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16 *Attorneys for the United States*

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

19 Mi Familia Vota, et al.,
20 Plaintiffs,
21 v.
22 Adrian Fontes, et. al.,
Defendants.

Living United for Change in Arizona, et al.,
Plaintiffs,

v.

No. 2:22-cv-00509-SRB (Lead Case)
No. 2:22-cv-01124-SRB (Consolidated)

United States' Response to Motion to
Intervene

1 Adrian Fontes,
2 Defendant,
3 and
4 State of Arizona, et al.,
5 Intervenor-Defendants.

6 Poder Latinx, et al.,
7 Plaintiffs,
8 v.
9 Adrian Fontes, et al.
10 Defendants.

11 United States of America,
12 Plaintiff,
13 v.
14 State of Arizona, et al.,
15 Defendants.

16 Democratic National Committee, et al.,
17 Plaintiffs,
18 v.
19 Adrian Fontes, et al.,
20 Defendants,
21 and
22 Republican National Committee,
Intervenor-Defendant.

1 Arizona Asian American Native Hawaiian
2 and Pacific Islander for Equity Coalition,
3 Plaintiff,

4 v.

5 Adrian Fontes, et al.,
6 Defendants.

7 Promise Arizona, et al.,
8 Plaintiffs,

9 v.

10 Adrian Fontes, et al.,
11 Defendants.

12 Tohono O’odham Nation, et al.,

13 v.

14 Kris Mayes, et al.,
15 Defendants.

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UNITED STATES' RESPONSE TO MOTION TO INTERVENE

The United States does not oppose the April 4, 2023 motion to intervene by the Arizona Speaker of the House and the Arizona President of the Senate (the “Legislature”), to the extent it seeks permissive intervention. *See* Mot. at 11-12, ECF No. 348.

Arizona enacted H.B. 2492 in March 2022 and H.B. 2243 in July 2022. The United States and seven other groups sued the State and various officials to enjoin enforcement of certain provisions of these state laws. The State responded to the lawsuits by noting its intention to defend the challenged laws. *See, e.g.*, Letter from Mark Brnovich to Kristen Clarke (July 1, 2022), <https://perma.cc/SRP3-PYRB>. Attorney General Kris Mayes took office in January 2023, Mot. at 5, ECF No. 348, and has continued to litigate the matter.

On February 16, 2023, this Court denied the State Defendants’ motion to dismiss the United States’ claims, including those brought under Section 6 of the National Voter Registration Act (NVRA), 52 U.S.C. § 20505(a). ECF No. 304.

On April 17, 2023, the Arizona Attorney General’s Office sent a letter to counsel for all parties in this consolidated litigation to provide “some clarity” regarding the Attorney General’s “positions with respect to the claims and defenses asserted in this litigation.” *See* Ex. A, Letter from Hayleigh S. Crawford, Deputy Solicitor General, Off. of the Ariz. Att’y Gen., to All Counsel for All Parties (April 17, 2023). For example, the letter indicates that the Attorney General “does not intend to continue asserting as a defense to Plaintiffs’ claims that Congress lacks the power to regulate presidential

1 elections” since “[t]hat defense is foreclosed by binding authority.” *Id.* As such, the
2 letter indicated that “the State acknowledges that to the extent H.B. 2492 conditions
3 acceptance of the federal mail voter registration form for presidential election registration
4 on documentary proof of citizenship, it is preempted by the federal requirement that
5 States ‘accept and use’ the federal form” under the NVRA. *Id.* The letter advises that
6 “[t]he State further acknowledges that this ‘accept and use’ requirement under federal law
7 likewise preempts H.B. 2492 to the extent it conditions acceptance of the federal mail
8 voter registration form for federal election registration on documentary proof of
9 residence.” *Id.* The letter also notes that the Attorney General has “serious concerns
10 about the legality of conditioning access to early ballots for federal elections on the
11 provision of documentary proof of citizenship,” and that the Office “is continuing to
12 evaluate the defensibility of this provision of H.B. 2492.” *Id.* Aside from certain issues,
13 the letter indicates that the Attorney General “otherwise generally intends to continue
14 defending H.B. 2492 and H.B. 2243.” *Id.*

15 In light of the Arizona Attorney General’s April 17 representations, the United
16 States does not oppose the Legislature’s motion to intervene permissively under Rule
17 24(b). *See* Mot. at 11-12, ECF No. 348. Accordingly, the United States respectfully
18 suggests that the Court need not reach the Legislature’s arguments regarding intervention
19 as of right under Rule 24(a).

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1 Date: April 18, 2023

2 Respectfully submitted,

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13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on April 18, 2023, I electronically filed the foregoing with the Clerk
15 of the Court using the CM/ECF system, which will send notification of this filing to
16 counsel of record.

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