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1 **AMERICA FIRST LEGAL FOUNDATION**

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

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

14 Plaintiffs,

15 v.

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

18 Defendants.

Case No. _____
CV2024-027778

**VERIFIED COMPLAINT FOR
STATUTORY SPECIAL ACTION
TO SECURE ACCESS TO PUBLIC
RECORDS**

19 Strong Communities Foundation of Arizona, Inc., an Arizona non-profit organization, submits this Complaint for Statutory Special Action to Secure Access to Public Records pursuant to A.R.S. § 39-121, *et seq.* (the “Arizona Public Records Law”) and Ariz. R. of Special Action (“RPSA”) 1-6, and alleges as follows:

20 **INTRODUCTION**

21 1. It is against State and federal law for foreign citizens¹ to register to vote.²

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

24 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 2. State law further requires that registrants provide documentary proof of citi-
2 zenship (“DPOC”) to be eligible to vote in state and local races. A.R.S. § 16-121.01(A)

3 3. Sixty percent of Arizonans “are concerned that cheating will affect the out-
4 come of the 2024 election.”³

5 4. In a statistically valid and representative survey from August 2024 of likely
6 voters in Arizona, 1.9 percent of likely voters said they are not U.S. citizens.⁴ An additional
7 1.18 percent responded “Not Sure” to the question about citizenship.⁵ Therefore, collec-
8 tively, just over three percent of likely Arizona voters in the survey disclaimed citizenship.

9 5. Many recent electoral races in Arizona have been decided by margins of less
10 than one percent.

11 6. For example, a recent national survey of likely voters found that 52% believe
12 that election officials are either doing nothing to prevent foreign citizens from voting or
13 are not doing enough.⁶ Only 26% believed that election officials have effective plans to
14 deal with foreign citizen voting.⁷

15 7. Another recent survey found “that 55% of Likely U.S. Voters believe it is likely
16 that non-citizens are illegally registered to vote in the state where they live, including 32% who
17 say it’s Very Likely. Thirty-seven percent (37%) don’t think it’s likely there are non-citizens
18 registered to vote in their state, including 14% who consider it Not At All Likely.”⁸

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20
21 ³ *Arizona: Trump 47%, Biden 40%*, RASMUSSEN REPORTS, (June 14, 2024),
<https://perma.cc/Y68S-Q7XS>.

22 ⁴ *NumberUSA August 2024 Arizona*, RASMUSSEN REPORTS, (Aug 2024),
<https://perma.cc/U74W-YCR9>.

23 ⁵ *Id.*

24 ⁶ *Election Integrity: Are States Doing Enough?*, RASMUSSEN REPORTS, (Aug. 28, 2024),
25 <https://perma.cc/EXE5-W7UL>.

26 ⁷ *Id.*

⁸ *Most Suspect Non-Citizens Are Illegally Registered to Vote*, RASMUSSEN REPORTS, (Aug
12, 2024), <https://perma.cc/F9NK-DSRF>.

1 nearly one million voter contacts. Its donors, subscribers, and followers view it as the pub-
2 lic voice for their concerns.

3 22. Under Arizona Public Records Law, EZAZ.org may request to examine or
4 be furnished copies of any public record, and public officers and public bodies are required
5 to furnish copies of such records “promptly.” See A.R.S. §§ 39-121.01(D)(1) and (E).

6 23. Defendant Secretary of State Adrian Fontes (“Secretary Fontes” or the “Sec-
7 retary”) is an elected officer of this State (Ariz. Const. art. IV § 1(A)) and an “[o]fficer”
8 within the meaning of A.R.S. § 39-121.01(A)(1).

9 24. Defendant Secretary Fontes has charge of and directs the Department of State
10 (A.R.S. § 41-121.02(B)), a “[p]ublic body” within the meaning of A.R.S. § 39-
11 121.01(A)(2).

12 25. By law, Secretary Fontes “shall maintain all records, including records as
13 defined in § 41-151, reasonably necessary or appropriate to maintain an accurate
14 knowledge of their official activities and of any of their activities that are supported by
15 monies from this state or any political subdivision of this state.” A.R.S. § 39-121.01(B).

16 26. The Secretary has a non-discretionary statutory duty to comply with the Pub-
17 lic Records Law. The Secretary has failed to comply with that mandatory statutory duty.
18 The Plaintiff requests that the Court order him to comply with his statutory duty. The Sec-
19 retary, therefore, is properly joined as a defendant to this action, and the Court may enter
20 special action relief against him. See Ariz. R. P. Spec. Act. 2(a)(1) (“The complaint shall
21 join as a defendant the body, officer, or person against whom relief is sought”); see also
22 *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 404 ¶18
23 (2020) (concluding that the petitioners had properly stated a mandamus action against the
24 Secretary by alleging that the Secretary refused to perform a constitutional duty and asking
25 the Arizona Supreme Court to order the Secretary to perform that duty). Upon information
26

1 and belief, the Secretary has custody, and is responsible for the preservation, maintenance,
2 care, and production of, the requested public records at issue in this case.

3 27. Defendant Arizona Department of State (the “Arizona Secretary of State’s
4 Office” or AZSOS) is an agency of the government of the State of Arizona and is headed
5 by the Secretary. A.R.S. § 41-121.02(B). AZSOS is a “public body” within the meaning of
6 A.R.S. § 39-121.01(A)(2). AZSOS has the same obligations as the Secretary to comply
7 with the Public Records Law. Upon information and belief, AZSOS has custody, and is
8 responsible for the preservation, maintenance, care, and production of, the requested public
9 records at issue in this case.

10 **JURISDICTION AND VENUE**

11 28. The Court has subject matter jurisdiction under A.R.S. § 39-121.02(A),
12 which provides that “[a]ny person who has requested to examine or copy public records
13 pursuant to this article, and who has been denied access to or the right to copy such records,
14 may appeal the denial through a special action in the superior court, pursuant to the rules
15 of procedure for special actions against the officer or public body.”

16 29. This Court further has subject matter jurisdiction over the Plaintiff’s claims
17 under article 6, sections 14 and 18 of the Arizona Constitution, A.R.S. §§ 12-123(B), 12-
18 2021, and RPSA Rules 3 and 4.

19 30. According to Arizona Public Records Laws, “[a]ccess to a public record is
20 deemed denied if a custodian fails to promptly respond to a request for production of a
21 public record.” A.R.S. § 39-121.01(E).

22 31. Venue lies in Maricopa County. RPSA 4(b) (“An action brought in the Su-
23 perior Court ... in the case of a state officer or body, [shall be brought] either in Maricopa
24 County or in the county of residence of the plaintiff[.]”); *see also* A.R.S. § 12-401(16)
25 (“Actions against public officers shall be brought in the county in which the officer, or one
26 of several officers, holds office.”).

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FACTS

32. Secretary Fontes administers Arizona’s system for performing statewide voter registration checks to determine whether an individual has provided proof of U.S. citizenship, as Arizona law requires.

33. On about September 6, 2024, Maricopa County Recorder Stephen Richer identified a flaw in the system that had allowed tens of thousands of individuals to register to vote even though they had not provided proof of citizenship.¹⁰

34. More specifically, Secretary Fontes, the Governor’s Office, and the Arizona Department of Transportation’s Motor Vehicle Division (MVD) jointly discovered following a hasty investigation that there was a “flaw in the interface between ADOT’s driver licensing issuance process, and the statewide voter registration database”¹¹ that caused voter registrations received after January 24, 2005¹² from individuals who received a “driver’s license *before* October 1, 1996, but received a duplicate copy of his Arizona driver’s license *after* October 1, 1996”¹³ to be inaccurately understood by the voter registration system to have provided documentary proof of citizenship (“DPOC”) in compliance with state law.

35. As of September 18, 2024, Secretary Fontes claimed to have identified 97,928 registered voters (87,881 active voters and 10,047 inactive voters) (“Affected Voters”) who may have been erroneously marked as having provided DPOC in compliance with Arizona law because of the system flaw.¹⁴

23 ¹⁰ Joint Stipulation of Facts (“JSOF”), *Richer v. Fontes*, CV-24-0221 (Ariz. Sup. Ct.) (Sept. 18, 2024). ¶¶ 14-15. <https://perma.cc/27GQ-NWGZ>.

24 ¹¹ *Id.* at ¶ 17.

25 ¹² *Id.* at ¶ 19.

26 ¹³ *Id.* at ¶ 18.

¹⁴ *Id.* at ¶ 21.

1 36. This “flaw” was revealed to the public on September 17, 2024, when Re-
2 recorder Richer filed an Emergency Petition for Special Action in the Arizona Supreme
3 Court, seeking to prevent the Affected Voters from voting in state and local races and in-
4 stead being registered as “Federal-Only” voters.¹⁵

5 37. On September 30, 2024, the Secretary announced that he had discovered an
6 additional “new set of approximately 120,000 Arizonans who may be affected by a data
7 coding oversight within [MVD] and Arizona voter registration databases.”¹⁶

8 38. Within hours of Recorder Richer filing his Emergency Petition on September
9 17 seeking to potentially disenfranchise nearly 100,000 Arizona voters, EZAZ.org submit-
10 ted a public records request to the Defendants seeking “a subset of the Statewide Voter
11 Registration Database (VRDB) that contains only those registered (active and inactive)
12 voters that have been identified by the Secretary of State as registrants ‘who first obtained
13 their Arizona driver’s license before October 1996 and then were issued a duplicate re-
14 placement before registering to vote sometime after 2004’ that may be moved from the
15 ‘full-ballot’ voter registration list to the ‘federal-only’ voter registration list, if the Mari-
16 copa County Recorder’s anticipated lawsuit is successful.” Exhibit A, Letter to Arizona
17 Secretary of State Public Records Custodian (Sept. 17, 2024) (“PRR”).

18 39. EZAZ.org noted that the records were sought “(1) because this information
19 is directly related to my client’s lawsuit against all of Arizona’s county recorders about
20 their list maintenance practices for federal-only voters and their failure to submit their lists
21 of federal-only voters to DHS for immigration status confirmation, *see Strong Communi-*
22 *ties Foundation of Arizona, Incorporated v. Richer*, Case No. Case 2:24-cv-02030-SMB,
23 ECF Nos. 12 and 15 (D. Ariz Sep. 15, 2024); (2) so that, in conjunction with the lawsuit,

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25 ¹⁵ Emergency Petition for Special Action (“Emergency Petition”), *Richer v. Fontes*, CV-
26 24-0221 (Ariz. Sup. Ct.) (Sept. 17, 2024), <https://perma.cc/22AZ-LH2K>.

¹⁶ *Arizona Voter Data Coding Oversight Updated*, AZSOS, (Sep. 30, 2024), <https://perma.cc/N6NF-SED6>

1 my client can add these new federal-only voters to the list of registered voters for which it
2 is seeking a court order requiring that the county recorders submit names to DHS to confirm
3 federal-only voters' citizenship status; and (3) to conduct voter outreach to aid the "nearly
4 100,000 registered voters in Arizona" who may need assistance providing documentary
5 proof of citizenship as part of the organization's voter outreach." *Id.*

6 40. Further, EZAZ.org noted, "Because both the case being contemplated by the
7 Maricopa County Recorder to make these full-ballot voters federal-only voters, as well as
8 the case our client is litigating are fast-moving matters, time is of the essence." *Id.*

9 41. EZAZ.org sent the PRR to Secretary Fontes via email to his Agency Counsel
10 with the Arizona Attorney General's Office ("Agency Counsel") at 2:44 pm on Tuesday,
11 September 17, 2024. Exhibit B.

12 42. EZAZ.org also submitted its request through the Arizona Secretary of State
13 Public Records Portal ("PR Portal") at 2:39 pm that same day. Exhibit C.

14 43. EZAZ.org also forwarded a copy of the PRR to Secretary Fontes' Public
15 Records Custodian ("PR Custodian") that same day via email at 3:14 pm. Exhibit D.

16 44. At around 2:56 pm on September 17, 2024, the PR Custodian contacted
17 EZAZ.org through the PR Portal, requesting confirmation that the requested voter registra-
18 tion data would only be used for purposes permitted under A.R.S. § 16-168(E). Exhibit C.

19 45. At or around 2:59 pm that same day, EZAZ.org, through counsel, confirmed
20 that the data would only be used for "research for election-related litigation, as well as
21 voter outreach" in compliance with A.R.S. § 16-168(E). *Id.*

22 46. On September 24, counsel for the Defendants responded to the PRR, refusing
23 to comply with the request in a timely manner, claiming that the records requested in the
24 PRR "will be made available for inspection at the soonest available time and to the extent
25 the law allows access. But no access will occur before the 2024 General Election." Exhibit
26 E, Letter from Defendants' Counsel at 8 (Sep. 24, 2024) (the "Denial Letter").

1 47. The Denial Letter offered no valid justification under Arizona law for this
2 response, nor was the denial based on facts and evidence.

3 48. Rather, the Defendants based the denial on their unfounded assumptions
4 about ulterior motives they falsely attributed to the Plaintiffs.

5 49. Specifically, the Defendants stated that “We fear, especially based on SCF’s
6 filings, that its true desire here is not to keep watch on government actions – which our
7 public records laws are designed to facilitate – but instead harass and intimidate voters in
8 the midst of an election and whose rights Secretary Fontes has already vindicated before
9 Arizona’s highest court.” *Id.* at 2.

10 50. However, no reasonable person would have a good faith basis for drawing
11 any such inferences from the Plaintiff’s filings.

12 51. Accordingly, this basis for the Defendants’ denial was made in bad faith and
13 in violation of Arizona law.

14 52. The Defendants also claimed “that privacy and security can overcome the
15 presumption of access to public records.” *Id.* at 5.

16 53. However, the Defendants failed to cite any specific privacy or security ex-
17 ception under Arizona law that applied to the PRR.

18 54. Indeed, the Defendants’ privacy claim is nonsensical because on or about
19 August 7, 2024, the Defendants already produced the *entire* Voter Registration Database
20 to the Plaintiff.

21 55. In fact, the Defendants had already produced the entire database because the
22 Defendants have a statutory obligation to produce the voter registration database upon re-
23 quest.¹⁷

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26 ¹⁷ 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 56. Here, the Plaintiff only seeks a subset of the database, which undercuts the
2 Defendants' purported privacy claims.

3 57. The Defendants also claimed that denial of the PRR was in the State's best
4 interests because the requested information is "imperfect or unreliable" and that producing
5 such information would "harm the public by causing confusion or insecurity, or harm an
6 agency by preventing it from discharging its duties to the best of its abilities while causing
7 needless litigation and administrative chaos, then the presumption of access will yield." *Id.*
8 at 5.

9 58. However, there is no exception under the Public Records Law for "imperfect
10 or unreliable" information.

11 59. Indeed, if the State is maintaining "imperfect" and "unreliable" information
12 in its Voter Registration Database, this is a gross failure and violation of public trust, and
13 the public's rightful interest in transparency about these failures is *greater*, and the case for
14 disclosure is *more compelling*, not less.

15 60. Furthermore, the Denial Letter failed to articulate *any* specific harm that
16 would be caused by fulfilling the PRR. Rather, the *only* conceivable "harm" that might
17 result would be the exposure of the Defendants' incompetence at maintaining voter rolls.

18 61. In essence, the "State's best interests" that the Defendants invoke here to
19 deny the PRR is that fulfilling the request would cause embarrassment to the Defendants
20 and expose them to public criticism for their failures to perform their lawful duties. How-
21 ever, this does not qualify as an interest of the State under the Public Records Law and is
22 not a valid basis for denying a PRR.

23 62. Indeed, bringing transparency to actions such as the Defendants' here is ex-
24 actly *why* the Legislature enacted the Public Records Law in the first place.

25 63. Finally, the Defendants claimed that fulfilling the PRR would be an "admin-
26 istrative burden," *Id.* at 5-6.

1 64. As with all their other excuses, the Defendants' claim about burdensomeness
2 is also pretextual.

3 65. The Defendants' own words betray them. The Denial Letter acknowledges
4 that the Defendants have *already* compiled the information requested in the PRR. *Id.* at 6.

5 66. Indeed, it is obvious that they have compiled the necessary information, oth-
6 erwise they would not have been able to publicly announce the number of voters affected
7 by their failures to perform proper list maintenance.

8 67. There is thus *no* burden for the Defendants to fulfill the request because the
9 Defendants have *already compiled all the information that the Plaintiffs have requested*.
10 The PRR does not ask for a perfectly vetted list. It merely asks the Defendants to produce
11 the list they have already compiled internally.

12 68. Nor is there any legitimacy to the Defendants' claim that it would be too
13 burdensome to conduct a review to redact private information. *Id.* at 6. The Defendants
14 routinely produce the entire Voter Registration Database (VRDB) to requesters, usually
15 within days, if not hours. If they are able to produce the VRDB on such tight timelines
16 while still managing to redact the VRDB appropriately, nothing is stopping them from
17 applying the same redaction processes to the PRR here.

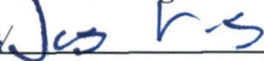
18 69. And even if there were any reality to the Defendants' meritless excuses, the
19 public's powerful interest in transparency would outweigh any such excuse.

20 70. Over the last few weeks, the Defendants have been forced to admit to stag-
21 gering failures in their voter list maintenance procedures and to gross violations of their
22 duties under Arizona's Constitution and laws. The public has a right to know the full extent
23 of their failures, and the Defendants may not use the limited exceptions to the Public Rec-
24 ords Law to shield themselves from the embarrassment of having their failures made man-
25 ifest.

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RESPECTFULLY SUBMITTED this 2nd day of October, 2024.

America First Legal Foundation

By: /s/ 
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Attorneys for Plaintiff

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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Exhibit A

JENNIFER WRIGHT ESQ., PLC

September 17, 2024

Via email

Arizona Secretary of State Public Records Custodian
c/o Ms. Karen Hartman-Tellez
Arizona Attorney General's Office
Karen.hartman@azag.gov

Re: 2:24-cv-02030-SMB, Strong Communities Foundation, et al. v. Richer, et. al.

Dear Public Records Custodian:

I represent Strong Communities Foundation of Arizona Inc. in the above captioned matter. My client is seeking a subset of the Statewide Voter Registration Database (VRDB) that contains only those registered (active and inactive) voters that have been identified by the Secretary of State as registrants “who first obtained their Arizona driver’s license before October 1996 and then were issued a duplicate replacement before registering to vote sometime after 2004” that may be moved from the “full-ballot” voter registration list to the “federal-only” voter registration list, if the Maricopa County Recorder’s anticipated lawsuit is successful.¹

Specifically, my client requests these records (1) because this information is directly related to my client’s lawsuit against all of Arizona’s county recorders about their list maintenance practices for federal-only voters and their failure to submit their lists of federal-only voters to DHS for immigration status confirmation, *see Strong Communities Foundation of Arizona, Incorporated v. Richer*, Case No. Case 2:24-cv-02030-SMB, ECF Nos. 12 and 15 (D. Ariz Sep. 15, 2024); (2) so that, in conjunction with the lawsuit, my client can add these new federal-only voters to the list of registered voters for which it is seeking a court order requiring that the county recorders submit names to DHS to confirm federal-only voters’ citizenship status; and (3) to conduct voter outreach to aid the “nearly 100,000 registered voters in Arizona”² who may need assistance providing documentary proof of citizenship as part of the organization’s voter outreach.

Because both the case being contemplated by the Maricopa County Recorder to make these full-ballot voters federal-only voters, as well as the case our client is litigating are fast-moving matters, time is of the essence. This request was also submitted through the Secretary’s public records request, NextRequest. Please promptly provide the materials requested electronically, either through the NextRequest portal, or via email to jen@jenwesq.com.

¹ Jen Fifield, *Error with tracking citizenship puts nearly 100,000 Arizona voters’ eligibility in limbo*, VOTEBEAT, Sept. 17, 2024, <https://www.votebeat.org/arizona/2024/09/17/citizenship-proof-records-error-federal-only-voter-registration-eligibility/>


² *Id.*

I aver that this public records request is for non-commercial purposes, as that phrase is defined in Arizona public records laws. A.R.S. § 39-121.03(D). I acknowledge that the voter registration data “may be used only for purposes relating to a political or political party activity, a political campaign or an election...or for any other purpose specifically authorized by law and may not be used for a commercial purpose.” Specifically, the data will be used for research for election-related litigation, as well as voter outreach. Further, I acknowledge that “any person in possession of [voter registration data] shall not permit the [data] to be used, bought, sold or otherwise transferred” and “shall not distribute, post or otherwise provide access to any portion of that information through the Internet.”

Note that failure to furnish copies of public records “promptly”, “quick[ly]”, and “without delay” is considered a denial of access. *See e.g., Phx. New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 538, 177 P.3d 275, 280 (App. 2008). Therefore, **please advise if the Secretary cannot deliver the list on or before September 20, 2024** and provide an anticipated alternative prompt delivery date.

Thank you in advance for your prompt disclosure.

Sincerely,



Jennifer Wright

Exhibit B

Subject: 2:24-cv-02030-SMB, Strong Communities Foundation, et al. v. Richer, et. al.: Arizona Secretary of State PRR #24-1268
From: Jennifer Wright <jen@jenwesq.com>
Date: 9/17/2024, 2:44 PM
To: "karen.hartman@azag.gov" <Karen.Hartman@azag.gov>, "PRR (MCRO)" <pr@risc.maricopa.gov>
CC: James Rogers <james.rogers@aflegal.org>

Dear Karen,

Please see attached letter regarding the public records request I submitted on behalf of my client, Strong Communities Foundation of Arizona, Inc., via the NextRequest portal. Because this request relates to litigation that is currently pending in the Arizona District Court, I am providing you a courtesy copy of the request. I am asking that the request be fulfilled no later than this Friday, September 20, 2024, given the expedited nature of election-related litigation.

If the Secretary anticipates any delay in providing the records in the time frame requested, please let me know as soon as possible.

Best regards,

Jennifer J. Wright
JENNIFER WRIGHT ESQ., PLC
4340 E. Indian School Road Ste #21-105
Phoenix, AZ 85018
(602) 332-0873
jen@jenwesq.com

This transmission may be protected by the attorney-client privilege or the attorney work product doctrine. If you are not the intended recipient, please delete all copies of the transmission and advise the sender immediately.

From: Arizona Secretary of State Public Records <messages@nextrequest.com>
Sent: Tuesday, September 17, 2024 2:39 PM
To: Jennifer Wright <jen@jenwesq.com>
Subject: Your Arizona Secretary of State public records request #24-1268 has been opened.

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

Arizona Secretary of State Public Records

Your record request #24-1268 has been submitted successfully.

The due date for your request may be later than usual because the

office is closed on:

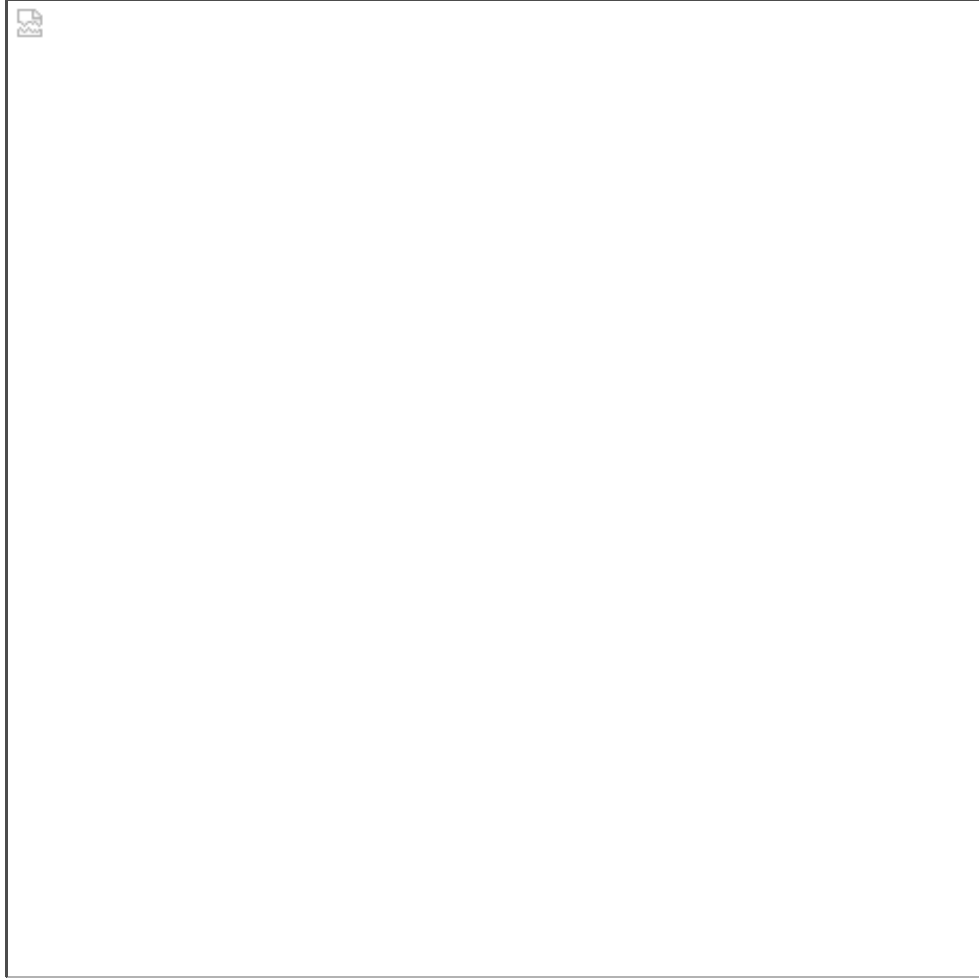
- November 11: Veterans Day
- November 28: Thanksgiving
- December 25: Christmas Day
- January 1: New Year's Day
- January 20: Martin Luther King, Jr. Day

[View Request 24-1268](#)

<https://azsos.nextrequest.com/requests/24-1268>

As the requester, you can always see the status of your request by signing into the Arizona Secretary of State [portal](#).

If you haven't already signed in, you may need to [activate or setup your account](#) to get started. Once your account is activated, you can communicate directly with the Arizona Secretary of State through NextRequest.



Reply to this email or sign in to contact Arizona Secretary of State.

[Change your email settings](#) | [Visit our help center](#)

Attachments:

240917 AZSOS PRR - Strong Communities Foundation, Inc v.
Richer.pdf

134 KB

Exhibit C

[Skip to main content](#)[Public Record Requests](#)

Arizona Secretary of State

Request Visibility:  Unpublished

Request 24-1268 Closed



Dates

Received

September 17, 2024 via web

Requester

 Jennifer Wright jen@jenwesq.com 4350 E. Indian School Road, Ste 21-105, Phoenix, AZ, 85018 602.332.0873 Jennifer Wright Esq., PLC

Invoices

No invoices due

Staff assigned

Departments

Communications

Legal

VRA&TD

Point of contact

Public Records Account

Request

On behalf of my client, Strong Communities Foundation of Arizona, Inc., I seek a subset of the Statewide Voter Registration Database (VRDB) that contains only those registered (active and inactive) voters that have been identified by the Secretary of State as registrants “who first obtained their Arizona driver’s license before October 1996 and then were issued a duplicate replacement before registering to vote sometime after 2004” that may be moved from the “full-ballot” voter registration list to the “federal-only” voter registration list, if the Maricopa County Recorder’s anticipated lawsuit is successful. See <https://www.votebeat.org/arizona/2024/09/17/citizenship-proof-records-error-federal-only-voter-registration-eligibility/>

Per public reporting, there are approximately 97,000 registrants that have been identified.

The files should include all columns typically provided in VRDB responsive records. See <https://azsos.nextrequest.com/documents/32497263>. Only those voters eligible to vote in the 2024 General Election (active and inactive voters) need be included.

I aver that this public records request is for non-commercial purposes, as that phrase is defined in Arizona public records laws. A.R.S. § 39-121.03(D). I acknowledge that the voter registration data “may be used only for purposes relating to a political or political party activity, a political campaign or an election...or for any other purpose specifically authorized by law and may not be used for a commercial purpose.” Specifically, the data will be used for research for election-related litigation, as well as voter outreach. Further, I acknowledge that “any person in possession of [voter registration data] shall not permit the [data] to be used, bought, sold or otherwise transferred” and “shall not distribute, post or otherwise provide access to any portion of that information through the Internet.”

Because both the case being contemplated by the Maricopa County Recorder to make these full-ballot voters federal-only voters, as well as the case our client is litigating are fast-moving matters, time is of the essence. Therefore, **please advise if the Secretary cannot deliver the list on or before September 20, 2024** and provide an anticipated alternative prompt delivery date.

A written copy of the associated letter will be emailed to prr@azsos.gov as well as counsel for the SOS.

Show less

Timeline

Documents

 **Message to requester**  Requester + Staff

We are writing to inform you that our response was released on 09/23/2024, and your request has been closed.

September 26, 2024, 9:53am by Staff

 **Request closed**  Public

We are writing to inform you that our response was released on 09/23/2024, and your request has been fulfilled.

September 26, 2024, 9:52am by Staff

 **Message from requester**  Requester + Staff

It is after 5pm on Friday, September 20th. Because of active litigation, and the potential impact on the voting rights of the Affected Voters, time is of the essence.

At this point, the SOS has yet to provide even a bill for the 97,688 registrations that have been identified as lacking DPOC. By my calculations, the statutory rate would be \$48.85. I would be happy to remit payment immediately.

Please note that if arrangements are not made by Monday at 10am to provide the records, the next step would be for my client to initiate judicial proceedings. There is no legitimate reason for the SOS to withhold this list or delay its release. Further, my client has a time-sensitive and legitimate reason (voter outreach to

Affected Voters) to need immediate access to this list.

September 20, 2024, 5:33pm by the requester

 **Message to requester** 

Requester + Staff

Thank you for confirming. We have received your public record request and have added it to the queue.

Please be advised that your request will be subject to the cost provisions in A.R.S. § 16-168(E).

- For one to one hundred twenty-four thousand nine hundred ninety-nine records, ninety-three dollars seventy-five cents plus \$0.0005 per record.
- For one hundred twenty-five thousand to two hundred forty-nine thousand nine hundred ninety-nine records, one hundred fifty-six dollars twenty-five cents plus \$0.000375 per record.
- For two hundred fifty thousand to four hundred ninety-nine thousand nine hundred ninety-nine records, two hundred three dollars thirteen cents plus \$0.00025 per record.
- For five hundred thousand to nine hundred ninety-nine thousand nine hundred ninety-nine records, two hundred sixty-five dollars sixty-three cents plus \$0.000125 per record.
- For one million or more records, three hundred twenty-eight dollars and thirteen cents plus \$0.0000625 per record.

Our office will reach out with payment information as the data becomes available.

September 17, 2024, 3:13pm by Staff

 **Message from requester** 

Requester + Staff

I aver that this public records request is for non-commercial purposes, as that phrase is defined in Arizona public records laws. A.R.S. § 39-121.03(D). I acknowledge that the voter registration data "may be used only for purposes

relating to a political or political party activity, a political campaign or an election...or for any other purpose specifically authorized by law and may not be used for a commercial purpose.” A.R.S. 16-168(E) Specifically, the data will be used for research for election-related litigation, as well as voter outreach. Further, I acknowledge that “any person in possession of [voter registration data] shall not permit the [data] to be used, bought, sold or otherwise transferred” and “shall not distribute, post or otherwise provide access to any portion of that information through the Internet.”

September 17, 2024, 2:59pm by the requester



Department assignment

Public

Added: VRA&TD.

September 17, 2024, 2:56pm by Staff



Message to requester

Requester + Staff

We are unable to fulfill your public record request until you respond with confirmation that the requested voter registration data will only be used for the purpose of political party activity or for elections pursuant to [ARS 16-168\(E\)](#).

Precinct registers, and other lists and information derived from registration forms may be used only for purposes relating to political or political party activity, a political campaign or an election, for revising election district boundaries or for any other purpose specifically authorized by law and **may not be used for a commercial purpose as defined in ARS 39-121.03**. The sale of registers, lists, and information derived from registration forms to a candidate or a registered political committee for a use specifically authorized by [ARS 16-168\(E\)](#) does not constitute use for a commercial purpose.

September 17, 2024, 2:56pm by Staff



Request opened

Public

Request received via web

September 17, 2024, 2:39pm by the requester

[FAQ](#) [Help](#) [Privacy](#) [Terms](#) [Arizona Secretary of State](#)



Exhibit D

Subject: FW: 2:24-cv-02030-SMB, Strong Communities Foundation, et al. v. Richer, et. al.: Arizona Secretary of State PRR #24-1268
From: Jennifer Wright <jen@jenwesq.com>
Date: 9/17/2024, 3:14 PM
To: "pr@azsos.gov" <pr@azsos.gov>, "karen.hartman@azag.gov" <Karen.Hartman@azag.gov>
CC: James Rogers <james.rogers@aflegal.org>

To the SOS Public Records Custodian,

I inadvertently sent this to the Maricopa County Public Records Custodian. Please see below and attached. I am already communicating with your office via NextRequest.

Best,

Jennifer J. Wright
JENNIFER WRIGHT ESQ., PLC
4350 E. Indian School Road Ste #21-105
Phoenix, AZ 85018
(602) 842-3061
jen@jenwesq.com

This transmission may be protected by the attorney-client privilege or the attorney work product doctrine. If you are not the intended recipient, please delete all copies of the transmission and advise the sender immediately.

From: Jennifer Wright
Sent: Tuesday, September 17, 2024 2:45 PM
To: karen.hartman@azag.gov; PRR (MCRO) <pr@risc.maricopa.gov>
Cc: James Rogers <james.rogers@aflegal.org>
Subject: 2:24-cv-02030-SMB, Strong Communities Foundation, et al. v. Richer, et. al.: Arizona Secretary of State PRR #24-1268

Dear Karen,

Please see attached letter regarding the public records request I submitted on behalf of my client, Strong Communities Foundation of Arizona, Inc., via the NextRequest portal. Because this request relates to litigation that is currently pending in the Arizona District Court, I am providing you a courtesy copy of the request. I am asking that the request be fulfilled no later than this Friday, September 20, 2024, given the expedited nature of election-related litigation.

If the Secretary anticipates any delay in providing the records in the time frame requested, please let me know as soon as possible.

Best regards,

Jennifer J. Wright
JENNIFER WRIGHT ESQ., PLC
4340 E. Indian School Road Ste #21-105
Phoenix, AZ 85018
(602) 332-0873

jen@jenwesq.com

This transmission may be protected by the attorney-client privilege or the attorney work product doctrine. If you are not the intended recipient, please delete all copies of the transmission and advise the sender immediately.

From: Arizona Secretary of State Public Records <messages@nextrequest.com>

Sent: Tuesday, September 17, 2024 2:39 PM

To: Jennifer Wright <jen@jenwesq.com>

Subject: Your Arizona Secretary of State public records request #24-1268 has been opened.

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

Arizona Secretary of State Public Records

Your record request #24-1268 has been submitted successfully.

The due date for your request may be later than usual because the office is closed on:

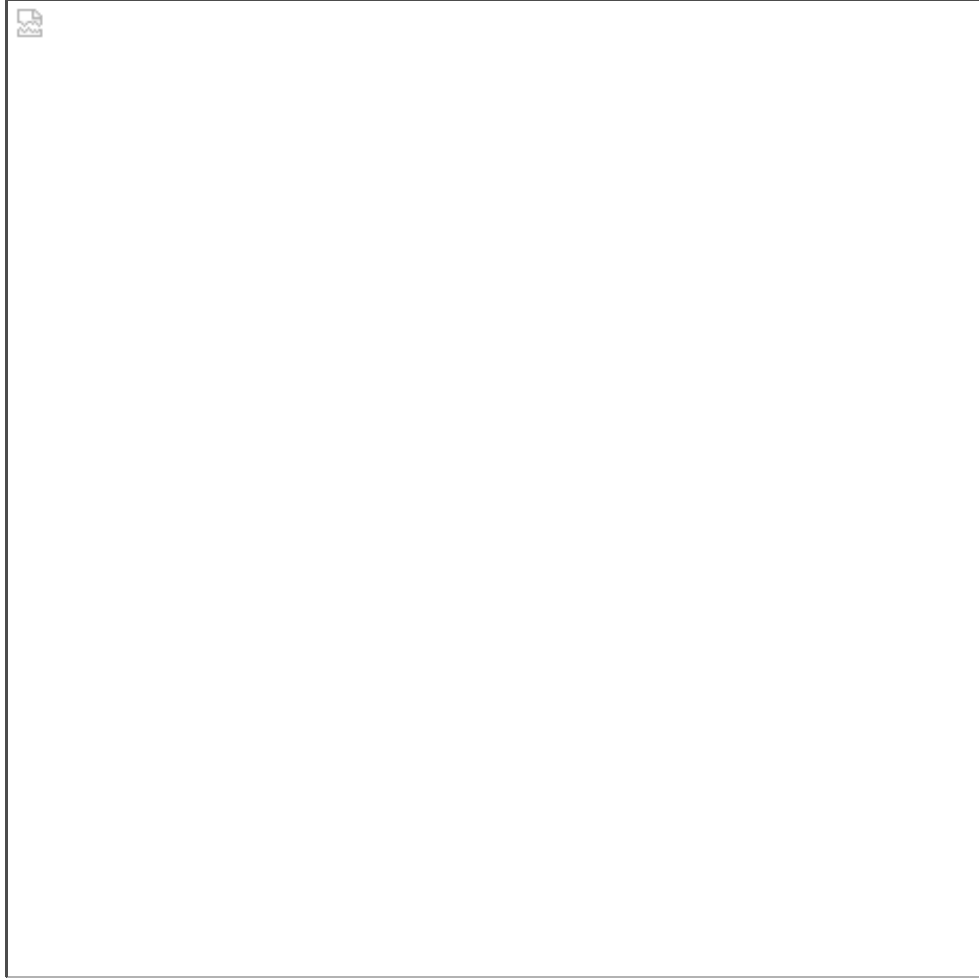
- November 11: Veterans Day
- November 28: Thanksgiving
- December 25: Christmas Day
- January 1: New Year's Day
- January 20: Martin Luther King, Jr. Day

[View Request 24-1268](#)

<https://azsos.nextrequest.com/requests/24-1268>

As the requester, you can always see the status of your request by signing into the Arizona Secretary of State [portal](#).

If you haven't already signed in, you may need to [activate or setup your account](#) to get started. Once your account is activated, you can communicate directly with the Arizona Secretary of State through NextRequest.



Reply to this email or sign in to contact Arizona Secretary of State.

[Change your email settings](#) | [Visit our help center](#)

Attachments:

240917 AZSOS PRR - Strong Communities Foundation, Inc v.
Richer.pdf

134 KB

Exhibit E



Sherman & Howard L.L.C.
2555 East Camelback Road, Suite 1050
Phoenix, Arizona 85016-4258
Telephone: 602.240.3000
shermanhoward.com



Craig A. Morgan
Direct Dial Number: 602.240.3062
E-mail: cmorgan@shermanhoward.com

September 24, 2024

VIA E-MAIL

Jennifer Wright
Jennifer Wright, Esq., PLC
4350 E. Indian School Road, Ste. #21-105
Phoenix, Arizona 85018
E-Mail: jen@jenwesq.com

**RE: THAT CERTAIN PUBLIC RECORDS REQUEST (THE “REQUEST”) MADE ON
BEHALF OF STRONG COMMUNITIES FOUNDATION OF ARIZONA, INC. (“SCF”)**

Dear Jennifer:

My name is Craig A. Morgan. I am an attorney with Sherman & Howard, LLC. This firm represents Adrian Fontes, Arizona’s Secretary of State (“Secretary Fontes”), and his office (the “Office”), in connection with SCF’s Request. Please direct all inquiries regarding the Request, and any related matters, to me.

The general policy in Arizona is to permit the public inspection of public records. *See* A.R.S. § 39-101 *et seq.* But that policy has its limits and must be tempered when necessary to protect Arizonans. At times, the need to provide carefully vetted and correct information to protect Arizonans from harassment and undue turmoil outweighs the public’s desire for general access to public records. This is especially so, when the information sought is imperfect, potentially unreliable, undergoing rigorous evaluation and investigation, and if distributed haphazardly could lead to chaos, confusion, harassment, and create an overwhelming administrative burden on an office with limited resources during a time when those resources are already needed to carry out core administrative functions. Ours is just that sort of situation.

SCF’s Request seeks “a subset of the Statewide Voter Registration Database” – what that means to SCF, precisely, we do not know – “that contains only those registered (active and inactive) voters that have been identified by the Secretary of State as registrants ‘who first obtained their Arizona driver’s license before October 1996 and then were issued a duplicate replacement



Sherman & Howard is merging with Taft effective January 1, 2025.



before registering to vote sometime after 2004' that *may* be moved from the 'full-ballot' voter registration list to the 'federal-only' voter registration list, *if* the Maricopa County Recorder's anticipated lawsuit is successful." Request at 1 (emphasis added).

First, Maricopa County Recorder Stephen Richer *did not succeed in his lawsuit*. So there will never be any documents technically responsive to SCF's Request as phrased. Moreover, as you know, every voter who is actually affected by the glitch the Arizona Department of Transportation has identified is entitled to vote a full ballot as a matter of law – a decision the Arizona Supreme Court made in a case wherein SCF unnecessarily intervened in a failed effort to disenfranchise voters under the ruse of voter protection. We fear, especially based on SCF's filings, that its true desire here is not to keep watch on government actions – which our public records laws are designed to facilitate – but instead harass and intimidate voters in the midst of an election and whose rights Secretary Fontes has already vindicated before Arizona's highest court.

Second, putting semantics aside, the information SCF seeks has not yet been definitively gathered and the voters who would be included in that data have not yet been definitively ascertained. As you may be aware, substantial and time consuming due diligence must occur before the Office can definitively ascertain who would fit the criteria that SCF's Request outlines. Secretary Fontes values transparency, but he also values accuracy. And both things demand that the information his Office disseminates be as accurate and reliable as possible. Arizonans deserve and expect no less from their leaders. That is why they overwhelmingly elected Secretary Fontes. And although that determination is underway, there is no way it will be complete before the conclusion of the 2024 General Election – a key reason, among others, why Secretary Fontes and Recorder Richer sought, and were granted, expedited relief in the Supreme Court of Arizona permitting anyone even *potentially* impacted by this situation to vote a full ballot in the 2024 General Election.

Third, (1) individual privacy and security concerns, (2) the best interests of the state with regard to protecting voters, communicating accurate information to the public in order to avoid voter confusion or intimidation, and maintaining election fairness, and (3) the burden disclosure will have on the Office in the midst of an election each, *independently*, heavily outweigh any presumptive right of access.

Thus, for the reasons explained below, the Office will not be fulfilling SCF's Request *at this time*. Once all relevant information has been gathered and reviewed (a process that has already begun), and the Office has been able to ascertain who are among those *actually* (not merely possibly) affected by these issues, we will then know what records are actually responsive to SCF's Request. Then, that *correct* information will be made publicly available to the extent permitted by law after the redaction of any personal identifying or otherwise confidential information the law protects from general disclosure.

For your reference, a more fulsome analysis and explanation of Secretary Fontes' position follows.



I. THE LAW

A. THE PRESUMPTION OF ACCESS IS NOT ABSOLUTE AND WHAT CONSTITUTES PROMPT DISCLOSURES DEPENDS ON THE CIRCUMSTANCES

Arizona’s public records law presumes the public should have prompt access to public records. *See* A.R.S. § 39-101 *et seq.* Promptness is ascertained in context and with consideration of the related facts and circumstances. *See Lunney v. State*, 244 Ariz. 170, 179, ¶ 31 (App. 2017) (“Whether a response is prompt depends on the factual circumstances of the request.”); *Hodai v. City of Tucson*, 239 Ariz. 34, 45, ¶ 35 (App. 2016) (“Whether a response to a public records request was prompt is an issue we review *de novo*, assessing promptness in the context of the circumstances of the request.”); *McKee v. Peoria Unified Sch. Dist.*, 236 Ariz. 254, 258, ¶ 15 (App. 2014) (“Promptness is assessed within the context of the particular facts and circumstances surrounding each request.”).

However, the presumption of access is *not* absolute. For example, the presumption of access may be outweighed by legitimate considerations of privacy or when limiting access is in the State’s best interests. *See Scottsdale Unified Sch. Dist. No. 48 v KPNX Broad. Co.*, 191 Ariz. 297, 300, ¶ 9 (1998) (confidentiality, privacy or best interests of the State can outweigh right to inspection); *Carlson v. Pima Cty.*, 141 Ariz. 487, 490-91 (1984). Records can also be withheld when the process of collecting the records, and preparing them for access, is itself unduly burdensome. *ACLU v. Ariz. Dept. of Child Safety*, 240 Ariz. 142, 152-153, ¶¶ 34-35 (App. 2016); *Hodai v. City of Tucson*, 239 Ariz. 34, 43, ¶ 27 (App. 2016) (“recognizing an unreasonable administrative burden may constitute a sufficient reason to deny a public records request”); *Judicial Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 397, ¶ 17 (App. 2011).

B. PRIVACY INTERESTS OR PUBLIC HARM CAN OVERCOME THE PRESUMPTION OF ACCESS

An officer or custodian of public records may refuse inspection of public records where “inspection might lead to substantial and irreparable private or public harm.” *Carlson v. Pima Cty.*, 141 Ariz. 487, 491 (1984); *see also A.H. Belo Corp v. Mesa Police Dep’t*, 202 Ariz. 184, 186, ¶ 6 (App. 2002) (holding that the city appropriately refused to disclose the audiotape of a 911 call in light of the family’s privacy interests).

Arizona’s public records law does not define “privacy.” The Arizona Supreme Court has relied on the United States Supreme Court’s definition of privacy under the federal Freedom of Information Act in finding that “information is private if it is intended for or restricted to the use of a particular person or group or class of persons: not freely available to the public” and “the privacy interest encompasses ‘the individual’s control of information concerning his or her person.’” *Scottsdale Unified Sch. Dist. No. 48*, 191 Ariz. at 301, ¶ 14 (cleaned up). Moreover, our



courts have recognized that privacy interests “must be weighed against the need for public awareness of the government’s performance of its ... functions” when determining if some of the records are not appropriately subject to public inspection. *Schoeneweis v. Hammer*, 223 Ariz. 169, 175-76 ¶ 23 (App. 2009) (addressing law enforcement and the privacy of survivors).

Over 300 Arizona statutes address the confidentiality of otherwise public records and command privacy. For example, a person has a privacy interest in their birth date. *Scottsdale Unified Sch. Dist. No. 48*, 191 Ariz. at 301- 02. State employees have a privacy interest in their home addresses and phone numbers. Ariz. Att’y Gen. Op. 191-004. In the election context alone, there are several statutes that protect certain information from public disclosure. See A.R.S. §§ 16-112(C)(2),(3) (whether an applicant registers to vote will remain confidential and will be used only for voter registration purposes); -140(C),(D) (declination to vote confidential and source of voter registration shall not be disclosed); -152(D) (if the county recorder confirms that a registrant has successfully petitioned the court for an injunction against harassment or an order of protection, the registrant’s residence address, telephone number, or voting precinct number will be protected from public disclosure); -153(A) (eligible who request that the general public be prohibited access to “that person’s documents and precinct number contained in that person’s voter registration record”, and if the person is a public official, the address of a property held in trust by the public office); -165(E) (records containing personal identifying information of deceased residents); -168(F) (protects certain personal information in a voter’s registration record from disclosure except by that vote).

Indeed, those who could be “eligible” for the confidentiality protections afforded under A.R.S. § 16-153 alone are many. An “eligible person” entitled to confidentiality in the voter registration context could include a:

health professional, election officer, public official, former public official, peace officer, spouse of a peace officer, spouse or minor child of a deceased peace officer, justice, judge, commissioner, hearing officer, public defender, prosecutor, member of the commission on appellate court appointments, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, employee of the department of child safety or employee of adult protective services who has direct contact with families in the course of employment, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment or firefighter who is assigned to the Arizona counter terrorism information center in the department of public safety.

A.R.S. § 16-153(K)(5); *see also* A.R.S. § 16-153(K)(6)-(15).

Of course, these privacy interests are not exhaustive and Courts will always look to a situation’s facts when ascertaining whether privacy interests outweigh the presumption of access.



The point of all this being, of course, that privacy and security can overcome the presumption of access to public records.

C. THE STATE’S BEST INTERESTS CAN OVERCOME THE PRESUMPTION OF ACCESS

As early as 1952, the Arizona Supreme Court recognized the need to prevent the disclosure of records that, when disclosed, would be “detrimental to the best interests of the [S]tate.” *Mathews v. Pyle*, 75 Ariz. 76, 81 (1952). In this context, otherwise public information can be withheld from inspection when the “release of information would have an important and harmful effect on the duties of the officials or agency in question.” *Ariz. Bd. of Regents v. Phoenix Newspapers Inc.*, 167 Ariz. 254, 257-58 (1991). Public officers must balance the possible adverse impact on the operation of the public body if the information in question is disclosed against the public’s right to be informed about the operations of its government. *Id.* (the public’s interest in ensuring the State’s ability to secure the most qualified candidate for university president is more compelling than its interest in knowing the names of all of the “prospects” for the position); *KPNX-TV v. Super. Ct.*, 183 Ariz. 589, 593 (App. 1995) (State was justified in withholding surveillance camera videotape due to its “security concerns about public disclosure of a videotape showing undercover officers, the evidence locker, and the location of the surveillance camera”). A public officer who determines that the harm to the State outweighs the public right to disclosure of a document has the burden of specifically demonstrating the harm if the decision is challenged in superior court. *Cox Ariz. Publ’n, Inc. v. Collins*, 175 Ariz. 11, 14 (1993).

“Th[e] ‘best interests of the state’ standard is not confined to the narrow interest of either the official who holds the records or the agency he or she serves. It includes the overall interests of the government *and the people.*” *Phx. Newspapers, Inc. v. Keegan*, 201 Ariz. 344, ¶ 18, 35 P.3d 105, 109-10 (App. 2001) (emphasis added); *see also Hodai*, 239 Ariz. at 41-42 (holding disclosure presumption is overcome by possible harm to investigation and that “release of any details of the open case would result in specific, material harm”).

Thus, when the disclosure of imperfect or unreliable information, even if technically a public record, will harm the public by causing confusion or insecurity, or harm an agency by preventing it from discharging its duties to the best of its abilities while causing needless litigation and administrative chaos, then the presumption of access will yield.

D. THE ADMINISTRATIVE BURDEN ASSOCIATED WITH COMPLIANCE CAN OVERCOME THE PRESUMPTION OF ACCESS

“[S]ometimes the benefits of public disclosure must yield to the burden imposed on . . . the government itself by disclosure.” *London v. Broderick*, 206 Ariz. 490, ¶ 9 (2003); *see also ACLU v. Ariz. Dept. of Child Safety*, 240 Ariz. 142, 152-153, ¶34 (App. 2016); *cf. Ariz. R. Sup. Ct. 123(c)(1), (f)(4)(A)(i)* (regarding judicial-branch records requests). Stated differently, “the burden of producing public records may outweigh the public’s interest in inspecting public records.” *ACLU*, 240 Ariz. at 153, ¶35; *see also Hodai*, 239 Ariz. at 43, ¶27 (“recognizing an unreasonable



administrative burden may constitute a sufficient reason to deny a public records request”); *Judicial Watch, Inc.*, 228 Ariz. at 397, ¶ 17 (holding “the burden of producing public records can outweigh the public’s interest in inspecting those records”).

The “burden” analysis is, at its core, an inquiry into whether “the best interests of the state in carrying out its legitimate activities outweigh the general policy of open access.” *Carlson*, 141 Ariz. at 491. “In determining whether production poses an unreasonable administrative burden, a court considers whether the general presumption of disclosure is overcome by: (1) the resources and time it will take to locate, compile, and redact the requested materials; (2) the volume of materials requested; and (3) the extent to which compliance with the request will disrupt the agency’s ability to perform its core functions.” *Hodai*, 239 Ariz. at 43, ¶27. For example, in *Humphrey v. State*, 249 Ariz. 57, ¶42 (App. 2020), review denied (Nov. 3, 2020), the court rejected as too burdensome a request that would have required the Arizona Department of Transportation to review (by hand) “at least 37,000 accident reports on microfilm and determining which accidents were ‘cross-median accidents’ resulting in fatalities.” *Id.* And consider the court’s analysis in *Hodai*, where it affirmed a finding that an inspection need not be undertaken due to administrative burden where the request required a search of nearly 1,400 email accounts, related review and redaction of sensitive information, and the review of records where an electronic search would be impossible. *Hodai*, 239 Ariz. at 43, ¶ 28.

Thus, when the burden on providing access to otherwise public records will take the state agency from the performance of its core functions – *i.e.*, conducting a national, state, and local election – then the presumption of access will give way.

II. PRIVACY, SECURITY, THE OFFICE’S INTEREST IN PROVIDING ACCURATE INFORMATION WITHOUT SACRIFICING THE PERFORMANCE OF ITS CORE FUNCTION, AND THE BURDEN OF COMPLIANCE IN THE MIDST OF AN ELECTION ALL OVERCOME ANY PRESUMPTIVE RIGHT TO ACCESS

The various constraints on the presumption of access discussed above compel Secretary Fontes to deny SCF’s Request *at this time*.

First, privacy interests and the State’s best interests easily overcome any presumption of access at this time. The information at issue, while generally understood to be contained within a set of parameters (certain persons who interacted with the Arizona Department of Transportation during a period of time), is still being vetted and at present is unreliable. The scope of those possibly affected – let alone those actually affected – by the situation at issue is presently unknown. Of course, Secretary Fontes and his Office are working tirelessly to investigate and ascertain the scope of the situation and to drill down who exactly is affected. And when that is determined, that information will be made public to the fullest extent legally permitted. But until that information is deemed reliable, it must not be haphazardly disseminated. To do so would create confusion, chaos, uncertainty and consternation among the public – all of which is avoidable, and indeed must be avoided amid an ongoing election during which we expect to receive record turnout.



Second, any information potentially subject to SCF's Request will likely contains highly confidential data that cannot be disclosed to anyone other than the person to whom the data belongs. For example, secure voters as defined by A.R.S. § 16-153 cannot be disclosed to the public. This includes law enforcement, prosecutors, judges, public defenders, people with protective orders against harassment, and many, many others. To ensure that information is not provided, the Office must review *each* responsive record for that information and redact it before disclosure. That, alone, is a time consuming and daunting process. It's timing will at minimum depend on the scope of those actually affected by the issue, and as we stated before, Secretary Fontes and his Office are presently ascertaining that scope. Only when that investigation is complete will the Office be able to begin the process of data reconciliation and the redaction of confidential, personal identifying information. And that process will be a manual process that goes line-by-line.

Third, Secretary Fontes and all Arizonans have a significant interest in avoiding uncertainty, confusion, and needless anxiety in the midst of a historic election. The dissemination of unreliable information is not only foolish, but dangerous. For example, and without limitation:

- People will falsely believe they are ineligible to vote, and based on that false premise, refrain from doing so, thus allowing misinformation to cause disenfranchisement.
- Bad actors will weaponize this unreliable information to harass and intimidate voters and election officials, causing undue stress, reduced voter participation, and a reduction in election officials willing to do their jobs for fear of retaliation.
- Meritless lawsuits will be filed and clog courts based on nothing more than unreliable and misunderstood information that, when properly vetted, would have cautioned a reasonable person against filing a meritless lawsuit.
- Mass automated voter challenges (which already occur across the nation), including multiple challenges for the same voter, will transpire and cause a substantial administrative burden on the officials responsible for adjudicating those challenges.
- People will use this imperfect information to try and single out polling areas or locations for protest and harassment, which will lead voters to refrain from voting in person or at all.
- Voters who are erroneously challenged and harassed, but who are actually eligible to vote, will refrain from voting for fear of repercussions.
- Secure voters whose personal identifying information is confidential as a matter of law will be compromised and subject to threats or actual harm.



- Election results will be delayed as we fight over admittedly incomplete and unreliable information, which in turn will delay democracy and thwart the People's will – all after the Arizona Supreme Court already said any affected voters can cast a full ballot in the 2024 General Election.

These very real concerns are precisely why Secretary Fontes sought and received a declaration from the Arizona Supreme Court stating that any voter affected by the technical glitch the Arizona Department of Transportation identified can nonetheless vote a full ballot in the 2024 General Election. Disseminating imperfect and unreliable information, now, will render that effort pointless and all of Arizona has a substantial interest in making sure that never happens.

Finally, attempting to gather, analyze, review, redact, and then disseminate the information responsive to SCF's Request within the timeframe SCF has unilaterally chosen – or even before the 2024 General Election – places an unreasonably and insurmountable administrative burden on Secretary Fontes' Office. As you know the 2024 General Election has commenced. All of the Office's resources are dedicated to that effort. As explained above, substantial resources will be required just to compile, review, and redact the records SCF seeks in order to make sure no private or confidential personal identifying information is disclosed. And again, that will be a manual process. For example, assuming there is eventually a single "list" of affected voters responsive to SCF's Request, at minimum someone will need to review each name on that list and cross reference it with a list of secure voters to make sure that no secure voter's name is disclosed. That could be tens of thousands of manual comparisons. The personnel needed to efficiently complete this single task, alone, are not presently able to drop their regular election-related duties to do so. The administrative burden of doing this, amid the 2024 General Election, is manifest.

Information responsive to SCF's Request will be made available for inspection at the soonest available time and to the extent the law allows access. But no access will occur before the 2024 General Election given the Office's duties during that time, the relative lack of resources to devote to the Request, and the administrative burden the Request places on the Office. But, fortunately for all of Arizona, in light of the Arizona Supreme Court's recent Order, those affected voters will not be disenfranchised due to what amounts to an unintentional technical glitch. We trust you to join us in celebrating this victory for Arizonans and our Republic.

Please do not hesitate to contact me if you desire to discuss this matter further.

Very truly yours,

Craig A. Morgan

CAM/em