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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

STRONG COMMUNITIES
FOUNDATION OF ARIZONA
INCORPORATED, an Arizona non-profit
corporation;

Plaintiffs,

v.

ADRIAN FONTES, in his official
capacity as Arizona Secretary of State;
and the ARIZONA DEPARTMENT OF
STATE;

Defendants.

Case No. CV2024-027778

**APPLICATION FOR ORDER TO
SHOW CAUSE**

Pursuant to A.R.S. § 39-121 *et seq.* (the “Arizona Public Records Laws”), Rule 4(c) of the Arizona Rules for Special Procedure for Special Actions, and Rule 7.3 of the Arizona Rules of Civil Procedure, Plaintiff Strong Communities Foundation of Arizona Incorporated (“EZAZ.org”), by and through undersigned counsel, seeks an order requiring Defendant Secretary of State Adrian Fontes and the Arizona Department of State (“Defendants”) to show cause why EZAZ.org should not be entitled to secure prompt access to inspect and copy the public records at issue in this lawsuit. This Application is supported by the following Memorandum of Points and Authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant Secretary of State Adrian Fontes (“Secretary Fontes”) recently reported
3 that upwards of 218,000 individuals have been registered to vote in Arizona without
4 providing documentary proof of citizenship (“DPOC”). Verified Complaint for Statutory
5 Special Action to Secure Access to Public Records (“Complaint” or “Compl.”) at ¶¶ 12,
6 35, 37. It is against State and federal law for foreign citizens¹ to register to vote.² Likewise,
7 those who have not provided documentary proof of citizenship are not eligible to vote in
8 state and local races. A.R.S. § 16-121.01(A).

9 On September 17, 2024, and just hours after the initial reports that individuals had
10 been registered to vote without providing documentary proof of citizenship, EZAZ.org
11 submitted a public records request to the Defendants seeking “a subset of the Statewide
12 Voter Registration Database (VRDB) that contains only those registered (active and
13 inactive) voters that have been identified by the Secretary of State as registrants ‘who first
14 obtained their Arizona driver’s license before October 1996 and then were issued a
15 duplicate replacement before registering to vote sometime after 2004’ that may be moved
16 from the ‘full-ballot’ voter registration list to the ‘federal-only’ voter registration list, if the
17 Maricopa County Recorder’s anticipated lawsuit is successful.” Compl. ¶ 38, Ex. A
18 (“PRR”).

19 On September 24, counsel for the Defendants Secretary of State Adrian Fontes and
20 the Arizona Department of State (“Defendants”) responded to the PRR, refusing to comply
21 with the request in a timely manner, claiming that the records requested in the PRR “will
22 be made available for inspection at the soonest available time and to the extent the law
23

24 ¹ In this Complaint, the term “foreign citizen” means “any person not a citizen or national
25 of the United States,” which is the defined meaning for the term “alien” in federal law. 8
U.S.C.A. § 1101(a)(3).

26 ² See, e.g., Ariz. Const. art. VII, § 2(A) (requiring that all voters be U.S. citizens); A.R.S.
§ 16-101(A)(1) (same); 18 U.S.C. § 1015(f) (knowingly making “any false statement or
claim that he is a citizen of the United States in order to register to vote or to vote in any
Federal, State, or local election” subjects an alien to five years’ imprisonment or fine).

1 allows access. But no access will occur before the 2024 General Election.” Compl. ¶ 46,
2 Ex E (the “Denial Letter”).

3 The 2024 election cycle is imminently underway, yet Defendants have denied,
4 without adequate justification, EZAZ.org’s PRR to obtain copies of and/or inspect public
5 records related to the 2024 General Election. Urgent intervention is necessary as this
6 lawsuit seeks to restore public trust in our State’s electoral system by ensuring that there is
7 transparency about the Defendants’ failures to ensure that registered voters have provided
8 documentary proof of citizenship, as required by law. With public confidence in elections
9 being so low, the need for transparency in government has never been higher. Arizona’s
10 Public Records Law is designed especially for times like now, to ensure that citizens
11 understand how their elected representatives are conducting the business of government.

12 Critically, EZAZ.org seeks a list *already compiled* by the Defendants, Compl. ¶ 66,
13 yet has been denied the requested documents on specious and statutorily unsupported
14 grounds, *id.* ¶ 46-72, until after the November 5th General Election, and perhaps never. *Id.*
15 ¶ 46, 71-72. Importantly, the Plaintiff does not seek information that has been deemed
16 nonpublic. Far from it. The Plaintiff seeks a subset of the voter registration database, a
17 record the Secretary of State is statutorily obligated to provide.³

18 In Arizona, there is a “strong presumption in favor of public inspection of public
19 records.” *Jud. Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 400 ¶ 32 (App. 2011). As
20 such, all records covered by the Public Records Law, A.R.S. § 39-121 to -128, “are
21 presumed open to the public for inspection.” *Carlson v. Pima Cnty.*, 141 Ariz. 487, 491
22 (1984). “The core purpose of the public records law is to allow the public access to official
23 records ... so that the public may monitor the performance of government officials and their
24 employees. To justify withholding public documents, the State’s interest in non-disclosure
25

26 ³ See A.R.S. § 16-138(E) (“the secretary of state... on a request for an authorized use and within thirty days from receipt of the request, shall prepare additional copies of an official precinct list and furnish them to any person requesting them on payment of a fee”).

1 must outweigh the general policy of open access....” *Fann v. Kemp in & for Cnty. of*
2 *Maricopa*, 253 Ariz. 537 ¶ 9 n.1 (2022) (cleaned up).

3 By refusing public access to these records, the Defendants frustrate the core
4 purpose of the Public Records Law, to “monitor the performance of the government
5 officials.” *Id.* And because these records deal with a pressing issue of immediate public
6 concern, time is of the essence. The Defendants should be ordered to immediately fulfill
7 Plaintiff’s public records request. As Defendants have wrongfully denied EZAZ.org’s
8 request, an award of attorneys’ fees is justified under A.R.S. § 39-121.02(B).

9 **Conclusion**

10 Public trust in our election officials to perform fundamental functions of their
11 statutory responsibilities has been severely compromised by the Defendants’ failure to
12 ensure that all voters have in fact provided DPOC. Bringing transparency to actions such
13 as the Defendants’ here is exactly *why* the Legislature enacted the Public Records Law in
14 the first place.

15 For the foregoing reasons, this Court should (a) grant EZAZ.org’s Application for
16 Order to Show Cause, (b) order Defendants to produce copies of the public records on or
17 before October 7, 2024, and (c) permit EZAZ.org to file an application for award of its
18 reasonable attorneys’ fees incurred for having to file this action against Defendants to
19 enforce its statutory rights.

20 RESPECTFULLY SUBMITTED this 2nd of October, 2024.

21 **America First Legal Foundation**

22 By: /s/ James K. Rogers

23 James K. Rogers (No. 027287)

24 *Senior Counsel*

25 America First Legal Foundation

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Rule 80 Declaration

I declare under penalty of perjury of the laws of the State of Arizona that the foregoing Application for Order to Show Cause is true and correct and that this Declaration is executed by me on the 2nd day of October, 2024, in Maricopa County, Arizona.



MERISSA HAMILTON
President
Strong Communities Foundation of Arizona, Inc.

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