



April 7, 2022

VIA U.S. MAIL AND ELECTRONIC MAIL

Secretary Katie Hobbs
Arizona Secretary of State
1700 W Washington Street, Floor 7
Phoenix, AZ 85007

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

Dear Secretary Hobbs,

Pursuant to 52 U.S.C. § 20510(b), we write on behalf of Voto Latino, Inc. and Mi Familia Vota to bring your attention to violations of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. §§ 20505, 20507, 20508. This letter serves as notice under 52 U.S.C. § 20510(b) that we will bring a lawsuit to address these issues if you do not take actions to correct the identified violations. This letter also serves as a request for the production of documents pursuant to 52 U.S.C. § 20507(i)(1).

Among other things, the NVRA requires Arizona to "accept and use the mail voter registration application form prescribed by the [Election Assistance Commission] pursuant to section 20508(a)(2) of this title for the registration of voters in elections for Federal office." 52 U.S.C. § 20505(a)(1), 20508(a), 21132.¹ This form "may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant" and must include a statement that (1) specifies each eligibility requirement (including citizenship); (2) contains an attestation that the applicant meets each such requirement; and (3) requires the signature of the applicant, under penalty of perjury. 52 U.S.C. § 20508. The state "shall ensure that an[] eligible applicant is registered to vote in a federal election" if the Federal Form or any other "valid voter registration form" is timely received, 52 U.S.C. § 20507(a)(1)(A)-(D), and the state may not undertake a program to systematically remove voters from the polls within 90 days of a federal election. *See* 52 U.S.C. § 20507 (c)(2)(A) ("A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.").

On March 30, 2022, Governor Doug Ducey signed into law House Bill 2492. Among other provisions, H.B. 2492 requires that as a qualification of registration an individual "ha[ve] provided

¹ Hereinafter, this letter refers to the "mail voter registration application form prescribed by the [Election Assistance Commission] pursuant to section 20508(a)(2)" of the NVRA as the "Federal Form."

satisfactory evidence of citizenship” and revises the definition of a “qualified elector” in Arizona to include that such person must have “provided satisfactory evidence of citizenship.” H.B. 2492 §§ 1, 2 55th Leg., 2d Reg. Sess. (Ariz. 2022) (enacted).² Accordingly, H.B. 2492 prohibits Arizonans who seek to register using the federal form required by 52 U.S.C. § 20505(a)(1) without adequate proof of citizenship from voting in presidential elections or from voting early by mail. H.B. 2492 §§ 1, 4, 5. H.B. 2492 also requires that, other than voters who seek to register using the Federal Form, state and local officials “reject any application for registration that is not accompanied by satisfactory evidence of citizenship,” *id.* § 4, and prohibits any registered voter who has not provided adequate proof of citizenship—including potentially all voters registered before 2005 and all federal-only voters—from voting in presidential elections. *See id.* § 5. The law is silent on how or when currently registered voters receive notice of defects in their registration, or the process by which these voters can provide proof of citizenship.

As such, H.B. 2492 violates the NVRA in at least four ways:

- *First*, the NVRA provides that a state shall ensure that any eligible applicant is registered to vote in an election if they submit a valid voter registration form “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)(B). By not placing voters who complete a Federal Form on the list of qualified electors under A.R.S. § 16-122 within this timeframe, H.B. 2492 violates the NVRA.
- *Second*, by redefining “qualified elector” to require satisfactory proof of citizenship and requiring all previously registered, eligible voters who have not provided sufficient proof of citizenship—including potentially all voters registered before 2005 and all federal-only voters—to provide additional proof of citizenship to vote in presidential elections, Arizona seeks to retroactively remove these voters from the list of qualified electors under A.R.S. § 16-122. H.B. 2492 will go into effect within 90 days of the November 8, 2022 federal election. *See True v. Stewart*, 18 P.3d 707, 708 n.1 (Ariz. 2001) (“An act with no specified effective date takes effect on the ninety-first day after the day on which the session of the legislature enacting it adjourns sine die.”); Ariz. Const. art. 4, pt. 1, § 1(3). The NVRA prohibits Arizona from conducting a systematic program such as H.B. 2492 to remove voters from its rolls within this timeframe. *See* 52 U.S.C. § 20507 (c)(2)(A) (“A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.”).
- *Third*, by changing the definition of “qualified elector” such that voters who complete a Federal Form would not appear on the list of qualified electors detailed by A.R.S. § 16-122 for presidential elections, Arizona has added an additional qualification to the

² Arizona does not permit an individual to vote “unless such person’s name appears as a qualified elector in both the general county register and in the precinct register or list of the precinct and election districts or proposed election districts in which such person resides.” A.R.S. § 16-122.

Federal Form for presidential elections. “[A] state-imposed requirement of evidence of citizenship not required by the Federal Form is ‘inconsistent with’ the NVRA’s mandate that States ‘accept and use’ the Federal Form.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 15 (2013). H.B. 2492 provides that any voter who completes (or has completed) a Federal Form but does (or did) not provide proof of citizenship cannot appear on the list of “qualified electors” for a presidential election under A.R.S. § 16-122. By failing to fully “accept and use” the Federal Form, H.B. 2492 violates 52 U.S.C. § 20505(a)(1), 52 U.S.C. §20508(b), and 52 U.S.C. §20507(a)(1).

- *Fourth*, by failing to register for all federal elections eligible voters who use a registration form other than the Federal Form, Arizona violates the requirement of 52 U.S.C § 20507(a)(1) that the state “shall ensure” that “eligible applicant[s]” who seek to register with a “valid voter registration form” are fully registered for federal elections so long as that form is timely submitted.

In light of the above, Voto Latino, Inc. and Mi Familia Vota request:

- A. That the state of Arizona immediately remedy the identified violations of the NVRA and provide written confirmation that Arizona will not prohibit any individual from voting in presidential elections or other federal elections due to any failure to provide adequate proof of citizenship if that individual registered or seeks to register using a Federal Form.
- B. That the state of Arizona immediately remedy the identified violations of the NVRA and provide written confirmation that Arizona will not prohibit any individual from voting in presidential elections or other federal elections due to any failure to provide adequate proof of citizenship if that individual registered or seeks to register through a state form without providing adequate proof of citizenship.
- C. All documents and records, including but not limited to any instructions provided to County Recorders, concerning any activities that Arizona has undertaken to effectuate H.B. 2492.
- D. A list of all voters who (a) are currently registered to vote in Arizona, (b) registered using the Federal Form, and (c) have not provided documentary proof of citizenship.
- E. A list of all voters who (a) are currently registered to vote in Arizona, (b) registered using an application submitted through the Arizona Department of Transportation, and (c) have not provided documentary proof of citizenship.

Voto Latino, Inc. and Mi Familia Vota requests that you make the records listed above available as quickly as possible and that you immediately remedy your violations of the NVRA. If not, we are prepared to bring litigation pursuant to 52 U.S.C. § 20510(b) to enforce Voto Latino, Inc. and Mi Familia Vota’s rights and the rights of all voters in Arizona.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Marc E. Elias', written over a horizontal line.

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Counsel for Voto Latino, Inc. and Mi Familia Vota

CC: Amy Chan, General Counsel to Secretary of State Katie Hobbs, achan@azsos.gov