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20 **UNITED STATES DISTRICT COURT**  
21 **DISTRICT OF ARIZONA**

22 Mi Familia Vota, et al.

23 Plaintiffs,

24 v.

25 Adrian Fontes, in his official capacity as Arizona  
26 Secretary of State, et al.,

27 Defendants,

28 and

Speaker of the House Ben Toma and Senate  
President Warren Petersen,

Intervenor-Defendants.

Living United for Change in Arizona, et al.,

Plaintiffs,

v.

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

**DEMOCRATIC NATIONAL  
COMMITTEE'S AND ARIZONA  
DEMOCRATIC PARTY'S REPLY  
IN SUPPORT OF MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

- 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

1 Adrian Fontes, in his official capacity as Arizona  
Secretary of State, et al.,  
2 Defendant,  
3 and  
4 State of Arizona, et al.,  
5 Intervenor-Defendants,  
6 and  
7 Speaker of the House Ben Toma and Senate  
President Warren Petersen,  
8 Intervenor-Defendants.

9  
10 Poder Latinx, et al.,  
Plaintiff,  
11 v.  
12 Adrian Fontes, in his official capacity as Arizona  
Secretary of State, et al.,  
13 Defendants,  
14 and  
15 Speaker of the House Ben Toma and Senate  
President Warren Petersen,  
16 Intervenor-Defendants.

17  
18 United States of America,  
19 Plaintiff,  
20 v.  
21 State of Arizona, et al.,  
22 Defendants,  
23 and  
24 Speaker of the House Ben Toma and Senate  
President Warren Petersen,  
25 Intervenor-Defendants.

26 Democratic National Committee, et al.,  
27 Plaintiffs,  
28 v.

1 Adrian Fontes, in his official capacity as Arizona  
2 Secretary of State, et al.,  
3 Defendants,  
4 and  
5 Republican National Committee,  
6 Intervenor-Defendant,  
7 and  
8 Speaker of the House Ben Toma and Senate  
9 President Warren Petersen,  
10 Intervenor-Defendants.

11 Arizona Asian American Native Hawaiian and  
12 Pacific Islander for Equity Coalition,  
13 Plaintiff,

14 v.

15 Adrian Fontes, in his official capacity as Arizona  
16 Secretary of State, et al.,  
17 Defendants,  
18 and  
19 Speaker of the House Ben Toma and Senate  
20 President Warren Petersen,  
21 Intervenor-Defendants.

22 Promise Arizona, et al.,  
23 Plaintiffs,

24 v.

25 Adrian Fontes, in his official capacity as Arizona  
26 Secretary of State, et al.,  
27 Defendants,  
28 and  
29 Speaker of the House Ben Toma and Senate  
30 President Warren Petersen,  
31 Intervenor-Defendants.

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1 **INTRODUCTION**

2 Defendants repeatedly ignore the binding case law cited by the Democratic National  
3 Committee and Arizona Democratic Party, as well as key DNC and ADP arguments about  
4 the preemptive force of the National Voter Registration Act. Those cases and arguments  
5 foreclose defendants' efforts to justify Arizona's re-imposition of the *exact same* voting  
6 restriction the Supreme Court invalidated in *Arizona v. Inter Tribal Council of Arizona, Inc.*,  
7 570 U.S. 1 (2013) ("*ITCA*"), and the other provisions of Arizona House Bill 2492 on which  
8 the DNC and ADP seek summary judgment. Defendants, by contrast, cite not a single case  
9 embracing their reading of either the NVRA or the relevant constitutional provisions. Those  
10 readings should be rejected, and partial summary judgment granted for the DNC and ADP.

11 **ARGUMENT**

12 **I. DEFENDANTS' ARGUMENTS REGARDING THE NVRA'S "ACCEPT AND USE"**  
13 **MANDATE LACK MERIT**

14 **A. Voting By Mail**

15 H.B. 2492 bars those who register to vote in Arizona without providing documentary  
16 proof of citizenship from voting in *any* election by mail—the method most Arizonans use.  
17 That bar conflicts with (and thus is preempted by) the NVRA's mandate that states "accept  
18 and use" the federal form, 52 U.S.C. §20508(a)(2). As *ITCA* held, that mandate means states  
19 must treat a properly submitted federal form (which does not require DPOC) as a "complete  
20 and sufficient" application. 570 U.S. at 9. Arizona is not doing that; it treats forms without  
21 DPOC as insufficient to register to vote *by mail*. Defendants' defense of that regime fails.

22 1. The state—which won't even say the mail-voting restriction is *not* preempted,  
23 asserting only that it "probably" isn't (Opp.12)—first attacks the DNC's and ADP's reliance  
24 on Congress's "broad" findings and purposes (*id.*) in enacting the NVRA. The state claims  
25 that the "the focus must be on the text of NVRA § 6 because 'the statutory text accurately  
26 communicates the scope of Congress's preemptive intent.'" *Id.* But the findings and  
27 purposes are *in the statute*, and the state offers no support for the notion that the scope of  
28 preemption is decided by looking at only *some* text. That is unsurprising, because statutory

1 construction, including in preemption cases, requires considering the statute “as a whole.”  
2 *E.g., Arizona v. United States*, 567 U.S. 387, 400 (2012). Hence, while the state’s effort to  
3 brush aside the NVRA’s stated purpose is understandable, binding precedent precludes it.<sup>1</sup>

4 The state relatedly claims (Opp.12) that the textual findings and purposes do not  
5 refute its position because “[t]he fact that Congress deemed the right to vote important does  
6 not answer whether ‘registration’ ... includes voting by mail here.” That is wrong.  
7 Congress’s finding about the importance of the right to vote shows that Congress intended  
8 the NVRA to ensure not simply that people can register but that they can actually *vote*.  
9 Giving effect to that intent—and congressional intent is the “touchstone” of any preemption  
10 analysis, *e.g., Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 163 (2016)—requires  
11 invalidating Arizona’s mail-voting restriction. That is because the restriction bars those who  
12 register without DPOC from using what is far and away the most popular method of voting  
13 in Arizona. It will thus inevitably prevent many properly registered voters from voting at all.  
14 The restriction therefore “stands as an obstacle to the accomplishment ... of the full purposes  
15 ... of Congress,” *Arizona*, 567 U.S. at 399, which means it is preempted. (Notably, the state  
16 and RNC both just ignore the DNC-ADP arguments about obstacle preemption (Mot.5-7)).

17 The state also wrongly suggests (Opp.12) that the NVRA’s findings and purposes are  
18 *limited* to “Congress deem[ing] the right to vote important.” In reality, they also include  
19 “enhanc[ing]” people’s participation “as voters in federal elections.” 52 U.S.C. §20501(b).  
20 H.B. 2492 does the opposite—*diminishing* people’s participation “as voters,” *id.*—by barring  
21 those who submit a complete federal form from using Arizona’s most popular method of  
22 voting. The “accept and use” mandate precludes that under basic preemption principles.

23 Equally infirm is the state’s two-part response to the DNC-ADP argument (Mot.7-8)  
24 that under defendants’ position, states could impose all manner of limits on the right to vote.  
25 The state first says—citing nothing—that “whether a state law unduly burdens the right to  
26 vote ... is not the inquiry in NVRA § 6.” Opp.12. But Congress’s intent was to safeguard

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27  
28 <sup>1</sup> The foregoing also answers the state’s claim (Opp.12) that the DNC and ADP rely “mostly  
... on policy concerns.” The DNC’s and ADP’s arguments rest firmly on the statutory text.

1 the “fundamental right” of U.S. “citizens ... to vote,” 52 U.S.C. §20501(a)(1), by barring  
2 states from hindering that right via myriad registration requirements, *see ITCA*, 570 U.S. at  
3 13. So the fact that defendants’ reading of the NVRA would allow the total evisceration of  
4 that right shows their reading is mistaken.

5 The state’s other response (Opp.12) is that even if “an outrageous limit like midnight-  
6 only-voting could amount to a constructive denial of registration, the same cannot be said of  
7 restricting voting by mail.” But like the state’s many other one-sentence conclusory claims,  
8 this one fails. Again, voting by mail is by far the most popular voting method in Arizona;  
9 nearly 90% of Arizonans voted that way in 2020, ECF 388, ¶60. Arizona’s denial of that  
10 right *is* “outrageous,” not least because it serves no legitimate purpose: Neither the state nor  
11 the RNC has ever offered *any* rationale for the denial, which confirms that its purpose is  
12 simply to make it harder for people to vote. Moreover, the state offers no support for its  
13 novel idea that NVRA preemption turns on the “outrageousness” of a voting limit—much  
14 less explains how courts could apply that standard in any sensible way.

15 The state’s arguments, moreover, are internally inconsistent. It says (Opp.11-12) that  
16 denying mail voting is “probably” not preempted because voters can still “vot[e] in person.”  
17 But that would also be true with a vast range of voting restrictions—including the midnight-  
18 only limit that the state admits might well be “a constructive denial of registration.” Opp.12.

19 Next, the state addresses the DNC’s and ADP’s argument (Mot.8-9) that another part  
20 of NVRA section 6 (specifically 6(c)) confirms that Arizona’s mail-voting restriction is pre-  
21 empted, by specifying circumstances in which an in-person voting mandate *is* allowed. After  
22 wrongly claiming that this is the DNC’s and ADP’s *only* “textual argument” (Opp.12), the  
23 state asserts that the argument fails because it is “based not on the ... ‘accept and use’”  
24 mandate itself (*id.*) but on another part of the same section. In fact, it is based on both, and  
25 specifically, the fact that section 6(c) expressly allows an in-person voting mandate while  
26 section 6(a) does not. This form of comparative textual analysis is common, including in  
27 preemption cases. *See, e.g., Sandoz Inc. v. Amgen Inc.*, 582 U.S. 1, 20 (2017). And here too,  
28 the state offers no support for its claim that only part of a statute is relevant to the preemption



1 analysis (much less for its claim that the analysis is limited not to “the text of ... § 6”—as the  
2 state argues earlier *on the same page* (Opp.12)—but to just one subsection).

3 The state also says (Opp.13) that “Congress did not intend [section 6](c)(1) to be a  
4 broad presumptive ‘no’ to states ... plac[ing] limits on voting by mail.” That is not the issue.  
5 The issue is whether the “accept and use” mandate reaches state efforts to deny mail voting  
6 via registration requirements. That section 6(c)(1) *allows* an in-person voting requirement in  
7 specified situations shows that the accept-and-use mandate *does* reach such efforts. Section  
8 6(c)(1)’s approval of such a requirement in the enumerated circumstances would otherwise  
9 be surplusage. The DNC and ADP explained this point (Mot.9); the state has no response.<sup>2</sup>

10 Finally, it bears noting that the state’s recognition that the presidential-voting ban *is*  
11 preempted underscores the logical infirmity of its defense of the mail-voting ban, in two  
12 ways. First, the state says (Opp.11) that the mail-voting ban is not preempted because voters  
13 subject to it are still “able to cast a ballot.” But the same is true of voters subject to the  
14 presidential-voting ban. (To the extent the state would respond that “cast a ballot” means  
15 “cast a ballot *in every race*,” that gerrymandered standard has no basis in the text of the  
16 NVRA or Arizona law, case law, or anything else; it therefore shows that the state started  
17 with its preferred positions and then worked backwards to justify them.) Second, the state  
18 attempts to justify its defense of the mail-voting ban but not the presidential-voting ban by  
19 asserting (Opp.10) that only the latter prevents voters from even “*register[ing]*” to vote.  
20 That is wrong. H.B. 2492 (§5) modified Arizona law to provide that any “person *who has*  
21 *registered to vote*” but has not provided DPOC “is not eligible to vote in presidential  
22 elections.” A.R.S. §16-127 (emphasis added). H.B. 2492 likewise treats the two bans  
23 identically in saying (§4) that voters whose U.S. citizenship cannot be verified cannot “vote  
24 in a presidential election or by mail.” There is simply no coherent way to separate the two  
25 bans for preemption purposes. For the reasons given herein and previously, each is invalid.

26 \_\_\_\_\_  
27 <sup>2</sup> The state does assert that the DNC and ADP “cite[d] no case” supporting their view. In  
28 fact, they cited Supreme Court precedent regarding both the canon against surplusage and the  
*expressio unius* principle. See Mot.9.

1           2.       Unlike the state, the RNC does not shy away from the extreme implications of  
2 its position, saying (Opp.6) that “[i]n the NVRA ..., Congress only set ‘procedures to  
3 register to vote.’” Thus, as the DNC and ADP argued (Mot.7-8), defendants’ reading would  
4 allow states to impose virtually any restriction imaginable on voting, so long as they averred  
5 that those to whom a restriction applied were nonetheless fully *registered*. The RNC does  
6 not deny that this would gut both the NVRA and *ITCA*. Nor does it have any answer to the  
7 point that that absurd consequence strongly suggests that its reading of the NVRA is wrong.<sup>3</sup>

8           Next, the RNC echoes the state in faulting the DNC and ADP (Opp.7) for supposedly  
9 relying on “broad notions of congressional intent,” and thereby “paper[ing] over the gaping  
10 hole in the text.” But as explained, the purposes and findings on which the DNC and ADP  
11 rely *are in the text*. The RNC thus cannot dismiss them as irrelevant. And again, they show  
12 that the NVRA is *not* solely about registration but also about “enhanc[ing] the participation  
13 of eligible citizens as voters,” 52 U.S.C. §20501(b)(2). Like the state, the RNC does not  
14 even attempt to reconcile its reading with this clear textual evidence of Congress’s intent.

15           The RNC also addresses the DNC’s and ADP’s argument based on NVRA section  
16 6(c)(1), which allows state in-person voting mandates in specified circumstances. The RNC  
17 first labels this argument “a non sequitur” (Opp.7), but it says nothing to support that label.  
18 Instead, it shifts to the argument that section 6(c)(1) was “inserted ... to address ‘concerns  
19 regarding fraud’” and that it “says nothing ... about the information States can require of  
20 voters before they can vote early by mail.” *Id.* That misses the point. The point, again, is  
21 that section 6(c)(1)’s express allowance of state in-person voting mandates in the enumerated  
22 circumstances would be superfluous if the NVRA otherwise imposed no limitation on such  
23 mandates, as the RNC and the state argue. The DNC and ADP explicitly made that critical  
24 point (Mot.9). Yet like the state, the RNC offers no response.

25           Lastly, the RNC quotes (Opp.7) *ITCA*’s observation that “state-developed forms may  
26 require information the Federal Form does not,” 570 U.S. at 12. That does not help the RNC

27 \_\_\_\_\_  
28 <sup>3</sup> The RNC also says (Opp.6) that “Plaintiffs cite no authority applying the NVRA to early  
mail-in voting rules.” But defendants likewise cite no case *rejecting* such an application.

1 because Arizona’s *state form* is not the issue here; neither that form nor state laws requiring  
2 excuses to vote absentee (*see* RNC Opp.7) would be affected under the DNC’s and ADP’s  
3 position. (Nor do the DNC and ADP argue that the NVRA created a “unif[ie]d] registration  
4 for early mail-in voting” (*id.* at 6).) The issue is whether Arizona is “accepting and using”  
5 the *federal form*—as the NVRA requires—when it denies voters who submit a properly  
6 completed federal form the right to vote by mail in any election. *ITCA*’s observation about  
7 state forms does not speak to that issue. But *ITCA*’s holding does, making clear that such a  
8 denial does not constitute “acceptance and use,” and hence is preempted. *See* 570 U.S. at 9.

9       3. Neither the state nor the RNC explains why their proposed dichotomy between  
10 registration and voting makes any sense. They do not explain, that is, why registration has  
11 any importance *at all* other than that it allows people to actually vote. It does not otherwise  
12 have any import, which is why courts have recognized that the two are inseparable—a point  
13 the RNC agrees with in another portion of its opposition (p.2)—and accordingly have held  
14 that the NVRA does not allow states to indirectly hinder the right to vote by promulgating  
15 registration requirements and limiting the right to vote of those who do not comply with  
16 those requirements. *See* Mot.7. Because such hindering is precisely what is effected by  
17 Arizona’s denial of mail voting to those who do not provide DPOC, it is preempted. *See id.*

### 18       **B. Voting In Presidential Elections**

19       Facing a phalanx of binding case law recognizing Congress’s authority to regulate  
20 presidential elections—and unable to cite *any* case supporting its crabbed reading of that  
21 authority—the RNC argues (e.g., Opp.1) that *only* the text of the Electors Clause matters.  
22 That is doubly wrong. First, that clause is not the only relevant constitutional provision; as  
23 courts have held, other provisions, such as the Elections Clause and the Reconstruction  
24 amendments, confer on Congress ample power to regulate presidential elections. *See*  
25 Mot.11-15. Second, this Court is bound by relevant Supreme Court and Ninth Circuit  
26 precedent, including the cases the DNC and ADP cited refuting the RNC’s view (Mot.9-11).  
27 If the RNC disagrees with those cases, it must bring its arguments to those courts.

28       The cases, moreover, are neither “irrelevant” nor rested on “vague invocations of

1 ‘broad congressional power’” (Opp.1). As the DNC-ADP motion showed, they are on point  
2 and reject the RNC’s position. For example, the RNC describes its own argument (Opp.1) as  
3 that “Congress does not have power to regulate the ‘Places and Manner’ of presidential  
4 elections.” The DNC and ADP block-quoted (Mot.10) the Supreme Court’s rejection of that  
5 *exact* argument in *Burroughs v. United States*, 290 U.S. 534, 544 (1934). The DNC and  
6 ADP thus did not attack “strawmen” (Opp.1). They refuted the RNC’s precise claim.

7 Unsurprisingly, the RNC has nothing to say about the language the DNC and ADP  
8 block-quoted from *Burroughs* rejecting the RNC’s argument. Instead, it offers (Opp.4-5)  
9 various irrelevant observations about *Burroughs*—including repeating its misleading claim  
10 about that case’s use of the phrase “exclusive state power.” *See* Mot.11 (answering that  
11 claim). None of that can wipe away *Burroughs*’s binding rejection of the RNC’s position.  
12 The RNC’s myriad efforts to distract this Court from that rejection should be ignored.

13 The RNC similarly offers an irrelevant observation (Opp.4) about *Buckley v. Valeo*,  
14 424 U.S. 1 (1976) (per curiam)—while saying nothing about *Buckley*’s crucial point: that  
15 *Burroughs* “recognized broad congressional power to legislate in connection with the  
16 elections of the President and Vice President,” 424 U.S. at 13 n.16, *cited in* DNC-ADP  
17 Mot.10. And the RNC never cites *Ex parte Yarbrough*, 110 U.S. 651 (1884), which upheld  
18 Congress’s power to regulate presidential elections, *see id.* at 657, *cited in* DNC-ADP  
19 Mot.10. Again, the RNC’s silence on all these cases (or their dispositive passages) is telling.

20 Equally flawed is the RNC’s discussion (Opp.5) of *Voting Rights Coalition v. Wilson*,  
21 60 F.3d 1411 (9th Cir. 1995). The RNC labels *Wilson* irrelevant because the case did not  
22 address the scope of Congress’s authority under the Electors Clause. But what the DNC and  
23 ADP argue (Mot.12-14) is that multiple *other* constitutional provisions by themselves give  
24 Congress the authority to regulate presidential elections in the NVRA. One such provision is  
25 the Elections Clause—which *Wilson* (as the RNC does not dispute) held sufficient to reject a  
26 constitutional challenge to the statute, *see* 60 F.3d at 1413-1415. Moreover, it was in  
27 analyzing Congress’s Elections Clause authority that *Wilson* pointed to the Supreme Court’s  
28 recognition—in *Burroughs*—of Congress’s power over presidential elections, *see id.* at 1414.

1 The RNC dismisses that language (Opp.5) as “neither essential to the judgment nor a proper  
2 interpretation of *Burroughs*.” But it *was* essential to the judgment: The judgment was that  
3 the challenge to the NVRA failed. And the NVRA regulates presidential elections. The  
4 Ninth Circuit thus could not reject the constitutional challenge without concluding that  
5 Congress has the power to regulate those elections. The RNC’s claim that *Wilson* misread  
6 *Burroughs*, meanwhile (beside being a bald plea for this Court to reject Ninth Circuit  
7 precedent), is wrong for the reasons given above and in the DNC’s and ADP’s motion.<sup>4</sup>

8 Lastly, as to the DNC’s argument that the NVRA was a valid exercise of Congress’s  
9 powers under the Fourteenth and Fifteenth Amendments, the RNC says (Opp.5) that “[t]hose  
10 amendments could have been a valid source for the NVRA had Congress invoked them. But  
11 it did not.” This is yet one more example of the RNC simply ignoring case law that the DNC  
12 and ADP cited. In particular, they cited (Mot.13) the Supreme Court’s holding that Congress  
13 need *not* expressly invoke its powers under those amendments, because the “constitutionality  
14 of action taken by Congress does not depend on recitals of the power which it undertakes to  
15 exercise,” *EEOC v. Wyoming*, 460 U.S. 226, 243 n.18 (1983). Indeed, that square holding,  
16 combined with the RNC’s admission that the “amendments *could have been* a valid source  
17 for the NVRA” (Opp.5 (emphasis added)) suffices to reject its argument that Congress’s  
18 regulation of presidential elections in the NVRA exceeded its constitutional authority.

19 In any event, the RNC does not dispute the DNC’s and ADP’s explanation (Mot.13-  
20 14) that the NVRA’s text *does* invoke Congress’s power under the amendments to redress  
21 racial discrimination, quoting Congress’s finding that “discriminatory and unfair registration  
22 laws and procedures ... disproportionately harm voter participation by various groups,  
23 including racial minorities,” 52 U.S.C. §20501(a)(3). Nor does the RNC take issue with the  
24 holding of *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), that “Congress may use any  
25 rational means to effectuate the constitutional prohibition of racial discrimination in voting,”  
26 *id.* at 324. As the DNC and ADP explained (Mot.14-15), mandating a simplified system for

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27  
28 <sup>4</sup> Reprising its approach of largely ignoring unfavorable case law, the RNC says nothing  
about the other circuit cases the DNC and ADP cited (Mot.10) that agreed with *Wilson*.

1 registering to vote in federal elections—including presidential elections—is unquestionably a  
2 rational means of preventing racial discrimination in voting procedures.

3 At bottom, nothing the RNC says can change the fact that its position would eliminate  
4 Congress’s authority to safeguard Americans’ right to vote for the nation’s highest office—  
5 or the fact that no court has *ever* endorsed that view. This Court should not be the first.

## 6 **II. THE STATE’S ARGUMENTS REGARDING THE NVRA’S “90-DAY” PROVISION FAIL**

7 H.B. 2492 also conflicts with (and hence is preempted by) the NVRA’s ban on any  
8 state operating, within 90 days of a federal election, any program “the purpose of which is to  
9 systematically remove ... ineligible voters from the” voter rolls, 52 U.S.C. §20507(c)(2)(A).  
10 H.B. 2492 conflicts with that prohibition because it added to Arizona Revised Statutes §16-  
11 165 a provision mandating the removal from the rolls of any voter whom a county recorder  
12 decides is not a U.S. citizen, A.R.S. §16-165(A)(10)—and the provision has no limit on such  
13 removals within 90 days of any federal election. The state’s contrary arguments lack merit.

14 A. The state first asserts (Opp.23) that “the 90-day quiet period does not apply to  
15 cancellations based on non-citizenship[] for the same reasons” the state offers “regarding  
16 NVRA § 8(a).” But the state’s argument regarding section 8(a) is that a congressional ban  
17 on states *ever* removing alleged non-U.S. citizens from the rolls would raise constitutional  
18 questions. Opp.21-23. True or not, the NVRA’s modest limit on *when* states can remove  
19 such people from the rolls raises no constitutional questions—even the state does not say it  
20 does. The 90-day cut-off leaves ample time for states to remove ineligible people, and it  
21 gives states an incentive to ensure that removals occur far enough in advance of federal  
22 elections that erroneous removals can be corrected without people losing their right to vote.  
23 The state never explains why or how the constitutional concerns it posits regarding sections  
24 8(a)(3) and (4) apply equally (or at all) to the far more limited restriction in section (c)(2)(A).

25 Instead, the state contends (Opp.24) that because (1) the plain language of section 8(a)  
26 supposedly raises constitutional questions and (2) section 8(a) uses language “similar to” the  
27 90-day provision’s, the *latter* provision must be given an atextual reading. The state, in other  
28 words, argues that if the Court departs from the plain text of section 8(a), then it should also

1 ignore the plain text of the 90-day provision so that the two sections are read similarly. That  
2 convoluted argument fails. For starters, the principle that similar text in statutes should be  
3 read similarly “is not rigid and readily yields” to other indications of Congress’s intent. *Gen.*  
4 *Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 595 (2004). Even legislative history, for  
5 example, can suffice. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 523-524 (1994). Here, there is  
6 something far more compelling than such history: the plain text. The state, moreover, cites  
7 no case that applied the canon of constitutional avoidance to a provision that did not *itself*  
8 raise constitutional concerns, just because *another* provision with similar language did so.  
9 Lastly, the canon is inapplicable to the 90-day provision for a reason beyond the fact that the  
10 provision raises no constitutional issues, namely that the state’s reading of the provision is  
11 not even “fairly possible,” *Edward J. DeBartolo Corp. v. NLRB*, 463 U.S. 147, 157 (1983).

12 Next, the state cites (Opp.23-24) *United States v. Florida*, 870 F.Supp.2d 1346 (N.D.  
13 Fla. 2012), in support of the claim that the 90-day provision should not apply to cancellations  
14 “based on” non-citizenship. But the state ignores the DNC’s and ADP’s explanation that the  
15 *Florida* court (like the state) both disregards the NVRA’s plain text and improperly assumes  
16 that anyone *suspected* of not being a U.S. citizen is in fact not one. Mot.16-17. The *Florida*  
17 court, that is, just pretends that there is no possibility of people being removed erroneously  
18 and thereby denied their fundamental right to vote. If erroneous removals were impossible,  
19 *Florida*’s and the state’s policy arguments might be compelling. But of course such  
20 removals *are* possible; even the state never contends otherwise. Indeed, such removals are  
21 exactly what motivated enactment of the 90-day limit. *See Arcia v. Fla. Sec’y of State*, 772  
22 F.3d 1335, 1346 (11th Cir. 2014). *Florida*’s and the state’s reading is therefore contrary not  
23 only to the statute’s text—which is of course the best indication of Congress’s intent as to the  
24 scope of preemption, *see, e.g., ITCA*, 570 U.S. at 14—but also to the statute’s purpose.

25 The state also thrice suggests (Op.24-25) that this Court should rule based just on vote  
26 counts, with the *Arcia* district judge and dissenter equaling the majority (or outweighing  
27 them if the *Florida* judge is counted). That is wrong. The *decision* in *Arcia* is law; the other  
28 *Arcia* judges’ views, and those of the judge in *Florida*—which *Arcia* abrogated—are not.

1 Finally, the state asserts as a fallback (Opp.24) that the 90-day provision does not bar  
2 removals “based on individualized information,” and that “parts of” the challenged laws  
3 “involve” such removals. As a threshold matter, the state did not make this argument in the  
4 opening motion, so it waived as far as that motion. In any event, the only “part[] of” the  
5 challenged laws that the state points to is a provision requiring sending a cancellation *notice*  
6 to certain persons thought to be non-U.S. citizens. Opp.24-25. But even putting aside that  
7 sending a notice is not removal, neither the notices nor the resulting removals fall outside the  
8 90-day provision just because the state repeatedly labels them “individualized” (Opp.25-  
9 26)—a word appearing nowhere in H.B. 2492—or because they are triggered by information  
10 about particular individuals. (Indeed, the state does not explain how removals could ever *not*  
11 flow from such information.) What matters is that H.B. 2492 expands Arizona’s statutory  
12 “program” (52 U.S.C. §20507(c)(2)(A)) for removing alleged non-U.S. citizens from the  
13 rolls, a program codified in A.R.S. §16-165. Such removals are exactly what the NVRA bars  
14 during the 90-day period. H.B. 2492’s authorization of such removals is thus preempted.

15 B. The state alternatively argues (Opp.25-26) that if this Court adheres to the 90-  
16 day provision’s plain text, it should read H.B. 2492 as barring, during the 90 days before any  
17 federal election, the removals it otherwise requires of alleged non-U.S. citizens. The state  
18 dismisses as “largely semantic” (Opp.25) the DNC’s and ADP’s response that this Court  
19 cannot re-write state law (Mot.17). But whereas the DNC and ADP cited Supreme Court  
20 caselaw to support its position, the state cites *no* authority to support its contrary position.

21 The state also suggests (Opp.26) that this Court, if it agrees with the DNC and ADP,  
22 direct the parties to “submit a proposed order specifying which parts of the Voting Laws  
23 constitute ‘systematic’ removal programs.” That is unnecessary. The DNC and ADP have  
24 challenged H.B. 2492’s mandate for the *removal* of voters during any 90-day period on any  
25 ground not listed in the 90-day provision. The state does not claim that any part of that  
26 mandate involves individualized removals, so the mandate should simply be invalidated.

## 27 CONCLUSION

28 The DNC’s and ADP’s motion for partial summary judgment should be granted.



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Dated this 19th day of July, 2023.

Respectfully submitted,

PAPETTI SAMUELS WEISS MCKIRGAN LLP

/s/Bruce Samuels

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**CERTIFICATE OF SERVICE**

On the 19<sup>th</sup> day of July, 2023, I caused the foregoing to be filed and served electronically via the Court’s CM/ECF system upon counsel of record.

/s/Bruce Samuels  
Bruce Samuels

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