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15
16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF ARIZONA**

18 Mi Familia Vota, et al.,) No. 2:22-cv-00509-SRB
19)
Plaintiffs,) **DEFENDANT SECRETARY OF**
20) **STATE KATIE HOBBS' ANSWER**
v.) **TO PLAINTIFFS DEMOCRATIC**
21) **NATIONAL COMMITTEE AND**
Katie Hobbs, in her official capacity as) **ARIZONA DEMOCRATIC**
22) **PARTY'S COMPLAINT**
Arizona Secretary of State, et al.,)
23 Defendants.)
24
25
26

1 Living United for Change in Arizona, et al.,)
2)
3 Plaintiffs,)
4)
5 v.)
6)
7 Katie Hobbs, in her official capacity as)
8 Arizona Secretary of State, et al.,)
9 Defendants.)
10)

11 Poder Latinx, et al.,)
12)
13 Plaintiffs,)
14)
15 v.)
16)
17 Katie Hobbs, in her official capacity as)
18 Arizona Secretary of State, et al.,)
19 Defendants.)
20)

21 United States of America,)
22)
23 Plaintiff,)
24)
25 v.)
26)
27 Katie Hobbs, in her official capacity as)
28 Arizona Secretary of State, et al.,)
29 Defendants.)
30)

31 Democratic National Committee, et al.,)
32)
33 Plaintiffs,)
34)
35 v.)
36)
37 Katie Hobbs, in her official capacity as)
38 Arizona Secretary of State, et al.,)
39 Defendants.)
40)

1 Defendant Katie Hobbs, in her official capacity as Arizona Secretary of State
2 (“Secretary”) answers Plaintiffs Democratic National Committee and Arizona Democratic
3 Party’s (“Plaintiffs”) Complaint [Doc. 1, 2:22-cv-01369] as follows:

4 **INTRODUCTION**

5 1. Responding to Paragraph 1 of the Complaint, the Secretary admits that in
6 *Arizona v. Inter. Tribal Council of Arizona*, 570 U.S. 1 (2013), the U.S. Supreme Court struck
7 down Arizona’s attempt to require voter registration applicants using the Federal Form to
8 submit documentary proof of citizenship (“DPOC”) because it violated the NVRA, and lacks
9 knowledge or information sufficient to form a belief about the truth of the remaining
10 allegations in Paragraph 1.

11 2. Responding to Paragraph 2 of the Complaint, the Secretary admits that HB 2492
12 requires voter registration applicants to provide DPOC unless election officials can verify the
13 applicant’s citizenship using potentially inaccurate and outdated data and information sources
14 purporting to contain U.S. citizenship information; HB 2492 subjects voters to investigation
15 and possible prosecution based on such potentially inaccurate and outdated information; HB
16 2492 denies voters who have not submitted DPOC the right to vote in presidential elections or
17 to receive an early ballot by mail; and HB 2492 requires county recorders to cancel the voter
18 registration records of individuals when they “receive[] and confirm[] information that the
19 person registered is not a United States citizen.” The Secretary lacks knowledge or information
20 sufficient to form a belief about the truth of the remaining allegations in Paragraph 2.

21 3. Responding to Paragraph 3 of the Complaint, the Secretary admits that there is
22 no evidence of widespread voting by non-citizens in Arizona elections, and, in her view as the
23 Chief Election Officer for the State of Arizona, the challenged provisions in HB 2492 do not
24 advance any legitimate regulatory interest in ensuring free, fair, and secure elections, furthering
25 the orderly and efficient administration of elections, or preventing fraud in elections. The
26 Secretary lacks knowledge or information sufficient to form a belief about the truth of the

1 remaining allegations in Paragraph 3.

2 4. The Secretary lacks knowledge or information sufficient to form a belief about
3 the truth of the allegations in Paragraph 4.

4 5. Responding to Paragraph 5 of the Complaint, the Secretary admits that, in her
5 view as the Chief Election Officer for the State of Arizona, certain provisions of HB 2492
6 conflict with the NVRA, including by requiring documentary proof of citizenship (DPOC) to
7 register to vote in federal elections using the Federal Form. The Secretary lacks knowledge or
8 information sufficient to form a belief about the truth of the remaining allegations in Paragraph
9 5.

10 6. The Secretary lacks knowledge or information sufficient to form a belief about
11 the truth of the allegations in Paragraph 6.

12 **JURISDICTION AND VENUE**

13 7. The Secretary admits the allegations in Paragraph 7.

14 8. The Secretary admits the allegations in Paragraph 8.

15 9. The Secretary admits the allegations in Paragraph 9.

16 10. The Secretary admits the allegations in Paragraph 10.

17 **PARTIES**

18 11. The Secretary lacks knowledge or information sufficient to form a belief about
19 the truth of the allegations in Paragraph 11.

20 12. The Secretary lacks knowledge or information sufficient to form a belief about
21 the truth of the allegations in Paragraph 12.

22 13. The Secretary lacks knowledge or information sufficient to form a belief about
23 the truth of the allegations in Paragraph 13.

24 14. The Secretary lacks knowledge or information sufficient to form a belief about
25 the truth of the allegations in Paragraph 14.

26 15. Responding to Paragraph 15 of the Complaint, the Secretary admits that, as of

1 August 2, 2022, there are over 1.3 million registered Democratic Party voters in Arizona,
2 including active and inactive registered voters. The Secretary lacks knowledge or information
3 sufficient to form a belief about the truth of the remaining allegations in Paragraph 15.

4 16. The Secretary lacks knowledge or information sufficient to form a belief about
5 the truth of the allegations in Paragraph 16.

6 17. The Secretary admits the allegations in Paragraph 17.

7 18. Responding to Paragraph 18 of the Complaint, the Secretary admits that Mark
8 Brnovich is the Arizona Attorney General, that he has certain powers and duties as set forth in
9 Arizona statutes, including HB 2492, and that he is sued in his official capacity. The Secretary
10 lacks knowledge or information sufficient to form a belief about the truth of the remaining
11 allegations in Paragraph 18.

12 **FACTUAL ALLEGATIONS**

13 19. The Secretary admits the allegations in Paragraph 19.

14 20. Responding to Paragraph 20 of the Complaint, the Secretary admits that Plaintiff
15 quotes certain portions of 52 U.S.C. § 20504, which applies to the process for registering to
16 vote as part of a state motor vehicle driver license application and not to the process for
17 registering to vote generally. The Secretary lacks knowledge or information sufficient to form
18 a belief about the truth of the remaining allegations in Paragraph 20.

19 21. The Secretary admits the allegations in Paragraph 21.

20 22. The Secretary admits the allegations in Paragraph 22.

21 23. The Secretary admits the allegations in Paragraph 23.

22 24. Responding to Paragraph 24 of the Complaint, the Secretary admits that,
23 currently, voters who otherwise meet Arizona's constitutional and statutory requirements for
24 voter registration and voting but do not provide documentary proof of citizenship (DPOC) and
25 for whom the county recorder is unable to acquire DPOC from Arizona Department of
26 Transportation (ADOT) records are eligible to vote only in federal elections, not state or local

1 elections.

2 25. Responding to Paragraph 25 of the Complaint, the Secretary admits that Arizona
3 voters passed Proposition 200 in 2004, which required voters to present DPOC when they
4 register to vote and to present identification to vote in person on election day, and required
5 county recorders to reject voter registration applications that were not accompanied by DPOC
6 no matter which voter registration form the applicant used.

7 26. Responding to Paragraph 26 of the Complaint, the Secretary admits that the U.S.
8 Supreme Court struck down Arizona's DPOC requirement for voters who apply to register to
9 vote using the Federal Form, but Arizona continued to enforce the requirement for those who
10 registered using the State Form; that those who register using the Federal Form and do not
11 provide DPOC (known as "federal-only" voters) are ineligible to vote in state and local
12 elections; and that Arizona's bifurcated voter registration system as implemented by then-
13 Secretary of State Ken Bennett was in place from 2013 until it was modified pursuant to the
14 *LULAC* consent decree in 2018.

15 27. Responding to Paragraph 27 of the Complaint, the Secretary admits that, as of
16 August 2, 2022, approximately 35,000 Arizonans are registered to vote as "federal-only" voters
17 (including active and inactive registered voters), and that the Secretary maintains voter
18 registration records for these voters. The Secretary denies the remaining allegations in
19 Paragraph 27.

20 28. Responding to Paragraph 28 of the Complaint, the Secretary admits the
21 allegations in the first two sentences. The Secretary lacks knowledge or information sufficient
22 to form a belief about the truth of the remaining allegations in Paragraph 28.

23 29. The Secretary admits the allegations in Paragraph 29.

24 30. The Secretary lacks knowledge or information sufficient to form a belief about
25 the truth of the allegations in Paragraph 30.

26 31. The Secretary lacks knowledge or information sufficient to form a belief about

1 the truth of the allegations in Paragraph 31.

2 32. The Secretary admits the allegations in Paragraph 32.

3 33. The Secretary admits the allegations in Paragraph 33.

4 34. Responding to Paragraph 34 of the Complaint, the Secretary admits that HB 2492
5 provides that voters who have not submitted DPOC will no longer be eligible to vote in
6 presidential elections or to receive an early ballot by mail, and that HB 2492 will take effect
7 on January 1, 2023. Responding to footnote 5, the Secretary denies the allegations based on
8 Section 1 of SB 1638, which amended A.R.S. § 16-127 “as added by” HB 2492 to clarify that
9 only those persons who have not provided DPOC “as prescribed by section 16-166” (as
10 opposed to section 16-166(F) specifically) are not eligible to vote in presidential elections or
11 to receive an early ballot by mail. SB 1638 therefore clarifies that A.R.S. 16-166(G)’s safe
12 harbor, which provided that any person who registered before December 2004 is deemed to
13 have provided satisfactory evidence of citizenship under Arizona law, was incorporated into
14 HB 2492.

15 35. Responding to Paragraph 35 of the Complaint, the Secretary admits that HB 2492
16 directs the Secretary and county recorders to give access to the Attorney General a list of all
17 individuals who applied or are registered to vote but have not provided proof of citizenship,
18 and directs the Attorney General to use all available resources to investigate the citizenship
19 status of those individuals. The Secretary denies that this list includes voters who registered
20 before December 2004, because HB 2492 provides that the list includes only individuals “who
21 have not provided satisfactory evidence of citizenship pursuant to section 16-166,” and A.R.S.
22 § 16-166(G) provides that any person who registered before December 2004 is “deemed to
23 have provided satisfactory evidence of citizenship.” The Secretary lacks knowledge or
24 information sufficient to form a belief about the truth of the remaining allegations in Paragraph
25 35.

26 36. Responding to Paragraph 36 of the Complaint, the Secretary admits the

1 allegations in the first sentence, admits that certain databases in Section 4 of HB 2492 may
2 contain potentially unreliable and outdated data regarding citizenship status, and lacks
3 knowledge or information sufficient to form a belief about the truth of the remaining
4 allegations in Paragraph 36.

5 37. The Secretary lacks knowledge or information sufficient to form a belief about
6 the truth of the allegations in Paragraph 37.

7 38. Responding to Paragraph 38 of the Complaint, the Secretary admits the
8 allegations in the fourth sentence and admits that HB 2492 requires the Secretary and county
9 recorders to make available to the Attorney General a list of all individuals who are registered
10 to vote and who have not provided DPOC, and to provide, by October 31, 2022, those
11 individuals' voter registration applications (although, pursuant to SB 1638, HB 2492 does not
12 go into effect until January 1, 2023). The Secretary lacks knowledge or information sufficient
13 to form a belief about the truth of the remaining allegations in Paragraph 38.

14 39. Responding to Paragraph 39 of the Complaint, the Secretary admits that HB 2492
15 requires cancellation of a voter's registration if the county recorder "receives and confirms
16 information that the person registered is not a United States citizen," and provides no cutoff
17 date by which the cancelation must occur. The Secretary lacks knowledge or information
18 sufficient to form a belief about the truth of the remaining allegations in Paragraph 39.

19 40. The Secretary lacks knowledge or information sufficient to form a belief about
20 the truth of the allegations in Paragraph 40.

21 41. Responding to Paragraph 41 of the Complaint, the Secretary admits the
22 allegations in the first two sentences, and lacks knowledge or information sufficient to form a
23 belief about the truth of the allegations in the last sentence.

24 42. The Secretary admits the allegations in Paragraph 42.

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1 **CLAIMS FOR RELIEF**

2 **Count I: Violation of the First and Fourteenth Amendment to the United States**
3 **Constitution – Undue Burden on the Fundamental Right to Vote**

4 43. The Secretary incorporates by reference all preceding paragraphs as if fully set
5 forth herein.

6 44. Responding to Paragraph 44 of the Complaint, the Secretary admits that
7 Plaintiffs generally describe the test set forth in *Burdick v. Takushi*, 504 U.S. 428 (1992) and
8 *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

9 45. The Secretary lacks knowledge or information sufficient to form a belief about
10 the truth of the allegations in Paragraph 45.

11 46. The Secretary lacks knowledge or information sufficient to form a belief about
12 the truth of the allegations in Paragraph 46.

13 47. The Secretary lacks knowledge or information sufficient to form a belief about
14 the truth of the allegations in Paragraph 47.

15 48. The Secretary admits the allegations in Paragraph 48.

16 49. The Secretary lacks knowledge or information sufficient to form a belief about
17 the truth of the allegations in Paragraph 49.

18 50. The Secretary lacks knowledge or information sufficient to form a belief about
19 the truth of the allegations in Paragraph 50.

20 51. The Secretary lacks knowledge or information sufficient to form a belief about
21 the truth of the allegations in Paragraph 51.

22 52. Responding to Paragraph 52 of the Complaint, the Secretary admits that, in her
23 view as the Chief Election Officer for the State of Arizona, the challenged provisions in HB
24 2492 do not advance any legitimate regulatory interest in ensuring free, fair, and secure
25 elections, furthering the orderly and efficient administration of elections, or preventing fraud
26 in elections. The Secretary lacks knowledge or information sufficient to form a belief about

1 the truth of the remaining allegations in Paragraph 52.

2 **Count II: Violation of the Fourteenth Amendment of the United States Constitution –**
3 **Procedural Due Process**

4 53. The Secretary incorporates by reference all preceding paragraphs as if fully set
5 forth herein.

6 54. Responding to Paragraph 54 of the Complaint, the Secretary admits that
7 Plaintiffs quote a portion of the Due Process Clause of the Fourteenth Amendment to the U.S.
8 Constitution and *Raetzel v. Parks/Bellefont Absentee Election Board*, 762 F.Supp. 1354, 1356
9 (D. Ariz. 1990).

10 55. Responding to Paragraph 55 of the Complaint, the Secretary admits that
11 Plaintiffs generally describe the procedural due process test set forth in *Mathews v. Eldridge*,
12 424 U.S. 319, 334-335 (1976), and lacks knowledge or information sufficient to form a belief
13 about the truth of the remaining allegations in Paragraph 55.

14 56. The Secretary lacks knowledge or information sufficient to form a belief about
15 the truth of the allegations in Paragraph 56.

16 57. The Secretary lacks knowledge or information sufficient to form a belief about
17 the truth of the allegations in Paragraph 57.

18 58. The Secretary lacks knowledge or information sufficient to form a belief about
19 the truth of the allegations in Paragraph 58.

20 59. Responding to Paragraph 59 of the Complaint, the Secretary admits that the right
21 to vote is a fundamental right, and that Plaintiffs quote portions of the cited cases. The
22 Secretary lacks knowledge or information sufficient to form a belief about the truth of the
23 remaining allegations in Paragraph 59.

24 60. The Secretary lacks knowledge or information sufficient to form a belief about
25 the truth of the allegations in Paragraph 60.

26 61. The Secretary admits the allegations in Paragraph 61.

1 **Count IV: Violation of Section 6 of the NVRA, 52 U.S.C. § 20505(a)(1) – Acceptance of**
2 **the Federal Form and Registration of Federal Form Applicants**

3 69. The Secretary incorporates by reference all preceding paragraphs as if fully set
4 forth herein.

5 70. The Secretary admits the allegations in Paragraph 70.

6 71. The Secretary admits the allegations in Paragraph 71.

7 72. Responding to Paragraph 72 of the Complaint, the Secretary admits that, in her
8 view as the Chief Election Officer for the State of Arizona, the challenged provisions of HB
9 2492 conflict with the NVRA and the Supreme Court’s decision in *ITCA* by requiring DPOC
10 to register to vote in all federal elections using the Federal Form.

11 **Count V: Violation of Section 8 of the NVRA, 52 U.S.C. § 20507(b)(1) – Uniformity and**
12 **Non-Discrimination**

13 73. The Secretary incorporates by reference all preceding paragraphs as if fully set
14 forth herein.

15 74. Responding to Paragraph 74 of the Complaint, the Secretary admits the
16 allegations in the first sentence, and lacks knowledge or information sufficient to form a belief
17 about the truth of the remaining allegations in Paragraph 74.

18 75. Responding to Paragraph 75 of the Complaint, the Secretary admits that HB 2492
19 prevents voters who have not provided DPOC from voting in presidential elections or receiving
20 an early ballot by mail, and subjects them to investigation by the Attorney General and
21 potential cancellation of their registration. The Secretary lacks knowledge or information
22 sufficient to form a belief about the truth of the remaining allegations in Paragraph 75.

23 76. Responding to Paragraph 76 of the Complaint, the Secretary denies the
24 allegations based on Section 1 of SB 1638, which amended A.R.S. § 16-127 “as added by” HB
25 2492 to clarify that only those persons who have not provided DPOC “as prescribed by section
26 16-166” (as opposed to section 16-166(F) specifically) are not eligible to vote in presidential

1 elections or to receive an early ballot by mail. SB 1638 therefore clarifies that A.R.S. 16-
2 166(G)'s safe harbor, which provided that any person who registered before December 2004
3 is deemed to have provided satisfactory evidence of citizenship under Arizona law, was
4 incorporated into HB 2492.

5 77. The Secretary lacks knowledge or information sufficient to form a belief about
6 the truth of the allegations in Paragraph 77.

7 78. Responding to Paragraph 78 of the Complaint, the Secretary admits that HB 2492
8 prevents voters who have not provided DPOC from voting in presidential elections or receiving
9 an early ballot by mail, and subjects them to investigation by the Attorney General and
10 potential cancelation of their registration. The Secretary lacks knowledge or information
11 sufficient to form a belief about the truth of the remaining allegations in Paragraph 78.

12 **Count VI: Violation of the NVRA, 52 U.S.C. § 20504(c)(2)(B)(i)-(ii) – Minimum –**
13 **Information – Necessary Requirement**

14 79. The Secretary incorporates by reference all preceding paragraphs as if fully set
15 forth herein.

16 80. Responding to Paragraph 80 of the Complaint, the Secretary admits that
17 Plaintiffs quote portions of 52 U.S.C. § 20504, which applies to the process for registering to
18 vote as part of a state motor vehicle driver license application and not to the process for
19 registering to vote generally.

20 81. Responding to Paragraph 81 of the Complaint, the Secretary admits that
21 Plaintiffs quote portions of 52 U.S.C. § 20504, which applies to the process for registering to
22 vote as part of a state motor vehicle driver license application and not to the process for
23 registering to vote generally.

24 82. Responding to Paragraph 82 of the Complaint, the Secretary admits that HB 2492
25 requires DPOC in addition to the attestation of citizenship on the Federal Form. The Secretary
26 lacks knowledge or information sufficient to form a belief about the truth of the remaining

1 allegations in Paragraph 82.

2 83. Responding to Paragraph 83 of the Complaint, the Secretary admits that, in her
3 view as the Chief Election Officer for the State of Arizona, the challenged provisions of HB
4 2492 conflict with the NVRA and the Supreme Court's decision in *ITCA*, including by
5 requiring DPOC to register to vote in all federal elections using the Federal Form. The
6 Secretary lacks knowledge or information sufficient to form a belief about the truth of the
7 remaining allegations in Paragraph 83.

8 **Count VII: Violation of Section 8 the NVRA, 52 U.S.C. § 20507 (c)(2)(A) – Removing**
9 **Voters from the Rolls Shortly Before an Election**

10 84. The Secretary incorporates by reference all preceding paragraphs as if fully set
11 forth herein.

12 85. The Secretary admits the allegations in Paragraph 85.

13 86. The Secretary lacks knowledge or information sufficient to form a belief about
14 the truth of the allegations in Paragraph 86.

15 **Count VIII: Violation of Section 101 of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B)**
16 **– Materiality Provision**

17 87. The Secretary incorporates by reference all preceding paragraphs as if fully set
18 forth herein.

19 88. The Secretary admits the allegations in Paragraph 88.

20 89. The Secretary lacks knowledge or information sufficient to form a belief about
21 the truth of the allegations in Paragraph 89.

22 90. Responding to Paragraph 90 of the Complaint, the Secretary admits that a voter's
23 place of birth is not material to whether they qualify to vote under Arizona law. Therefore, the
24 Secretary admits that, in her view as the Chief Election Officer for the State of Arizona, HB
25 2492 conflicts with the Materiality Provision in 52 U.S.C. § 10101(a)(2)(B) to the extent that
26

1 it requires rejection of a voter registration application if the applicant does not provide their
2 place of birth.

3 91. The Secretary denies each and every allegation in the Complaint that is not
4 specifically admitted herein, including (i) any implied allegations, inferences, or
5 characterizations not specifically admitted, and (ii) any and all allegations stated or implied in
6 unnumbered paragraphs, footnotes, and headings.

7 **PRAYER FOR RELIEF**

8 92. Responding to Plaintiffs' prayer for relief, the Secretary states that, other than
9 providing her view on certain provisions as Arizona's Chief Election Officer, she takes no
10 position regarding the ultimate merits of Plaintiffs' claims against the challenged laws and
11 Plaintiffs' request for substantive relief in the form of a declaratory judgment and a permanent
12 injunction. The Secretary denies that Plaintiffs should be entitled to an award of their
13 reasonable attorneys' fees, litigation expenses, and costs as against her.

14 Respectfully submitted this 16th day of September, 2022.

15 **COPPERSMITH BROCKELMAN PLC**

16 By /s/ D. Andrew Gaona
17 D. Andrew Gaona
18 Kristen Yost

19 **STATES UNITED DEMOCRACY CENTER**

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24 State Katie Hobbs*