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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

WARREN PETERSEN, in his official capacity as the President of the Arizona State Senate; and BEN TOMA, in his official capacity as the Speaker of the Arizona House of Representatives,

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as the Arizona Secretary of State,

Defendant.

No. CV2024-001942

AMICUS BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF ARIZONA

(Hon. Scott A. Blaney)

I. STATEMENT OF INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Arizona ("ACLU of Arizona") is a statewide, nonprofit, nonpartisan organization with over 20,000 members throughout Arizona, dedicated to protecting the fundamental liberties guaranteed by the Constitution, including the right to vote. The ACLU of Arizona has a strong interest in protecting the ability of its members to vote and register to vote and ensuring that individuals can engage in the democratic process to the fullest extent permissible under the Constitution. The ACLU of Arizona frequently files *amicus curiae* briefs in Arizona courts on a wide range of civil liberties and civil rights issues.

II. INTRODUCTION

Under the Elections Clause of the United States Constitution, Arizona law concerning registration and removal of voters from the State's registration rolls, and by extension the Elections Procedures Manual ("EPM") provisions promulgated by Secretary of State Adrian Fontes in 2023 to implement the law, must be consistent with the federal National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20501, et seq. The NVRA prohibits the removal of individuals from voting rolls on the grounds that the voter has changed residence unless the voter confirms the residence change in writing *or* the voter fails both to respond to

a notice and to vote in two federal general elections following that notice. 52 U.S.C. § 20507(d)(1). The procedures set forth by A.R.S. § 16-165(A)(9) that Plaintiffs contend the Secretary of State was required to include in the EPM are incompatible with these provisions of the NVRA because they require cancellation of a voter's registration based on a jury commissioner's summary report, without written confirmation from the voter or waiting out the requisite two federal election cycles. Neither the jury commissioner's summary report nor the juror questionnaires that underlie it constitute sufficient written confirmation that the voter has changed residence as required for bypassing the NVRA's notice and waiting period. Thus, to utilize the summary report or the juror questionnaires as a trigger for cancellation, Arizona is required to provide notice to the voter and wait two general election cycles before removing based on non-responsiveness—precisely what the EPM provides. EPM at 41-42. Accordingly, the challenged Non-Residency of Juror Questionnaire Rule in Chapter 1, Section IX, Subsection (C)(1) of the EPM is consistent with the NVRA and not void or contrary to law.

III. THE EPM RULES REGARDING JUROR QUESTIONNAIRE RESIDENCY INFORMATION ARE CONSISTENT WITH THE NVRA

To provide for effective list maintenance without undermining the NVRA's other key goals of promoting voter registration and participation, Section 8 of the NVRA has established multiple critical safeguards against improper removal from the voter rolls. *See generally* 52 U.S.C. § 20507; *see also id.* § 20501(b). One such safeguard pertains to cancellation of a voter's registration due to a potential change in residence. Section 8(d) of the NVRA generally prohibits the immediate removal of registrants from the voter rolls "on the ground that the registrant has changed residence" and instead requires a notice and waiting period designed to "protect against wrongful disenfranchisement." *Common Cause Ind. v. Lawson*, 327 F. Supp. 3d 1139, 1142, 1148 (S.D. Ind. 2018), *aff'd*, 937 F.3d 944 (7th Cir. 2019) (citing 52 U.S.C. § 20507(d)(1)). Specifically, this process requires providing notice (in the form of a "postage prepaid and pre-addressed return card, sent by forwardable mail," on which registrants can confirm their address) and a waiting period (spanning two federal general elections from the date of notice) during which registrants have the chance to either respond to the notice or

appear to vote before their registrations are canceled. 52 U.S.C. § 20507(d). During the waiting period, registrants who have not responded are treated as inactive voters, so that an additional step of an "affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote" again.[1] *See id.* The only exception to this notice and waiting period requirement in Section 8 is in instances where "the registrant . . . confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered." *Id.* In other words, absent written confirmation *from the registrant*, the registrar cannot remove that registrant from the rolls without first completing the notice and waiting period process.

The EPM is aligned with the NVRA's requirements regarding potential changes of residence in the context of juror questionnaire responses: when a county recorder "receives a summary report from the jury commissioner . . . indicating that the person has stated on the juror questionnaire that the person is not a resident of the county," the recorder shall verify and then send notice informing the person that failure to return this form within 35 days would result in their registration "being put into inactive status and may ultimately lead to cancelation." EPM at 41 (Chapter 1, § IX(C)(1)). By contrast, A.R.S. § 16-165(A)(9)(b) states that when a county recorder receives a jury commissioner summary report, the recorder shall send notice providing 35 days to respond, after which the recorder "shall *cancel*" that person's registration. A.R.S. § 16-165(A)(9)(b) (emphasis added).

Plaintiffs challenge the EPM for conflicting with A.R.S. § 16-165(A)(9)(b) by specifying inactive status rather than immediate cancellation based on jury questionnaire residency responses. Compl. 7-8. Defendant counters that A.R.S. § 16-165(A)(9) conflicts

[1] While the NVRA does not explicitly label these registrants "inactive" voters, its description of these registrants, *see* 52 U.S.C. § 20507(d), aligns with the description of "inactive" voters used in many states, including Arizona, *see* A.R.S. §§ 16-166(A), (E), 16-583 (deeming voters "inactive" if they fail to return the notice form and requiring "affirmation" from these voters that they still "reside at the address indicated on the inactive voter list" before being allowed to vote). *See also* 11 C.F.R. § 9428.2(d) (2024) (implementing the NVRA and defining "Inactive voters" as "registrants who have been sent but have not responded to a confirmation mailing . . . and have not since offered to vote").

with the NVRA and that the EPM "properly harmonizes state and federal law" by moving these voters to inactive status. Resp. to PI Mot. 6. Plaintiffs argue that A.R.S. § 16-165(A) does not conflict with the NVRA because juror questionnaire responses fall into the exception of "confirm[ations] in writing that the registrant has changed residence to a place outside the registrar's jurisdiction" and therefore trigger "immediate cancelation." *See* PI Mot. 5. Plaintiffs' arguments fail because there is a fundamental and direct conflict between the removal procedures set forth in A.R.S. § 16-165(A)(9) and the federal removal procedures in the NVRA, 52 U.S.C. § 20507(d)(1), that cannot be reconciled.

A. Consistent with the EPM, a jury questionnaire summary report is not a confirmation in writing of a change of residence for purposes of Section 8(d) of the NVRA, and does not justify immediate cancellation of voter registration.

A summary report of juror questionnaire residency responses sent from a jury commissioner to a county recorder does not constitute a "confirm[ation] in writing" that would allow for immediate cancellation of a voter's registration under Section 8(d)(1)(A) of the NVRA, because it is not provided directly by the registrant to the registrar. To avoid the notice and waiting period typically required by the NVRA, the plain language of Section 8 requires a confirmation directly from the registrant to the relevant registrar regarding the registrant's change of residence. The provision at issue—subsection (d) of Section 8 of the NVRA—allows immediate removal only where a "registrant . . . confirms in writing that the registrant has changed residence." 52 U.S.C. § 20507(d)(1)(A). Within the same section of the NVRA, subsection (b) includes an overview of the other provisions—including subsection (d)—summarizing and providing clarification that a state can use this provision "to remove an individual from the official list of eligible voters if the individual . . . has not either notified the applicable *registrar* (in person or in writing)" or responded or appeared to vote during the notice and waiting period. *See id.* § 20507(b)(2) (emphasis added). In other words, Section 8 of the NVRA makes clear that immediate removal of a voter from the voter rolls based on potential change of residence is reserved only for instances where confirmation comes directly from the registrant and goes directly to an election official.

The legislative history of the NVRA also demonstrates that a direct confirmation *from a voter to a registrar* is required for immediate cancellation or removal from the voter rolls under Section 8. *See, e.g.*, S. Rep. No. 103-6, at 19 (1993) (explaining that the NVRA "allows the removal of a person's name from the official list by reason of a change of residence outside the jurisdiction of the registrar, *only if the voter notifies the registrar* of such a change or has failed to respond to a notice sent by the registrar and has failed to vote or appear to vote in two Federal general elections following the date of the notice") (emphasis added).

As further evidence of the NVRA's framework of requirements for what does or does not warrant immediate cancellation of voter registration based on change of residence, though Section 8 does not specifically address juror questionnaires, it does explicitly reference another comparable indirect source of data for list maintenance—"change-of-address information supplied by the [U.S.] Postal Service"—in another subsection that requires a notice and waiting period prior to cancellation. *See* 52 U.S.C. § 20507(c)(1). As with summary data of residency responses from juror questionnaires, the underlying Postal Service change-of-address data can be self-reported in writing, though not directly from a person to a *registrar* for purposes of voter registration. But even where a change of address has been confirmed through a relatively "reliable" source such as the U.S. Postal Service and where the "information provided by the U.S. Postal Service originates from the voter," the "notice and a waiting period are still required by the NVRA before cancelling the registration." *Common Cause*, 327 F. Supp. 3d at 1153 (citing 52 U.S.C. § 20507(c)(1)).

Case law further supports that the NVRA requires direct confirmation from the voter for immediate cancellation. An Arizona district court recently analyzed the "confirm[ation] in writing" under the NVRA in the context of similar claims challenging Arizona statutory provisions requiring the State to cancel voter registrations upon receipt of "confirmation from another county recorder that the person registered has registered to vote in that other county." *See Ariz. All. for Retired Ams. v. Hobbs*, 630 F. Supp. 3d 1180 (D. Ariz. 2022). The court found that this "confirmation from another county recorder" was not "direct authorization" from the voter, rejecting an argument that a voter was "impliedly" confirming a change of

1 voter residence under Section 8(d) by registering to vote elsewhere. *Id.* at 1190-94 (granting
2 preliminary injunction since these cancellation provisions "conflict with the NVRA" and "are
3 likely preempted"). The court stated that the NVRA and some particularly pertinent Seventh
4 Circuit cases make clear that any confirmation under Section 8(d)(1)(A) of the NVRA "must
5 unequivocally come from the voter." *Id.* at 1193 (citing *League of Women Voters of Ind., Inc.*
6 *v. Sullivan*, 5 F.4th 714, 724 (7th Cir. 2021) ("*Sullivan*")); *see also Sullivan*, 5 F.4th at 723
7 (finding that the NVRA requirement for confirmation in writing "is clear enough: it says that
8 a state may not remove a voter from its voter rolls without . . . receiving a direct communication
9 from the voter that she wishes to be removed . . . [and a]ny state law that fails to follow that
10 prescription cannot stand"); *Common Cause*, 937 F.3d at 961 (such a reading "makes sense in
11 the context of the rest of the NVRA, . . . which emphasizes the state's duty to communicate—
12 or at least attempt to communicate—directly with a voter before it removes that voter's name
13 from the rolls" (citations omitted)).

14 Here, Plaintiffs conflate the individual juror questionnaire responses with the summary
15 report from a jury commissioner. *See, e.g.*, PI Mot. 5. The Arizona law at issue, A.R.S. § 21-
16 314(F), specifically refers to "*summary report*[*s*]" from the jury commissioner—which are
17 compiled by third-party non-election officials and do not include copies or images of actual
18 juror questionnaire responses for verification, but "shall only contain the information that is
19 necessary for the county recorder to accurately identify" those voters. A.R.S. § 21-314(F).
20 This summary report clearly falls short of "unequivocal" confirmation "from the voter"
21 necessary under the NVRA for a cancellation. *See Ariz. All.*, 630 F. Supp. 3d at 1193. For one,
22 it does not come from the voter. But even if the underlying juror questionnaires originating
23 from individual voters were indirectly provided to the registrar, these still would not constitute
24 sufficient confirmation under Section 8 of the NVRA, because these confirmations were not
25 provided by the voter directly to election officials for the purpose of voter registration. *See* 52
26 U.S.C. § 20507(b)(2), 20507(d)(1).

27 Moreover, as explained more fully in the following section, residence in the jury service
28 context is a flawed proxy for residence in the voting context such that even the juror

questionnaires that underly the reports fail to constitute "unequivocal" confirmation. Even if a juror questionnaire were to include an indication that responses to the questionnaire would impact one's voter registration status, the inclusion of this language on a form that respondents must fill out in a context *unrelated to voting* does not in itself transform the questionnaire into an "unequivocal" acceptance or confirmation in writing of a change of *voter* residence for purposes of Section 8(d) of the NVRA. *See Ariz. All.*, 630 F. Supp. 3d at 1190-93 (rejecting argument that evidence of registration in another county could be used as implied confirmation of change of voter residence).

Thus, the high bar of "unequivocal" confirmation that a voter wishes to be removed from the voter rolls cannot be met by residency responses in the discrete context of juror questionnaires, much less by summary-level data from a report compiled by a third-party jury commissioner. *See id.*; *Sullivan*, 5 F.4th at 723.

B. The EPM's procedures for use of juror questionnaire residency information for voter registration are consistent with the reasoning underlying the NVRA.

As the NVRA recognizes, "residency" for purposes of voting does not always align with "residency" in other contexts; for that simple reason, the NVRA provides safeguards from removal that allow registrants the chance to confirm that their residence has changed in the *voter registration* context, even where they may have indicated a change in residence for other purposes. *See, e.g.*, 52 U.S.C. § 20504(d) (allowing a special procedure in the motor vehicle agency context where registrants can change their addresses immediately, but with the option to have one address for a driver's license while maintaining a different address "for voter registration purposes"); H.R. Rep. No. 103-9, at 9 (1993) (recognizing, for example, that "requirements of residency pertaining to driver's licenses may vary from those pertaining to voting"); *see also* 52 U.S.C. § 20507(c) (requiring opportunity for notice and waiting period in the context of potential removals based on U.S. Postal Service residency data). Because "residency" can have different meanings in different contexts, statements regarding residence in the context of jury service are insufficient to bypass the safeguards of the NVRA's notice and waiting period requirements.

1 In Arizona, a jurisdiction's jury service list is pulled from (among other sources) its
2 voter registration list, and a person whose name and address appear on this "master jury list"
3 is "presumed to be a resident of the jurisdiction" for jury service and may be sent a juror
4 questionnaire. *See* A.R.S. §§ 21-201, 21-301. But such a presumption is rebuttable, and juror
5 questionnaire residence responses may not be reliable proxies for *voter* residence because
6 Arizona law provides many examples where residency for voting purposes may not line up
7 with residency for jury service purposes. To be eligible to vote, individuals must be Arizona
8 residents for at least 29 days before an election; residents for voting purposes have "actual
9 physical presence in this state [or] political subdivision, combined with an intent to remain,"
10 but notably, "temporary absence does not result in a loss of [voter] residence if the individual
11 has an intent to return following his absence." A.R.S. § 16-101; *see also id.* § 16-593(A)(1)-
12 (9) (listing other examples where voters can maintain residence even if temporarily away, such
13 as while away "in the service of the" country, or as a student). As such, residency requirements
14 for voting and jury service can be different. Individuals who are or plan to be temporarily away
15 from their Arizona voter residence may know or reasonably believe that they are not proper
16 residents in that jurisdiction for jury service purposes if they would be unable to appear in
17 person if summoned for jury duty. Even a U.S. citizen "who has never resided in the United
18 States" is eligible to register to vote in Arizona so long as their "parent is a United States
19 citizen who is registered to vote in this state," A.R.S. § 16-103, but would surely not qualify
20 as a resident for jury service in any rational sense.
21 These nuances distinguishing residency for voter registration purposes and jury service
22 purposes help illustrate the prudence of the NVRA in treating only unequivocal and direct
23 confirmation from the registrant in the voting context as evidence warranting immediate
24 cancellation, while treating other evidence—such as residence information from juror
25 questionnaire responses—as useful but not necessarily determinative evidence of residency in
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the *voter registration* context, thus warranting only a change to inactive status, as prescribed by the EPM[2]—a procedure less likely to disenfranchise eligible voters.[3]

IV. SECRETARY OF STATE FONTES ACTED PROPERLY IN PROMULGATING THE EPM RULES REGARDING JUROR QUESTIONNAIRE RESIDENCY INFORMATION

A. The EPM provisions regarding voter list maintenance based on juror questionnaire data adhere to the NVRA.

As explained above, neither the jury commissioner's summary report nor the juror questionnaires underlying it are a "confirm[ation] in writing" of a change of residence by a voter sufficient to permit removal from the statewide database without further contact with the voter or waiting the two requisite election cycles. *See supra* Section III.A. Accordingly, a voter may be removed from the rolls based on the jury commissioner's summary report *only* after

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[2] Contrary to Plaintiffs' implication that the EPM's designation of "inactive" status bears no consequence because inactive voters "retain[] all the attributes and rights of a qualified elector," *see* PI Mot. 5, inactive voters in Arizona are, for example, "removed from the active early voting list." A.R.S. § 16-544(E). And as noted above, inactive voters in Arizona must take the additional step of affirming their residence before being allowed to vote again—which, notably, is similar in function to what A.R.S. § 16-165(A)(9) would otherwise require to avoid cancellation: returning a notice with an affirmation under oath of their residence. The remaining element required by Section 8 of the NVRA but missing from A.R.S. § 16-165(A)(9) is the *waiting period* prior to cancellation—and, as the Supreme Court recognized, "Congress obviously anticipated that some voters who received cards would fail to return them for any number of reasons, and it addressed this contingency in § 20507(d)" by choosing to require this additional waiting period. *See Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 763-64 (2018).

[3] The explanation in *Sullivan*—that an explicit "authorization-of-cancellation form that a voter personally signs" while registering to vote in one state that is forwarded to Indiana constitutes a sufficient communication from the voter to cancel registration in Indiana—is distinguishable. *Sullivan*, 5 F.4th at 732. First, this portion of *Sullivan* focused on a different provision of the NVRA than at issue here, Section 8(a)(3)(A), which allows for immediate removal "at the request of the registrant." *See* 52 U.S.C. § 20507(a)(3)(A). Second, *Sullivan* considered voter registration forms where registrants were "*invited* expressly to authorize the cancellation" of a previous registration. *Sullivan*, 5 F.4th at 719-20 (emphasis added). Unlike juror questionnaire responses, these cancellation authorization forms sought express authorization from registrants in the *voting* context, thus necessitating fewer procedural safeguards under the NVRA.

the voter has been issued a written notice seeking confirmation of her address, fails to timely respond to that notice, *and* fails to vote or appear to vote for two federal general elections after that notice. 52 U.S.C. § 20507(d)(1); *see also, e.g.*, *Ariz. All.*, 630 F. Supp. 3d at 1190 (explaining that "at least one of [the procedures of the NVRA] must be followed" to remove a voter from the voting rolls). This is precisely what the EPM provides, *see* EPM at 41-42; *supra* Section III, so the EPM rules concerning juror questionnaire residency information are fully consistent with the requirements of the NVRA. *See, e.g.*, *Husted*, 584 U.S. at 757 (noting the importance of following the NVRA "to the letter").

B. The Secretary of State is required to and did properly follow the provisions of the NVRA.

Plaintiffs assert that Secretary of State Fontes has transgressed his authority by adopting the voter list maintenance procedures outlined above. PI Mot. 1-2; *see also* Compl. ¶¶ 34-36. But there is nothing improper about a state election official complying with federal election laws. In essence, Plaintiffs contend that Secretary Fontes was required to adhere blindly to A.R.S. § 16-165(A)(9) when drafting the EPM and overlook the fact that the provision conflicts with the NVRA. That contention is wrong for at least three reasons.

First, the Arizona statutory provisions at issue concerning voter list maintenance expressly recognize that those provisions (and the corresponding sections of the EPM) must be consistent with federal law, including the NVRA. *See* A.R.S. § 16-168(J) (stating that the "secretary of state shall provide" that provisions in Arizona law regarding the removal of voters from the registration database must be "consistent with the national voter registration act of 1993"); *see also* A.R.S. § 16-452(A)-(B) (requiring the secretary of state to prescribe EPM rules to achieve, among other things, "the maximum degree of correctness" for voting procedures). In other words, Plaintiffs' position ignores the express language of Arizona law *requiring* the secretary of state's compliance with the NVRA.

Second, Plaintiffs ignore that Secretary Fontes, as the "chief state election" official of Arizona, is charged under state and federal law with the responsibility "for coordination of [Arizona's] responsibilities under" the NVRA. A.R.S. § 16-142(A)(1); 52 U.S.C. § 20509.

Nowhere do Plaintiffs suggest how Secretary Fontes can meet his responsibilities for NVRA coordination and compliance without addressing potential discrepancies between the NVRA and Arizona law in the EPM.

Third, Plaintiffs' position turns fundamental constitutional and legal principles on their head. Here, the guiding principle is not separation of powers between the executive and the legislative branch as Plaintiffs suggest, *see* PI Mot. 5-6, but federal preemption and the Elections Clause, which require that state election officials follow federal mandates with respect to the "Times, Places, and Manner" of elections. U.S. Const. art. I, § 4, cl. 1.

While courts generally will not assume that federal acts preempt state law absent evidence of a "clear and manifest purpose of Congress," voting rights cases concerning acts by Congress under the Elections Clause are distinct. *Ariz. All.*, 630 F. Supp. 3d at 1193-94 (quoting *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992)). In such cases, the presumption is for, rather than against, federal preemption because "the power the Elections Clause confers is none other than the power to pre-empt." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14 (2013); *Foster v. Love*, 522 U.S. 67, 69 (1997) (Elections Clause "is a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices") (citation omitted); *Sullivan*, 5 F.4th at 723 (explaining that "voting cases are different . . . because Congress's authority . . . is rooted in the Constitution itself"). The substantive scope of the Elections Clause is broad and, importantly here, embraces authority to provide for "regulations relating to 'registration.'" *Inter Tribal Council*, 570 U.S. at 8-9 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)). Accordingly, in cases involving the NVRA, the "presumption for, rather than against, federal preemption is . . . the proper starting point." *Pub. Int. Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932, 940 (C.D. Ill. 2022); *accord Ariz. All.*, 630 F. Supp. 3d at 1193-94.

As such, the cases to which Plaintiffs cite to suggest that Secretary Fontes was required to ignore the NVRA and adopt the procedures of A.R.S. § 16-165(A)(9) in the EPM are inapposite. *Roberts v. State*, 253 Ariz. 259 (2022) (cited by Plaintiffs in PI Motion at 5-6)

addressed state employment laws and federal preemption under the Supremacy Clause, which applies a presumption against preemption not applicable under the Elections Clause. *See Inter Tribal Council*, 570 U.S. at 13 (explaining presumption against preemption does not hold under the Elections Clause). And *Leibsohn v. Hobbs*, 254 Ariz. 1 (2022) (cited by Plaintiffs in PI Motion at 4, 6) concerned issues of state law only, not compliance with the NVRA or other Elections Clause legislation. Thus, neither case supports Plaintiffs' position that Secretary Fontes misused the EPM by bringing it into conformity with the NVRA.

Instead, other cases make clear that Secretary Fontes acted appropriately because the NVRA's "procedures for removal must be followed 'to the letter.'" *Common Cause*, 937 F.3d at 963 (quoting *Husted*, 584 U.S. at 767). For example, in *Arizona v. Inter Tribal Council of Arizona*, the United States Supreme Court rejected arguments that the NVRA's mandate that states "accept and use" a uniform federal form for voter registration permitted states to require additional documents with the form. *Inter Tribal Council*, 570 U.S. at 9. After analyzing statutory arguments, the Supreme Court emphasized that there was "no compelling reason not to read Elections Clause legislation simply to mean what it says," and thus the requirement to "accept and use" the federal form precluded Arizona's additional requirements. *Id.* at 14-15; *see also Sullivan*, 5 F.4th at 723-30 (holding that the NVRA preempted portions of Indiana's voter removal procedure that "impermissibly allow[ed] Indiana to cancel a voter's registration without either direct communication from the voter or compliance with the NVRA's notice-and-waiting procedures"); *see also Ariz. All.*, 630 F. Supp. 3d at 1190–94 (rejecting Arizona's provisions requiring county recorders to cancel a voter's registration based on confirmation from another county recorder of a second registration or "credible information" of a second registration as preempted by the NVRA).

Here, there is a direct conflict between the removal procedures set forth in A.R.S. § 16-165(A)(9) and the federal removal procedures in the NVRA, 52 U.S.C. § 20507(d)(1), that cannot be reconciled. *See supra* Section III. The NVRA preempts contradictory state law, so the Secretary of State was required to—and in fact did—ensure that the EPM complied with the federal statute. *See, e.g.*, A.R.S. § 16-168(J); *Inter Tribal Council*, 570 U.S. at 14; *Ariz.*

All., 630 F. Supp. 3d at 1193-94. Secretary of State Fontes thus acted properly in adhering to the provisions of the NVRA.

V. CONCLUSION

For the foregoing reasons, we respectfully request that the Court find in favor of Defendant regarding the challenged Non-Residency of Juror Questionnaire Rule in Chapter 1, Section IX, Subsection (C)(1) of the EPM.

Respectfully submitted this 25th day of March, 2024.

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The original of the foregoing was electronically filed via TurboCourt this 25th day of March, 2024 with:

Clerk of the Court
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