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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Mi Familia Vota, et al.,

Plaintiffs,

v.

Adrian Fontes, et al.,

Defendants.

No. CV-22-00509-PHX-SRB (Lead)

**DEFENDANTS ATTORNEY
GENERAL KRISTIN K. MAYES AND
STATE OF ARIZONA'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

AND CONSOLIDATED CASES.

No. CV-22-00519-PHX-SRB

No. CV-22-01003-PHX-SRB

No. CV-22-01124-PHX-SRB

No. CV-22-01369-PHX-SRB

No. CV-22-01381-PHX-SRB

No. CV-22-01602-PHX-SRB

No. CV-22-01901-PHX-SRB

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INTRODUCTION

In this consolidated action, eight lawsuits allege that parts of HB 2492 and HB 2243 enacted last year (“the Voting Laws”) violate various federal statutory and constitutional provisions.¹ Defendants State of Arizona and Attorney General Kristin K. Mayes (collectively “the State”)² respectfully ask the Court to decide the following issues as a matter of law—for one side or the other—at this stage:

- I. Whether the Voting Laws violate provisions in the National Voter Registration Act, 52 U.S.C. §§ 20501 *et seq.* (“NVRA”), for federal elections, namely:
 - A. The requirement that states “accept and use” the federal mail registration form;
 - B. The requirement that states’ programs for maintaining accurate registration lists be “uniform” and “nondiscriminatory”;
 - C. The limit on grounds for cancelling voter registrations; and
 - D. The requirement that states complete any systematic program for cancelling registrations 90 days before an election;
- II. Whether the Voting Laws violate the Materiality Provision of the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B), by requiring voters to:
 - A. Check a box affirming citizenship;
 - B. Provide proof of citizenship; and
 - C. List the state or country of birth;
- III. Whether the Voting Laws are unconstitutionally vague; and
- IV. How to interpret the proof of residence requirements in the Voting Laws—in particular, whether those requirements are as strict as some plaintiffs fear.

¹ The Court summarized the Voting Laws and recent Arizona history in an earlier ruling. (Doc. 304 at 2–10.) The State assumes the Court’s general familiarity with the Voting Laws and refers to specific parts of the laws throughout this motion.

² The Attorney General, in addition to being a named defendant, is the chief legal officer of the State and represents the State in federal court. A.R.S. §§ 41-192(A), 41-193(A)(3).

Given the complexity of this consolidated action, the State requests specific legal rulings below but does not attempt to explain how each ruling applies to each plaintiff's claims. Rather, the State requests that the Court issue rulings and then order the parties to submit a proposed order applying the rulings to each plaintiff's claims.

ARGUMENT

I. REQUESTED RULINGS ON NVRA CLAIMS

The NVRA requires that states do (and not do) certain things with respect to registering voters for federal elections. Below the State explains four such requirements and asks the Court to issue rulings accordingly.

A. Requirement that states “accept and use” federal mail registration form

NVRA § 6 is about registering voters by mail. Under this section, states must “accept and use” the federal mail registration form when registering voters for federal elections:

Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission . . . for the registration of voters in elections for Federal office.

52 U.S.C. § 20505(a)(1).³

Plaintiffs⁴ claim that this NVRA requirement preempts the Voting Laws, insofar as the Voting Laws require voters to submit documents *beyond* the federal mail registration form to register for federal elections. After careful review, the State agrees.⁵

The Voting Laws generally require voters to submit two types of documents: proof of citizenship and proof of residence. Each is discussed below.

³ This “accept and use” requirement is for the federal *mail* registration form because NVRA § 6 is about registering voters by mail. Other NVRA sections are about registering voters by other methods: namely, a driver's license application (§ 5) and in person (§ 7). Those other sections have similar requirements. For simplicity, the present motion focuses on NVRA § 6 rather than § 5 or § 7.

⁴ Here and below, “Plaintiffs” means “at least one plaintiff.”

⁵ The State's position on this issue has changed since the motion to dismiss stage, so the State explains its current position below. By explaining its position, the State does not intend to preclude any other defendant from expressing a different view.

scope of the NVRA’s “accept and use” requirement is limited to what states must do “for the *registration*” of voters. 52 U.S.C. § 20505(a)(1) (emphasis added). And registration under the NVRA occurs, at least arguably, when a voter is “able to cast a ballot.” *U.S. Student Ass’n v. Land*, 546 F.3d 373, 383–84 (6th Cir. 2008). Under that interpretation, a voter’s registration in Arizona does not depend on whether he or she can vote early by mail, because “voting by mail is simply one method by which Arizonans may choose to vote” and “Arizonans may also choose to vote in the traditional manner—by voting in person at a polling place.” *Mi Familia Vota v. Hobbs*, 608 F. Supp. 3d 827, 848 (D. Ariz. 2022).⁹

Requested ruling: To the extent the Voting Laws require voters to submit documents beyond the federal mail registration form to *register* for federal (presidential) elections, they are preempted by 52 U.S.C. § 20505(a)(1). However, to the extent the Voting Laws require voters to submit documents beyond the federal mail registration form to *vote early by mail* in federal elections, they are not preempted by 52 U.S.C. § 20505(a)(1).

2. Proof of residence

Under the Voting Laws, a voter must provide “an identifying document that establishes proof of location of residence” to register. A.R.S. § 16-123. Likewise, a voter is presumed registered upon completing a registration form that contains, among other things, “proof of location of residence.” A.R.S. § 16-121.01(A).

These provisions do not distinguish between federal and state registration forms or federal and state elections and therefore appear to require voters to submit documents beyond the federal mail registration form for federal elections. To that extent, these provisions are preempted by the NVRA’s requirement that states “accept and use” the federal form. *Inter Tribal*, 570 U.S. at 15.

Requested ruling: The Voting Laws are preempted by 52 U.S.C. § 20505(a)(1) to the extent they require voters to submit documents beyond the federal mail registration form to register for federal elections.

⁹ This is not to say the Voting Laws’ restrictions on early voting by mail violate no federal law. For example, this motion generally does not address Plaintiffs’ constitutional claims, because those claims involve questions of fact in addition to questions of law.

B. Requirement that states' programs for maintaining accurate registration lists be "uniform" and "nondiscriminatory"

NVRA § 8 is about how states administer voter registration. Under this section, a state's program for "maintain[ing]" an accurate registration list for federal elections must be "uniform" and "nondiscriminatory":

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office . . . shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965

52 U.S.C. § 20507(b)(1).

Plaintiffs claim that the Voting Laws violate this NVRA requirement because the Voting Laws treat some groups of voters differently from others. Plaintiffs identify three general ways in which the Voting Laws treat some groups of voters differently:

(1) at the front end, preventing some voters (such as those who do not provide evidence of citizenship) from registering or being able to vote early by mail;

(2) during or after registration, referring some voters (such as those identified as noncitizens) for investigation; and

(3) after registration, cancelling registration of some voters (such as those identified as be noncitizens).¹⁰

The first and second categories of differential treatment, however, do not violate the NVRA's "uniform" and "nondiscriminatory" requirement for a simple reason: That NVRA requirement does not apply to the front-end registration process at all. Nor does it apply to referrals for investigations. Rather, by its terms, the requirement merely governs states' programs for "maintenance" of existing registration lists. 52 U.S.C. § 20507(b)(1). Legislative history confirms that the requirement was simply intended "to prohibit selective

¹⁰ To illustrate these distinctions, consider the DNC's complaint. The DNC claims that HB 2492 violates the NVRA's "uniform" and "nondiscriminatory" requirement for certain federal-only voters, by (1) excluding them from presidential elections and from voting early by mail, (2) singling them out for investigation and potential prosecution, and (3) singling them out for registration cancellation. Case 2:22-cv-01369-SRB, Doc. 1, ¶ 75.

1 or discriminatory *purge* programs.” S. REP. No. 103-6, 103rd Cong., at 31 (1993)
 2 (emphasis added).

3 The third category of differential treatment—cancelling voter registration—requires
 4 closer analysis. It is true that the NVRA’s “uniform” and “nondiscriminatory” requirement
 5 is intended to prohibit *some* differential treatment when cancelling voter registration. The
 6 question is: which differential treatment?

7 Here, too, legislative history is useful. “The term ‘uniform’ is intended to mean that
 8 any purge program or activity must be applied to an entire jurisdiction.” S. REP. No. 103-
 9 6, 103rd Cong., at 31 (1993). And “[t]he term ‘non-discriminatory’ is intended to mean
 10 that the procedure complies with the requirements of the Voting Rights Act of 1965.” *Id.*¹¹

11 The questions, then, is whether the registration cancellation provisions in the Voting
 12 Laws (1) are non-uniform, i.e., apply to less than an entire jurisdiction, or (2) are
 13 discriminatory, i.e., violate the Voting Rights Act of 1965. At least on the face of the Voting
 14 Laws, the answer is no.¹²

15 ***Requested ruling:*** To the extent the Voting Laws treat some groups of voters
 16 differently during the registration process or refer some voters for investigation, such
 17 differences do not violate 52 U.S.C. § 20507(b)(1). In addition, the registration cancellation
 18 provisions in the Voting Laws are not, at least on their face, non-uniform or discriminatory
 19 within the meaning of 52 U.S.C. § 20507(b)(1).

20 **C. Limit on grounds for cancelling voter registrations**

21 NVRA § 8 also limits the grounds on which states may cancel voter registrations for
 22 federal elections. Specifically:

25 ¹¹ Elsewhere in the NVRA, Congress explained that “discriminatory and unfair registration
 26 laws and procedures can . . . disproportionately harm voter participation by various groups,
 including racial minorities.” 52 U.S.C. § 20501(a)(3).

27 ¹² Because discovery is ongoing, the State takes no position at this time on whether the
 28 registration cancellation provisions in the Voting Laws, *as applied*, result in a non-uniform
 or discriminatory program for maintaining accurate registration lists.

In the administration of voter registration for elections for Federal office, . . . the name of a registrant may not be removed from the official list of eligible voters except

. . . at the request of the registrant;

. . . as provided by State law, by reason of criminal conviction or mental incapacity; or

. . . as provided under . . . a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of . . . the death of the registrant; or . . . a change in the residence of the registrant

52 U.S.C. § 20507(a)(3)–(4).

Plaintiffs claim that the Voting Laws violate this NVRA provision because the Voting Laws require cancelling a voter’s registration for reasons not specified in the NVRA—most notably, when the voter is found not to be a U.S. citizen. *See* A.R.S. § 16-165(A)(10) (“The county recorder shall cancel a registration . . . [w]hen the county recorder obtains information pursuant to this section and confirms that the person registered is not a United States citizen”).¹³

The problem with Plaintiffs’ argument is that U.S. citizenship is a basic requirement for voting. Ariz. Const., art. VII, § 2; *see also Inter Tribal*, 570 U.S. at 6 (“To be eligible to vote under Arizona law, a person must be a citizen of the United States.”). And the NVRA does not prohibit Arizona from cancelling registrations of voters who do not meet such requirements.

The Sixth Circuit reached a similar conclusion in *Bell v. Marinko*, 367 F.3d 588, 591–92 (6th Cir. 2004). The court explained that “[i]n creating a list of justifications for removal, Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place.” *Id.* Rather, the NVRA “protects only ‘eligible’ voters from unauthorized removal.” *Id.*

¹³ Notably, before the county recorder may cancel registration, the recorder must notify the voter of the anticipated cancellation and give the voter a 35-day opportunity to cure the problem by providing “satisfactory evidence of citizenship.” A.R.S. § 16-165(A)(10).

1 A district court reached the same conclusion in *United States v. Florida*, 870 F. Supp.
 2 2d 1346, 1349–50 (N.D. Fla. 2012). The court explained that the NVRA’s limits on the
 3 grounds for cancelling registration were intended to address “grounds that typically arise
 4 *after* an initial proper registration.” *Id.* at 1350. In other words, “Congress was not
 5 addressing the revocation of an improperly granted registration of a noncitizen.” *Id.* Thus,
 6 the NVRA provision “simply does not apply to an improperly registered noncitizen.” *Id.*

7 A contrary conclusion would yield an absurd result. Preventing states from
 8 cancelling registration of voters found not to be U.S. citizens “would effectively grant, and
 9 then protect, the franchise of persons not eligible to vote.” *Bell*, 367 F.3d at 592. That
 10 result would also undermine the NVRA’s stated purpose “to establish procedures that will
 11 increase the number of *eligible citizens* who register to vote in elections for Federal office”
 12 and “to ensure that *accurate* and current voter registration rolls are maintained.” 52 U.S.C.
 13 § 20501(b)(1), (b)(4) (emphases added). This Court should “favor an interpretation of a
 14 statute that furthers and does not obstruct the statute’s purpose.” *United States v. Prasad*,
 15 18 F.4th 313, 322 (9th Cir. 2021).¹⁴

16 ***Requested ruling:*** The Voting Laws do not violate 52 U.S.C. § 20507(a)(3) or (4).

17 **D. Requirement that states complete any systematic program for cancelling**
 18 **registrations 90 days before election**

19 NVRA § 8 also generally requires states to complete any program for systematically
 20 cancelling voter registrations at least 90 days before a federal election (sometimes referred
 21 to as the 90-day “quiet period”). Specifically:

22 A State shall complete, not later than 90 days prior to the date of a primary
 23 or general election for Federal office, any program the purpose of which is

24
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 26 ¹⁴ In addition, interpreting the NVRA as prohibiting states from cancelling registrations of
 27 ineligible voters would raise constitutional concerns. *See Inter Tribal*, 570 U.S. at 16–17
 28 (observing that “the Elections Clause empowers Congress to regulate *how* federal elections
 are held, but not *who* may vote in them,” and that “it would raise serious constitutional
 doubts if a federal statute precluded a State from obtaining the information necessary to
 enforce its voter qualifications”).

1 to systematically remove the names of ineligible voters from the official lists
2 of eligible voters.

3 52 U.S.C. § 20507(c)(2)(A). The NVRA clarifies, however, that states may still cancel a
4 voter’s registration during the 90-day quiet period (1) when the voter so requests, (2) when
5 the voter becomes ineligible because of criminal conviction or mental incapacity, (3) when
6 the voter dies, or (4) for “correction of registration records.” *Id.* § 20507(c)(2)(B).

7 Plaintiffs claim that the Voting Laws violate this NVRA provision because the
8 Voting Laws require cancelling a voter’s registration on certain grounds *without* specifying
9 a time limit—again, most notably, when the voter is found not to be a U.S. citizen. *See*
10 A.R.S. § 16-165(A)(10) (“The county recorder shall cancel a registration . . . [w]hen the
11 county recorder obtains information pursuant to this section and confirms that the person
12 registered is not a United States citizen . . .”).¹⁵

13 However, as explained above, U.S. citizenship is a basic requirement for voting, and
14 the NVRA does not prohibit states from cancelling registrations of voters who do not meet
15 such requirements. *Bell*, 367 F.3d at 591–92; *Florida*, 870 F. Supp. 2d at 1349–50. And
16 this interpretation of the NVRA’s limit on *grounds* for cancellation should apply equally to
17 the NVRA’s limit on *time* for cancellation. In other words, if the limit on grounds for
18 cancellation does not prohibit states from cancelling registrations for noncitizens, neither
19 should the 90-day quiet period. The district court in *Florida* reached this very conclusion,
20 explaining as follows:

21 During the 90-day quiet period, a state may pursue a program to
22 systematically remove registrants on request or based on a criminal
23 conviction, mental incapacity, or death, but not based on a change of
24 residence. What matters here is this: ***none of this applies to removing***
25 ***noncitizens who were not properly registered in the first place.*** . . . [T]he
NVRA does not require a state to allow a noncitizen to vote just because the
state did not catch the error more than 90 days in advance.

26 870 F. Supp. 2d at 1350 (emphasis added).

27 ¹⁵ Again, before the county recorder may cancel registration, the recorder must notify the
28 voter of the anticipated cancellation and give the voter a 35-day opportunity to cure the
problem by providing “satisfactory evidence of citizenship.” A.R.S. § 16-165(A)(10).

For this reason, the Voting Laws do not violate the NVRA’s 90-day quiet period. In the alternative, however, the Court could simply interpret the Voting Laws as including the 90-day quiet period. Related provisions of Arizona law show an intent to harmonize with the NVRA. *See* A.R.S. § 16-168(J) (directing Secretary of State to maintain registration database including “provisions regarding removal of ineligible voters that are consistent with the national voter registration act”). And “[s]tate and federal laws should be accommodated and harmonized where possible so that preemption can be avoided.” *Unocal Corp. v. Kaabipour*, 177 F.3d 755, 769 (9th Cir. 1999).

Requested ruling: The Voting Laws do not violate 52 U.S.C. § 20507(c)(2)(a).

Requested alternative ruling: To the extent the Voting Laws contain programs to systematically cancel registrations of ineligible voters for federal elections, those programs must not be in effect during the 90 days prior to the date of the federal elections at issue.

II. REQUESTED RULINGS ON MATERIALITY PROVISION CLAIMS

The Civil Rights Act prohibits states from denying the right to vote based on an error or omission in an application that is “not material in determining” the person’s eligibility:

No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

52 U.S.C. § 10101(a)(2)(B). This is sometimes referred to as the Materiality Provision.

Enacted in 1964, the Materiality Provision was deemed “necessary to sweep away such tactics as disqualifying an applicant who failed to list the exact number of months and days in his age.” *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1173 (11th Cir. 2008) (citation omitted). “Such trivial information served no purpose other than as a means of inducing voter-generated errors that could be used to justify rejecting applicants.” *Id.*

Plaintiffs claim that the Voting Laws violate the Materiality Provision by requiring voters to submit immaterial information. Plaintiffs identify three such categories of

information. Below the State asks the Court to issue rulings on each.¹⁶

A. Checking a box to affirm citizenship

The Voting Laws require prospective voters to check the box on the registration form that affirms he or she is a U.S. citizen. A.R.S. § 16-121.01(A). This requirement applies to state registration forms and federal registration forms. *Id.*¹⁷

On the federal form, the box is at the top, and below it is an instruction in bold and red font: “**If you checked ‘No’ . . . , do not complete form.**” Here is a picture:

SOF ¶ 4 & Ex. C at 4, 6.

On the state form, the box is above the signature line, and next to it is an instruction in red font: “**If you checked ‘No’ . . . , DO NOT submit this form.**” Here is a picture:

¹⁶ Several courts hold that only the United States (not private citizens) can enforce the Materiality Provision. *E.g.*, *McKay v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000). Here, because the United States is among the plaintiffs asserting a Materiality Provision claim and the Court ruled at the motion to dismiss stage that it “need not decide whether there is a private right of action under § 10101” (Doc. 304 at 32), the State does not seek summary judgment on this issue. The State does not waive any rights regarding this issue and does not intend to preclude any other defendant from seeking summary judgment on the issue.

¹⁷ If the applicant does not check the box, the county recorder must notify the applicant of the missing information within 10 business days and must state that the registration cannot be completed until the information is supplied. A.R.S. § 16-134(B).

1 SOF ¶ 6 & Ex. D at 1.

2 Requiring a voter to check this box does not violate the Materiality Provision. The
3 check box is “material in determining” the voter’s eligibility, 52 U.S.C. § 10101(a)(2)(B),
4 because U.S. citizenship is a requirement for voting in Arizona, Ariz. Const., art. VII, § 2.

5 Moreover, the check box has long existed on both forms. In 2002, Congress placed
6 the box on the federal form and specified that, if the applicant fails to answer, the applicant
7 must be notified and given an opportunity to complete it. 52 U.S.C. § 21083(b)(4)(A), (B).
8 Likewise, in 2003, Arizona placed the box on the state form, and in 2004, Arizona specified
9 that checking the box was a condition for being “presumed to be properly registered.” SOF
10 ¶¶ 7–8 & Exs. E & F. The Voting Laws simply go one step further and state that the voter
11 “must” check the box to be registered. A.R.S. § 16-121.01(A).

12 Plaintiffs nevertheless argue that checking the box is immaterial on the federal form
13 because the voter already attests to his or her U.S. citizenship by signing under penalty of
14 perjury at the bottom. And Plaintiffs argue that checking the box is immaterial on both
15 forms, to the extent the voter is already required to submit proof of citizenship.

16 These arguments fail for two reasons. First, Plaintiffs are confusing the concepts of
17 “immaterial” and “duplicative.” The Materiality Provision is aimed at the former problem
18 only. As one district court put it: “Even if the check-boxes were duplicative of the oath,
19 failing to check one or more boxes would not be an immaterial omission” *Diaz v.*
20 *Cobb*, 435 F. Supp. 2d 1206, 1213 (S.D. Fla. 2006).

21 Second, the check boxes are *not* duplicative of other parts of the registration process.
22 True, the check boxes may ultimately seek content (the voter’s citizenship status) that is
23 being provided elsewhere. But they still serve a useful role by seeking it in a different way.
24 For example, a mortgage document may seek to confirm that a purchaser agrees, by
25 including a space for her signature on one page and another space for her initials on another
26 page. Or a survey may seek to confirm that the respondent is answering consistently, by
27 asking a question one way at the beginning and then asking a reworded version at the end.
28 The point is: “Since the information conveyed by checking the check-boxes is different in

1 nature from (albeit similar in content to) that conveyed by signing the oath, checking one
2 or more check-boxes is not duplicative of signing the oath.” *Diaz*, 435 F. Supp. 2d at 1213.

3 ***Requested ruling:*** Requiring voters to check a box affirming their citizenship does
4 not violate 52 U.S.C. § 10101(a)(2)(B).

5 **B. Providing proof of citizenship**

6 As explained above, the Voting Laws require prospective voters to provide
7 “satisfactory evidence of citizenship” to register for federal elections and to vote early by
8 mail. *See* A.R.S. §§ 16-121.01(D), (E), 16-127(A). In addition, the Voting Laws require
9 prospective voters to provide “satisfactory evidence of citizenship” to register for state
10 elections. *Id.* § 16-121.01(C).¹⁸

11 Requiring voters to provide proof of citizenship does not violate the Materiality
12 Provision. As with the check box, proof of citizenship is “material in determining” the
13 voter’s eligibility, 52 U.S.C. § 10101(a)(2)(B), because U.S. citizenship is a requirement
14 for voting in Arizona, Ariz. Const., art. VII, § 2.

15 Indeed, when Arizona began requiring proof of citizenship in 2004, Judge Silver
16 decided this very question: “Citizenship is material in determining whether an individual
17 may vote and Arizona’s decision to require more proof than simply affirmation by the voter
18 is not prohibited.” *Gonzalez v. Arizona*, No. CV 06-1268-PHX-ROS, 2007 WL 9724581,
19 at *2 (D. Ariz. Aug. 28, 2007).

20 ***Requested ruling:*** Requiring voters to provide proof of citizenship does not violate
21 52 U.S.C. § 10101(a)(2).

22 **C. Listing state or country of birth**

23 Since 1979, Arizona’s voter registration form has had a space for prospective voters
24 to write their “state or country of birth.” SOF ¶ 9 & Ex. G. Before the Voting Laws, the
25 voter’s birth place was not among the information required for the voter to be “presumed to

26 _____
27 ¹⁸ For state forms, if the applicant does not provide proof of citizenship, the county recorder
28 must notify the applicant of the missing information within 10 business days and must state
that the registration cannot be completed until the information is supplied. A.R.S. § 16-
134(B). For federal forms, the process is different. *See* A.R.S. §§ 16-121.01(E), 16-127(A).

1 be properly registered.”¹⁹ Now, however, it is. *See* A.R.S. § 16-121.01(A).²⁰

2 The State acknowledges that the materiality of a voter’s birth place is less obvious
3 than the materiality of a voter checking the citizenship box or providing proof of citizenship.
4 But a voter’s birth place is material in at least one sense: it is information that can help
5 confirm the voter’s identity.

6 For example, the U.S. State Department in its Foreign Affairs Manual has long
7 required passport applicants to provide their birth place because “it is an integral part of
8 establishing an individual’s identity” and it “distinguishes that individual from other
9 persons with similar names and/or dates of birth, and helps identify claimants attempting to
10 use another person’s identity.” SOF ¶¶ 10–11 & Ex. H. Likewise, nine states other than
11 Arizona include birthplace on their registration forms, and four states other than Arizona
12 appear to require it. *See* SOF ¶¶ 12–13 & Ex. I.

13 More broadly, states often require voters to submit information that helps confirm
14 their identity. After all, “verifying an individual’s identity is a material requirement of
15 voting.” *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 841 (S.D. Ind. 2006).
16 True, there may be “other methods of proving identification,” but Arizona “is entitled to
17 make its own judgment as to which method(s) it wishes to employ.” *Id.* at 841 n.11. A
18 voter’s birth place—among the basic information required for a passport—is not the sort of
19 “trivial information” that serves “no purpose other than as a means of inducing voter-
20 generated errors that could be used to justify rejecting applicants.” *Fla. State Conf. of*
21 *NAACP*, 522 F.3d at 1173.

22 ***Requested ruling:*** Requiring voters to list their state or country of birth does not
23 violate 52 U.S.C. § 10101(a)(2).

24 ¹⁹ Before the Voting Laws, the information that *was* required for the voter to be “presumed
25 to be properly registered” was the voter’s name, residence address or location, date of birth,
26 signature, and a check in the box affirming citizenship. *See* A.R.S. § 16-121.01(A) (as of
27 2021).

28 ²⁰ If the applicant does not list his or her birth place, the county recorder must notify the
applicant of the missing information within 10 business days and must state that the
registration cannot be completed until the information is supplied. A.R.S. § 16-134(B).

1 III. REQUESTED RULING ON UNCONSTITUTIONAL VAGUENESS CLAIM

2 A statute can be unconstitutionally vague if it authorizes or encourages arbitrary and
3 discriminatory enforcement, *Hill v. Colorado*, 530 U.S. 703, 732 (2000), but vagueness
4 challenges are “strong medicine” to be used “sparingly and only as a last resort,” *Nat’l*
5 *Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998).

6 Here, one plaintiff group (Promise Arizona and Southwest Voter Registration
7 Education Project) claims that parts of the Voting Laws—A.R.S. § 16-165(A)(10) and (I)—
8 are unconstitutionally vague. *See* Case 2:22-cv-01602-SRB, Doc. 1, ¶ 139. Under these
9 laws, when a county recorder “confirms” that a registered voter is not a U.S. citizen, the
10 recorder must (1) give the voter 35 days to provide proof of citizenship, then (2) cancel
11 registration and notify the county attorney and attorney general for possible investigation.
12 A.R.S. § 16-165(A)(10). And, when a county recorder has “reason to believe” a registered
13 voter is not a U.S. citizen, the recorder must consult a federal database to verify citizenship
14 status. *Id.* § 16-165(I).

15 The Court did not address this claim at the motion to dismiss stage. (*See* Doc. 304.)
16 The Court should dispose of it now.

17 For starters, this is a vagueness challenge to a statute on its face (not as applied), and
18 no free speech rights are implicated. Thus, for the plaintiff group to prevail, the statute must
19 be “impermissibly vague in *all* its applications.” *Humanitarian L. Project v. U.S. Treasury*
20 *Dep’t*, 578 F.3d 1133, 1146 (9th Cir. 2009) (emphasis added). The statute is not vague in
21 *all* its applications, and the plaintiff group does not allege otherwise.

22 Further, even if free speech rights were implicated (thus triggering a more “relaxed”
23 legal standard), the plaintiff group would still need to have standing—i.e., “an actual or
24 imminent injury.” *See, e.g., Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010) (citation
25 omitted). But there is no indication that this plaintiff group (or its members) will experience
26 registration cancellation or investigation referral at all—much less wrongly. *Cf. San Diego*
27 *Cnty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1127–28 (9th Cir. 1996) (“general threat”
28 or “possibility of . . . eventual prosecution” is insufficient to establish standing).

Moreover, even if free speech rights were implicated *and* the plaintiff group had standing to challenge it, the vagueness challenge would still fail. The plaintiff group argues that the statutes do not specify how recorders “confirm” or acquire “reason to believe” that a voter is not a U.S. citizen. But even if the statute “adds some imprecise considerations,” that does not mean it is unconstitutionally vague. *Nat’l Endowment for the Arts*, 524 U.S. at 580. Indeed, such terms are common. *See, e.g.*, A.R.S. § 12-2042 (county attorney may bring quo warranto action “when he has reason to believe” office is unlawfully held).²¹

Requested ruling: The Voting Laws are not unconstitutionally vague.

IV. REQUESTED RULINGS ON PROOF OF RESIDENCE REQUIREMENTS

As mentioned above, the Voting Laws require prospective voters to provide “an identifying document that establishes proof of location of residence” to register. A.R.S. § 16-123. Likewise, a voter is presumed registered upon completing a registration form that contains, among other things, “proof of location of residence.” A.R.S. § 16-121.01(A). “Any of the identifying documents prescribed in [§ 16-579(A)(1)] constitutes satisfactory proof of location of residence.” A.R.S. § 16-123.

Some of Plaintiffs’ constitutional claims assume a strict interpretation of these laws. For example, the Tohono O’odham Nation claims that the laws require their members to obtain “a standard street address for their home.” Case 2:22-cv-01901-SRB, Doc. 21, ¶ 2.

The State does not interpret these laws so strictly, for several reasons.

First, although the Voting Laws state that any identifying document listed in A.R.S. § 16-579(A)(1) constitutes satisfactory proof of location of residence, the laws do not specify that such documents are the *only* acceptable proof.

Second, although the documents listed in A.R.S. § 16-579(A)(1) include an “address,” the statute does not specify that the address must be a “standard street address.” Indeed, the existing Arizona registration form contemplates that the requirement for a “residential address” may be satisfied by a description of the voter’s location or a hand

²¹ A Westlaw search indicates that the term “reason to believe” appears in Arizona law more than 100 times.

1 drawn map if the voter has no “traditional street address.” *See* SOF ¶ 6 & Ex. D box #3.

2 Third, the Voting Laws must be read in conjunction with A.R.S. § 16-121(B), which
3 provides that a person who is otherwise qualified to register “shall not be refused
4 registration or declared not qualified to vote because the person does not live in a permanent,
5 private or fixed structure.”

6 Fourth, “[f]ederal courts are required to accept a narrowing construction of a state
7 law in order to preserve its constitutionality.” *Voting for Am., Inc. v. Steen*, 732 F.3d 382,
8 396 (5th Cir. 2013).

9 Notably, near the end of last year, the Secretary of State’s office made a chart
10 explaining documents that could constitute proof of location of residence. SOF ¶¶ 14–15
11 & Ex. J. The State concurs with the Secretary.

12 The State requests that the Court issue rulings interpreting the proof of residence
13 requirements in the Voting Laws, to clarify the legal dispute that underlies some of
14 Plaintiffs’ constitutional claims. The State specifically requests the following rulings.

15 ***Requested ruling #1:*** Although the Voting Laws state that any identifying document
16 listed in A.R.S. § 16-579(A)(1) constitutes satisfactory proof of location of residence, the
17 Voting Laws do not specify that such documents are the *only* acceptable proof.

18 ***Requested ruling #2:*** The Voting Laws do not require tribal members to obtain a
19 standard street address for their home.

20 ***Requested ruling #3:*** The chart made by the Secretary of State’s office (at SOF Ex.
21 J) accurately explains documents that could constitute satisfactory proof of location of
22 residence under the Voting Laws.

23 CONCLUSION

24 The State respectfully requests that the Court issue the rulings described above and
25 then order the parties to submit a proposed order applying the rulings to Plaintiffs’ claims.

1 DATED this 8th day of May, 2023.

2 **FENNEMORE CRAIG, P.C.**

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