



April 6, 2022

Katie Hobbs
Arizona Secretary of State
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(602) 542-4285

Via email and certified mail

Re: Notice of Violations of the National Voter Registration Act

Dear Secretary Hobbs:

I am writing on behalf of Living United for Change in Arizona (LUCHA), League of United Latin American Citizens (LULAC), Arizona Students' Association (ASA), and ADRC Action regarding Arizona House Bill 2492 ("HB 2492"), which was signed into law by Governor Doug Ducey on March 30, 2022 and will go into effect 90 days after adjournment of the legislature sine die.¹ **This letter serves as notice to inform you that enforcement of certain provisions of HB 2492, as detailed below, violates the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20501, *et seq.***

As you know, Arizona voters may register to vote using either the Arizona Registration Form ("State Form") or the National Mail Voter Registration Form ("Federal Form"), which is promulgated by the U.S. Election Assistance Commission ("EAC") pursuant to the NVRA. Arizona voters may also register online (with an Arizona Driver's License and/or an Arizona non-operating I.D. card issued by the Motor Vehicle Division), in person at a County Recorder's office, or at several NVRA-mandated public agencies.

Under the NVRA, all states must "accept and use" the Federal Form, which only requires attestation of citizenship and residence and does not

¹ If the legislature adjourns April 23, HB 2492 would go into effect on July 22, 2022.

require documentary proof of either. 52 U.S.C. § 20505. The NVRA also requires certain mandated public assistance agencies to provide voter registration services using the Federal Form or “its equivalent.” 52 U.S.C. § 20506. Likewise, a voter registration application provided at a state’s motor vehicle authority may require only the minimum amount of information necessary to “(i) prevent duplicate voter registrations; and (ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 52 U.S.C. § 20504. If a valid voter registration form through any one of these channels is timely received by election officials, the NVRA mandates that the State “ensure that any eligible applicant is registered to vote.” 52 U.S.C. § 20507.

HB 2492 violates these provisions of the NVRA by requiring that all eligible Arizona voters provide documentary proof of residence (“DPOR”), documentary proof of citizenship (“DPOC”), and their birthplace to register to vote in any elections. The Federal Form does not require any of these elements. Therefore “its equivalent,” which must be used at NVRA-designated agencies, cannot either. 52 U.S.C. § 20506. And these elements exceed the information election officials need “to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 52 U.S.C. § 20504. In sum, the NVRA preempts any attempt by states to impose additional requirements to prove citizenship, residence, or any other voter qualification above and beyond those provided by the Federal Form. See *Arizona v. Inter Tribal Council of Arizona* (“ITCA”), 570 U.S. 1, 18 (2013).²

This is not Arizona’s first attempt to impose unlawful requirements on its citizens in order for them to exercise their constitutionally protected right to register and vote in Federal elections. In fact, multiple federal courts have found that similar schemes enacted over the past two decades violated federal law. See *ITCA*, 570 U.S. 1; *Gonzalez v. Arizona*, No. 06-cv-1268, 2013 WL 7767705 (D. Ariz. Sept. 11, 2013); cf. *LULAC v. Reagan*, No. 2:17-cv-04102-DGC, ECF No. 36-1 (D. Ariz. 2018) (Consent Decree), available at <https://campaignlegal.org/sites/default/files/Consent%20Decree.pdf>.

HB 2492 also violates federal law by mandating that election officials reject valid voter registration applications and remove voters from the rolls based on faulty and stale data that allegedly demonstrates the applicant’s non-

² Perhaps in recognition of the DPOC requirement’s direct conflict with *Arizona v. Inter Tribal*, HB 2492 provides for access to a “federal only” ballot for those who use the Federal Form and do not provide DPOC. It is not clear how these provisions of HB 2492 comport with other parts of HB 2492 that purport to make DPOC a voter “qualification.” Notwithstanding that incongruity, HB 2492 seeks to limit “federal only” voters to congressional—not presidential—elections and bar their usage of early voting and vote by mail. The NVRA does not countenance such second-class discriminatory treatment of voters who lawfully register using the Federal Form.

citizenship. In fact, the data sources that HB 2492 mandates election officials rely on are error-prone, not designed to reflect current citizenship status, and have been shown to target naturalized voters. Such a system does not comply with the NVRA's requirements that States ensure that applicants who submit valid voter registration forms are registered and that all list maintenance procedures are uniform and nondiscriminatory. 52 U.S.C. § 20507.

As Secretary of State of Arizona, you are the State's Chief Elections Officer, Ariz. Rev. Stat. § 16-142(A), and as such are responsible for ensuring Arizona's compliance with the NVRA. *See* 52 U.S.C. § 20509. This letter constitutes notice pursuant to 52 U.S.C. § 20510(b) that your required enforcement of the HB 2492 provisions detailed will place you in violation of 52 U.S.C. §§ 20504, 20505, 20506, and 20507. As you know, the Arizona primary elections for federal offices will occur on August 2, 2022, which is less than 120 days away. If the violations identified above are not corrected within 20 days, the undersigned may seek declaratory or injunctive relief to remedy the violation. *See* 52 U.S.C.A. § 20510 ("If the violation is not corrected...within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action...").

Respectfully submitted,

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CC: Arizona Attorney General Mark Brnovich