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7 UNITED STATES DISTRICT COURT

8 DISTRICT OF ARIZONA

9 League of Women Voters of Arizona; Mi
10 Familia Vota Education Fund; and Promise
Arizona, on behalf of themselves, their
members, and all others similarly situated,

No. _____

11 Plaintiffs,

COMPLAINT

12 vs.

13 Michele Reagan, in her official capacity as
14 Secretary of State for the State of Arizona,

15 Defendant.

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16
17 The League of Women Voters of Arizona (the “League”), Mi Familia Vota Education
18 Fund (“Mi Familia Vota”), and Promise Arizona (“Promise Arizona”) bring this action
19 seeking declaratory and injunctive relief to halt and remedy the deliberate, ongoing
20 violations of Sections 5 of the National Voter Registration Act (“NVRA”) by Michele
21 Reagan, in her official capacity as the Secretary of State for the State of Arizona (“SOS”).
22 The SOS is failing to update the voter registration addresses of persons who update their
23 address with the Arizona Department of Transportation (“ADOT”) through ADOT’s Motor
24 Vehicle Division (“MVD”) (collectively “ADOT/MVD”), as required by Section 5 of the
25 NVRA, despite receiving updated addresses from the ADOT/MVD and despite being on
26 notice of the problem for over nine months. The SOS’s deliberate violations of the NVRA
27 have deprived thousands of Arizona citizens of their opportunity to vote, register to vote, and
28 to change their voter registration address. The SOS’s failure to comply with the clear

1 language of the NVRA explains why Arizona has one of the highest rates of provisional
2 balloting in the country.¹

3 As a result of the SOS’s intentional, ongoing violations of the NVRA, thousands of
4 Arizona citizens are deprived of their opportunity to participate in federal elections. Judicial
5 intervention is necessary to halt the SOS’s continuing violations of the NVRA and to remedy
6 her past violations.

7 **JURISDICTION AND VENUE**

8 1. This case arises under the National Voter Registration Act of 1993 (the
9 “NVRA”), 52 U.S.C. § 20501 *et seq.*, a law of the United States.

10 2. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C.
11 § 1331 and 28 U.S.C. § 1343.

12 3. This Court has jurisdiction to grant both declaratory and injunctive relief under
13 28 U.S.C. §§ 2201 and 2202.

14 4. This Court has personal jurisdiction over the SOS because she resides in the
15 State of Arizona.

16 5. Venue in this district is proper under 28 U.S.C. § 1391(b)(2) because a
17 substantial part of the events giving rise to the claim occurred in this district.

18 **PLAINTIFFS**

19 **LEAGUE OF WOMEN VOTERS OF ARIZONA**

20 6. Plaintiff the League is a non-partisan political organization that encourages
21 informed and active participation in the democratic process. The League works to increase
22 civic participation and education, and advocates for policies in the public interest.

23 7. The League consists of both a statewide organization and five local chapters.
24 In total, the League has 850 members and over 1,000 supporters in Arizona. The League has
25 at least one member who has updated her driver’s license address with ADOT/MVD and has

26 _____
27 ¹ *EAVS Deep Dive: Provisional Ballots*, U.S. ELECTION ASSISTANCE COMMISSION,
28 June 7, 2018, <https://www.eac.gov/documents/2018/06/07/eavs-deep-dive-provisional-ballots/> (last visited Aug. 17, 2018) (“Seventy-five percent of all provisional ballots issued [across the country] were issued in Arizona, California, New York and Ohio”).

1 been harmed by the SOS's failure to subsequently update her address for voting purposes.
2 Other League members are at risk of being harmed by the SOS's NVRA violations if they
3 change their address in the future.

4 8. The League offers a variety of voter education programs to its members and to
5 the public on a wide range of issues such as education funding, climate change, campaign
6 financing, health care, and electoral redistricting. The League also produces a voter guide to
7 inform voters about Arizona ballot measures. The local chapters host candidate forums for
8 the public to learn about candidates running for local, state, and national offices.

9 9. The League lobbies the Arizona legislature on local issues including education
10 funding, campaign finance reform, redistricting reform, ranked choice voting, and automatic
11 voter registration, as well as nationwide issues, such as adopting the national popular vote for
12 allocating Arizona's presidential electors and ratifying the Equal Rights Amendment.

13 10. The League also participates in Arizona ballot initiatives and referendums. For
14 these efforts, League members gather signatures to assist in getting initiatives on the ballot
15 and then campaign for the initiative during the election season. The League also participates
16 in statewide coalitions with other organizations with similar goals. These coalitions include
17 AZSchoolsNow and the Arizona 19th Amendment Celebration.

18 11. The League encourages voter registration among all eligible voters, including
19 low-income persons who are more likely to change addresses. The League and its local
20 chapters have frequently conducted voter registration drives in Arizona and have numerous
21 voter registration drives planned in 2018 leading up to the November election. These efforts
22 include voter registration drives targeted at low-income voters, including registration drives
23 at public libraries, public schools, community centers, and food banks. Several of the local
24 chapters are also working with Native American nations to coordinate voter registration
25 efforts on reservations and in low-income communities.

26 **MI FAMILIA VOTA**

27 12. Plaintiff Mi Familia Vota Education Fund is a national non-profit organization
28 working to unite the Latino community and its allies to promote social and economic justice

1 through increased civic participation. Mi Familia Vota works to expand the electorate
2 through direct, sustainable citizenship, voter registration, census education, get-out-the-vote
3 activities, and issue organizing in states with large Latino populations.

4 13. Mi Familia Vota has approximately 6,000 members in Arizona. Mi Familia
5 Vota has at least one member who has updated their driver's license address with
6 ADOT/MVD and has been harmed by the SOS's failure to subsequently update their
7 residence address for voting purposes. Other members of Mi Familia Vota are also at risk of
8 being harmed by the SOS's NVRA violations if any change their address in the future.

9 14. Mi Familia Vota engages in large-scale voter registration campaigns focused
10 on individuals aged 18 to 30 in Arizona. In 2018, Mi Familia Vota aims to register 25,000
11 voters. To meet this goal, the organization conducts between five and ten voter registration
12 drives in Arizona each week. To date, the organization has registered almost 10,000 voters
13 this year. In addition to registering new voters, these voter registration drives also include
14 efforts to assist voters with updating their voter registration address.

15 15. Mi Familia Vota's voter registration efforts are focused on Maricopa, Pima,
16 Yuma, and Santa Cruz counties due to the large Latino populations in those areas. Most of
17 the organization's voter registration drives are conducted at high schools and community
18 colleges, Latino owned businesses, churches, consulates (who serve dual-citizens),
19 community centers, labor union halls, social services provider facilities, and community
20 events hosted by the Spanish language media.

21 16. In 2018, Mi Familia Vota expects to spend between \$500,000 and \$1 million
22 on voter registration programs in Arizona. In addition to in-person voter registration drives,
23 Mi Familia Vota will engage in online, email, social media, and mail campaigns. The
24 organization will also spend time and resources on a text messaging campaign to assist
25 voters with updating their voter registration records, including address changes. All of these
26 efforts will be supported by 40-50 staff members and 100-150 volunteers.

27 **PROMISE ARIZONA**

28 17. Promise Arizona is a non-partisan, faith-based organization that was founded

1 in 2010 in reaction to passage of anti-immigrant legislation in Arizona. Promise Arizona
2 seeks to positively impact Latino and immigrant communities by building leaders,
3 encouraging sustained civic participation, and engaging with the political process for positive
4 change. Promise Arizona primarily targets underserved, low-income, and Latino
5 populations.

6 18. Promise Arizona has approximately 1,000 members, 1,500 volunteers, and six
7 employees. Promise Arizona has at least one member who has updated their driver's license
8 address with ADOT/MVD and has been harmed by the SOS's failure to update their
9 residence address for voting purposes. Other Promise Arizona members are also at risk of
10 being harmed by the SOS's NVRA violations if they change addresses in the future.

11 19. Voter registration is a significant portion of Promise Arizona's work. Staff,
12 members, and volunteers work with local school districts and community colleges to identify
13 potential voters at back-to-school events, provide voter registration materials at events
14 serving the Latino community, and conduct door-to-door voter registration drives in
15 neighborhoods with high Latino populations. Promise Arizona also incorporates voter
16 registration into its other work. For example in the English Innovations program, which
17 primarily focuses on teaching the English language and technology literacy, Promise Arizona
18 registers eligible students to vote and trains them on how to register other voters as well.

19 20. Promise Arizona assists large numbers of voters with registration. For
20 example, in 2010, Promise Arizona conducted a nonpartisan, volunteer-based voter
21 registration drive in Maricopa, Pima, and Pinal Counties. Within a month, volunteer teams
22 registered 13,040 voters. Promise Arizona also registered approximately: 6,000 voters in
23 2011, 21,000 voters in 2012, 1,000 voters in 2013, 2,000 voters in 2014, 1,000 voters in
24 2015, 4,000 voters in 2016, and 1,000 voters in 2017.

25 21. All of Promise Arizona's six employees work, in part, on voter registration
26 activities; two staff members devote their entire time to registering new voters and assisting
27 voters with updating their voter registrations. In preparation for the 2018 election, Promise
28 Arizona plans to increase its voter registration and engagement activities and to hire

1 additional staff members to focus on these efforts.

2 **DEFENDANT**

3 22. Defendant Michele Reagan is the Secretary of State for the State of Arizona
4 and the chief election officer of Arizona. As Arizona’s chief election officer, she is
5 responsible for coordinating the State’s responsibilities under the NVRA. *See*
6 52 U.S.C. § 20509; A.R.S. § 16-142. This includes ensuring that Arizona’s public assistance
7 agencies and Department of Transportation satisfy their NVRA obligations. *See* 52 U.S.C.
8 § 20506(a)(4)(A); A.R.S. § 16-452. Plaintiffs bring this action against Michele Reagan in
9 her official capacity as SOS.

10 **FACTUAL ALLEGATIONS**

11 **THE NVRA REQUIRES THE SECRETARY OF STATE TO PROVIDE VOTER
12 REGISTRATION AND ADDRESS UPDATES TO ADOT/MVD CLIENTS**

13 23. Congress enacted Section 5 of the NVRA, 52 U.S.C. § 20504 (“Section 5”),
14 commonly referred to as the “Motor Voter” law, to streamline the federal voter registration
15 process, improve accessibility to voter registration, and increase the number of qualified
16 voters who are properly registered. 52 U.S.C. § 20501; *see also, e.g.*, S. Rep. No. 103-6, at 5
17 (1993) (“[I]ncorporating voter registration into the drivers licensing process provides a
18 secure and convenient method for registering voters; an effective means of reaching groups
19 of individuals generally considered hard-to-reach for voting purposes . . . and a procedure for
20 keeping rolls current through contact with licensees who change addresses”).

21 24. Section 5 requires motor vehicle agencies to provide federal voter registration
22 services to citizens who engage in certain types of interactions—initial application, renewal,
23 and/or change of address—commonly referred to as “Covered Transactions.”

24 25. Under Section 5, when an individual notifies a motor vehicle agency of a
25 change of address, the individual’s voter registration address must be automatically updated
26 unless the individual affirmatively states that the change of address is not for voter
27
28

1 registration purposes. 52 U.S.C. § 20504(d).² In other words, change of address for voter
2 registration must be “opt out” and not “opt in.”

3 26. Section 5 requires that “[e]ach State motor vehicle driver’s license application
4 (including any renewal application) submitted to the appropriate State motor vehicle
5 authority under State law shall serve as an application for voter registration,” and that, if the
6 individual is already registered, such an application “shall be considered as updating any
7 previous voter registration by the applicant.” 52 U.S.C. § 20504(a).

8 27. Motor vehicle agencies are responsible for transmitting voter registration
9 information received during Covered Transactions to the appropriate election officials within
10 ten days of acceptance or, for transactions that occur within five days of the deadline to
11 register to vote in an election, within five days. *See* 52 U.S.C. § 20504(e). The election
12 officials must then update the voter registration using the information received.

13 28. These requirements must be met regardless of whether a Covered Transaction
14 takes place in-person at a motor vehicle office, online, by mail, over the phone, or through
15 other remote means.

16 29. It is particularly important that state officials in Arizona adhere to the address
17 update requirements of Section 5. Almost 70% of Arizonans changed their residential
18 address between 2000 and 2010, making Arizona the state with the second highest rate of
19 residents with address changes.³ The U.S. Census Bureau estimates that in 2016, more than
20 800,000 people in Arizona moved within the same county, and more than 126,000 moved to
21 a different county.⁴

22 30. The failure to update a voter’s address can have devastating consequences on a
23

24 ² The NVRA defines a “motor vehicle driver’s license” as including “any personal
25 identification document issued by a State motor vehicle authority.” 52 U.S.C. § 20502(3).

26 ³ *Democratic Nat’l Comm. v. Reagan*, No. CV-16-01065-PHX-DLR, 2018 WL 2191664, at *22 (D. Ariz. May 10, 2018).

27 ⁴ U.S. Census Bureau: Am. FactFinder, S0701 Geographical Mobility by Selected
28 Characteristics in the United States, *available at* https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_B07401&prodType=table
(last visited Aug. 11, 2018).

1 voter's right to cast a ballot. Under Arizona law, if a voter has moved, they are required to
 2 vote in the polling location for their new address. A.R.S. §§ 16-122, 16-135, 16-584.

3 31. Voters who casts a ballot at their old polling place, which reflects the address
 4 on their voter registration, are completely disenfranchised. A voter who casts a ballot at the
 5 polling place associated with their old address must do so by provisional ballot. That
 6 provisional ballot, however, will be cast in a precinct that does not correspond to the voter's
 7 current address, making it an out-of-precinct ballot. Under Arizona law, no part of an out-of-
 8 precinct ballot will be counted—even those parts for which the voter would be eligible (*e.g.*,
 9 the votes for statewide and federal offices). A.R.S. §§ 16-122, 16-135, 16-584. Worse, a
 10 voter who moves between Arizona counties is unable to vote at either their new or old
 11 polling place if their voter registration address is not up to date. *See* A.R.S. §§ 16-122, 16-
 12 135, 16-584.

13 32. As a result of the SOS's failure to keep the Arizona voter rolls updated with
 14 address changes submitted to ADOT/MVD, Arizona is consistently at the top of the list of
 15 states that collect and reject provisional ballots each election. One of the most frequent
 16 reasons provisional ballots in Arizona are rejected is because they are cast out-of-precinct.⁵
 17 In the 2008 general election, 14,885 out-of-precinct ballots were not counted, constituting
 18 0.6% of total ballots cast. In the 2012 general election, 10,979 ballots were cast out-of-
 19 precinct and thus not counted, constituting 0.5% of all ballots cast.⁶ The SOS's failure to
 20 update addresses in compliance with the NVRA contributes significantly to the high number
 21 of ballots rejected in Arizona.

22 33. The SOS's failure to update voter addresses in compliance with Section 5 of
 23 the NVRA may also have a profound effect on Arizona's vote by mail system. In 2016,
 24 approximately 75% of votes cast in Arizona were ballots received by mail, with many of
 25

26
 27 ⁵ *Democratic Nat'l Comm.*, 2018 WL 2191664, at *21.

28 ⁶ *Feldman v. Ariz. Secretary of State*, 842 F.3d 613, 618 (9th Cir. 2016), *rev'd en banc*.

1 those cast by voters on Arizona's Permanent Early Voting List (PEVL).⁷ If a voter on the
 2 PEVL moves and their registration address is not updated, the voter will not receive their
 3 ballot.

4 **THE SECRETARY OF STATE'S CHANGE OF ADDRESS PROCEDURES**
 5 **VIOLATE SECTION 5 OF THE NVRA**

6 34. The SOS is violating the NVRA by failing to update the voter registration
 7 addresses of persons who report a change of address to ADOT/MVD or who submit a
 8 driver's license or state identification card application or renewal bearing an address
 9 different from the one at which the individual is registered to vote. Instead, individuals who
 10 wish to update their voter registration address must take additional affirmative steps, in direct
 11 violation of Section 5.

12 35. On information and belief, ADOT/MVD regularly sends every change of
 13 address it collects from ADOT/MVD clients to the Secretary of State, regardless of whether
 14 the individual has chosen the voter registration option on ADOT/MVD's in-person or online
 15 forms.

16 36. However, on information and belief, the SOS does not use the address update
 17 information it receives from ADOT/MVD to automatically update addresses for voter
 18 registration purposes.

19 37. Only when an individual takes the affirmative step of checking the voter
 20 registration box affirming they would like to register to vote or update their voter
 21 registration, or, in the case of online changes of address, follows the link to a different
 22 website and completes an entirely new voter registration application, does the SOS update
 23 the individual's voter registration record to reflect the new address information.

24 38. The SOS also violates the NVRA because she has failed to ensure that
 25 ADOT/MVD's Duplicate/Credential Update Application and Driver License/Identification
 26

27 ⁷ *EAVS Deep Dive: Early, Absentee and Mail Voting*, U.S. ELECTION ASSISTANCE
 28 COMMISSION, Oct. 17, 2017, at 3, <https://www.eac.gov/documents/2017/10/17/eavs-deep-dive-early-absentee-and-mail-voting-data-statutory-overview/> (last visited Aug. 17, 2018).

1 Card Application forms comply with the NVRA. As Arizona’s chief election officer, the
 2 SOS is responsible for taking all possible steps to ensure ADOT/MVD’s NVRA compliance.
 3 *See, e.g., Harkless v. Brunner*, 545 F.3d 445, 452 (6th Cir. 2008); *Valdez v. Herrera*, Civ.
 4 No. 09-688 JCH/DJS, 2010 U.S. Dist. LEXIS 142209 at *34-35 (D.N.M. Dec. 21, 2010),
 5 *aff’d sub nom., Valdez v. Squier*, 676 F.3d 935 (10th Cir. 2012); *Scott v. Schedler*, 771 F.3d
 6 831, 839 (5th Cir. 2014).

7 39. An individual applying in person for a new driver’s license or identification
 8 card must complete the Driver License/Identification Card Application (ADOT form 40-
 9 5122). The form asks whether the applicant wishes to register to vote or update an existing
 10 voter registration. An applicant who is already registered to vote has their address updated
 11 **only** if the applicant affirmatively checks “yes” in response to this question . The Driver
 12 License/Identification Card Application violates Section 5 because it requires applicants to
 13 affirmatively check a box if they wish to update their existing voter registration address
 14 rather than making the update automatic unless an applicant selects to opt out. 52 U.S.C.
 15 § 20504(d).

16 40. An individual who already possesses a driver’s license or identification card
 17 and wishes to report a change of address in person at an ADOT/MVD office may do so by
 18 completing a Duplicate/Credential Update Application (ADOT form 40-5145).⁸ The form
 19 provides no indication that it can or will be used to update an existing voter registration and
 20 asks only if the applicant wishes to register to vote. Only if an already registered voter
 21 answers “yes” to this immaterial question is the individual’s voting address updated. Like
 22 the Driver License/Identification Card Application, the form violates Section 5 because it
 23 does not serve to update the applicant’s voter registration address unless the applicant takes
 24 the affirmative step of checking an “opt in” box. 52 U.S.C. § 20504(d).

25 41. Similarly, the SOS is violating the NVRA because she has failed to ensure that

26 _____
 27 ⁸ In some ADOT/MVD offices, individuals use the Driver License/Identification Card
 28 Application form rather than the Duplicate/Credential Update Application form to update
 their address. As explained above, this form violates the NVRA when a new address is
 reported to ADOT/MVD.

1 the process for change-of-address transactions conducted through ADOT/MVD's Service
 2 Arizona website ("Service AZ") complies with Section 5. When an individual navigates to
 3 the "Address/Email Change" page on Service AZ and submits an updated address, that
 4 update will be reflected in their driver's license/state identification card record but the SOS
 5 does not use it to update the individual's voter registration address as required by Section 5.

6 42. Instead, the online address update form merely provides a hyperlink an
 7 individual may click to initiate a separate transaction to update their address for voter
 8 registration purposes. If an individual follows the link, they are directed to a separate
 9 webpage and must complete an entirely new voter registration form to update their voter
 10 registration address. The addresses of those individuals who do not click the link and
 11 complete the new voter registration form are not updated, in violation of Section 5.

12 43. In sum, a voter who provides their new address to ADOT/MVD, whether in-
 13 person or online, must take additional affirmative steps to ensure that the updated address is
 14 applied to their voter registration record.

15 44. On information and belief, the SOS has taken no steps to ensure that
 16 ADOT/MVD forms, procedures, and practices comply with Section 5 of the NVRA. This
 17 lack of oversight has led to thousands of voters not being properly registered to vote.

18 45. The SOS's failure to ensure that a voter's registration address is updated when
 19 they update their driver's license address violates the NVRA and contravenes the statutory
 20 purpose of ensuring that voter rolls are kept accurate and up-to-date and that voters need not
 21 repeatedly reregister to avoid falling off the voter rolls.

22 **THE SECRETARY OF STATE'S FAILURE TO FOLLOW SECTION 5 OF THE**
 23 **NVRA HARMS PLAINTIFFS**

24 46. The SOS's ongoing failure to comply with the NVRA harms Plaintiffs by
 25 depriving their members of the opportunity to update their address when conducting Covered
 26 Transactions with ADOT/MVD, unless those members take additional affirmative steps.
 27 This also requires Plaintiffs to expend considerable resources, staff time, and volunteer time
 28 educating and registering voters to mitigate the impact of the SOS's failures to adhere to the

1 plain language of Section 5.

2 47. To mitigate the SOS's Section 5 harms to the public, the League spends
3 considerable time and resources educating Arizona residents who are already registered
4 voters about the need to update their voter registration addresses. As part of the League's
5 voter registration drives, to ensure all eligible voters have an opportunity to vote, the League
6 collects updated voter registration applications from already registered voters who need to
7 change their voter registration address.

8 48. Due to the SOS's ongoing violations of the NVRA, the League has expended
9 considerable resources assisting voters to update their address, when those voters should
10 have had their voter registration address automatically updated when they changed their
11 driver's license address with ADOT/MVD.

12 49. If the SOS complied with her obligations under the NVRA, the League could
13 have deployed these resources toward other activities germane to its purposes, including
14 lobbying, voter education, and ballot initiative activities, as well as reaching additional
15 voters through its voter registration efforts. Based on the SOS's ongoing violations, the
16 League reasonably anticipates that this diversion of resources will continue.

17 50. Similarly, as part of Mi Familia Vota's efforts to register voters, the
18 organization spends time and resources educating and collecting voter registration
19 applications from already registered voters who need to update their voter registration
20 address.

21 51. Mi Familia Vota voter registration efforts are part of a wide range of services
22 the organization provides to Latinos in Arizona. These include assistance with completing
23 citizenship applications, leadership development programs, voter education programs, and
24 get-out-the-vote campaigns.

25 52. Due to the SOS's ongoing violations of the NVRA, Mi Familia Vota has
26 expended additional resources on assisting voters who should have had their voter
27 registration address automatically updated when they changed their driver's license address
28 with ADOT/MVD. These are resources that Mi Familia Vota was not able to spend on its

1 other activities. Based on the SOS's ongoing violations, Mi Familia Vota reasonably
2 anticipates that this diversion of resources will continue.

3 53. Promise Arizona also spends significant time and resources on mitigating the
4 impact of the SOS's failure to update voter registration addresses when voters change their
5 address with ADOT/MVD. A significant portion of Promise Arizona's voter registration
6 work is focused on helping voters update their address for voter registration purposes.

7 54. Promise Arizona works with many voters who face economic instability that
8 forces them to frequently change addresses. Promise Arizona has worked with numerous
9 voters who have moved, updated their address with ADOT/MVD, and then had to separately
10 update their voter registration address. For these very mobile voters, this may happen
11 multiple times a year.

12 55. Because Promise Arizona does not charge fees for any of its services, the
13 money and time spent on voter registration and address updates acutely impacts the other
14 work the organization is able to do. In addition to the organization's voter registration work,
15 Promise Arizona conducts non-voter related issue advocacy and programming including:
16 English language, technology, and leadership training; U.S. citizenship application
17 assistance; community-based organizing; and direct legal services for immigrant and refugee
18 communities including Deferred Action for Childhood Arrival ("DACA") renewals, power
19 of attorney, and fee waivers. Promise Arizona's Leadership Institute works with immigrant
20 and Latino students to build confidence and self-esteem; ground students in the history and
21 values of past social movements; and to become leaders in the community. If not for the
22 SOS's failure to comply with Section 5 of the NVRA, Promise Arizona could devote more
23 resources, staff time, and volunteer time to these issues and programs.

24 56. Due to the SOS's ongoing violations of the NVRA, Promise Arizona has
25 expended additional resources on assisting voters with updating their address, when those
26 voters should have had their voter registration address automatically updated when they
27 changed their driver's license address with ADOT/MVD. If the SOS complied with her
28 obligations under the NVRA, Promise Arizona could have deployed its resources toward

1 other activities germane to its purposes, including lobbying, voter education, and ballot
 2 initiative activities. Based on the SOS's ongoing violations, Promise Arizona reasonably
 3 anticipates that this diversion of resources will continue.

4 **THE SECRETARY OF STATE HAS FAILED TO CORRECT ONGOING**
 5 **NVRA VIOLATIONS**

6 57. To ensure compliance, the NVRA provides that “[a] person who is aggrieved
 7 by a violation [of the NVRA] may provide written notice of the violation to the chief election
 8 official of the State involved.” 52 U.S.C. § 20510(b)(1). If the violation is not corrected
 9 within a set period of time (ordinarily 90 days), “the aggrieved person may bring a civil
 10 action . . . for declaratory or injunctive relief” 52 U.S.C. § 20510(b)(2).

11 58. On November 14, 2017, counsel for Plaintiffs sent a letter to the SOS,
 12 ADOT/MVD, the Arizona Health Care Cost Containment System (“AHCCCS”) and the
 13 Arizona Department of Economic Security (“DES”) notifying them of violations to Section
 14 5, Section 7 and Section 8 of the NVRA (the “November Letter”). The November Letter
 15 indicated that Plaintiffs’ counsel was prepared to meet with the SOS and the agencies to help
 16 them develop a comprehensive compliance plan. A copy of the November Letter is attached
 17 as Exhibit A.

18 59. The SOS and the agencies requested and were granted an extension to respond
 19 to the November Letter. The SOS finally responded on June 14, 2018.

20 60. Plaintiffs and ADOT/MVD entered into an Interim Memorandum of
 21 Understanding executed August 14, 2018, in which ADOT/MVD agreed to make the
 22 necessary changes to the relevant ADOT/MVD forms and procedures (“MOU”). A copy of
 23 the MOU is attached as Exhibit B. However, even if ADOT/MVD could make these
 24 changes unilaterally and even if the SOS began processing ADOT/MVD address changes as
 25 voting address changes in the future, these actions would provide only prospective relief for
 26 voters who engage in future Covered Transactions. Only the SOS has the capacity to rectify
 27 the previous violations and prevent voter disenfranchisement in the 2018 general election for
 28 voters whose voting addresses are out of date. She has repeatedly refused to remedy these

1 violations.

2 61. On information and belief, the SOS's violations of Section 5 of the NVRA
3 identified in the November Letter are continuing and have not been cured.

4 62. On information and belief, the SOS could update the addresses of voters who
5 submit address changes to ADOT/MVD—but to date, she has failed to do so.

6 63. As a result of the SOS's continuing failure to update addresses in compliance
7 with the NVRA and to ensure ADOT/MVD compliance with Section 5 of the NVRA,
8 persons in Arizona applying for and renewing driver's licenses or state identification cards
9 are not currently offered the opportunity to update their voter registration address as required
10 by federal law.

11 64. The SOS's ongoing violations of the NVRA harm Plaintiffs and prevent
12 thousands of individuals from being able to vote in federal elections. Judicial intervention is
13 necessary to prevent the SOS from further harming Plaintiffs and the public, and to remedy
14 past harms that only the SOS can correct.

15 **FIRST CAUSE OF ACTION**

16 **Violation of Section 5 of the National Voter Registration Act of 1993**

17 65. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
18 through 64 as if fully set forth herein.

19 66. The SOS does not provide voter registration opportunities and assistance as
20 required by Section 5 of the NVRA, 52 U.S.C. § 20504. The SOS has failed to ensure that
21 individuals who engage in Covered Transactions have their voter registration address
22 automatically updated without taking additional steps, in accordance with Section 5.

23 67. The failure of the SOS to comply with Section 5 has injured and will continue
24 to injure the Plaintiffs because Plaintiffs have been required to invest additional resources in
25 voter registration and divert resources from other activities critical to their missions.
26 Remediation of these ongoing violations will permit Plaintiffs to allocate their scarce
27 resources to other activities important to their missions.

28 68. The failure of the SOS to comply with Section 5 has also injured and will

1 continue to injure Plaintiffs' members. Remediation of these ongoing violations will ensure
2 that members of the League, Mi Familia Vota, and Promise Arizona receive the voter
3 registration services required by the NVRA during future Covered Transactions.

4 **BASIS FOR INJUNCTIVE RELIEF**

5 69. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 68 as if fully set forth herein.

7 70. The SOS has violated Section 5 of the NVRA by depriving Arizona residents
8 of the voter registration and address update services required by this statutory provision.

9 71. Missed voter registration opportunities impose unnecessary and legally
10 prohibited burdens on voters, including members of Plaintiff organizations, who must seek
11 out voter registration materials and opportunities that should have been provided to them
12 through the election procedures that the SOS coordinates. The SOS's failure to ensure
13 proper compliance with the NVRA may result in complete disenfranchisement of Arizona
14 residents who are unable to update their registration prior to the voter registration deadline.

15 72. These missed opportunities impose considerable, unnecessary burdens on the
16 League, Mi Familia Vota, and Promise Arizona as they must fill the gap by providing voter
17 registration address update services that the Secretary of State is failing to ensure occur.

18 73. Because monetary relief cannot compensate for Plaintiffs' members lost
19 opportunities to participate in the democratic process and Plaintiffs' opportunities to pursue
20 their organizational objectives, Plaintiffs have no adequate remedy at law for the SOS's
21 violation of their rights and will suffer irreparable harm without injunctive relief.

22 74. The SOS will suffer no undue harm if compelled to comply with her statutory
23 obligations, while Arizona residents may be wholly deprived of their right to vote if the
24 SOS's violations of the law continue. Therefore, the balance of hardships favors a
25 mandatory permanent injunction against the SOS.

26 75. Issuing an injunction against the SOS promotes the public interest by ensuring
27 voter rolls are accurate and current and by increasing the number of eligible individuals who
28 can vote and have their voices heard.

1 76. Because the SOS is the only person able to update the voter registration
2 addresses of voters whose addresses were not properly updated, only the SOS can rectify the
3 ongoing harm to eligible voters who may be disenfranchised because of the SOS's failure to
4 comply with Section 5. Injunctive relief is required to remedy the SOS's current and past
5 violations of the NVRA and to secure ongoing compliance.

6 **Prayer for Relief**

7 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in favor
8 of Plaintiffs and against the SOS on the claims for relief as alleged in this Complaint and
9 enter an Order:

10 (i) declaring, pursuant to 28 U.S.C. § 2201 and 52 U.S.C. § 20510(b)(2), that the
11 SOS has violated Section 5 of the NVRA, 52 U.S.C. § 20504, by failing to provide voter
12 registration services during Covered Transactions;

13 (ii) permanently enjoining the SOS, her agents and successors in office, and all
14 persons working in concert with her office, from implementing practices and procedures that
15 violate Section 5 of the NVRA, 52 U.S.C. § 20504;

16 (iii) directing the SOS, under a court-approved plan with appropriate reporting and
17 monitoring requirements, to take all appropriate measures necessary to remedy the past harm
18 caused by her non-compliance with Section 5 of the NVRA;

19 (iv) directing the SOS, under a court-approved plan with appropriate reporting and
20 monitoring requirements, to take all steps necessary to ensure ongoing compliance with the
21 requirements of Section 5 of the NVRA, 52 U.S.C. § 20504, including, without limitation,
22 procedures for ensuring that voters who engage in Covered Transactions with ADOT/MVD
23 have their voting address updated unless they affirmatively state that the ADOT/MVD
24 address change does not apply for voter registration purposes;

25 (v) directing the SOS to take all steps necessary to train and direct election
26 workers to count all votes cast by provisional ballot for state and federal offices if the voter
27 is eligible to vote in those races, regardless of whether the voter casts their provisional ballot
28 in the precinct for their former or updated address;

1 (vi) awarding Plaintiffs reasonable attorney fees, including litigation expenses, and
2 costs pursuant to 52 U.S.C. § 20510(c);

3 (vii) retaining jurisdiction over this action to ensure that the SOS complies with her
4 obligations under the NVRA; and

5 (viii) awarding such other equitable and further relief as the Court deems just and
6 proper.

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1 DATED this 18th day of August, 2018.

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EXHIBIT A



November 14, 2017

Via certified mail and email

Michele Reagan
Arizona Secretary of State
Office of the Secretary of State
1700 W Washington Street, 7th Floor
Phoenix, AZ 85007-2808

RE: *Arizona's Compliance with the National Voter Registration Act*

Dear Secretary Reagan:

Recognizing that the right to vote is “at the heart of our democracy,” *Burson v. Freeman*, 504 U.S. 191, 198 (1992), and the burdens imposed on that right by onerous registration requirements, Congress enacted the National Voter Registration Act of 1993 (“NVRA”) to ease obstacles to voting by providing individuals with additional opportunities to register to vote. *See* S. Rep. No. 103-6 (1993). In enacting the NVRA, Congress specifically found that “unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.” 52 U.S.C. § 20501(a)(3).

We are writing on behalf of the League of Women Voters of Arizona, Mi Familia Vota Education Fund and Promise Arizona, as well as persons eligible to register to vote that these organizations represent, and others similarly situated, to notify you that the State of Arizona is not in compliance with Section 5, Section 7, or Section 8 of the NVRA, 52 U.S.C. §§ 20504; 20506; 20507, and that State agencies are failing to meet their obligations under Section 203 of the Voting Rights Act (“VRA”) in counties covered by its protections.

Section 5 of the NVRA requires states to provide individuals with an opportunity to register to vote when they conduct certain driver license and non-driver identification card transactions. Section 7 requires states to provide the opportunity to register to vote and to provide assistance with that voter registration during public assistance applications, recertifications, renewals, and changes of address. Section 8 of the NVRA requires states to ensure that every eligible applicant is in fact added to the voter registration rolls when they submit their voter registration application to a designated voter registration agency before the prescribed deadline. Section 8 also requires that if an individual moves to another address within the same registrar’s jurisdiction, the registrar shall update the registrant’s addresses on the voter registration rolls. Arizona is failing to comply fully with the requirements of these three Sections of the NVRA. Extensive review of available voter registration data, and public documents and an extensive on-the-ground investigation of agency practices have directed us to this conclusion.

As Arizona’s chief election official, you are ultimately responsible for the State’s compliance with the NVRA. *See* Ariz. Rev. Stat. § 16-142 (“The secretary of state or the secretary’s designee is . . . [the] chief state election officer who is responsible for coordination of state

responsibilities under the national voter registration act of 1993”); *Harkless v. Brunner*, 545 F.3d 445, 451- 53 (6th Cir. 2008). We urge you to take immediate steps, in conjunction with relevant state agencies, including the Arizona Department of Transportation (ADOT), the Arizona Department of Economic Security (DES), and the Arizona Health Care Cost Containment System (AHCCCS), and relevant Arizona counties, to bring the State of Arizona into compliance with Sections 5, 7, and 8 of the NVRA, and bring Arizona into compliance with Section 203 of the Voting Rights Act.

ACLU, ACLU of Arizona, Dēmos, and the Lawyers’ Committee for Civil Rights Under Law have years of experience in working with states to ensure compliance with the NVRA and other federal voting rights statutes. We hope to work amicably with you to remedy Arizona’s non-compliance but will pursue litigation if necessary.

I. VIOLATIONS OF SECTION 5 OF THE NVRA

A. Arizona’s Obligations Under Section 5 of the NVRA

Section 5 of the NVRA requires the Arizona Department of Transportation (“ADOT”) and its Motor Vehicle Division (“MVD”) to provide individuals with an opportunity to register to vote in conjunction with an initial or renewal application for a driver license or state-issued identification card (“ID card”). 52 U.S.C. § 20504(a)(1), (d).¹ The NVRA mandates that when an individual applies for or renews a driver license or ID card that application also “serve as an application for voter registration . . . unless the applicant fails to sign the voter registration application.” 52 U.S.C. § 20504(a)(1). A voter registration application “shall” be included as part of every application for state driver license or ID card. *Id.* § 20504(c)(1). If an individual is already registered, their driver license application or renewal shall “update any previous voter registration[.]” 52 U.S.C. § 20504(a)(2).

Additionally, Section 5(d) of the NVRA requires that any request ADOT receives to change the address associated with a driver license must serve to automatically update the client’s voter registration information unless the client affirmatively opts out. *Id.* § 20504(d) (noting that “[a]ny change of address form submitted in accordance with state law shall serve as a notification of change of address for voter registration . . . unless the registrant states on the form that the change of address is not for voter registration purposes”).²

ADOT must provide these voter registration services regardless of whether a transaction takes place in person at an ADOT office or remotely via phone, mail, email, or internet. *See, e.g., Stringer v. Pablos*, No. 5:16-CV-257-OLG, 2017 WL 1861910, at *7 (W.D. Tex. Mar. 31, 2017) (holding that online transactions are covered by Section 5); *Action NC v. Strach*, 216 F. Supp. 3d

¹ Throughout this letter, references to driver licenses include state personal identification cards, which are available in Arizona. *See* [https://www.azdot.gov/motor-vehicles/driver-services/driver-license-information/identification-\(id\)-card](https://www.azdot.gov/motor-vehicles/driver-services/driver-license-information/identification-(id)-card); *see also* 52 U.S.C. § 20502(3) (defining “motor vehicle driver’s license” to “include[] any personal identification document issued by a State motor vehicle authority”).

² Because the NVRA requires that address updates must be performed for “any” address update submitted to ADOT, the corresponding update to the voter registration record when a registered voter reports to ADOT they have moved should be performed whether the individual moves within the same county or to a new county within the state of Arizona.

597, 623 (M.D.N.C. 2016) (holding that requirements of Section 5 “apply equally to in-person and remote covered transactions”); U.S. Department of Justice, Civil Rights Division, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q4, *available at* <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> (last visited Oct. 20, 2017) (“to the extent that the State provides for remote applications for driver licenses, driver license renewals, or driver license changes of address, via mail, telephone, or internet or other means, then provision must be made to include the required voter registration opportunity as well”).

B. Arizona’s Violations of Section 5 of the NVRA

ADOT’s current and on-going failure to comply with its voter registration obligations under Section 5 of the NVRA is established by several sources, including site visits,³ certain ADOT forms, information publicly available on ADOT’s website (Service Arizona, <https://servicearizona.com>), and internal policy and other documents addressing the voter registration services provided by ADOT. Specifically, ADOT violates the NVRA during change of address transactions.⁴ As described below, ADOT clients who conduct a change-of-address transaction in person or online through Service Arizona are not provided with the voter registration services mandated under the NVRA. ADOT requires—in violation of Section 5(d) of the NVRA—that individuals who report a change of address take affirmative steps to update their voter registration information by requiring that the applicant request to “apply for an address change on his or her voter registration.”⁵

1. In-Office Change-of-Address Transactions Require ADOT Clients to Opt In to Changing their Voter Registration Information.

During change of address transactions conducted in ADOT offices, rather than using the opt-out procedure required by Section 5, ADOT requires voters to opt in to have their voter registration address updated. In Arizona, a change of address is reported to ADOT in office using a Duplicate/Credential Update Application (https://www.azdot.gov/docs/default-source/mvd-forms-pubs/40-5145_fillable.pdf?sfvrsn=4). This form requires an ADOT client to affirmatively request that their voter registration information be updated when submitting a request to update their address on their license (rather than automatically updating the information unless the individual declines that such a change be made). This process is an “opt-in” process; not the “opt-out” process required by Section 5 of the NVRA.

³ In summer 2017, staff and volunteers from our organizations visited nine ADOT offices as part of an investigation into NVRA compliance.

⁴ There may be additional NVRA violations during ADOT covered transactions.

⁵ Arizona has a number of “Authorized Third Party offices” for driver services that are operated by private individuals or businesses, and contract with and are monitored by MVD. See <https://www.azdot.gov/motor-vehicles/hours-and-locations>. As explained *infra* at I.A., third-party contractors that are providing services covered by the NVRA must comply with the NVRA. The Authorized Third Party offices in Arizona are not fully compliant with the NVRA, as they provide, for the most part, the same voter registration services as ADOT itself. Any efforts to bring ADOT into compliance with the NVRA must also include the Authorized Third Party offices.

ADOT offices which do not use the Duplicate/Credential Update Application, and instead use the initial driver license application to update addresses, also appear to be in violation of the NVRA.⁶ When used as a process to report a change of address, the initial application form violates the NVRA, as this form, like the Duplicate/Credential Update Application, requires an individual to take affirmative steps to update their voter registration, and thus does not function as an automatic voter registration update.

2. ADOT Does Not Offer Clients Who Conduct Change-of-Address Transactions Online Through “Service Arizona” the Voter Registration Services Required by the NVRA.⁷

In Arizona, it is possible to update a driver license address through Service Arizona (<https://servicearizona.com/addressChange?popularclick>). But, like the in-office processes for change of address, voter registration offered through Service Arizona is not compliant with the NVRA because it requires voters to take affirmative steps if they want to update their voter registration. Below is a screenshot from Service Arizona through which clients report a change of address, showing the voter registration language:

You can also register to vote or update your voter registration using ServiceArizona.com.



Rather than *automatically* updating an applicant’s address for voter registration purposes at the same time as the applicant’s address for their driver license is updated, all that is provided is an opportunity to click a button about voter registration. After taking the affirmative step of clicking the button to indicate that they would like to register to vote, clients must also complete a new voter registration application through Service Arizona’s online voter registration portal. Unless clients go through this entire additional process, their voter registrations are not updated. This process, where the client must take affirmative steps to ensure that their voter registration record is updated, is a clear violation of Section 5.

II. VIOLATIONS OF SECTION 7 OF THE NVRA

A. Arizona’s Obligations Under Section 7 of the NVRA

The NVRA requires Arizona to “designate as voter registration agencies . . . all offices in the State that provide public assistance. See 52 U.S.C. § 20506(a)(2)(A). “Public assistance” offices include state offices that administer the Supplemental Nutritional Assistance Program (“SNAP”), Medicaid, Children’s Health Insurance Program (“CHIP”), and Temporary Assistance for Needy

⁶ As mentioned above, in the summer of 2017, staff and volunteers from our organizations visited nine ADOT offices as part of an investigation into NVRA compliance. Of those nine offices, three did not have any Duplicate/Credential Update Applications available.

⁷ Service Arizona can also be accessed through kiosks located at MVD offices throughout the state. See <https://www.azdot.gov/motor-vehicles/hours-and-locations>. The Service Arizona processes are basically the same whether they are accessed through the internet or through a kiosk in an MVD office, so the NVRA violations are the same.

Families (“TANF”). See H.R. Rep. No. 103-66, at 19 (1993) (Conf. Rep.); Department of Justice, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q13.⁸ In Arizona, these programs are administered by DES and AHCCCS, and therefore, these agencies are “voter registration agencies.”

Section 7 of the NVRA requires these Arizona public assistance offices to (i) distribute voter registration application forms; (ii) assist applicants in completing the voter registration application forms; and (iii) accept completed voter registration application forms and forward them to the appropriate election official. See 52 U.S.C. § 20506(a)(4)(A).

More specifically, each office must (i) distribute a voter registration application form with each application for public assistance and with each recertification, renewal or change of address form (“covered transactions”), except under limited circumstances as explained below; (ii) inquire in writing, through statutorily-prescribed language, whether the applicant would like to register to vote or change their voter registration address (“voter preference question”); (iii) provide, in writing, several statutorily-prescribed disclaimer statements, including notice that the decision whether to register to vote will not affect the amount of public assistance provided by the agency; and (iv) provide assistance in completing the voter registration application form to the same degree the agency provides assistance in completing its own forms, including assistance with providing information necessary to establish eligibility to register to vote. 52 U.S.C. § 20506(a)(6). The NVRA’s requirements are very specific and states must comply strictly with those obligations. See, e.g., *United States v. Louisiana*, 196 F. Supp. 3d 612, 673-75 (M.D. La. 2016) (holding that substantial compliance with the NVRA is not sufficient; “the Court reads Section 7 to prescribe strict compliance with its commands, finding no support for any other standard in the NVRA’s plain and unambiguous language”).

The NVRA further provides that public assistance offices must distribute a voter registration application to each public assistance applicant or client engaging in a covered transaction unless the applicant or client affirmatively declines to register to vote *in writing*. *Valdez v. Squier*, 676 F.3d 935, 945-47 (10th Cir. 2012) (citing 52 U.S.C. § 20506(a)(6)). To decline “in writing,” a client must affirmatively opt out by answering “no” in response to the voter preference question. *Id.* at 945-46 (“[A]n applicant’s failure to check either the ‘YES’ or ‘NO’ box on the voter declination form does not constitute a declination ‘in writing.’ . . . [The NVRA] requires an applicant to affirmatively, by way of writing, ‘opt out’ of receiving a voter registration form.”).

Public assistance offices must provide voter registration during each covered transaction, regardless of whether the transaction takes place in an agency office, over the Internet or via email, telephone, fax, or other remote means. See, e.g., *Louisiana*, 196 F. Supp. 3d at 669 (“[J]urisprudence compels this Court to honor Section 7’s specific language and hold the NVRA to cover what its text also commands: remote transactions.”); *Action NC*, 216 F. Supp. 3d at 623 (concluding, in denying defendant’s motion to dismiss, that plaintiffs have sufficiently pled a plausible claim that “Sections 5 and 7 of the NVRA apply equally to in person and remote covered transactions”); *Ga. State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1329

⁸ Section 7 also imposes voter registration services requirements on additional programs, including Women, Infants, and Children (“WIC”) and state run disability programs. NVRA compliance by those additional programs is not addressed in this notice letter.

(N.D. Ga. 2012); *see also* U.S. Department of Justice, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q24.

The NVRA also requires effective distribution of voter registration applications for each covered transaction. Section 7 explicitly requires agencies to “distribute” the federal voter registration mail-in form or the state’s version of the same. 52 U.S.C. § 20506(a)(6)(A). “Distribute is defined as ‘deliver[ing]’ or ‘to disperse.’ . . . The statute is very clear in that with each transaction the applicant must be given a form that is described in Section 9 of the NVRA.” *Ferrand v. Schedler*, No. 11-cv-926, 2012 WL 1570094, at *9 (E.D. La. May 3, 2012) (quoting Black’s Law Dictionary (9th ed. 2009)). Merely providing a link to a voter registration application that must be downloaded and printed out by applicants in order to be used effectively fails to comply with the Section 7 requirement to *distribute* a voter registration application. Furthermore, providing only access to an online voter registration system that cannot be accessed by all citizens does not comply with the requirement to distribute. In order to be NVRA-compliant during remote transactions, covered agencies must offer to mail a paper voter registration application directly to any client who requests it. The failure to provide clients completing a remote transaction the option of having a voter registration application mailed to them is not just a technical violation of the NVRA; it has a real impact on the ability of public assistance applicants—who are low income and thus less likely to have driver licenses (enabling them to register online) or access to a printer (enabling them to print a hard copy of the application themselves)—to engage in the political process. Unless there is a method of physical distribution available, many eligible voters will not receive actual distribution of the form.

Finally, the NVRA’s requirements cannot be circumvented simply by contracting the underlying transaction to a third party. U.S. Department of Justice, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q5 (“When a state contracts with a private entity to administer services in an agency that is required to offer voter registration, the ultimate responsibility for ensuring provision of voter registration services remains with the state, and the voter registration requirements under the NVRA remain the same.”); *see also Louisiana*, 196 F. Supp. 3d at 675 (“[T]he NVRA compel[s] this Court to hold [the Louisiana Department of Health] responsible for the violations of its chosen agents when the power to appoint, to monitor, and to maintain rests upon it alone and when each agent receives payment from LA by virtue of its contracts.”).

B. Arizona’s Non-Compliance with Section 7 of the NVRA

ACLU, ACLU of Arizona, Dēmos, and the Lawyers’ Committee for Civil Rights Under Law recently completed a comprehensive investigation of Arizona’s compliance with Section 7 of the NVRA. The investigation included (1) analyzing voter registration and public assistance data; (2) examining public assistance agencies’ forms, policies, and practices; and (3) speaking with public assistance employees and clients. Taken together, the evidence indicates that Arizona’s public assistance offices are systematically failing to provide the voter registration services mandated by the NVRA, including (1) when individuals leave the voter preference question blank, (2) during certain change of address transactions, (3) during some remote transactions, (4) in connection with certain renewals and recertifications, and (5) when transactions are conducted by third-party contractors.

1. Voter Registration Data Indicating Non-Compliance

According to data Arizona reported to the U.S. Election Assistance Commission, the number of voter registration applications originating from Arizona public assistance offices decreased precipitously over the past decade and a half, from 32,137 in the 1999-2000 reporting period⁹ to just 13,135 in 2015-2016,¹⁰ a reduction of nearly 60%. Even more telling, Arizona's reported number of voter registration applications actually went down between 2013-2014 and 2015-2016,¹¹ even though 2016 was a presidential election year when voter registration rates typically increase and Arizona officials purported to be working on NVRA compliance.

Moreover, this decrease is not due to a decline in social services provided in Arizona or a lack of need for voter registration services. The number of initial food stamp applications through the SNAP program in Arizona around the same general time frame has nearly doubled, from 529,556 in 2004¹² to 965,046 in 2016.¹³ And, in 2016, only 58% of Arizona citizens earning an annual income of less than \$30,000 were registered to vote, while 76% of those earning \$60,000 or more were registered to vote.¹⁴ In other words, there is a substantial voter registration gap between low- and high-income Arizona citizens, and only slightly more than half of low-income Arizona citizens are registered to vote.

In our experience, such a decrease, in the face of rising caseloads and persistent need, is an important consideration and likely indicates systematic non-compliance and disproportionate harm to voter participation by low-income groups and people of color.

⁹ U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1999-2000* (June 2001), Table 2 page 1, available at <https://www.eac.gov/assets/1/6/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201999-2000.pdf>.

¹⁰ U.S. Election Assistance Commission, *The Election Administration and Voting Survey: 2016 Comprehensive Report* (June 2017), NVRA Appendix A, Table 2, available at https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_Report.pdf.

¹¹ *See id.*; U.S. Election Assistance Commission, *The Election Administration and Voting Survey: 2014 Comprehensive Report* (June 2017), NVRA Appendix A, Table 2, available at <https://www.eac.gov/research-and-data/2014-election-administration-voting-survey/>.

¹² U.S. Department of Agriculture, Food and Nutrition Services, Program Accountability Division, *Food Stamp Program State Activity Report, 2004* (Feb. 2006), available at https://fns-prod.azureedge.net/sites/default/files/2004_state_activity.pdf.

¹³ U.S. Department of Agriculture, Food and Nutrition Services, *Supplemental Nutrition Assistance Program (SNAP), State Level Participation and Benefits* (September 2017), available at <https://fns-prod.azureedge.net/sites/default/files/pd/29SNAPcurrPP.pdf>.

¹⁴ Dēmos analysis of the 2016 Current Population Survey Voting and Registration Supplement. Data available at <https://www.census.gov/cps/data/>.

2. Specific NVRA Violations Identified

In addition to general concerns highlighted by the precipitous drop in voter registration applications generated by Arizona's public assistance agencies, our on-the-ground investigation and review of agency policies and procedures highlight several compliance problems that constitute violations of the NVRA.

a. Blank Voter Preference Questions

The NVRA requires designated agencies to present each client with a written voter preference question and to distribute a voter registration application to the client unless the client declines the opportunity to register in writing. It appears from our investigation that DES and AHCCCS are not distributing voter registration applications to clients who leave the voter preference question blank when filling out initial applications, renewal applications, or change of address forms. As noted above, leaving the question blank is not equivalent to declining to register in writing. This is especially troubling with respect to change of address transactions given the high likelihood that the affected client should also have their address changed for voter registration purposes and, without the opportunity to update their registration, will no longer be properly registered to vote.

Documents obtained from the agencies through Arizona's Public Records law show ambiguous, incomplete, and in some cases inaccurate guidance for agency staff concerning the voter preference question. Most concerning are recent training documents. A DES "CBT System Check" training form concerning voter registration (dated 1-4-2017) instructs employees to complete the NVRA-5 forms with "no" answers when the clients have not completed the form themselves. (Arizona uses a form called the NVRA-5 form as a voter preference form, where the voter registration question is provided to clients, along with the NVRA disclosures). Similarly, the DES current Voter Registration Policy, Policy 1-01-24-1, states that "[i]f the applicant or participant does not sign [the NVRA-5 voter preference form], staff shall circle "No" and initial and date the form indicating the individual declined the opportunity to register to vote." Furthermore, a supplementary policy document called "Voter Registration Policy and Procedure" states that if the client does not answer the voter preference question, the staff shall complete the form and indicate that the client's response was "no" and do nothing more. As explained above, this practice violates the NVRA's requirement that a voter registration application be distributed to all clients unless *the client* declines in writing.

While there appears to have been some attempt to correct this violation, the policy manual itself has not changed and, as noted, the most recent training materials do not provide the legally correct guidance about how to respond when a client leaves the voter registration question blank. Moreover, DES and AHCCCS have issued conflicting information to their employees in recent years. On January 12, 2015, DES and AHCCCS issued "News Flash, #14-084F" stating that if the voter preference question was left unanswered, it should be treated as "yes" and clients should receive a voter registration application. But then just a few weeks later on January 30, 2015, DES and AHCCCS rescinded this notice, stating that "an offer of voter registration left unanswered must be treated the same as if the client had answered 'no.'"

AHCCCS has issued more recent policy and training documents to its employees that appear to comply with the law on this issue except for the change of address issue discussed below. However, DES has not taken similar steps and, as a result, DES employees are not adhering to the law.¹⁵ Critically, our field investigation found that front line agency staff appear to be violating the NVRA when the voter preference question is left blank. Five out of the eight DES offices surveyed indicated that a blank voter preference question is treated as a “no” and results in no voter registration application being distributed to the client. This evidence establishes that DES is engaged in on-going systematic violation of Section 7 because it does not provide voter registration applications to all clients who do not decline in writing.

b. Change of Address

AHCCCS’ processes for offering voter registration when a client reports a change of address appear to violate the NVRA. The AHCCCS policy manual addresses voter registration in Sections 1301, 1401, and 1502. While there is additional information addressing “offering voter registration” that makes it clear that voter registration must be offered during a transaction involving a change of address, there is no guidance provided about how this should be accomplished if a client does not come into the office. There is language stating explicitly that no action by agency staff is necessary if the change is submitted through the Health-e-Arizona Plus portal. *See infra* at II.B.2.c. Furthermore, if the change of address is conducted over the telephone, it is not possible for a client to decline the offer of voter registration in writing, so a voter registration form must be distributed, usually through the mail, to all clients reporting a change of address over the telephone.¹⁶

There also does not appear to be any guidance in the policy manual or elsewhere for providing the required NVRA disclosures, which must be provided in writing. *See* 52 U.S.C. § 20506(a)(6)(B). Given this lack of guidance, AHCCCS most likely is violating the requirements of the NVRA whenever clients report a change of address.

¹⁵ AHCCCS is responsible for administering the online benefits application in Arizona that can be used to apply for SNAP, Medicaid, CHIP and TANF called Health-e-Arizona Plus (“HEAplus”). *See* <https://www.healtharizonaplus.gov/Default/Default.aspx>. There is a voter preference question incorporated into this online application. It appears as though the voter preference question must be answered before an individual can submit the application. Clients, therefore, must always answer the voter preference question during these online benefits transactions, avoiding the circumstance of a blank answer. This is a best practice to achieve NVRA compliance. But if this is not correct and there is not a hard stop for the voter preference question in HEAplus, AHCCCS is also most likely violating Section 7 in a manner similar to that described *supra* at II.B.2.a. None of the AHCCCS policy or training manuals address how to respond if a client does not answer the voter preference questions in HEAplus, so it is likely that staff do not distribute voter registration applications to clients in this circumstance.

¹⁶ This is true during any telephone transaction. While AHCCCS may conduct few renewal transactions over the telephone, the policy manual sections refer to telephone renewal transactions. As with a change of address, it is not possible to obtain a declination in writing over the telephone, so any client conducting a renewal transaction exclusively over the telephone, must be sent a voter registration application.

c. Distribution of Voter Registration Applications through the Health-e-Arizona Plus Portal

As noted, AHCCCS is responsible for administering the online benefits applications in Arizona for SNAP, Medicaid, CHIP and TANF called Health-e-Arizona Plus (“HEAplus”) (https://www.healtharizonaplus.gov/app/Info_Family_Individual.aspx?TokenID=0.7530142175131413). Although the HEAplus benefits application interface contains a voter registration question, none of AHCCCS’ training, policy or guidance documents explain the process for providing voter registration applications to clients who indicate they would like to register to vote in response to the required voter registration question. AHCCCS staff do not take any affirmative steps to ensure that voter registration applications are distributed to all clients using the HEAplus application interface when they want to register to vote. Instead, when a client applies for Medicaid, SNAP, or TANF through HEAplus and indicates a desire to register to vote, the client is provided with a link to the Secretary of State’s voter registration page where they may register online (if they meet certain requirements) or download a voter registration application, which then must be printed and submitted to the appropriate county recorder or Secretary of State. See <https://www.azsos.gov/elections/voting-election> and then <https://www.azsos.gov/elections/voting-election/register-vote-or-update-your-current-voter-information>. This same process also occurs if an individual clicks the “voter registration button” on the AHCCCS home page. See https://www.healtharizonaplus.gov/app/Info_Family_Individual.aspx?TokenID=0.7530142175131413. As noted previously, however, this procedure does not satisfy the NVRA’s requirement that designated agencies effectively distribute voter registration applications. In addition, Arizona’s online voter registration system cannot be used by all Arizona citizens, as it can only be used if an individual has a valid Arizona driver license or a non-operating identification.¹⁷ See <https://servicearizona.com/webapp/evoter/register?execution=e1s4>. Furthermore, many clients who do not qualify to register online may not have access to a printer. Providing only a link to the Secretary of State’s webpage is a violation of the NVRA.

d. AHCCCS Automatic Renewal Processes

As noted above, any renewal or recertification of benefits constitutes a “covered transaction” under the NVRA. And, as AHCCCS policies acknowledge, NVRA-compliant voter registration opportunities must be provided during all Medicaid renewals. However, AHCCCS’ Medicaid renewal process currently violates the NVRA. The forms sent to clients who are approved for an automatic renewal of their benefits mention voter registration; however, unless a client returns this form indicating that they do not want to register to vote by checking the box “no,” they have not declined in writing and should receive an actual voter registration application. Because, in most cases, these clients are not required to return these forms, there is generally no opportunity for them to answer the voter registration question in writing. Therefore, a blank voter registration application should be distributed as part of this renewal documentation to ensure that

¹⁷ Furthermore, even some individuals with an Arizona driver license cannot effectively register to vote online because if that driver license was issued before October 1, 1996, and the individual has not been registered to vote before in that county, the voter registration will not be accepted unless the individual provides some other “acceptable” proof of citizenship. See *State of Arizona’s Election Manual*, revised 2014, ¶ 17, at 20, available at https://www.azsos.gov/sites/azsos.gov/files/election_procedure_manual_2014.pdf (last visited October 13, 2017).

there is distribution of a voter registration application to every client who does not decline in writing.¹⁸

e. Use of Third-Party Contractors

DES operates a program called “SNAP Partnership” with the Arizona Community Action Association and nearly 50 partner organizations.¹⁹ The purpose of this program is to engage community organizations in the process of SNAP enrollment. While organizations may participate in the partnership program at different levels, many of these organizations are “Full-Service Partners” that are actively engaged in assisting with actual enrollment of individuals in SNAP.²⁰ It is our understanding that these organizations contract with the State to provide assistance with completing and processing SNAP applications and receive reimbursements approved by DES for their enrollment work.²¹

It thus appears that some of these Partners are an integral part of the process by which Arizona and DES provide public assistance services. However, it is our understanding that transactions conducted or assisted by the Partners do not include the voter registration services required by the NVRA. None of the partner contracts we reviewed even mention voter registration.

As noted above, Arizona and DES have an obligation under the NVRA to provide voter registration as part of covered public assistance transactions, regardless of whether the transaction is conducted by a state agency or is conducted in whole or in part by a Full-Service Partner. The Secretary of State and DES are responsible for ensuring that the voter registration services required by the NVRA are offered as part of SNAP applications and recertifications handled by the Full-Service Partners. This may involve writing voter registration requirements into third-party contracts and providing training to the Full-Service Partners.

Finally, we note that if the Arizona public assistance agencies have contracts with other third-party organizations to provide assistance in completing applications and/or recertifications for any forms of public assistance, the State and its agencies similarly must ensure voter registration is offered in connection with the public assistance transactions.

¹⁸ As explained herein, just providing the link to the Secretary of State’s voter information page at the bottom of the renewal documentation is not sufficient “distribution.”

¹⁹ See, e.g., Arizona Community Action Association, “SNAP PARTNERSHIP,” <http://www.azcaa.org/partnerships/snap> (last visited October 2017).

²⁰ See *id.*

²¹ *Supplemental Nutrition Assistance (SNAP) Outreach Partnership: Application and Budget Training*, available at <http://www.azcaa.org/wp-content/uploads/2014/04/Application-and-Budget-Training-FFY-2015-FINAL.pdf>.

III. DOCUMENTARY PROOF OF CITIZENSHIP AND VIOLATIONS OF SECTIONS 7 AND 8 OF THE NVRA

A. Legal Requirements

With respect to voter registration at designated voter registration agencies, Section 8 of the NVRA requires that Arizona “ensure that any eligible applicant is registered to vote in an election” when the individual submits their voter registration form at a designated “voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election.” 52 U.S.C. § 20507(a)(1)(C). When eligible applicants have submitted their voter registration forms at one of these agencies, it is the duty of Arizona to ensure that the applicants are then actually registered to vote. And as noted above, in addition to offering the opportunity to register, each voter registration agency must assist applicants in completing voter registration forms, accept completed voter registration forms, and transmit the forms to the appropriate state official, 52 U.S.C. § 20506(a)(4)—in Arizona, the county recorders, Ariz. Rev. Stat. § 16-134(A).

Furthermore, Arizona law states that if a state voter registration form is submitted unaccompanied by “satisfactory evidence of United States citizenship,” which is limited to an Arizona driver license number or a set of particular documents, it is “reject[ed].” Ariz. Rev. Stat. § 16-166(F). However, under federal law, documentary proof of citizenship is not required for registration in federal elections. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013); *Fish v. Kobach*, 840 F.3d 710 (2016).

B. Arizona’s Non-Compliance with Sections 7 and 8 of the NVRA

As described above, the ACLU, ACLU of Arizona, Dēmos, and the Lawyers’ Committee for Civil Rights Under Law conducted a comprehensive investigation of the availability of voter registration at designated voter registration agencies. The information gathered shows Arizona is systematically failing to “ensure” that applicants are registered to vote after completing voter registration forms through designated voter registration agencies in violation of Section 8 of the NVRA and systematically failing to assist applicants in completing voter registration forms in violation of Section 7 of the NVRA.

Only one of the agency offices visited indicated that they copied and submitted documentary proof of citizenship with the state voter registration form. At another office, a front line staff member expressed surprise that a voter registration form submitted without a copy of proof of citizenship would be rejected, even though the form states, “A complete voter registration form must contain proof of citizenship or the form will be rejected.” And six of the eight agencies reviewed did not have federal voter registration forms as an option for applicants who did not have proof of citizenship available at the voter registration agency. By failing to make copies of documentary proof of citizenship when an applicant completes a state voter registration form, or by failing to provide and assist in the completion of federal voter registration forms to those who do not have accompanying proof of citizenship, Arizona’s voter registration agencies have not assisted eligible applicants in completing their voter registration applications as required by Section 7 of the NVRA. 52 U.S.C. § 20506(a)(4). This deficiency is especially glaring as DES’s Cash and Nutrition Assistance Policy Manual requires those applying for benefits to provide

“primary citizenship documents to verify U.S. citizenship,” as part of the application for benefits. See Cash and Nutrition Assistance Policy Manual at FAA2.N.06.A.01, *available at* https://extranet.azdes.gov/faapolicymanual/wwhelp/wwhtml/js/html/wwhelp.htm#href=FAA2/2.N_IDCI.15.17.html. As DES requires presentation of these documents, the voter registration agencies should make copies in order to assist applications in completing their voter registration applications as required by the NVRA.

Similarly, there is no information provided to applicants through the HEAplus application process about the role of documentary proof of citizenship in voter registration, and no training for AHCCCS workers assisting clients using HEAplus about providing the necessary proof of citizenship documents during these transactions. So any client engaged in a covered transaction through HEAplus is not provided sufficient assistance in completing a voter registration application. Moreover, the current voter registration process available through an HEAplus covered transaction— a link to the Secretary of State’s website—does not provide any method for clients to successfully register to vote (which requires complying with the documentary proof of citizenship requirements or submitting a federal voter registration form) unless they can use the online voter registration system or have access to a printer and a copy machine. And as explained above, many eligible registrants cannot use the online system to successfully register to vote. Again, this violation of the NVRA disproportionately harms voter participation by certain groups, including low income Arizonans and people of color.

Likewise, by submitting state voter registration forms collected by voter registration agencies to the county recorder without including accompanying proof of citizenship that is in the possession of the relevant voter registration agencies administering the covered transactions, Arizona has failed to ensure that eligible applicants are registered to vote as required by Section 8 of the NVRA. 52 U.S.C. § 20507(a)(1)(C).

IV. ADDITIONAL VIOLATIONS OF SECTION 8 OF THE NVRA

A. Arizona’s Obligations Under Section 8 of the NVRA

Section 8 of the NVRA also governs the circumstances under which voters can be removed from the voter registration rolls. Among other things, when a registered voter moves within the same jurisdiction, “the registrar shall correct the voting registration list accordingly.” 52 U.S.C. § 20507(f). Additionally, after updating this information, the voter may not be removed except through the process specified by Section 8. *Id.*

B. Arizona’s Non-Compliance with Section 8 of the NVRA

Arizona law states that the “county recorder *shall* cancel a registration . . . [w]hen the county recorder receives written information from the person registered that the person has a change of residence within the county and the person does not complete and return a new registration form within twenty-nine days after the county recorder mails notification of the need to complete and return a new registration form with current information.” Ariz. Rev. Stat. § 16-165(A)(8) (emphasis added). This law violates Section 8 of the NVRA in two ways. One, it requires the voter to take an extra additional step to update their voter registration, as opposed to requiring

the county recorder to correct the voting registration list. Two, it contemplates cancellation of the voter's registration without following the procedural safeguards of Section 8.

V. VIOLATIONS OF SECTION 203 OF THE VOTING RIGHTS ACT

Section 203 of the Voting Rights Act states, "whenever any state or political subdivision (covered by this section) provides any *registration* or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language." 52 U.S.C. § 10503(c). A number of Arizona counties are covered for Spanish or a Native American language under Section 203.²²

Unfortunately, it appears that many state agencies operating in Section 203 covered jurisdictions are not providing language assistance in the covered language for voter registration activities. For instance, we did not observe any language assistance offered for voter registration at ADOT or DES offices in counties covered by Section 203 for Native American languages. Furthermore, ten ADOT offices in jurisdictions covered by Section 203 for Spanish were surveyed, but none of the ADOT forms that provide a voter registration opportunity (as required by the NVRA) are available in any language but English. There is a related guidance document providing a Spanish translation of the initial driver license application. However, only two of the ten offices visited had this guidance available in Spanish. Moreover, none of these offices had a Spanish translation of the Duplicate/Update Credential Application used for change of address transactions.

Ariz. Rev. Stat. § 16-452 requires the Secretary of State to "consult[] with each county board of supervisors or other officer in charge of elections" and then "prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting." As the Chief Election Officer for the state, we believe that, in order to help maintain the correctness, impartiality, uniformity and efficiency of voting in Arizona, it is your duty to work with the state agencies within counties covered by Section 203 to ensure that they meet their language assistance obligations.

VI. CONCLUSION

The Arizona Department of Transportation, the Arizona Department of Economic Security, and the Arizona Health Care Cost Containment System are engaged in current and on-going violations of the NVRA. In addition, state agencies covered by the NVRA are in violation of Section 203 of the VRA. Together, these violations deprive many State residents of their right to vote and have a particularly harmful impact on low-income Arizonans and people of color. As Arizona's chief election official, you are responsible for ensuring that these agencies comply with the NVRA. This letter serves as notice pursuant to 52 U.S.C. § 20510(b) of violations by Arizona of Section 5 of the NVRA, *id.* § 20504, Section 7 of the NVRA, *id.* § 20506, and Section 8 of the NVRA, *id.* § 20507.

²² Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87,532, 87,533, available at https://www.census.gov/rdo/pdf/1_FRN_2016-28969.pdf.

We are prepared to meet with you and other State officials at your earliest convenience to discuss these violations and to assist in your development of a comprehensive plan that addresses the problems identified in this letter. In the absence of such a plan, we will have no alternative but to initiate litigation at the conclusion of the statutory 90-day waiting period.

Sincerely,

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Eric Spencer, State Election Director

EXHIBIT B

INTERIM MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made by and among the ACLU, ACLU of Arizona, Dēmos, and the Lawyers’ Committee for Civil Rights Under Law, on behalf of the League of Women Voters of Arizona, Mi Familia Vota Education Fund and Promise Arizona (hereinafter collectively the “Advocates”), and the Arizona Department of Transportation, the Arizona Department of Economic Security and the Arizona Health Care Cost Containment System (hereinafter collectively the “Parties”).

Recitals

WHEREAS, on November 14, 2017, the League of Women Voters of Arizona, Mi Familia Vota Education Fund, and Promise Arizona sent a letter (hereinafter the “Notice Letter”) to the Arizona Secretary of State (“SOS”), who is the Chief Election Official, alleging that the State of Arizona is not in compliance with Section 5, Section 7, or Section 8 of the National Voter Registration Act (“NVRA”), 52 U.S.C. §§ 20504, 20506, and 20507, and that State agencies are failing to meet their obligations under Section 203 of the Voting Rights Act (“VRA”) in counties covered by its protections. This letter was sent on behalf of the above civic engagement organizations by the ACLU, ACLU of Arizona, Dēmos, and the Lawyers’ Committee for Civil Rights Under Law;

WHEREAS, the agencies whose voter registration activities were addressed in the Notice Letter are Arizona Department of Transportation (“ADOT”), the Arizona Department of Economic Security (“DES”), and the Arizona Health Care Cost Containment System (“AHCCCS”) (herein after collectively the “Agencies”). ADOT administers motor vehicle driver license service transactions in Arizona that are covered by Section 5 of the NVRA. DES and AHCCCS administer public assistance transactions in Arizona that are covered by Section 7 of the NVRA, including the Supplemental Nutritional Assistance Program (“SNAP”), Medicaid, Children’s Health Insurance Program (“CHIP”), and Temporary Assistance for Needy Families (“TANF”). *See* H.R. Rep. No. 103-66, at 19 (1993) (Conf. Rep.); Department of Justice, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q13. In addition, the Agencies must comply with Section 203 of the VRA;

WHEREAS, the Agencies deny that they are in violation of the NVRA or VRA;

WHEREAS, the Parties now desire to resolve this matter without the need to resort to litigation;

WHEREAS, Advocates and Agencies share the goal of ensuring that all eligible Arizonans receive the opportunity to register to vote in accordance with the NVRA and the VRA;

WHEREAS, Advocates and Agencies have agreed to engage in on-going negotiations to ensure compliance with the NVRA and VRA, including making changes to the ADOT forms, online systems, and processes concerning changes of address that the parties agree are necessary;

WHEREAS, ADOT currently periodically sends the Secretary of State a delimited text file containing change of address information with respect to driver licenses and non-driver identification cards submitted by all ADOT customers who are over 18 years of age and whose driver license type does not indicate they are non-citizens;

WHEREAS, in recognition of the demands of the November 2018 General Election and needed technology upgrades, the Parties agree to the following Interim Remedial Measures that will be put into place before the General Election;

WHEREAS, Advocates do not concede that the "Interim Measures" described herein remedy all alleged NVRA or VRA violations, but in exchange for the Agencies agreeing to undertake the described actions and the Parties' agreement to engage in comprehensive negotiations concerning long term NVRA compliance, the Advocates are willing to forebear from initiating formal litigation against the Agencies until December 1, 2018, if at all.

NOW, THEREFORE, the undersigned Parties hereby agree to the following Interim Remedial Measures:

Remedial Mailings – Section 7 Clients:

- 1) A one-time Remedial Voter Registration Mailing shall be sent by the Agencies to each primary contact ("Client") who engaged in an application, recertification, renewal, and/or change of address ("Covered Transaction") with DES or AHCCCS between August 1, 2017 and July 31, 2018 (hereinafter the "relevant time period"), whether in person, online, by phone, or by mail.
 - a) This Remedial Voter Registration Mailing shall be sent to the primary contact who engaged in a Covered Transaction during the relevant time period through Health-e-Arizona Plus, through the telephone with DES, or through an in-person transaction with DES or AHCCCS; or who received a Medicaid Renewal Letter during the relevant time period, except that the one-time Remedial Voter Registration Mailing need not be sent to the primary contact if that person is not a U.S. Citizen.
 - b) The Remedial Voter Registration Mailing will include:
 - i. A State Voter Registration Form marked with a specific code in accordance with Sections 1.5 and 1.6.2 of the Arizona Secretary of State's draft 2018 election procedures manual to track voter registration applications that originate

from public assistance clients. This form already exists and provides opportunity to register to vote in both Spanish and English.

- ii. An Explanatory Letter, an exemplar of which is attached to this MOU as Exhibit A. This Explanatory Letter will be provided both in English and Spanish.
- c) The Remedial Voter Registration Mailing will be sent bearing the return address of either DES or AHCCCS as appropriate for the client, using envelopes similar to those the Agency regularly uses to correspond with clients.
- d) Only one mailing to each household is required.
- e) Sending of the Remedial Voter Registration Mailings will be completed no later than August 31, 2018.

On-going Remedial Measures:

2) *Policy:*

- a) From execution of this MOU, until such time as a permanent resolution of this matter is reached, a voter registration application shall be distributed to each Client during each in-person Covered Transaction conducted by DES and AHCCCS at an office, unless the Client declines to register to vote *in writing* in response to the voter registration question on the NVRA Form-5.
- b) Caseworkers shall not complete the NVRA Form-5s or their equivalent unless specifically requested by the Client. A client's failure to complete the NVRA Form-5 does not, without more, constitute a request by the client for the caseworker to complete the form but the caseworker may document on the top portion of the NVRA-5 form that a voter registration application was provided to the Client.
- c) DES and AHCCCS staff will offer assistance with voter registration to each Client engaged in a Covered Transaction.

3) *Training:*

- a) By August 31, 2018, DES will conduct a WebEx training and policy broadcast for each employee that engages with clients during Covered Transactions. The training shall include an explanation that it is the policy of the state to require distribution of a voter registration application to each Client engaged in a Covered Transactions unless they decline to register to vote in response during in-person transactions to the voter

registration question by marking "no" on the NVRA Form-5, and that assistance with voter registration will be offered. The training will also instruct staff that the Form-5s shall not be completed by case workers unless requested by the Client but the caseworker may document on the top portion of the NVRA-5 form that a voter registration application was provided to the Client if the Client leaves the voter preference question blank.

- b) Any new DES employee orientation program conducted through October 9, 2018 will include an explanation of the procedures outlined in paragraph 3(a).
- c) AHCCCS will continue to require voter registration training for employees who engage with Clients during Covered Transactions. The training includes an explanation of the requirement for distribution of a voter registration application to each Client engaged in a Covered Transaction during in-person transactions unless the Client declines to register to vote by marking "no" to the voter registration question on the NVRA Form-5 and that assistance with voter registration will be offered. AHCCCS will also conduct mandatory refresher training by August 31, 2018.

4) *Reporting:*

- a) Not later than September 14, 2018, the Agencies shall report to the Advocates the final number of the Remedial Voter Registration Mailings sent pursuant to paragraph (1) of this MOU.
- b) DES shall report to the Advocates when the training required by paragraph 3(a) of this MOU is completed and when the policy broadcast required by paragraph 3(a) of this MOU is issued and provide Advocates with a copy.

203 of the VRA:

- 5) By August 31, 2018, ADOT will ensure that the current paper ADOT Driver's License/Identification Card Application shall be translated into Spanish and distributed for use in all MVD offices in counties covered by 203 (Maricopa, Pima, Santa Cruz, and Yuma), including Authorized Third Party offices that are authorized to conduct driver license transactions. Clients shall be allowed to complete forms in Spanish and submit them to Agencies for processing. At the start of each day, there shall be sufficient numbers of Spanish-language forms in each MVD office and offices operated by an Authorized Third Party for each such office's typical daily volume of clients based on past observations.

Additional Terms:

- 6) ADOT agrees to provide the SOS any data necessary to achieve compliance with any future agreement between the Advocates and the SOS related to compliance with the requirements of Section 5 of the NVRA or any Court order issued against the SOS related to compliance with Section 5 of the NVRA, including but not limited to providing to the SOS a list of all ADOT clients who reported a new address to ADOT during any Covered Transactions (initial application, renewal, Duplicate/Credential Update or change of address) whether online or in-person since November 9, 2016. This list shall include as much information as ADOT can provide, including, but not limited to, the person's name, current address, previous address, driver license number and type, partial social security number, and date of birth. This data will be provided in a delimited text file similar to the address change delimited text file ADOT currently provides to the Secretary of State.
- 7) The Parties agree to engage in on-going settlement discussions regarding a final resolution of this matter. The goal of these discussions will be to enter into a final agreement resolving all outstanding issues within six months of the execution of this MOU. The final agreement shall set specific benchmarks and timelines for completion of the necessary technology upgrades.
- 8) To facilitate such discussions, the Advocates shall prepare and present to Agencies within eight weeks of the date of this MOU a comprehensive list of the issues that the Advocates believe should be addressed in any final resolution of this action.
- 9) Advocates and Agencies acknowledge that this MOU represents a collaborative effort by all parties to enhance voter registration opportunities for Arizona citizens.

Binding Effect:

- 10) The terms of this MOU shall be binding on all Parties.
- 11) Upon execution of this MOU, Advocates agree not to raise any claims against DES or AHCCCS that have been asserted or could have been asserted up until the date of execution of this MOU that are based on Section 7 of the NVRA at any time before December 1, 2018.
- 12) Upon execution of this MOU, Advocates agree not to raise any and all claims against ADOT that have been asserted or could have been asserted up until the date of execution of this MOU that are based on Section 5 of the NVRA before December 1, 2018. Although Advocates will not raise any claims against ADOT unless required by the Court, the parties acknowledge and understand that nothing in the agreement prevents the

SOS or any other party from bringing a claim against ADOT in any NVRA enforcement proceeding.

- 13) The Advocates and the Agencies will engage in comprehensive negotiations concerning long term NVRA compliance in a mutual effort to negotiate a resolution to this dispute without the need for formal litigation. However, nothing in this MOU shall preclude the Advocates from bringing any claims related to any NVRA violations or VRA violations against the Agencies after December 1, 2018, if the Advocates and Agencies are unable to reach an agreement. Nothing in this MOU shall be interpreted to preclude the Advocates, within such lawsuit, from asserting or offering proof of any claims or facts alleging widespread past and ongoing violations of Section 5 and 7 of the NVRA or VRA by the Agencies that the Advocates have alleged prior to entering into the negotiations leading to MOU, including in the Notice Letter.
- 14) Nothing in this MOU will prevent Advocates from acting to enforce compliance with the NVRA or VRA if future NVRA or VRA violations occur; or if DES, AHCCCS or ADOT do not take the steps as required in this MOU regardless of when those actions occur.
- 15) In entering into this MOU, the Agencies do not admit to any liability or wrongdoing under the NVRA, VRA, or any other law, or waive any of their defenses, and Advocates do not waive or release any claims based on violations of Section 5 or 7 of the NVRA, or Section 203 of the VRA.
- 16) Before pursuing any legal remedies for an alleged breach of this MOU, Parties agree to make their best effort to resolve any dispute without judicial intervention. If any Party believes that another Party is in breach of this MOU, or any other dispute arises under the terms of this MOU, the aggrieved Party shall, within 30 days of the Party becoming aware of the asserted breach or dispute, notify the other Party in writing of the asserted breach or dispute. The Parties will work cooperatively and make their best effort to promptly remedy the asserted breach or dispute without judicial intervention. If reasonable good-faith efforts to resolve the asserted breach or dispute fail, the Parties may pursue all legal remedies available.

Joint Negotiation and Drafting

- 17) The Parties hereto have participated jointly in the negotiation and drafting of this MOU with the assistance of counsel and other advisors and, in the event any ambiguity or question of intent or interpretation arises, this MOU shall be construed as jointly drafted by the parties hereto and thereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this MOU, or any other documents attached or referenced therein.

Costs:

- 18) As consideration for this MOU, the Advocates agree to waive any claim for attorneys' fees or costs incurred in connection with the negotiation, implementation and monitoring of this MOU. In exchange, the Agencies agree to be bound by the terms of this MOU and to implement its terms in good faith and in cooperation with the Advocates.
- 19) Nothing in this Agreement shall be construed to prevent the Advocates from pursuing attorneys' fees and costs incurred before or after December 1, 2018, as permitted by 52 U.S.C. § 20510 and Section 14(e) of the VRA, if the Agencies breach the terms of this MOU, and nothing in this MOU will be construed to prevent the Advocates from seeking fees and costs related to preparing any such litigation. In the event of such litigation, however, the Advocates will not seek attorneys' fees and costs related to time spent negotiating, implementing, or monitoring this MOU.

Execution in Counterparts:

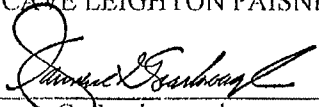
- 20) This Agreement may be executed in counterpart originals, and any copies and facsimiles of such counterparts shall be considered originals.
- 21) The undersigned attorneys represent and warrant that they have authority to enter into this agreement on behalf of the respective parties they represent, and that this agreement shall be binding upon, and inure to the benefit of, the heirs, personal representatives, successors and assigns of the parties hereto.

[Signatures on Following Page]

BRYAN CAVE LEIGHTON PAISNER LLP

BALLARD SPAHR LLP

By



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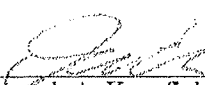
** Not admitted in the District of
Columbia; practice limited pursuant
to D.C. App. R. 49(c)(3)

Attorneys for Advocates

DATE: August 14, 2018

12069663

By



Joseph A. Kanefield
One East Washington Street, Suite 2300
Phoenix, Arizona 85004-2555

Attorneys for Agencies

DATE: August 14, 2018

Exhibit A



ARIZONA DEPARTMENT OF ECONOMIC SECURITY (DES)
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

<<First Name>><<Last Name>>

<<Address 1>>

<<Address 2>>

<<City>><<State>><<ZIP>>

Information About Registering to Vote

We are sending you the attached mail-in voter registration form to ensure that you receive an opportunity to register to vote and/or ensure that the State has your current voting address. You are receiving this notice because you recently interacted with a state agency such as the Department of Economic Security (DES), Arizona Health Care Cost Containment System (AHCCCS), and/or the Health-e-Arizona Plus web portal.

If you are not registered to vote where you live now, and you want to vote in the upcoming federal election on November 6, 2018, you must return or mail this application to one of the locations described below or complete the online registration by October 9, 2018.

If you want to register to vote or update your voter registration address, please complete the enclosed Voter Registration Application and put it in the mail. After you have registered to vote you will receive a voter registration card in the mail within 4-6 weeks.

Completed voter registration applications can be returned:

By mailing to:

- Office of the Secretary of State
Elections Division
1700 W Washington St Fl 7
Phoenix AZ 85007-2808
- The County Recorder for the County where you live.
The addresses are listed on the back of the enclosed voter registration form.

In person:

- By taking it to your local DES or AHCCCS office.

If you have an Arizona driver's license or State ID card issued since October 1, 1996 you can also register to vote on the internet on ADOT's Service Arizona website: <https://servicearizona.com/voterRegistration>.

Please carefully read the instructions about registering to vote, eligibility to register to vote and proof of citizenship requirements.

If you are already registered to vote at your current address, you do not need to re-register to vote. You can check your voter registration at: <https://voter.azsos.gov/VoterView/RegistrantSearch.do>.

Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided, or your eligibility. If you would like help filling out the voter registration form, need more voter registration forms, or have any questions, you can call 1-877-THE VOTE (843-8683).