rather than cancelling batches  
of registrations based on a set procedure. *See Arcia v. Fla. Sec’y of State*, 772 F.3d 1335,  
1344 (11th Cir. 2014).

1 death of a registrant,” “a change in the residence of the registrant,” or “correction of  
2 registration records pursuant to this chapter.” 52 U.S.C. § 20507(a)(3)–(4), (c)(2)(B).

3 Plaintiffs assert that the Voting Laws violate Section 8(c) because they allow  
4 systematic cancellation of registrations within 90 days of federal elections. (*E.g.*,  
5 AAANHPI Mot. at 8–10.) The Court agrees. The Voting Laws contain no provision  
6 limiting systematic roll review and registration cancellation to at least 90 days prior to a  
7 federal election.<sup>9</sup> (*See id.*); A.R.S. § 16-165(G)–(K). The State acknowledges that the  
8 Voting Laws fail to limit systematic purges within 90 days of an election, but claims that  
9 Section 8 does not prevent states from cancelling registrations of voters found to be  
10 noncitizens within this 90-day window. (State Mot. at 9.) Though all parties agree that  
11 citizenship is a requirement for voting, the State ignores the text and purpose of the 90-  
12 day provision.

13 The 90-day Provision prohibits systematic cancellation of registrations within 90  
14 days of an election. First, Section 8 plainly forbids “any program” to routinely remove  
15 registrants, subject to enumerated exceptions, and “the phrase ‘any program’ suggests  
16 that the 90 Day Provision has a broad meaning. . . . [R]ead naturally, the word ‘any’ has  
17 an expansive meaning, that is ‘one or some indiscriminately of whatever kind.’” *Arcia*,  
18 772 F.3d at 1344 (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)). And “[w]here  
19 Congress explicitly enumerates certain exceptions to a general prohibition, additional  
20 exceptions are not to be implied, in the absence of evidence of a contrary legislative  
21 intent.” *Id.* at 1345 (quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–17 (1980)).  
22 Second, the Court agrees with the Eleventh Circuit that the 90-day provision “is designed  
23 to carefully balance [the] . . . purposes in the NVRA,” which include protecting the  
24 integrity of the electoral process and ensuring that accurate rolls are maintained, yet also  
25 fostering procedures that will “enhance[] the participation of eligible citizens as voters in

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26 <sup>9</sup> The DNC seeks summary judgment on its claim that H.B. 2492 violates Section 8  
27 because “it places no time limit on the direction to county recorders to cancel  
28 registrations when they ‘receive[] and confirm[] information that [a] person registered is  
not’ a U.S. citizen.” (DNC Mot. at 16 (quoting H.B. 2492) (alterations in original).) This  
provision of H.B. 2492 was superseded by H.B. 2243. *Compare* H.B. 2492, § 8, with  
H.B. 2243, § 2.



1 elections for Federal office.” *Id.* at 1346. It makes sense that Congress “decided to be  
2 more cautious” leading up to an election cycle, as systematic cancellation programs can  
3 cause inaccurate removal and “[e]ligible voters removed days or weeks before Election  
4 Day will likely not be able to correct the State’s errors in time to vote.” *Id.*; (*see* Non-US  
5 SOF ¶¶ 48–49.) But individualized removals, not expressly forbidden within the 90-day  
6 window, are based on more “rigorous” registrant-specific inquiries “leading to a smaller  
7 chance for mistakes.” *Arcia*, 772 F.3d at 1346.

8 The State’s arguments to the contrary do not persuade the Court. Relying heavily  
9 on *United States v. Florida*, 870 F. Supp. 2d 1346, 1350 (D. Fla. 2012), the State argues  
10 that the 90-day Provision does not “apply to removing noncitizens who were not properly  
11 registered in the first place.” (State Mot. at 9 (quoting *Florida*, 870 F. Supp. 2d at 1350).)  
12 Yet the State ignores that the Eleventh Circuit rejected *Florida*’s reasoning in *Arcia*. *See*  
13 *Arcia v. Detzner*, NO. 12–22282–CIV–ZLOCH, 2015 WL 11198230, at \*1 n.1 (S.D. Fla.  
14 Feb. 12, 2015) (describing conclusion reversed in *Arcia* as the same one reached in  
15 *United States v. Florida*). The State also relies on *Bell v. Marinko*, 367 F.3d 588 (6th Cir.  
16 2004), in which the Sixth Circuit upheld a state statute enabling purges of precinct  
17 nonresidents within the 90-day window. But the *Bell* Court did not expressly consider the  
18 effect of individualized purges, the dual purposes of Section 8, or the plain meaning of  
19 “any” in Section 8(c)(2)(A). *Bell*, 367 F.3d at 591–92. Further, the facts of *Bell* are  
20 distinguishable from the Voting Laws. The statute at issue in *Bell* provided for individual  
21 “challenge hearings,” which were “devoted to investigating each [registrant’s]  
22 residence,” before an alleged nonresident was purged from the voter roll. *Id.* at 590.

23 The State alternatively asks the Court to read the 90-day Provision into the Voting  
24 Laws, “harmoniz[ing]” the statutes with another Arizona law that mandates compliance  
25 with the NVRA, while Equity Coalition requests a declaration that Section 2 of H.B.  
26 2243 violates the 90-day Provision. (State Mot. at 10; AAANHPI Mot. at 7–8, 10.) While  
27 the Court agrees with Plaintiffs that the State may still conduct individualized voter  
28 removals within the 90-day window, the systematic removal program mandated by H.B.

1 2243 violates Section 8(c)(2) of the NVRA.

2 **b. Grounds for Cancellation**

3 As described above, Section 8(a) lists the grounds upon which a State can cancel  
4 registrations for federal elections. 52 U.S.C. § 20507(a)(3)–(4). According to Defendant  
5 Fontes, “H.B. 2243 do[es] not specify what type, set, or combination of ‘information’  
6 establishes that a registered voter ‘is not a United States citizen’ or what information is  
7 sufficient to match an individual in a database with the registered voter or applicant, and .  
8 . . . some United States citizens may be erroneously flagged as non-citizens based on  
9 potentially outdated and inaccurate data.” (Non-US SOF ¶ 49 (quoting Doc. 189, Sec’y of  
10 State Ans. ¶ 44).) Additionally, “if a county recorder obtains information and confirms  
11 that a registered voter is not a United States citizen, which may be based on potentially  
12 unreliable and outdated sources, and if, after receiving a notice, the voter does not  
13 provide proof of citizenship within 35 days, the recorder must cancel the registration and  
14 notify the county attorney and Attorney General for possible investigation.” (*Id.* ¶ 50  
15 (quoting Ex. 21, Doc. 63, 22-cv-1381, Sec’y of State Ans. ¶ 12).) The State argues that  
16 because “citizenship is a basic requirement for voting,” the Voting Laws’ cancellation  
17 provision cannot violate Section 8 as a matter of law, otherwise the NVRA “would  
18 effectively grant, and then protect, the franchise of persons not eligible to vote.” (State  
19 Mot. at 8.)

20 Plaintiffs correctly counter that “[t]he very real fact questions about voters’  
21 citizenship status and how successful the removal scheme will be in identifying truly  
22 ineligible voters make summary judgment inappropriate here.” (AAANHPI Mot. at 12.)  
23 The State admits that only registrants suspected of being noncitizens are subjected to  
24 arguably unreliable database checks, which Plaintiffs may be able to prove result in  
25 inaccurate identification of noncitizens, cancellation of registration for reasons not  
26 permitted by the NVRA, and wrongful referral for prosecution. (Non-US SOF ¶¶ 45–50.)  
27 And again, the Court is not persuaded by the State’s sparsely substantiated argument that  
28 Arizona may freely cancel voter registrations of those individuals suspected of being

1 noncitizens merely because some such individuals might actually be noncitizens, nor  
2 does this outcome raise constitutional concerns. *Supra* Section II(A)(2)(a); *Arcia*, 772  
3 F.3d at 1347–48 (Section 8 would raise constitutional concerns if it entirely prohibited  
4 states from removing noncitizens from voter rolls, but case did not present that question).  
5 The Court concludes that there remains an issue of fact as to whether the purge  
6 procedures mandated by H.B. 2243 will likely result in unlawful cancellation of  
7 legitimate voter registrations.

8 **c. Discriminatory Maintenance Procedures**

9 The State seeks summary judgment on Plaintiffs’ claim that the Voting Laws  
10 violate Section 8(b) of the NVRA, titled “Confirmation of voter registration,” which  
11 mandates that “[a]ny State program or activity to protect the integrity of the electoral  
12 process by ensuring the maintenance of an accurate and current voter registration roll for  
13 elections for Federal office . . . shall be uniform, nondiscriminatory, and in compliance  
14 with the Voting Rights Act of 1965.” 52 U.S.C. § 20507(b). Plaintiffs claim that the  
15 Voting Laws violate Section 8(b) by treating federal-only and full-ballot voters  
16 differently and imposing “disparate treatment as between naturalized citizens and U.S.-  
17 born citizens, as well as within and between Arizona counties.” (*E.g.*, *Poder Latinx Mot.*  
18 at 8–9.) Specifically, Plaintiffs oppose summary judgment on the grounds that there  
19 remain factual issues regarding the effects of the allegedly discriminatory verification  
20 procedures mandated by the Voting Laws. (*Id.* at 9.)

21 As a threshold issue, the State argues that Section 8(b) only applies to post-  
22 registration voter roll maintenance, namely purges, and the State is entitled to judgment  
23 as a matter of law on any claim that the State treats *applicants* to vote in a nonuniform or  
24 discriminatory way. (*State Mot.* at 5–6.) Based on the plain language of the NVRA, the  
25 Court agrees with the State only to the extent the State argues that Section 8(b) does not  
26 apply to state programs regarding individuals not yet registered to vote. Section 8(b),  
27 which expressly addresses confirming rather than soliciting voter registration, speaks to  
28 ensuring the *maintenance*, not the enlargement, of current voter registration rolls. *See* 52

1 U.S.C. § 20507(b); (*see also* State Mot. at 5–6 (discussing legislative history indicating  
2 that Section 8(b) was intended “to prohibit selective or discriminatory purge programs”).)  
3 Binding authority supports this interpretation, and Plaintiffs cite no case or make no  
4 argument to otherwise persuade the Court. *See, e.g., Husted v. A. Philip Randolph Inst.*,  
5 138 S.Ct. 1833, 1840 (2018) (referencing § 20507(b)(1) as a “limitation applicable to  
6 state removal programs”).

7 The Court will deny summary judgment on Plaintiffs’ remaining claims that  
8 Section 8(b) forbids the State from (1) cancelling existing voter registrations of  
9 individuals identified as noncitizens after running certain individuals through (an)  
10 unreliable database(s) and (2) referring certain individuals for investigation based on such  
11 unreliable data. The Secretary of State admitted that H.B. 2243 “requires a different  
12 ‘standard, practice, or procedure’ for determining a voter’s qualifications for voters who a  
13 county recorder ‘has reason to believe are not United States citizens’ than for voters who  
14 a county recorder does not have reason to believe are not United States citizens.”<sup>10</sup> (Non-  
15 US SOF ¶ 44 (citing Sec’y of State Ans. ¶ 102)); A.R.S. § 16-165(I). And the Secretary  
16 specifically admitted that H.B. 2243 mandates that county recorders distinguish between  
17 those registrants who will be subjected to the additional Systematic Alien Verification  
18 Entitlements program screens and those who “are not suspected of lacking U.S.  
19 citizenship [and] will not be subjected to the investigation and potential cancellations  
20 [sic] provisions set forth in H.B. 2243.” (*Id.* ¶ 45 (citing Sec’y of State Ans. ¶¶ 102–03).);  
21 § 16-165(I). As the Court concludes that there are outstanding issues of fact as to how  
22 this purging will be executed and whether it causes nonuniform and discriminatory  
23 registration investigation and cancellation, the Court denies summary judgment on these

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24 <sup>10</sup> Poder Latinx seeks summary judgment on its claim that the verification procedures’  
25 “reason to believe” standard violates 52 U.S.C. § 10101(a)(2)(A), which prohibits the  
26 State from “apply[ing] any standard, practice, or procedure” to determine an individual’s  
27 qualification to vote that is “different from the standards, practices, or procedures  
28 applied” to other individuals “found by State officials to be qualified to vote.” Because  
there remain issues of fact of when and how a county recorder will have “reason to  
believe” that a registered voter is a non-citizen and use the Systematic Alien Verification  
for Entitlements program to verify citizenship, the Court denies as moot Poder Latinx  
Plaintiffs’ Motion on its 52 U.S.C. § 10101(a)(2)(A) claim. (*See* Poder Latinx Mot. at 1–  
5.)

1 Section 8(b) claims.<sup>11</sup>

2 **d. State Form Users Registering for Federal Elections**

3 Section 8(a) of the NVRA mandates that States “ensure that any eligible applicant  
4 is registered to vote in an election” when an applicant submits registration materials at  
5 least 30 days before an election. 52 U.S.C. § 20507(a)(1); *see also* A.R.S. § 16-120(A) (a  
6 registrant “shall not vote in an election called pursuant to the laws of this state unless the .  
7 . . . [individual’s] registration has been received by the county recorder . . . before  
8 midnight of the twenty-ninth day preceding the date of the election”). Plaintiffs argue,  
9 *inter alia*, that the Voting Laws contravene Section 8(a) by mandating that applicants  
10 who submit a State Form by mail or at public assistance agencies must provide DPOC in  
11 order to be registered for any election.<sup>12</sup> (LUCHA Mot. at 14.) Countering that the  
12 NVRA does not require states to register applicants not actually eligible to vote under  
13 state criteria, namely “known noncitizens,” the RNC seeks summary judgment on  
14 Plaintiffs’ claim that H.B. 2492 contravenes Section 8(a)’s requirement that states ensure  
15 all eligible applicants to vote are actually registered to vote. (RNC Mot. at 2, 9–11;  
16 LUCHA Mot. at 13–14.)

17 This claim is resolved by the existing LULAC Consent Decree, which requires  
18 Arizona “County Recorders to accept State Form applications submitted without DPOC .  
19 . . . [and] to immediately register the applicants for federal elections, provided the  
20 applicant is otherwise qualified and the voter registration form is sufficiently complete.”

21 <sup>11</sup> The State “takes no position” on whether the Voting Laws “*as applied*, result in a non-  
22 uniform or discriminatory program for maintaining accurate registration lists.” (State  
23 Mot. at 6 n.12 (emphasis in original).) Offering an expansive definition of the term “non-  
24 uniform” as “apply[ing] to less than an entire jurisdiction,” the State argues that the  
25 Voting Laws still facially pass muster under Section 8(b). (*Id.* at 6.) But the State does  
26 not address that even the text of the Voting Laws mandates purges that apply to “less than  
27 an entire jurisdiction,” as only those registrants whom recorders have “reason to believe”  
28 are noncitizens will be subject to heightened scrutiny through, *inter alia*, the Systematic  
Alien Verification for Entitlements program. The Court need not endorse a specific  
definition of uniformity or parse Plaintiffs’ facial and as-applied arguments to deny  
summary judgment on the Section 8(b) claim.

<sup>12</sup> The Court has already explained that Section 6 precludes Arizona from requiring  
DPOC from Federal Form users and will grant summary judgment regarding the Voting  
Laws’ DPOR requirement, so the Court need not address the parties’ arguments  
regarding the effect of Section 8(a) in these respects. (*See* RNC Mot. at 9–11, RNC Reply  
at 7–8.)

1 (LULAC Consent Decree at 8.) The LULAC Consent Decree, which Judge Campbell has  
 2 never set aside, makes no carve-out for mail-in registrations or individuals who register at  
 3 public assistance agencies. (*See* Doc. 388-4, Ex. 15, Sec’y of State Voting Laws  
 4 Implementation Email (“[Q]uestions remained as to whether we could implement [the  
 5 Voting Laws’] requirements that would conflict with . . . federal settlements and court  
 6 cases. Having thoroughly analyzed the changes that both bills require, the Secretary of  
 7 State’s Office believes that there is no way to implement certain requirements without  
 8 conflicting with federal law . . . including *Documentary Proof of Citizenship for federal*  
 9 *elections.*” (emphasis added)).) Rather, it reflects that Arizona agreed to refrain from  
 10 precisely the conduct that the RNC would have Arizona participate in. *C.f. Taylor v.*  
 11 *United States*, 181 F.3d 1017, 1024 (9th Cir. 1999) (“Congress may change the law and,  
 12 in light of changes in the law or facts, a *court* may decide in its discretion to reopen and  
 13 set aside a consent decree under [Rule] 60(b) . . . but Congress may not direct a court to  
 14 do so with respect to a final judgment (whether or not based on consent) without running  
 15 afoul of the separation of powers doctrine.” (internal citations omitted) (emphasis  
 16 added)).<sup>13</sup>

## 17 **B. Section 10101 of the Civil Rights Act**

18 Plaintiffs argue that the Checkbox Requirement and the Birthplace Requirement

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19 <sup>13</sup> Even if the Court were to accept the parties’ position that the Voting Laws “roll[ed]  
 20 back” the LULAC Consent Decree, the RNC’s arguments are unpersuasive in light of the  
 21 Court’s Section 6 analysis. (Doc. 196, MTD Hr’g Tr. at 62:3–4; *see also* Doc. 67,  
 22 LUCHA Compl. ¶90 (requiring DPOC for State Form user to register for federal  
 23 elections “requires the Secretary to violate a federal consent decree”); *but see* Doc. 388-4,  
 24 Ex. 19, Veto Letter from Recorder Cazares-Kelly at 1 (automatic State form rejection  
 25 “had been eliminated by the consent decree in the LULAC case so that currently all  
 26 voters are treated the same”). The State Form elicits the same information for federal-  
 27 only voters as the Federal Form. (*Compare* State Form (federal-only information shaded  
 28 red) *with* Federal Form at 26.) The State Form informs applicants that they will only be  
 registered for “full ballot” elections if they provide proof of citizenship, but absent DPOC  
 and the Birthplace Requirement discussed below, the State Form’s requirements are  
 substantively indistinguishable from the Federal Form. As long as Arizona has chosen to  
 produce a State Form that offers registration for federal elections, it must abide by the  
 requirements outlined in Section 6, cross-referenced to Section 8. *See* § 20505(a)(2) (“In  
 addition to accepting and using the [Federal Form], a State may develop and use a mail  
 voter registration form that meets all of the criteria stated in section 20508(b) of this title  
 for the registration of voters in elections for Federal office.”). And as above explained,  
 the NVRA precludes states from requiring DPOC to register applicants for federal  
 elections.

1 violate the Materiality Provision, which prohibits the State from denying an individual  
2 her right to vote “because of an error or omission on any record or paper relating to any  
3 application, registration, or other act requisite to voting, if such error or omission is not  
4 material in determining whether such individual is qualified under State law to vote in  
5 such election.”<sup>14</sup> 52 U.S.C. § 10101(a)(2)(B). The Materiality Provision was “intended to  
6 address the practice of requiring unnecessary information for voter registration with the  
7 intent that such requirements would increase the number of errors or omissions on the  
8 application forms, thus providing an excuse to disqualify potential voters.” *Schwier v.*  
9 *Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003). To be qualified to vote in Arizona, a person  
10 must be at least eighteen years old, a current United States citizen, and a current resident  
11 of Arizona. Ariz. Const. art. VII § 2.

12 The State asserts that the Checkbox Requirement and Birthplace Requirement do  
13 not violate the Materiality Provision because citizenship is material in determining a  
14 person’s eligibility to vote and birthplace is material in determining a person’s identity.  
15 (State Mot. at 10–14.) The Court concludes that the Checkbox Requirement violates the  
16 Materiality Provision when a person provides Arizona with DPOC. But the Court finds  
17 that there are genuine issues of fact precluding summary judgment on whether the  
18 Birthplace Requirement contravenes the Materiality Provision.

### 19 **1. The Checkbox Requirement**

20 The State contends that the Checkbox Requirement does not violate the  
21 Materiality Provision because “citizenship is a requirement for voting in Arizona.” (*Id.* at  
22 11–13.) The United States counters that whether the Checkbox Requirement violates the  
23 Materiality Provision is question of fact inappropriate for summary judgment. (USA Mot.  
24 at 17–20.) Specifically, the United States contends that further discovery is necessary

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25 <sup>14</sup> Plaintiffs do not dispute that the State can require DPOC to vote in state elections, but  
26 Plaintiffs do claim that requiring federal-only voters to provide DPOC to vote in  
27 presidential elections and by mail violates the Materiality Provision. (*E.g.*, Doc. 1, 22-cv-  
28 1124, USA Compl. ¶¶ 69–70; *see generally* USA Mot.; *Mi Familia Vota* Mot.; *LUCHA*  
Mot.) Because requiring DPOC for federal-only voters to vote in presidential elections  
and by mail violates Section 6, the Court need not address the parties’ arguments as they  
relate to the Materiality Provision. (*See* State Mot. at 13.)

1 because the State posits without any “record evidence supporting its assertions,” that the  
2 Checkbox Requirement is “useful.” (*Id.* at 19.)

3 No party disputes that citizenship itself is material to a voter’s eligibility to vote.  
4 (*E.g., id.* at 18.) And the Court finds persuasive those circumstances under which the  
5 materiality of omitted information is an issue of law. *See Chism v. Washington State*, 661  
6 F.3d 380, 389 (9th Cir. 2011) (noting the “inquiry into whether the false statements and  
7 omissions [in an affidavit for a search warrant application] were material is a purely legal  
8 question . . . . [and] were material if ‘the affidavit, once corrected and supplemented,’  
9 would not have provided a magistrate judge with a substantial basis for finding probable  
10 cause” (citation omitted)); *S.E.C. v. Reys*, 712 F. Supp. 2d 1170, 1177 (W.D. Wash.  
11 2010) (noting that, in the shareholder context, the materiality of an omission is an issue of  
12 law “[o]nly when the disclosures or omissions are so clearly unimportant that reasonable  
13 minds could not differ” (quoting *In re Craftmatic Sec. Litig.*, 890 F.2d 628, 641 (3d Cir.  
14 1989))). The materiality of an applicant’s failure to complete the checkbox on the State  
15 Form or Federal Form is a question of law.

16 **a. The Checkbox Requirement With DPOC**

17 The United States contends that an incomplete checkbox on a voter registration  
18 form is immaterial when an applicant provides the State with DPOC. (USA Mot. at 21.)  
19 The State cites *Diaz v. Cobb*, 435 F. Supp. 2d 1206 (S.D. Fla. 2006), as “the most  
20 analogous case” to the Checkbox Requirement in asserting that it does not violate the  
21 Materiality Provision. (State Reply at 31; *see* State Mot. at 11–13.) The plaintiffs in *Diaz*  
22 argued that a voting law violated the Materiality Provision by requiring applicants to (1)  
23 check boxes affirming that they are citizens, have not been convicted of a felony, and  
24 have not been adjudicated mentally incompetent, and (2) sign an oath affirming, *inter*  
25 *alia*, that they are “qualified to register as an elector under the Constitution and laws of  
26 the State of Florida.” 435 F. Supp. 2d at 1212–13. The *Diaz* court held that checking the  
27 boxes was not “duplicative” of signing the oath because the oath did not require an  
28 applicant to specifically affirm her citizenship, and even if it were duplicative, material



1 information does not “become[] immaterial due solely to its repetition.” *Id.* at 1212–13.

2        Though an applicant registering for Arizona elections must similarly affirm her  
3 citizenship both by specifically marking “yes” in the checkbox and signing an oath, *Diaz*  
4 is inapposite, as an applicant must also provide DPOC. A.R.S. § 16-121.01(A), (C).  
5 Instead, the Court finds the reasoning in *League of Women Voters of Arkansas v.*  
6 *Thurston*, No. 5:20-cv-05174, 2021 WL 5312640 (W.D. Ark., Nov. 15, 2021), more  
7 persuasive. There, the court found that plaintiffs stated a claim that a voting law violated  
8 the Materiality Provision because it required absentee voters to provide information about  
9 their eligibility to vote “several times,” and voters “correctly provided that information at  
10 least once,” but had their ballots “rejected on the basis of a mismatch or omission in one  
11 of the multiple documents they ha[d] provided.” 2021 WL 5312640, at \*4. The Voting  
12 Laws similarly permit Arizona to reject an applicant’s registration based on a “mismatch”  
13 between documents, specifically an incomplete checkbox on a registration form  
14 notwithstanding the applicant’s accompanying documentary proof of citizenship. *See*  
15 § 16-121.01(A), (C).

16        The State contends that the checkbox is still “useful” in determining an applicant’s  
17 citizenship.<sup>15</sup> Materiality “signifies different degrees of importance in different legal  
18 contexts.” *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1173 (11th Cir.  
19 2008). The Eleventh Circuit observed in *Browning* that if “material” under the  
20 Materiality Provision “means minimal relevance,” then an error is material if it “tends to  
21 make it more likely that the applicant is not a qualified voter than” in the absence of the  
22 error. *Id.* at 1174. The *Browning* court cited to the “criminal mail and wire fraud  
23 context,” where “a false statement is material if it has a natural tendency to influence, or  
24 is capable of influencing, the decision of the decisionmaking body to which it was  
25 addressed.” *Id.* at 1173 (quoting *United States v. Gray*, 367 F.3d 1263, 1272 n.19 (11th

26 \_\_\_\_\_  
27 <sup>15</sup> The State also argues more generally that “[t]he [checkbox] is ‘material in  
28 determining’ the voter’s eligibility because U.S. citizenship is a requirement for voting in  
Arizona.” (State Mot. at 12 (internal citations omitted).) But this conclusory argument  
conflates materiality of an applicant’s citizenship with the materiality of an incomplete  
checkbox in *determining* an applicant’s citizenship. (*See* USA Mot. at 18.)

1 Cir. 2004)). However, “‘capable of influencing’ is an objective test, which looks at ‘the  
2 intrinsic capabilities of the false statement itself, rather than the possibility of the actual  
3 attainment of its end.’” *United States v. Peterson*, 538 F.3d 1064, 1072 (9th Cir. 2008).  
4 The Court does not accept that information must only meet such a low bar to be material.  
5 Because Arizona may not deny an individual the right to vote due to an error or omission  
6 that “is not material *in determining*” her eligibility to vote, the Court infers that Congress  
7 intended<sup>16</sup> materiality to require some probability of actually impacting an election  
8 official’s eligibility determination.<sup>17</sup> § 10101(a)(2)(B) (emphasis added); *c.f. TSC Indus.,*  
9 *Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (explaining that under the Securities  
10 Exchange Act, an omission is material if there is a “substantial likelihood that the  
11 disclosure of the omitted fact would have been viewed by the reasonable investor as  
12 having significantly altered the ‘total mix’ of information made available”); *United States*  
13 *v. Bagley*, 473 U.S. 667, 682 (1985) (in criminal procedure, exculpatory “evidence is  
14 material only if there is a reasonable probability that, had the evidence been disclosed to  
15 the defense, the result of the proceeding would have been different. A ‘reasonable  
16 probability’ is a probability sufficient to undermine the confidence in the outcome”);  
17 *Bruton v. Massanari*, 268 F.3d 824, 827 (9th Cir. 2001) (in social security benefits cases,  
18 “new evidence is material . . . if there is a reasonable possibility that the new evidence  
19 would have changed the outcome of the determination” (citation and internal quotation

20 <sup>16</sup> “Where Congress uses terms that have accumulated settled meaning under either equity  
21 or the common law, a court must infer, unless the statute otherwise dictates, that  
22 Congress means to incorporate the established meaning of these terms.” *Kungys v. United*  
*States*, 485 U.S. 759, 770 (1988) (citation omitted) (applying meaning of materiality of  
false statements to public officials to the denaturalization context).

23 <sup>17</sup> At least one court has interpreted “material” to mean something akin to necessary. *See*  
*La Unión del Pueblo Entero v. Abbott*, 604 F. Supp. 3d 512, 542 (W.D. Tex. 2022)  
24 (plaintiffs plausibly alleged that a voting law “may require information that is  
25 *unnecessary and therefore not material* to determining an individual’s qualifications to  
26 vote under Texas law” (internal citations omitted) (emphasis added)). Whatever the  
appropriate definition of “material” in this context, it means something more than  
27 “useful” or “minimal[ly] relevan[t].” (*See* USA Mot. at 18); *compare Material*, Black’s  
Law Dictionary (11th ed. 2019) (“Having some logical connection with the consequential  
28 facts” or being “[o]f such a nature that knowledge of the item would affect a person’s  
decision-making; significant; essential”), *with Relevant*, Black’s Law Dictionary  
 (“Logically connected and tending to prove or disprove a matter in issue; having  
appreciable probative value—that is, rationally tending to persuade people of the  
probability or possibility of some alleged fact”).

1 marks omitted) (cleaned up))).

2 The State asserts that “if a prospective voter is presented with a clear yes-or-no  
3 question about whether the voter is a citizen and does not mark ‘Yes,’ that information is  
4 material.” (State Reply at 30.) The State cites *Browning*, which interpreted the  
5 Materiality Provision as “ask[ing] whether, accepting the error *as true and correct*, the  
6 information contained in the error is material to determining the eligibility of the  
7 applicant.” 522 F.3d at 1175 (emphasis in original). The *Browning* court explained that  
8 with additional and accurate information:

9 [an] election official will *always* be able to verify identity of the applicant.  
10 It is this additional information exclusively—and not the degree to which  
11 that new information deviates from the information on the registration  
application form, or the “nature of the error”—that enables the election  
official to ascertain the identity of the voter.

12 *Id.* at 1175 n.23 (emphasis in original). This suggests that no error could be material  
13 unless the erroneous information were considered in isolation from other additional  
14 information probative of an applicant’s eligibility to vote. But the materiality of an error  
15 or omission is determined by the other information available to the State. So when an  
16 applicant includes DPOC, it makes little sense to accept an incomplete citizenship  
17 checkbox on her registration form as “true and correct” when it is clearly not, and that  
18 incomplete checkbox should not alter any determination of her eligibility to vote. *C.f.*  
19 *TSC Indus.*, 426 U.S. at 449 (focusing on “the ‘total mix’ of information made  
20 available”). Applying *Browning*’s interpretation of materiality would allow Arizona to  
21 disregard documentation that, under Arizona law, constitutes “*satisfactory evidence* of  
22 citizenship” and disenfranchise eligible voters. A.R.S. § 16-166(F) (emphasis added).  
23 The Checkbox Requirement violates the Materiality Provision when an applicant  
24 provides satisfactory evidence of citizenship.

25 **b. The Checkbox Requirement Without DPOC**

26 As discussed above, the State must register both State Form and Federal Form  
27 users for federal elections without requiring DPOC. (*Supra* Part II.A.) The Checkbox  
28 Requirement as applied to these voters does not violate the Materiality Provision.

1 Specifically, the Federal Form “may require only such [information] as is necessary to  
2 enable the appropriate State election official to assess the eligibility of the applicant and  
3 to administer voter registration and other parts of the election process.” 52 U.S.C.  
4 § 20508(b)(1); *see id.* § 20505(a)(1). Congress further specified that the Federal Form  
5 “shall include,” *inter alia*, a checkbox for the applicant to indicate whether she is a  
6 citizen and requires that an applicant who fails to check the box be given “an opportunity  
7 to complete the form” before the next federal election. *Id.* § 21083(b)(4)(A)(i), (B); (*see*  
8 State Mot. at 12; State Reply at 29.) This statutory scheme indicates that the checkbox is  
9 “necessary” to determine an applicant’s eligibility, and it is doubtful “that Congress  
10 would mandate the gathering of information . . . that it also deems immaterial.”  
11 *Browning*, 522 F.3d at 1174.

12 The Court also agrees with the State that even assuming the checkbox on the  
13 Federal Form is duplicative of the oath, an applicant’s failure to complete the checkbox is  
14 not an immaterial omission. (State Reply at 29 (citing *Diaz*, 435 F. Supp. 2d at 1213); *see*  
15 Federal Form at 26 (requiring applicant to affirm “under penalty of perjury and threat of  
16 deportation” that she is a United States citizen).) Though an applicant must affirm her  
17 citizenship twice, it is effectively an applicant’s only opportunity to provide this  
18 information when registering for federal elections. *See League of Women Voters of Ark.*,  
19 2021 WL 5312640, at \*4 (indicating that it would not violate the Materiality Provision to  
20 reject a ballot due to an error or omission “[w]here absentee voters have only one  
21 opportunity to provide information” about their qualifications to vote). As for State Form  
22 users, they must specifically affirm their citizenship only once, and the United States  
23 concedes that the Checkbox Requirement on the State Form is permissible in the absence  
24 of DPOC.<sup>18</sup> (USA Mot. at 21; State Form.) The Checkbox Requirement does not violate

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25  
26 <sup>18</sup> Unlike the checkbox and the signature box on the Federal Form, which both inquire  
27 specifically into whether an applicant is a citizen, the oath on the State Form requires an  
28 applicant to affirm that the information in the registration is true, that she is a resident of  
Arizona, and has not been convicted of a felony or adjudged incapacitated. (*See* Federal  
Form at 26; State Form at 51.) The checkbox on the State Form is not duplicative of this  
“general” oath. *See Diaz*, 435 F. Supp. 2d at 1213.

1 the Materiality Provision as applied to individuals who do not provide DPOC.<sup>19</sup>

## 2                   **2.     The Birthplace Requirement**

3           The State argues that the Birthplace Requirement does not violate the Materiality  
4 Provision because an applicant’s place of birth “can help confirm [a] voter’s identity.”  
5 (State Mot. at 14 (noting that “verifying an individual’s identity is a material requirement  
6 of voting” (quoting *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 841 (S.D. Ind.  
7 2006))).) The Court agrees with the United States that there is a dispute of material fact  
8 about whether an applicant’s failure to include her birthplace is material in determining  
9 her eligibility to vote. (*See* USA Mot. at 21–23.) The State cites the United States  
10 Department of State’s Foreign Affairs Manual, which requires passport applicants to  
11 provide their birthplace because birthplace is an “integral part of establishing an  
12 individual’s identity.” (State Mot. at 14 (quoting Doc. 365-1, Ex. H, at 107).) But as the  
13 State recognizes, it began offering voters the *option* to include their “state or country of  
14 birth” in 1979, and there is no indication that this information—or lack thereof—has ever  
15 been material in determining an applicant’s eligibility to vote. (State Mot. at 13 (citing  
16 Doc. 365-1, Ex. G, A.R.S § 16-152(A) (1979)).)

17           The State argues that how election officials use a person’s birthplace is beside the  
18 point because “[t]he question is whether a person’s state or country of birth is,  
19 objectively, ‘material to determining the eligibility of the applicant.’” (State Reply at 33  
20 (quoting *Browning*, 522 F.3d at 1175).) The State also contends that “[w]hether  
21 [birthplace] is material in determining voter eligibility depends on its relevance to  
22 eligibility.” *Id.* But if, as the State argues, a person’s state or country of birth is  
23 “objectively relevant” to a person’s identity, so too are her father’s and mother’s names,  
24 or her occupation. (*See* State Form at 51 (providing applicants the *option* to include  
25 occupation and parents’ names).) Whether the Birthplace Requirement violates the  
26 Materiality Provision is an issue of fact inappropriate for summary judgment.

27 \_\_\_\_\_  
28 <sup>19</sup> Mi Familia Vota’s Cross-Motion on the materiality of the Checkbox Requirement is moot. The Court need not address the parties’ arguments regarding Private Plaintiffs’ standing. (*See, e.g.*, RNC Mot. at 11–15.)

1           **C.     Vagueness of the Purge Provisions**

2           The State seeks summary judgment on Promise Arizona’s claims that the purge  
3 provisions of the Voting Laws, A.R.S. § 16-165(a)(10) and (I), are void for vagueness  
4 because they do “not provide an election official any guidance to determine whether a  
5 person is not a United States citizen” and allow the Attorney General to open a criminal  
6 investigation into any person whose voter registration is cancelled. (Doc. 1, 22-cv-1602,  
7 Compl. ¶ 139; State Mot. at 15–16.) Specifically, the State contends that the void-for-  
8 vagueness doctrine is inapplicable because the Voting Laws do not regulate voter  
9 conduct, and that even if the doctrine does apply, the purge provisions are not vague.  
10 (State Mot. at 15–16; State Reply at 39–42.)

11           “The void-for-vagueness doctrine . . . guarantees that ordinary people have ‘fair  
12 notice’ of the conduct a statute proscribes.” *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212  
13 (2018). Promise Arizona attempts to frame § 16-165 as a penal statute and asserts that “in  
14 order to avoid the punishment of being compared with the [Systematic Alien Verification  
15 for Entitlements] program, and subsequently, voter registration cancellation and criminal  
16 investigation, the voter is *prohibited* from giving county recorders *any* reason to believe  
17 that they are not a United States citizen.” (Promise Arizona Resp. at 4–5 (emphasis in  
18 original).) A penal law must “provide a reasonable opportunity to know what conduct is  
19 prohibited,” or be sufficiently definite as to not “allow arbitrary and discriminatory  
20 enforcement.” *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1019 (9th Cir.  
21 2010) (citation omitted); *see City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). As the  
22 Voting Laws are not penal in nature and do not address individual conduct, the Court will  
23 grant the State’s Motion on this claim.

24           First, § 16-165(I) is not penal, as “[i]t does not define the elements of an offense,  
25 fix any mandatory penalty, or threaten people with punishment if they violate its terms.”  
26 *United States v. Christie*, 825 F.3d 1048, 1064–65 (9th Cir. 2016); (*see* State Reply at  
27 40). Because the provision “is not a penal statute or anything like one,” it cannot be  
28 unconstitutionally vague. *Christie*, 825 F.3d at 1064 (“Justice Thomas, in his history of

1 the void-for-vagueness doctrine, cites one case in which the Supreme Court voided a  
2 vague statute that he classifies as non-penal.” *Id.* at 1064 n.5 (citing *Johnson v. United*  
3 *States*, 576 U.S. 591, 612 (2015) (Thomas, J., concurring in the judgment)).

4 Second, § 16-165(I) regulates county recorders, not registered voters. (State Reply  
5 at 39.) If a law “imposes neither regulation of nor sanction for *conduct*,” then “no  
6 necessity exists for guidance so that one may avoid the applicability of the law.” *Boutilier*  
7 *v. INS*, 387 U.S. 118, 123 (1967) (emphasis added). The void-for-vagueness doctrine is  
8 inapplicable to the fact of whether a voter is a citizen. *See Martinez-de Ryan v. Whitaker*,  
9 909 F.3d 247, 251 (9th Cir. 2018) (citing *Boutilier* to distinguish between conduct and a  
10 “status or condition”); *c.f. Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d  
11 1176, 1184 (9th Cir. 1988) (rejecting argument that a county charter’s grant of  
12 “unbounded discretion to schedule special elections in ‘appropriate circumstances’” was  
13 void for vagueness because “Appellants are not at risk of being punished for engaging in  
14 ill-defined *proscribed conduct*” (emphasis added)). And a statute “is not vague because it  
15 may at times be difficult to prove [a] . . . fact but rather because it is unclear as to what  
16 fact must be proved.” *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012)  
17 (citing *United States v. Williams*, 553 U.S. 285, 306 (2008)); *c.f. Kay v. Mills*, 490 F.  
18 Supp. 844, 850–52 (E.D. Ky. 1980) (finding statute void for vagueness because it did not  
19 notify a presidential candidate of what it meant to be “generally advocated and nationally  
20 recognized” in order to be placed on the preferential primary ballot). The void-for-  
21 vagueness doctrine is inapplicable, as the Voting Laws clearly require county recorders to  
22 investigate a registered voter’s citizenship status.<sup>20</sup>

23 Promise Arizona’s void-for-vagueness argument about § 16-165(A) fails for  
24 similar reasons. The county recorder must cancel a voter’s registration and refer the

25 <sup>20</sup> Even if the void-for-vagueness doctrine applies, § 16-165(I) is not unconstitutionally  
26 vague. The “reason to believe” standard in § 16-165(I) is not “so indefinite as to allow  
27 arbitrary and discriminatory enforcement,” but is common in statutory drafting. *See, e.g.*,  
28 15 U.S.C. § 56(b) (“Whenever the Commission has reason to believe that any person,  
partnership, or corporation is liable for a criminal penalty under this subchapter, the  
Commission shall certify the facts to the Attorney General . . . .”); 25 U.S.C. § 3206  
(permitting examinations and interviews of children whom law enforcement officials  
“have reason to believe” were abused).

1 matter for investigation only after (1) the county recorder “confirms”<sup>21</sup> that the voter is  
2 not a citizen, (2) the county recorder notifies the voter that her registration will be  
3 cancelled in 35 days unless the voter provides DPOC, and (3) the voter fails to provide  
4 DPOC. § 16-165(A)(10). The first two requirements do not regulate or sanction a voter’s  
5 conduct, while the third unambiguously informs voters that they must confirm their  
6 citizenship status within 35 days to avoid being de-registered and referred for criminal  
7 investigation.<sup>22</sup> (*See* State Reply at 39 (arguing § 16-165 regulates county recorders));  
8 *Boutilier*, 387 U.S. at 123.

9 The Court grants the State’s Motion on Promise Arizona’s void-for-vagueness  
10 claim.

### 11 **III. CONCLUSION**

12 The NVRA was designed to enhance eligible voter participation in federal  
13 elections and lawfully regulates presidential elections. The Court finds Section 6  
14 preempts H.B. 2492’s restrictions on presidential elections and mail-in voting. The Court  
15 also concludes that H.B. 2243’s systematic removal provisions violate the NVRA’s 90-  
16 day Provision. The Court also finds that the Voting Laws’ purge provisions are not  
17 unconstitutionally vague, yet there remain genuine issues of material fact as to whether  
18 the purge provisions violate the Civil Rights Act or enable Arizona to contravene Section  
19 8. Lastly, the Court finds that the LULAC Consent Decree precludes Arizona from  
20 enforcing H.B. 2492’s mandate to reject any State Form without accompanying DPOC.

21 The Checkbox Requirement does not violate the Materiality Provision as applied  
22 to individuals who submit a registration without DPOC. But the Court finds that Arizona

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23  
24 <sup>21</sup> Promise Arizona argues that § 16-165(A)(10) does not specify when a county recorder  
25 “‘confirms’, i.e., *believes*, that a registered voter is not a U.S. citizen.” (Promise Arizona  
26 Resp. at 6.) But the provision clearly sets forth the sources of information that may  
27 confirm a registrant’s non-citizenship.

28 <sup>22</sup> Promise Arizona’s argument that these provisions empower county recorders to  
“decide” when to subject voters to “criminal liability” is unpersuasive. (Promise Arizona  
Resp. at 5.) County recorders only notify the attorney general of cancelled voter  
registrations for “*possible* investigation.” § 16-165(A)(10) (emphasis added). It is the  
attorney general who investigates and must subsequently “prosecute individuals who are  
found not to be United States citizens” and who registered to vote “knowing” that they  
are “not entitled to such registration.” *See* A.R.S. §§ 16-143(D), 16-182(A).



1 may not reject a voter registration that does not contain a checkmark in the box next to  
2 the question regarding citizenship when the person provides DPOC and is otherwise  
3 eligible to vote. There remain genuine issues of material fact as to the materiality of a  
4 person's place of birth in determining eligibility to vote and whether the Birthplace  
5 Requirement violates the Materiality Provision.

6 **IT IS ORDERED** granting Plaintiffs' Cross-Motion for Summary Judgment that  
7 Section 6 of the NVRA preempts H.B. 2492's restriction on registration for presidential  
8 elections and voting by mail (Doc. 391; Doc. 393);

9 **IT IS FURTHER ORDERED** granting Tohono O'odham Plaintiffs' Motion for  
10 Summary Judgment (Doc. 390) and declaring that A.R.S. § 16-123 references A.R.S. §  
11 16-579(A)(1) for a list of documents that satisfy the documentary proof of location of  
12 residence requirement in A.R.S. § 16-123. The reference to § 16-579(a)(1) provides  
13 examples of documents, but is not an exhaustive list of the documents, that can be used to  
14 satisfy A.R.S. § 16-123.

15 **IT IS FURTHER ORDERED** declaring that A.R.S. § 16-123 does not require  
16 tribal members or other Arizona residents to have a standard street address for their home  
17 to satisfy A.R.S. § 16-123.

18 **IT IS FURTHER ORDERED** declaring that in addition to the documents listed  
19 in A.R.S. § 16-579(A)(1), the following documents satisfy the requirement in A.R.S. §  
20 16-123:

21 o A valid unexpired Arizona driver license or nonoperating ID ("AZ-issued ID"),  
22 regardless of whether the address on the AZ-issued ID matches the address on the ID-  
23 holder's voter registration form and even if the AZ-issued ID lists only a P.O. Box.

24 o Any Tribal identification document, including but not limited to a census card,  
25 an identification card issued by a tribal government, or a tribal enrollment card,  
26 regardless of whether the Tribal identification document contains a photo, a physical  
27 address, a P.O. Box, or no address.

28 o Written confirmation signed by the registrant that they qualify to register

1 pursuant to A.R.S. § 16-121(B), regarding registration of persons who do not reside at a  
2 fixed, permanent, or private structure.

3 **IT IS FURTHER ORDERED** granting Plaintiffs' Cross-Motion for Summary  
4 Judgment that the Voting Laws violate Section 8(c) of the NVRA by allowing systematic  
5 cancellation of registrations within 90 days of an election (Doc. 393; Doc. 396);

6 **IT IS FURTHER ORDERED** declaring that Arizona must abide by the LULAC  
7 Consent Decree and register otherwise eligible State Form users without DPOC for  
8 federal elections;

9 **IT IS FURTHER ORDERED** denying the RNC's Motion for Summary  
10 Judgment as to whether Arizona can reject any State Form without accompanying DPOC  
11 (Doc. 397);

12 **IT IS FURTHER ORDERED** denying the State's Motion for Summary  
13 Judgment as to whether H.B. 2243 violates Section 8(a) by allowing unlawful  
14 cancellation of registrations (Doc. 364);

15 **IT IS FURTHER ORDERED** granting in part and denying in part the State's  
16 Motion for Summary Judgment as to whether the Voting Laws violate Section 8(b) by  
17 mandating nonuniform and discriminatory list maintenance procedures (Doc. 364);

18 **IT IS FURTHER ORDERED** denying as moot LUCHA's Cross-Motion for  
19 Summary Judgment under Sections 6 and 8(a) of the NVRA (Doc. 394);

20 **IT IS FURTHER ORDERED** granting in part and denying in part the State's  
21 Motion for Summary Judgment as to whether the Voting Laws violate the Materiality  
22 Provision of the Civil Rights Act by rejecting voter registrations that do not satisfy the  
23 Checkbox Requirement (Doc. 364);

24 **IT IS FURTHER ORDERED** declaring that Arizona may not reject a voter  
25 registration solely on the basis that the registration does not contain a checkmark in the  
26 box next to the question regarding citizenship, if the applicant provides DPOC and is  
27 otherwise eligible to vote;

28 **IT IS FURHTER ORDERED** denying the State's Motion for Summary

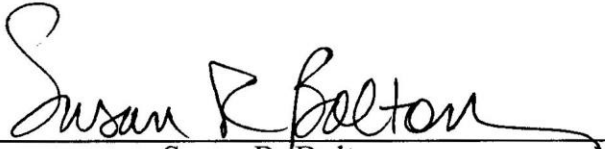
1 Judgment as to whether the Voting Laws' Birthplace Requirement violates the  
2 Materiality Provision of the Civil Rights Act (Doc. 364);

3 **IT IS FURTHER ORDERED** granting the State's Motion for Summary  
4 Judgment that the Voting Laws' purge provisions are not unconstitutionally vague (Doc.  
5 364);

6 **IT IS FURTHER ORDERED** denying as moot Poder Latinx's Motion for  
7 Summary Judgment as to whether the Voting Laws violate § 10101(a)(2)(A) of the Civil  
8 Rights Act by applying different standards or procedures to voters that the county  
9 recorder has reason to believe are non-citizens (Doc. 397);

10 **IT IS FURTHER ORDERED** denying as moot the parties' Motions and Cross-  
11 Motions for Summary Judgment as to whether there is a private right of action under  
12 § 10101 of the Civil Rights Act (Doc. 367; Doc. 397; Doc. 399).

13 Dated this 13th day of September, 2023.

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18 Susan R. Bolton  
19 United States District Judge  
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