

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

STRONG COMMUNITIES FOUNDATION OF
ARIZONA INCORPORATED

JAMES K ROGERS

v.

ARIZONA DEPARTMENT OF STATE, et al.

CRAIG A MORGAN

JENNIFER JAYNE WRIGHT
SHAYNA G STUART
JAKE TYLER RAPP
JUDGE BLANEY

ORDER

FINDINGS OF FACT

1. On October 28, 2024, the Court held an evidentiary hearing and trial on the merits in this matter. The Court received the evidence, heard the arguments of counsel, and observed the demeanor of the witnesses. The Court has since reviewed and considered the evidence, including the demeanor and credibility of the witnesses, and issues these findings of fact.

2. As the Court admonished the parties prior to and during the hearing, the issue for the Court to decide is whether the records that Plaintiff requested must be released pursuant to Arizona's public records law. Despite the political undertones, this is simply a public records case.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

3. Strong Communities Foundation of Arizona, Incorporated, (“EZAZ.org”) a nonprofit organization in Arizona, filed a public records request (“PRR”) on September 17, 2024 with the Arizona Secretary of State’s Office seeking “a subset of the Statewide Voter Registration Database (VRDB) that contains only those registered (active and inactive) voters that have been identified by the Secretary of State as registrants ‘who first obtained their Arizona driver’s license before October 1996 and then were issued a duplicate replacement before registering to vote sometime after 2004’ that may be moved from the ‘full-ballot’ voter registration list to the ‘federal-only’ voter registration list, if the Maricopa County Recorder’s anticipated lawsuit is successful.”

4. In other words, the PRR sought the complete list of all voters affected by a glitch between the systems of the Motor Vehicles Division and the Arizona Secretary of State’s Office (AZSOS) whereby some voters had been “automatically, but incorrectly, understood by voter registration systems to have provided” Documentary Proof of Citizenship (DPOC). *Richer v. Fontes*, No. CV-24-0221-SA, 2024 WL 4299099, at *2 (Ariz. Sept. 20, 2024). These individuals are hereinafter referred to as “Affected Voters.”

5. On September 24, 2024, Secretary of State Adrian Fontes (“Secretary Fontes”), notified EZAZ.org through counsel that the PRR would not be fulfilled prior to the 2024 General Election, citing, among other things, concerns for the safety of voters, and concerns about the accuracy of the list. Plf. Ex. 2. The letter neither invoked the Driver’s Privacy Protection Act (DPPA), 18 U.S.C. §§ 2721 *et seq.*, as a reason for withholding the records, nor the DPPA’s state counterpart, A.R.S. §§ 28-455, -456.

6. On September 26, 2024, EZAZ.org was notified through the Secretary’s NextRequest – Modern FOIA & Public Records Request online portal, that EZAZ.org’s PRR was “closed”. Plf. Ex. 3. The following message was also added to the NextRequest file on the same date: “We are writing to inform you that our response was released on 09/23/2024, and your request has been closed.”

7. Merissa Hamilton, President of EZAZ.org, testified that after both receiving the letter and notification that her PRR was closed, she understood her PRR to have been denied.

8. **THE COURT FINDS** specifically that the letter of September 24, 2024 and the NextRequest closure of the file with an explanatory note stating that “our response was released” collectively constitute a denial of the PRR.

9. On October 2, 2024, EZAZ.org filed its *Verified Complaint for Statutory Special Action to Secure Access to Public Records*.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

10. EZAZ.org’s PRR was in response to both public reports and the subsequent Emergency Petition for Special Action filed by Maricopa County Recorder Stephen Richer (“Recorder Richer”) in the Arizona Supreme Court against Arizona Secretary of State Adrian Fontes (“Secretary Fontes”). The Recorder’s action sought to prevent a number estimated at the time to be approximately 98,000 voters from voting in state and local races (“Full-Ballot Voters”), and instead allowing them to only vote in the federal races (“Federal-Only Voters”), who had been inaccurately recorded as having provided satisfactory documentary proof of citizenship (“DPOC”) when registering to vote due to a system flaw. Def. Ex. 29 (Emergency Petition for Special Action (“Emergency Petition”), *Richer v. Fontes*, CV-24-0221 (Ariz. Sup. Ct.) (Sept. 17, 2024)).

11. In *Richer v. Fontes*, Secretary Fontes and Recorder Richer jointly admitted that “a flaw in the interface between ADOT’s driver licensing issuance process, and the statewide voter registration database... failed to maintain any indicator for election officials of the original issuance date [of the driver’s license] (i.e. that the original was not satisfactory evidence of DPOC).” Def. Ex. 30 ¶ 17. (Joint Stipulation of Facts (“JSOF”), *Richer v. Fontes*, CV-24-0221 (Ariz. Sup. Ct.) (Sept. 18, 2024)).

12. Secretary Fontes and Recorder Richer further admitted that this flaw would cause certain registrants to “be automatically, but inaccurately, understood by the voter registration systems to have provided DPOC,” *Id.* ¶ 18, and that “the Secretary of State worked with MVD to identify persons who: (a) registered to vote in Arizona for the first time or re-registered to vote in a new Arizona county on or after January 24, 2005, (b) used the number of their Arizona driver’s license or nonoperating identification license as DPOC when registering, and (c) the license number used as DPOC was first issued to the registrant before October 1, 1996.” *Id.* ¶ 19.

13. According to Secretary Fontes and Recorder Richer, “[a]s of September 18, 2024, the Secretary of State, thus far, has identified 97,928 registered voters who meet the foregoing criteria...” *Id.* ¶ 21.

14. In a press release dated October 3, 2024, Secretary Fontes noted that a “recent addition of approximately 118,000 people to the list of impacted registrants (originally thought to be approximately 98,000) was a result of including renewed and reinstated licenses in the MVD data pull of registrants that state officials now know may not have shown documentation sufficient to meet voter registration requirements.” Plf. Ex. 6 at 1.

15. The press release further noted that, among other things, “the AZ SOS has: Collected all available data from the MVD and, when able to do so, notified all election officials and the public of the situation; ... Sent every County Recorder in Arizona voter records from the initial MVD group with information that would enable SAVE database verification so the County

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

Recorders can begin conducting citizenship verification,... Engaged the Arizona Department of Health Services to provide copies of birth certificates for all possibly affected voters who were born in Arizona so their records reflect proper DPOC[.]” *Id.* at 1-2.

16. At the evidentiary hearing and bench trial before this Court, Secretary Fontes testified that the total number of individuals affected by the system error, and who are the subject of the PRR, was about 218,000.

17. He confirmed that he and the AZSOS possess the initial list of approximately 98,000 registered voters who have not been confirmed as providing DPOC. However, he denied that they possess a complete list of all 218,000 voters. He claimed that the press release’s reference to a complete list was because of hasty drafting and “unartful” language. He claimed that the AZSOS was not in possession of a list and that no such list of Affected Voters existed for the additional approximately 118,000 people who may not have shown sufficient DPOC.

18. Secretary Fontes maintained that MVD never provided him with a list that contains any personally identifiable information of the additional 118,000 Affected Voters.

19. However, Secretary Fontes provided inconsistent testimony on this point, initially denying that he even possessed a list of initial 98,000 voters, and then changing his testimony after returning from lunch. His testimony suggested that he lacked detailed familiarity with the AZSOS’s efforts with regard to the issue and with regard to the records in the possession of the AZSOS related to the 218,000 individuals.

20. Secretary Fontes also testified that much of the information contained in the voter registration database (VRDB) is derived from and originated from MVD records and that his office routinely responds to and releases copies of the entire VRDB, as such release is specifically provided for in Arizona law.

21. Secretary Fontes admitted that the VRDB contains a data field denoting whether a voter is a Federal-Only Voter who has failed to provide DPOC.

22. Ms. Hamilton confirmed this, testifying that her attorneys had used a PRR to obtain access to the VRDB on EZAZ.org’s behalf, that the AZSOS had produced 6,724,115 voter records on or around August 8, 2024, and that these records contained information about nearly 42,000 Federal-Only Voters.

23. Throughout the hearing, the Court did not receive any evidence of threats to Federal-Only Voters, and certainly no *credible* evidence of *specific* threats. The Secretary also testified that he was not aware of any specific threats to Federal-Only Voters.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

24. The parties agree that the full voter registration database is a public record and can legally be used to contact registered voters and conduct voter outreach.

25. Defendants offered Professor Robert Pape as an expert witness. The Court found that Professor Pape met the minimal requirements of Rule 702 and allowed him to offer his expert opinions. However, the Court gives only minimal weight to Professor Pape's testimony and/or report. As detailed below, much of Professor Pape's testimony focused on political violence trends nationally and contained no analysis of such trends in Arizona. Professor Pape admitted on cross-examination that he conducted no research specific to Arizona. Professor Pape offered little more than speculation that a release of the requested information would lead to violence or harassment and, again, only based this opinion on national statistics.

26. The credibility of Professor Pape's testimony and report was further diminished by what appeared to be gratuitous political bias in his report and in his testimony. The Professor's opinions regarding general political violence focused almost entirely on allegations of past and anticipated prospective violence from only one side of the political spectrum, and only related to former president Donald Trump. *See, e.g.,* Defendants' Exhibit 7 at 18, 19, 27-32. When questioned, Professor Pape failed to offer a credible explanation for a seemingly partisan emphasis on potential violence from only one end of the political spectrum.

27. Secretary Fontes and Professor Pape argued producing the list of 218,000 voters to EZAZ.org would expose those individuals to the risk of harassment and violence. However, the only evidence they presented was about generalized threats of elected-related political violence, most against elected officials. They failed to identify any specific threats of violence or harassment from EZAZ.org, and Ms. Hamilton's un rebutted testimony established that EZAZ.org does not condone violent or harassing behavior and carefully screens its members and volunteers to ensure that persons who do condone or participate in such behavior do not participate in the organization.

28. Prof. Pape testified that there was a potential of violence against voters who may be misidentified as "illegals", especially if the information was publicly released on the internet. Def. Ex. 7. However, Prof. Pape also testified he was unfamiliar with Arizona law, and did not realize that Arizona criminalizes releasing information from the VRDB on the internet.

29. In fact, Secretary Fontes later testified that his office had recently referred an individual to law enforcement for posting voter registration information online that he obtained from the Secretary's Office in violation of A.R.S. § 16-168(F). Def. Ex. 31.

30. Prof. Pape also testified he was unaware that the entire VRDB was not only a

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

public record, but specifically identifies each Federal-Only Voter.

31. Prof. Pape and Secretary Fontes provided no evidence that EZAZ.org had unlawfully and/or publicly released any portion of the VRDB, including information about Federal-Only Voters, despite EZAZ.org having access to the list of Federal-Only Voters.

32. Prof. Pape and Secretary Fontes presented no evidence that EZAZ.org had harassed or intimidated any individuals or voters, nor that EZAZ.org had organized protests at voting locations or otherwise unlawfully interfered with or prevented anyone from exercising the right to vote.

33. Secretary Fontes indicated that he was unaware of EZAZ.org submitting any challenges to voter registrations, and Ms. Hamilton testified that her organization does not submit challenges to voter registrations. However, Ms. Hamilton did testify that when EZAZ.org identifies ineligible individuals registered to vote through routine canvassing efforts, EZAZ.org will refer the individual to the Recorder's Office and provide them assistance in doing so.

34. Ms. Hamilton testified that EZAZ.org carefully screens all members before they are allowed to host events or canvass voters on behalf of EZAZ.org, including banning any individual with a history of violence or violent rhetoric from participating in EZAZ.org events or publicly representing themselves as members of EZAZ.org.

35. EZAZ.org also provides extensive training to ensure that voter canvassing efforts and providing public comments at government meetings is done in a friendly, welcoming, respectful manner.

36. Ms. Hamilton further testified that she personally posts on the social media platform "X" multiple times a day, yet none of the evidence proffered by Defendants included any posts where Ms. Hamilton, or any member of EZAZ.org, had engaged in violent rhetoric or harassing behavior.

37. Ms. Hamilton testified that EZAZ.org would not oppose an order that prevented EZAZ.org from distributing the list to any third parties other than the 15 county recorders, the Senate President, Speaker of the House, and members of the Senate and House Elections Committees. Ms. Hamilton further agreed that EZAZ.org would not oppose an order that required EZAZ.org to obtain the written assurances of the approved recipients that the list will not be further distributed before she released the list to any of the parties permitted by the Court to obtain a copy of the list.

38. Secretary Fontes argued that providing the list of 218,000 Affected Voters would

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

necessarily lead to violence – even sure death – of one or more Affected Voters, even if this Court specifically ordered that EZAZ.org could only distribute the list of Affected Voters to county recorders, leadership for the Arizona state legislature, and the Arizona Senate and House Elections Committee. The Secretary’s claims were not credible and not supported by evidence.

39. Secretary Fontes testified it was his opinion that, if provided with a copy of the list of Affected Voters, elected members of the Arizona Legislature would undoubtedly provide the list to third party groups with the specific intent to encourage third party groups to engage in violent or harassing behavior, resulting in possible death or injury. The Secretary’s claims were not credible and not supported by evidence.

40. The Secretary avowed to the Court during his testimony that he will comply with whatever ruling this Court issues on the present dispute.

CONCLUSIONS OF LAW

1. Pursuant to the Arizona Public Records Law, A.R.S. §§ 39-121 *et seq.*, the public has a right to inspect public records. A.R.S. § 39-121.01(D). Arizona recognizes a well-established presumption favoring disclosure of public records. *Griffis v. Pinal County*, 215 Ariz. 1, 4, ¶ 8 (2007). Thus, the public official seeking to withhold public records from disclosure bears the burden of overcoming the presumption favoring disclosure. *KPNX-TV v. Superior Court*, 183 Ariz. 589, 592 (App. 1995). “To justify denying access to public records, the public official must demonstrate specifically how production of the records would violate rights of privacy or confidentiality or would be detrimental to the best interests of the state.” *Id.*

2. Under Arizona law, “lists and information derived from registration forms may be used only for purposes relating to a political or political party activity, a political campaign or an election, for revising election district boundaries or for any other purpose specifically authorized by law” and the Secretary must release the list “within thirty days from receipt of the request[.]” A.R.S. § 16-168(E).

3. Under Arizona law, the lists include the name, party preference, date of registration, residence address, mailing address, zip code, telephone number, birth year, occupation, voting history, and data related to early voters. A.R.S. § 16-168(C)(1)-(11).

4. **THE COURT FINDS** specifically that the information that the Plaintiff requested in its PRR qualifies as a “public record” subject to mandatory and prompt disclosure under the Public Records Law because it has a “substantial nexus” to the Defendants’ official duties and activities in connection with the conduct and administration of elections in Arizona. *See Griffis*, 215 at 4 ¶ 10.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

5. A public records request need not be presented in any particular format or use any specific phrasing. A.R.S. § 39-121.01(D)(1).

6. To effectuate the purpose of Arizona’s strong presumption of disclosure, it is within the discretion of this Court to adjust a public records request to balance the interests of the state and the interests of the party seeking the public record.

7. There is no exception under the Public Records Law for “imperfect or unreliable” information. An agency cannot withhold records because it believes that these records contain imperfect or unreliable information. Indeed, when public agencies make mistakes, the public has an even greater interest in the disclosure of such information.

8. A public agency or official subject to the Public Records Law attempting to withhold records on the basis of privacy must demonstrate “*specifically* how production of the records would violate rights of privacy or confidentiality or would be detrimental to the best interests of the state[.]” *KPNX-TV*, 183 Ariz. at 592 (emphasis added).

9. At several points during his testimony, the Secretary argued that he would withhold the requested information if his act of withholding “could save just one life,” or words to that effect. Putting aside the lack of any evidence that any individual’s life was in danger, the Court rejects the Secretary’s broad reading of the “best interests of the state” exception. If the Court were to adopt this standard – that a public official may withhold public records whenever he subjectively believes such withholding could somehow “save even one life” – the Court would be adopting an impermissibly broad, arbitrary standard where the best interest of the state exception swallows the entirety of the Arizona Public Records law.

10. Although the Defendants provided testimony as to generalized political threats in the current environment, they did not provide any evidence demonstrating that the Plaintiff has or will engage in activities that would jeopardize the safety, security, or voting rights of Arizonans. In contrast, the Plaintiff provided un rebutted testimony that not only a similar list of 42,000 Federal-Only Voters is currently available as a public record, but that EZAZ.org possesses that list and has not been implicated in any violations in the privacy or confidentiality rights of those voters.

11. The Defendants further proffered no evidence that EZAZ.org has ever weaponized information to harass or intimidate voters, conducted mass voter challenges, singled out voting locations to protest or harass voters, or subjected voters to threats.

12. Conversely, EZAZ.org provided un rebutted specific, credible evidence that it carefully vets and trains members, encourages a friendly environment, and has been a good steward

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

of private information, including the Federal-Only Voter list at its disposal.

13. In summary, the Court received no credible evidence that Plaintiff in this case or its agents and/or representatives will misuse the requested information, will encourage violence or harassment against any of the individuals identified in the requested lists, or will fail to diligently comply with the orders of this Court regarding dissemination of the information.

Driver Privacy Laws

14. It is a well-established principle in State and federal law that courts evaluating the decisions of administrative bodies can only consider the justifications that the body offered at the time it acted and may not consider *post hoc* rationalizations offered in litigation.¹ Because the Defendants failed to invoke the DPPA or its Arizona counterpart, A.R.S. §§ 28-455, -456 (the “Driver Privacy Laws”), in their refusal letter, they have likely waived any such argument here.

15. But even considering the Defendants’ late argument on this point, the Driver Privacy Laws do not foreclose disclosure here.

16. As an initial matter, Plaintiff in the present case is not seeking MVD records; Plaintiff is seeking records in the possession, custody, and/or control of the Secretary.

17. The Defendants’ argument boils down to the claim that voter information maintained by the Motor Vehicles Division (MVD) within the Arizona Department of

¹ See, e.g., *Shelby Sch. v. Arizona State Bd. of Educ.*, 192 Ariz. 156, 163 ¶¶ 21-22 (App. 1998) (findings made by the State Board of Education “must be explicit enough to allow the court to intelligently review the agency's decision and to decide whether there is a reasonable basis for the decision” and reversing Board decision because it had “failed to make basic findings of fact or conclusions of law”); *Arizona Corp. Comm'n v. Citizens Utilities Co.*, 120 Ariz. 184, 189 (App. 1978) (“judicial inquiry” into Corporation Commission order “must of necessity be exercised based upon the conditions as they existed at the time of the promulgation of the order under review” (citation omitted)); *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 231 Ariz. 366, 369 ¶ 12 (2013) (“judicial review of [board of adjustment] decisions is limited to the record before the board at the time of its decision”); see also, *DHS v. Regents of the Univ. of Calif.*, 140 S.Ct. 1891, 1907 (2020) (it is a “‘foundational principle of administrative law’ that judicial review of agency action is limited to ‘the grounds that the agency invoked when it took the action.’”) (quoting *Michigan v. EPA*, 576 U.S. 743, 758 (2015)); *Texas v. United States*, 40 F.4th 205, 226–27 (5th Cir. 2022) (“[A]n agency's action must be upheld, if at all, on the basis articulated by the agency itself, not reasons developed post hoc.” (cleaned up)); *United States v. Johnson*, 632 F.3d 912, 928 (5th Cir. 2011) (in assessing whether good cause exists, courts “must rely only on the ‘basis articulated by the agency itself’ at the time of the rulemaking. ‘Post hoc explanations’” do not suffice (cleaned up)); cf. *Rouse v. Scottsdale Unified Sch. Dist. No. 48*, 156 Ariz. 369, 373–74 (App. 1987) (holding that action by a school board should be reviewed the same way that of an administrative agency).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

Transportation (ADOT) constitutes information protected by the Driver Privacy Laws.

18. The Driver Privacy Laws forbid, subject to a number of exceptions, “[a] State department of motor vehicles and any officer, employee, or contractor thereof” from disclosing personal information “obtained by the department in connection with a motor vehicle record. 18 U.S.C. § 2721(a); *see also* A.R.S. § 28-455(A). Under those laws, a “‘motor vehicle record’ means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles.” 18 U.S.C. § 2725(1); *see also* A.R.S. § 28-440(8). The Defendants’ claims under the Driver Privacy Laws turn on whether the list provided by the MVD to the AZSOS constitutes “motor vehicle records” under the Driver Privacy Laws.

19. The Seventh Circuit has considered this question and concluded that such records are not motor vehicle records. The National Voter Registration Act (NVRA) “allows eligible citizens to register to vote while applying for a driver's license. Congress passed the NVRA to (1) make it easier to register to vote and (2) to help protect the integrity of the process by ensuring that accurate voter registration rolls are maintained.” *Lake v. Neal*, 585 F.3d 1059, 1060 (7th Cir. 2009). When a motorist applying for a driver’s license registers to vote at the same time, “[h]e fill[s] out and submit[s] a voter registration form ... attached to the driver's license application.” *Id.* The Seventh Circuit concluded that “[t]he plain language of both statutes [the DPPA and NVRA] makes it clear that a voter registration form filled out pursuant to the NVRA does not ‘pertain’ to any of the listed DMV documents.” *Id.* At 1061. This is because “[t]he voter registration form, which is filled out separately and at the applicant’s option, is not a part, member, accessory, or product of a motor vehicle operator’s permit. Other than the fact that it is filled out simultaneously with a driver’s license application, the voter form has nothing to do with, nor does it ‘pertain’ to, a motor vehicle operator's permit.” *Id.*

20. The Seventh Circuit’s reasoning is persuasive. The list provided by the MVD to the Defendants was a list of *voter* information, not *motorist* information, and, therefore, the Driver Privacy Laws do not apply. To hold otherwise “would ‘lead to an absurd result.’” *Id.* (*Castellon–Contreras v. INS*, 45 F.3d 149, 153 (7th Cir.1995)). Under the Absurdity Doctrine, Arizona courts interpret statutes to avoid absurd results. *Perini Land & Dev. Co. v. Pima Cnty.*, 170 Ariz. 380, 383 (1992). “A result is absurd if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion.” *State v. Estrada*, 201 Ariz. 247, 251 ¶ 17 (2001) (cleaned up). Under the interpretation urged by the Defendants, any voter information in the possession of the AZSOS that originated from the MVD would be protected by the Driver Privacy Laws and could not be disclosed as part of a Public Records Request or under the disclosure provisions of the NVRA, 52 U.S.C. § 20507(i), which require such records to be disclosed. Under the Defendants’ interpretation, county recorders would thus “likely be forced to stop accepting voter registration forms received from the [MVD]. That

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

would nullify an important purpose of the NVRA.” *Id.*

21. Furthermore, by its own terms, the DPPA only prohibits “[a] *State department of motor vehicles*, and any officer, employee, or contractor thereof” from sharing certain types of personal information. 18 U.S.C. § 2721(a) (emphasis added). Similarly, Arizona’s driver privacy law only prohibits the Arizona “[D]epartment [of Transportation]” from sharing certain types of personal information. A.R.S. § 28-455(a). Neither the MVD nor ADOT are parties to this case. The Driver Privacy Laws do not apply to Secretary Fontes or the AZSOS and, therefore, do not prohibit disclosure. *See Davis v. Freedom of Info. Comm'n*, 47 Conn. Supp. 309, 315–16, 790 A.2d 1188, 1192 (Super. Ct. 2001), *aff’d*, 259 Conn. 45, 787 A.2d 530 (2002) (holding that the DPPA and Connecticut’s equivalent state law “apply only to the commissioner of motor vehicles and motor vehicle records” and that the office of the tax assessor was required to release motor vehicle records in its possession because “[n]either the [DPPA] nor [the state statute] ... apply by their express terms to the office of the tax assessor”); *Atlas Transit, Inc. v. Korte*, 638 N.W.2d 625, 632–33 (Wis.App.2001) (“the DPPA does not prohibit the release of [names and commercial driver’s license numbers] by” the Milwaukee Public Schools because “the act applies only to the Department of Motor Vehicles” and because the DPPA’s purpose was “to stop the practice of many state departments of motor vehicles from the wholesale selling of personal information to third parties” and not to foreclose the type of public records request at issue in the case).

22. Even if they applied here, the Driver Privacy Laws include a number of exceptions that would allow for disclosure of the requested information. For example, they allow for the disclosure of records for “investigation in anticipation of litigation” or “pursuant to an order of a ... State ... court.” 18 U.S.C. § 2721(b)(4); *see also* A.R.S. § 28-455(C)(4). The Plaintiff has made clear that one purpose for which it seeks disclosure is for investigation in connection with litigation against the county recorders. Plaintiff’s Exhibit 1. Additionally, this Court has the authority under the Driver Privacy Laws to order the records’ release.

23. The Driver Privacy Laws also allow for disclosure “[f]or use in research activities ... so long as the personal information is not published, redisclosed, or used to contact individuals.” 18 U.S.C. § 2721(b)(5); *see also* A.R.S. § 28-455(C)(5). The purposes for which the Plaintiff has requested the records (to share with county recorders and State legislators) would also qualify under this exception.

24. **THE COURT FINDS** specifically that the Secretary has not established by a preponderance of the evidence that production of the records would violate rights of privacy or confidentiality or would be detrimental to the best interests of the state.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

Fees and Costs

25. Pursuant to A.R.S. §§ 12-341, 12-348, 12-2030, 39-121.02(B), the private attorney general doctrine, and other applicable law, Plaintiff is entitled to an award of attorneys' fees and costs.

Good cause shown, and in the Court's discretion:

IT IS ORDERED granting the relief sought in Plaintiff's *Verified Complaint for Statutory Special Action to Secure Access to Public Records* as follows:

- Defendants shall release to Plaintiff no later than **noon on Monday, November 4, 2024**, the original list of approximately 98,000 Affected Voters as specifically identified in *Richer v. Fontes*;
- Defendants shall release to Plaintiff no later than **noon on Monday, November 4, 2024**, any communications with county recorders that contain any datasets, compilation of information, list, or any portion of a list of Affected Voters or that otherwise contain PII of Affected Voters;
- Defendants shall release to Plaintiff no later than **noon on Monday, November 4, 2024**, any other datasets, compilation of information, lists, or communications from MVD containing personally identifying information (PII) about Affected Voters;
- Defendants shall release no later than **noon on Monday, November 4, 2024**, all communications or data transmissions between the Secretary of State's Office and the following government agencies that contain any dataset, compilation of information, list, or any portion of a list of Affected Voters or that otherwise contain PII of Affected Voters:
 - Governor's Office
 - Arizona Department of Transportation
 - Motor Vehicle Division
 - Arizona Department of Health Services
 - County Recorder's Offices
 - County Election Departments
 - Arizona Legislature
- Defendants shall release to Plaintiff no later than **noon on Monday, November 4, 2024**, whatever dataset, list, partial list, or compilation of information they relied upon when drafting and issuing the Secretary of State's October 3, 2024 Press Release. *See* Finding Nos. 14 and 15, above.
- Defendants may redact the datasets, compilations, and/or lists as necessary to prevent the release of information not typically made publicly available when releasing records pursuant to A.R.S. § 16-168, including redacting or withholding identifying

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-027778

10/31/2024

information of protected registrants.

IT IS FURTHER ORDERED that, prior to **November 6, 2024**, Plaintiff may only distribute lists or information that includes any personally identifiable information of any Affected Voters to Arizona County Recorders, the Senate President, the Speaker of the House, and members of the House and Senate Elections Committee.

IT IS FURTHER ORDERED that prior to releasing any information before November 6, 2024 to an approved party pursuant to this Order, the Plaintiff shall obtain written confirmation from each recipient that the Affected Voter information will not be distributed to any other individuals or groups.

IT IS FURTHER ORDERED that Plaintiff may not release any personally identifiable information of any Affected Voters to any other third parties **prior to November 6, 2024**.

IT IS FURTHER ORDERED that, **prior to November 6, 2024**, Plaintiff and its staff, members, volunteers, and affiliates may not knowingly canvass or contact any Affected Voter.

IT IS FURTHER ORDERED directing Plaintiff to prepare and lodge a form of Judgment on or before **November 15, 2024**. Plaintiff shall file any application for attorney's fees and statements of taxable costs by this deadline as well. Defendants shall file any objections or responses to the form of judgment or to the request for attorney's fees and costs no later than **November 29, 2024**. No replies will be permitted.

IT IS FURTHER ORDERED the Judgment shall contain Rule 54(c) language as upon resolving attorney's fees and costs, no further matters will remain pending.

/s/ HONORABLE SCOTT A. BLANEY

HONORABLE SCOTT A. BLANEY
JUDICIAL OFFICER OF THE SUPERIOR COURT