

**IN THE SUPREME COURT  
STATE OF ARIZONA**

MARICOPA COUNTY RECORDER STEPHEN  
RICHER, in his Official Capacity,  
Petitioner,

v.

ARIZONA SECRETARY OF STATE ADRIAN  
FONTES, in his Official Capacity,  
Respondent.

Arizona Supreme Court  
No. CV-24-0221-SA

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**BRIEF OF *AMICI CURIAE* STRONG COMMUNITIES FOUNDATION OF  
ARIZONA INCORPORATED AND YVONNE CAHILL<sup>1</sup>**

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<sup>1</sup> Pursuant to Arizona Rule of Civil Appellate Procedure 16(b)(1)(A), this brief is filed with the written consent of the parties.

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Under RPSA 7(f), ARCAP , 16(b)(1)(A), and this Court’s September 17 order, Amici Strong Communities Foundation of Arizona, Inc. (EZA.Z.org) and Yvonne Cahill submit this brief as amici curiae with the parties’ written consent.

## **Introduction**

Arizona’s voters have lost confidence in our election system’s integrity. In a recent poll, sixty percent of likely Arizona voters were “concerned that cheating will affect the outcome of the 2024 election.”<sup>2</sup> One of their key concerns is the possibility that foreign citizens<sup>3</sup> may unlawfully vote.

The recent revelation of 97,688 voters (the “Affected Voters”) registered as Full-Ballot Voters without ever having provided Documentary Proof of Citizenship (DPOC) further contributes to voters’ concerns. And this failure makes clear that the Secretary of State and County Recordors (collectively “State Election Officials”), and their predecessors have failed in their voter list maintenance duties.

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<sup>2</sup> *Arizona: Trump 47%, Biden 40%*, RASMUSSEN REPORTS, (June 14, 2024), <https://perma.cc/Y68S-Q7XS>.

<sup>3</sup> In this Motion, 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. § 1101(a)(3).

However, the relief Recorder Richer seeks would effectively disenfranchise tens of thousands of voters through no fault of their own. On the other hand, the relief that Secretary Fontes seeks—allowing all Affected Voters to cast full ballots in the 2024 election—violates Arizona law and would further erode public confidence in elections.

Instead, this Court should craft a remedy, as outlined below in Section III, that strikes a balance between the two extremes.

### **Interest of Amicus Curiae**

Amici EZAZ.org is a large local grassroots organization that conducts significant voter outreach and education. EZAZ-APPX016. Amicus Yvonne Cahill is a naturalized citizen registered to vote in Maricopa County. They have a substantial interest in this case.<sup>4</sup> They are plaintiffs in a federal case seeking to compel Arizona’s County Recorders to properly apply Arizona’s requirements for voter list maintenance of Federal-Only Voters and the requirements of the National Voter Registration Act of 1993 (NVRA). *See Strong Communities Foundation of Arizona*

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<sup>4</sup> No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of it. No person other than amicus curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

*v. Richer*, Case No. 2:24-cv-02030-SMB, ECF Nos 12 and 15 (D. Ariz. Sep. 15, 2024).

## **Argument**

### **I. Arizona imposes strict voter list maintenance requirements for Federal-Only Voters.**

Since 2005, Arizona has required that voters submit DPOC to be able to vote in State and local elections (“Full-Ballot Voters”). APP0025; *see also* A.R.S. § 16-166(F). Voters who fail to provide DPOC (Federal-Only Voters”) may only vote in federal races. *See Arizona v. Inter Tribal Council of Arizona, Inc.* (“*Inter Tribal Council*”), 570 U.S. 1, 15 (2013).

In 2022, the Arizona Legislature enacted, and Governor Ducey signed, H.B. 2492 and H.B. 2243,<sup>5</sup> which, among other things, amended Arizona’s election statutes to impose stricter voter list maintenance requirements for Federal-Only Voters. One obstacle to performing such list maintenance is that Secretary Fontes has neglected to obtain access for list maintenance to the three databases that the statutes specifically require be consulted to verify citizenship: the U.S. Department of Homeland Security’s (DHS) Systematic Alien Verification for Entitlements

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<sup>5</sup> 2022 Ariz. Legis. Serv. Ch. 370 (H.B. 2243); 2022 Ariz. Legis. Serv. Ch. 99 (H.B. 2492).

(SAVE), A.R.S. §§ 16-121.01(D)(3) and -165(I); the Social Security Administration (SSA) database, A.R.S. §§ 16-121.01(D)(2) and -165(H); and the National Association for Public Health Statistics and Information Systems (NAPHSIS) electronic verification of vital events system (EVVE). A.R.S. §§ 16-121.01(D)(4) and -165(J).

**II. Arizona law names three databases for verifying citizenship: SAVE, SSA, and EVVE, two of which have an important role here.**

**A. EVVE.**

NAPHSIS is a nonprofit organization representing vital records agencies. NAPHSIS’s EVVE database contains information on most births in the United States except for Texas and the State of New York outside of New York City. EZAZ-APPX030. Therefore, the citizenship of the vast majority of the Affected Voters could likely be confirmed by consulting EVVE. However, the Federal District of Arizona recently found that “county recorders currently do not have access to NAPHSIS [EVVE].” *Mi Familia Vota v. Fontes*, 2024 WL 862406, at \*5 (D. Ariz. Feb. 29,

On September 18, counsel for EZAZ.org contacted NAPHSIS via telephone and spoke with NAPHSIS’s Chief Information Officer, Caprice Edwards (“CIO”). EZAZ-APPX029. The CIO said it could take a month or



more for the Secretary to negotiate the contract for access to EVVE, plus another week or two to get access to the database. EZAZ-APPX030.

She also stated that the Arizona Bureau of Vital Records within the Arizona Department of Health Services (“Bureau”) has access to the EVVE database. However, she said that, under the User Agreement, the results of the query may be restricted. *Id.* There is, therefore, the possibility that Secretary Fontes could obtain access to EVVE even sooner through the Bureau, if any potential restrictions could be resolved.

However, because EVVE cannot verify births in Texas and New York State outside of New York City, it is not fully adequate for verifying citizenship. Fortunately, State Election Officials have two other tools at their disposal.

## **B. SAVE**

SAVE can be used to submit immigration status inquiries to DHS. Unfortunately, it requires at least one of the several DHS-specific “numeric identifier[s],”<sup>6</sup> and “the [EAC’s] Federal Form does not include a space for registrants to provide this information” about “immigration

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<sup>6</sup> *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEP’T OF HOMELAND SEC., (Mar. 2024), <https://perma.cc/MS43-GBWM>.

numbers.” *Mi Familia*, 2024 WL 862406, at \*6. Arizona’s State voter registration form only provides an optional space for registrants to provide an alien number. *See* APP0040, #11.

**C. Federal law entitles County Recorders to submit citizenship inquiries to DHS.**

Fortunately, there is an easy method for County Recorders to confirm the citizenship of Federal-Only Voters who have not submitted an alien number. The Immigration and Nationality Act (INA), at 8 U.S.C. § 1373, requires DHS to “respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of *any individual* within the jurisdiction of the agency for *any purpose authorized by law*, by providing the requested verification or status information.” 8 U.S.C. § 1373(c) (emphasis added).

Section 1373 specifically preempts the requirements of “any other provision of Federal, State, or local law.” 8 U.S.C. § 1373(a). The House Judiciary Committee enacting Section 1373 explained that, with Section 1373:

[t]he Committee intends to give State and local officials the authority to communicate with the INS regarding the presence, whereabouts, and activities of illegal aliens. *This section is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State*

*and local officials and the INS.*

H.R. REP. 104-469, at 277 (1996) (emphasis added).

The INA also states, in 8 U.S.C. § 1644, that “[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from ... [DHS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.” 8 U.S.C. § 1644 (emphasis added). The House Conference Report enacting Section 1644 explained Congress’s intent in enacting Section 1644 contained the same above-quoted statement of purpose as the committee report for Section 1373. H.R. Conf. Rep. 104-725, at 383, 1996 U.S.C.C.A.N. 2649, 2771 (1996).

Because Sections 1373 and 1644 both expressly preempt any other federal or State law, no other law could prevent a County Recorder from submitting citizenship confirmation requests to DHS. *See* U.S. Const. art. VI, cl. 2. Thus, none of the list maintenance blackout provisions of the NVRA would prevent the submission of Section 1373/1644 Requests. 52 U.S.C. § 20507(c)(2)(A).

As the Supreme Court has explained, “Congress has *obligated* ICE

to respond to *any* request made by state officials for verification of a person’s citizenship or immigration status.” *Arizona v. United States*, 567 U.S. 387, 412 (2012) (citing 8 U.S.C. § 1373(c)) (emphasis added). Thus, DHS’s “ICE’s Law Enforcement Support Center operates 24 hours a day, seven days a week, 365 days a year and provides, among other things, immigration status, identity information and real-time assistance to local, state and federal law enforcement agencies.” *Id.* (cleaned up).

DHS has the capability of verifying an individual’s citizenship status without using the alien number that SAVE requires. For example, DHS maintains the Person Centric Query System (PCQS) database, which allows agency employees to look up individuals and quickly and easily verify their citizenship and immigration status using only a name and date of birth.<sup>7</sup>

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<sup>7</sup> *Privacy Impact Assessment Update for the USCIS Person Centric Query Service Supporting Immigration Status Verifiers of the USCIS Enterprise Service Directorate/Verification Division*, DEP’T OF HOMELAND SEC. (June 8, 2011), <https://perma.cc/32CZ-467V>. (“Status verifiers may conduct queries based on an individual’s name and date of birth.”); DEP’T OF STATE, Foreign Affairs Manual, 9 FAM 202.2-5(C)(c), (Aug. 2, 2024), <https://perma.cc/C8QM-H5Z4> (instruction to consular officers about using PCQS stating that “[y]ou can review the applicant’s information by ... entering the name and date of birth of the individual”).

**1. Multiple States have already submitted 1373/1644 Requests to DHS.**

Submitting 1373/1644 Requests is straightforward and unremarkable. It does not break any new ground. For example, two States—Florida<sup>8</sup> and South Carolina<sup>9</sup>—have recently submitted 1373/1644 Requests to DHS for the purpose of voter list maintenance. EZAZ-APPX022-27.

**III. The affected voters should be allowed to vote a full ballot, but with procedural safeguards to ensure that no ineligible ballots are cast.**

The potential disenfranchisement of the Affected Voters is a problem entirely caused by the failures of Secretary Fontes, the County Recorders (and their predecessors), and the Motor Vehicles Division. Ordinarily, Federal-Only Voters are immediately notified of their status as a limited-ballot voter, and provided an opportunity to submit DPOC.<sup>10</sup> Voter registration cards clearly indicate that the registrant is a federal-

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<sup>8</sup> Eric Daugherty. *DeSantis demands info on non-citizens registered to vote from federal government*, FLORIDA NEWS, (Sep. 10. 2024), <https://perma.cc/KXC9-FP37>, also available at <https://ti-nyurl.com/27rzej62>.

<sup>9</sup> *Fair and Secure Elections*, OFFICE OF CONGRESSMAN RALPH NORMAN, (Aug. 8, 2024), <https://perma.cc/YM2R-NAYL>.

<sup>10</sup> See 2023 EPM at 10 (“a County Recorder must... [s]end a letter to the registrant... within 10 business days, informing the registrant that they have been registered as a “federal-only” voter and must submit other valid DPOC to become a “full-ballot” voter.”)

only voter,<sup>11</sup> and the mailer accompanying the card must include information about how to submit DPOC.<sup>12</sup> A “‘federal-only’ voter [that] provides satisfactory DPOC to the County Recorder by 5:00 p.m. on the Thursday before Election Day” is entitled to vote a full ballot.<sup>13</sup>

Here, the Affected Voters will not have the same opportunity to submit DPOC before early ballots are mailed to early voters. The affected voters should not be penalized because of the failures of the public officials responsible for this fiasco. To limit the Affected Voters to casting ballots only in federal races would unfairly (and unconstitutionally) disenfranchise them. However, at the same time, in imposing the DPOC requirements, the State struck a careful balance between the importance of exercising the franchise and ensuring that only eligible voters may cast a ballot. This Court should not upset that delicate balance by allowing all the Affected Voters to cast a ballot without the required verification of their citizenship.

Rather, this Court should order relief that treads a middle path between the two extremes offered by the Petitioner and Respondent. This

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<sup>11</sup> *Id.* at 27.

<sup>12</sup> *Id.* at 28.

<sup>13</sup> *Id.* at 33.

Court should order the Recorders to send full ballots to all Affected Voters on the early voting list but should order that all ballots returned by Affected Voters be segregated pending confirmation of the voter's citizenship. The Court should further order that the Secretary of State and County Recorders confirm citizenship by doing the following:

*First*, Secretary Fontes should promptly obtain access to EVVE. If Secretary Fontes had fulfilled in a timely manner his statutory duty to obtain access, the resolution of this issue would have been far simpler. Counsel has verified with NAPHSIS that access to EVVE can be obtained in six weeks or less. EZAZ-APPX030. This means that, if Secretary Fontes requested access to EVVE today, he could obtain it by October 30, perhaps earlier. The citizenship of all Affected Voters could thus be verified before the general election takes place on November 5. *Id.*

*Second*, Secretary Fontes and the County Recorders should use EVVE to verify the place of birth of Affected Voters and update voters files accordingly, allowing confirmed citizens' ballots to be counted.

*Third*, Secretary Fontes and the County Recorders to conduct inquiries through SAVE for as many as possible of the Affected Voters and take appropriate action based on the results.

*Fourth*, Secretary Fontes and the Recorders should submit 1373/1644 Requests to verify Affected Voters' immigration status and then take the appropriate actions delineated above.

*Fifth*, Secretary Fontes and the Recorders should use all available contact methods to notify the Affected Voters that they must provide DPOC no later than 5:00 pm the Thursday before the election to vote a full ballot. All early full ballots returned to Recorders from Affected Voters whose citizenship status could not be confirmed should be duplicated onto a Federal-Only ballot before being tabulated.

### **Conclusion**

Therefore, this Court should order the Respondent and Petitioner State Election Officials to take the preceding actions.

**RESPECTFULLY SUBMITTED** this 18th day of September, 2024.

**America First Legal Foundation**

By /s/ James K. Rogers

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**JENNIFER WRIGHT ESQ., PLC**

By /s/ Jennifer J. Wright (with permission)

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**IN THE SUPREME COURT  
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Arizona Supreme Court  
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**APPENDIX FOR  
BRIEF OF *AMICI CURIAE* STRONG COMMUNITIES FOUNDATION OF  
ARIZONA INCORPORATED AND YVONNE CAHILL**

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9/18/2024	Exhibit D: Declaration of Jennifer Wright	EZAZ-APPX028

# EXHIBIT

# A

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9 **IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

10 STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED,  
11 and YVONNE CAHILL;

12 Plaintiffs,

13 v.

14 STEPHEN RICHER, in his official capacity as Maricopa County Recorder; *et al.*;

15 Defendants.  
16  
17

No. CV-24-02030-PHX-SMB

**DECLARATION OF MERISSA HAMILTON**

18  
19 I, Merissa Hamilton, declare as follows:

20 1. I am over 18 years of age and competent to testify, and the following facts  
21 are based on my personal knowledge.

22 2. I am the President and CEO of Strong Communities Foundation of Arizona,  
23 Incorporated, which is a 501(c)(3) non-profit organization that was incorporated under the  
24 laws of Arizona on July 16, 2018. The organization is more commonly known as  
25 EZAZ.org, which is now the URL of the organization's principal website, along with EZ-  
26 CIVICS.org.

27 3. EZAZ.org is a leading grassroots organization in Arizona.  
28

1           4.       It rose to prominence during the latter half of the COVID-19 pandemic when  
2 many community members and small business owners asked for help navigating through  
3 the pandemic with little direction from locally elected officials. Violent crime was increas-  
4 ing in neighborhoods, and thousands of small business owners were forced to shut down  
5 permanently without any relief. Citizens didn't know how to address their government to  
6 get relief.

7           5.       After volunteers, who eventually became Board Members of the 501(c)(4)  
8 arm of EZAZ.org, knocked on tens of thousands of doors during the 2020 election season,  
9 it became evident that voters found it a challenge to stay informed about what their local  
10 government was doing. Even worse, many local government organizations, such as school  
11 boards, had completely shut down their public comment functions. EZAZ.org has thus  
12 adopted as a core mission to teach people how to become active in the political process in  
13 their local communities and to help voters get engaged in a positive way.

14           6.       EZAZ.org's mission is to make civic participation easy and accessible for all  
15 Arizonans. It trains Arizonans about becoming more civically involved and offers commu-  
16 nity neighborhood events to engage neighbors who want to stay informed but would oth-  
17 erwise not be civically engaged.

18           7.       An essential part of the mission of EZAZ.org to increase civic engagement  
19 is ensuring that Arizona's elections are free, fair, and lawfully administered, which includes  
20 proper voter list maintenance.

21           8.       Together with its associated 501(c)4 organization, EZAZ.org has 59,000 sub-  
22 scribers to its mailing list. It has received donations from 4,756 people and conducts 90 or  
23 more public events per year with 3,001 people signed up as volunteers. It conducts signif-  
24 icant voter outreach and education, across the State of Arizona. It reached over 150,000  
25 voters in 2023. So far in 2024, it has made nearly one million voter contacts. Its donors,  
26 subscribers, and followers view it as the public voice for their concerns.

          9.       One of EZAZ.org's slogans is "We make civic action as easy as pie."

          10.      As part of that theme, EZAZ.org maintains a "Monthly Pie Club" through

1 which donors become members of the organization. Members are issued a membership  
2 card and receive a number of benefits, including 1) exclusive access to the “Pie Report,”  
3 which provides political insider intelligence; 2) text message action alerts; 3) reserved seat-  
4 ing at EZAZ.org events; 4) discounts to events; 5) special member-only events; and 6)  
5 exclusive information about bills at the Arizona legislature. Since the inception of the  
6 membership program, EZAZ.org has had 573 members.

7 11. EZAZ.org’s members include Arizona citizens and voters registered in each  
8 of Arizona’s 15 counties. They are affected by the Defendants’ unlawful failure to comply  
9 with required voter list maintenance practices.

10 12. Through its volunteers, EZAZ.org conducts door-knocking campaigns to ed-  
11 ucate voters. Sometimes during the resulting conversations, registered voters will volun-  
12 tarily disclose to EZAZ.org volunteers that they or members of their household are not  
13 eligible to vote and that their registration is in error. Whenever EZAZ.org volunteers dis-  
14 cover such information, EZAZ.org has taught its volunteers to report this information to  
15 the relevant county recorder’s office.

16 13. When there are more ineligible persons who are incorrectly registered to  
17 vote, EZAZ.org volunteers will encounter them more often, and the burden and financial  
18 expense of reporting such information also increases for EZAZ.org and its volunteers.

19 14. EZAZ.org’s volunteers have been encountering an increasing number of vot-  
20 ers (of all political persuasions) who state that they do not believe that their votes matter  
21 because they believe that their votes will be canceled out by illegal votes. They explain that  
22 they believe this because county recorders are not doing enough to remove ineligible voters  
23 from voter rolls. During such conversations, such voters will often specifically mention  
24 their concerns that foreign citizens are unlawfully registered to vote. This is a reasonable  
25 concern, given the unprecedented crisis at the border in which more than 10 million foreign  
26 citizens have entered the United States since January 21, 2021. Such voters are concerned  
that, with such an unprecedented surge in illegal immigrants entering the country, and with  
county recorders not conducting proper voter list maintenance, it is inevitable that

1 ineligible foreign citizens illegals have been registering to vote, and will vote, in the up-  
2 coming 2024 general election.

3 15. EZAZ.org has to expend significant amounts of time and money responding  
4 to such voter concerns and on conducting voter education about this issue.

5 16. These problems with voter list maintenance are also extremely discouraging  
6 to potential EZAZ.org volunteers. Because of this, EZAZ.org is encountering ever-greater  
7 difficulty in recruiting volunteers or activating current volunteers to engage in voter edu-  
8 cation efforts. Fewer people want to get involved in civic engagement since they perceive  
9 that their efforts have no effect and because elected officials do not take their concerns  
10 seriously. Some volunteers are even discouraged to vote due to their concerns.

11 17. Since the start of the organization, EZAZ.org has been deeply involved in  
12 activism on the issue of Federal-Only Voters.

13 18. EZAZ.org has worked with State Legislators to educate them about the issue  
14 of Federal-Only Voters and suggest ways that Arizona can more securely protect and en-  
15 hance the integrity of voter rolls and ensure increased transparency.

16 19. The county recorders' failure to conduct sufficient list maintenance of Fed-  
17 eral-Only Voters requires EZAZ.org to expend more resources on educating State Legis-  
18 lators.

19 20. County recorders' recent failures to do proper list maintenance of Federal-  
20 Only Voters have been particularly egregious, with the number of Federal-Only Voters  
21 increasing in recent months by unprecedented amounts. These failures have caused  
22 EZAZ.org to expend significant resources and money to monitor data about the registration  
23 of Federal-Only Voters.

24 21. The unprecedentedly rapid rate of increase in the number of Federal-Only Vot-  
25 ers this year strongly suggests that county recorders are failing to do proper list mainte-  
26 nance. If the registration rates of Federal-Only Voters had not started increasing this year

1 at such unprecedented rates, then there would be less cause for concern and EZAZ.org  
2 would not be forced to expend as much time and money on monitoring the situation.

3 22. The failure of Arizona county recorders to use all available resources to ver-  
4 ify the citizenship of Federal-Only Voters significantly contributes to the problem of in-  
5 creasing numbers of Federal-Only Voters and causes EZAZ.org to expend more resources  
6 addressing the issue and encouraging legal voters to still cast a ballot despite their concerns  
7 on whether their vote will matter.

8 23. The failure of Arizona county recorders to consult all federal databases to  
9 which they have access to verify the citizenship of Federal-Only Voters significantly con-  
10 tributes to the problem of increasing numbers of Federal-Only Voters and causes EZAZ.org  
11 to expend more resources addressing the issue.

12 I declare under penalty of perjury that the foregoing is true and correct to the best  
13 of my knowledge, and that this declaration was executed by me on September 11, 2024  
14 Arizona.

15  
16  
17 

18 \_\_\_\_\_  
19 Merissa Hamilton  
20 President, Strong Communities Foundation of Arizona, Inc.  
21  
22  
23  
24  
25  
26



# EXHIBIT

# B



## FLORIDA DEPARTMENT *of* STATE

RON DESANTIS  
Governor

CORD BYRD  
Secretary of State

September 9, 2024

Tammy Meckley  
Associate Director  
Immigration Records and Identity Services Directorate  
U.S. Citizenship and Immigration Services  
5900 Capital Gateway Drive  
Camp Springs, MD 20746

*Via E-MAIL & U.S. MAIL*

**Re: Demand for Information under 8 U.S.C. § 1373 and 8 U.S.C. § 1644**

Dear Associate Director Meckley:

Noncitizens cannot vote in Florida elections. *See* Fla. Const., art. VI, § II; § 97.041(1)(a)2., Fla. Stat. Those who do expose themselves to criminal liability.<sup>1</sup> Accurate and up-to-date voter registration rolls help ensure that noncitizens cannot vote and do not violate Florida law. *See* Fla. Stat. § 98.0575(6). And, under both Florida and federal law, the Florida Department of State (“FDOS”) is responsible for maintaining these accurate and up-to-date rolls.<sup>2</sup> *See, e.g.*, 42 U.S.C. § 15483(a) (requiring Department to “ensure that voter registration records” “are accurate and are updated regularly”); 42 U.S.C. § 1973gg(b)(4) (establishing procedures to “protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records.”); Fla. Stat. § 98.075(1) (“The department shall protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records.”).

FDOS must also take affirmative steps to “remove registrants who are ineligible to vote.” 42 U.S.C. § 15483(a); *see also* Fla. Stat. § 98.075(4)-(6). Any credible and reliable information of ineligibility obtained by FDOS triggers a notice of removal and opportunity for a hearing and can

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<sup>1</sup> <https://www.fdle.state.fl.us/News/2024/April/FDLE-arrests-non-citizen.-felon-for-voter-fraud>  
<https://www.fdle.state.fl.us/News/2022/October/FDLE-arrests-Jamaican-citizen-for-voting-in-U-S-el>  
*See, e.g.*, 18 U.S.C. § 611; 18 U.S.C. § 911; 18 U.S.C. § 1015(f); 52 U.S.C. § 21144(b); § 104.15, Fla. Stat.; § 104.011(1), (2), Fla. Stat.

<sup>2</sup> In Florida we take this responsibility seriously. Due to recent updates to our voter list maintenance laws, in the last month alone, nearly 26,000 individuals have been removed from Florida voter rolls for ineligibility (e.g., adjudication of mental incapacity without voting rights restored, felony conviction without voting rights restored, death, not a U.S. citizen, did not list a valid Florida residence, determined to be fictitious person), voter request, duplicate record, moved out of state, etc.

result in a “final determination that a voter is ineligible to vote.”<sup>3</sup> Fla. Stat. § 98.075(7). To perform its responsibilities and ensure accurate voter rolls, FDOS must have access to up-to-date citizenship information that can only be obtained from the federal government.

To that end, 8 U.S.C. § 1373 and 8 U.S.C. § 1644 provide a mechanism for FDOS to obtain pertinent information from your office. Section 1373 states:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the [Department of Homeland Security] (“DHS”) information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

8 U.S.C. § 1373(a). It goes on to say that “[DHS] *shall* respond to an inquiry by a federal, state, or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.” *Id.* § 1373(c) (emphasis added). Section 1644 reaffirms FDOS’s right to obtain citizenship-related information from your office, as does the United States Supreme Court. *See Arizona v. United States*, 567 U.S. 387 (2012) (“Congress has obligated [DHS] to respond to any request made by state officials for verification of a person’s citizenship or immigration status.”); *Chamber of Commerce of United States v. Whiting*, 563 U.S. 582 (2011) (“[Section 1373(c)] requires the Federal Government to ‘verify or ascertain’ an individual’s ‘citizenship or immigration status’ in response to a state request.”).

Indeed, FDOS’s successful federal lawsuit in 2012 against your office reaffirmed FDOS’s right to pertinent, citizenship-related information.<sup>4</sup> More specifically, that case resulted in FDOS obtaining access to the Systematic Alien Verification for Entitlements Program or SAVE database. *See Exhibit 1* (Memorandum of Agreement for SAVE).

Although the SAVE database can be helpful,<sup>5</sup> it is nevertheless insufficient. The database requires FDOS to have at least one of the following, specific numeric identifiers: “Alien/USCIS Number (A-Number),” “Form I-94, Arrival/Departure Record Number,” “Student and Exchange Visitor Information System (SEVIS) ID number,” “Naturalization/Citizenship Certificate Number,” “Card/I-797 Receipt Number,” “VISA Number,” or “Foreign Passport Number (if entered along with a U.S. immigration enumerator).”<sup>6</sup> Florida does not always have access to this information.

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<sup>3</sup> The individual also has a right to appeal a determination of ineligibility pursuant to § 98.0755, Fla. Stat.

<sup>4</sup> <https://dos.fl.gov/communications/press-releases/2012/florida-department-of-state-receives-commitment-from-us-department-of-homeland-security-to-provide-access-to-citizenship-database/>

<sup>5</sup> Last month FDOS sent 144 individualized non-citizen files to local Supervisors of Elections for removal from the state voter roll. The SAVE database confirmed that all 144 individuals were non-citizens, validating the state’s information. Upon receipt of the state’s non-citizen removal file, the Supervisor of Election must begin, within 7 days, the list maintenance process outlined in § 98.075(7), Fla. Stat.

<sup>6</sup> *Tutorial: Introduction to SAVE and the Verification Process for SAVE Users*, DEPARTMENT OF HOMELAND SECURITY. ET AL (Mar. 2024) (available at <https://tinyurl.com/msek795k>).

Under Florida law, the Florida Department of Highway Safety and Motor Vehicles (“DHSMV”) notifies FDOS of persons who self-identified as non-U.S. citizens upon being issued a new or renewed Florida driver’s license,<sup>7</sup> Florida identification card, or updated DHSMV record. *See* § 98.093(8)(b), Fla. Stat. This information is highly credible but in some instances lacks the kind of identifiers needed to obtain confirmation through the SAVE database.

I thus include as **Exhibit 2-9**, the names of specific individuals for whom FDOS has information of non-citizenship but for whom FDOS cannot run a search on the SAVE database. All 7 of these individuals are currently on Florida’s voter rolls. For these seven individuals, pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644, I ask for verification of citizenship status **within fourteen days of your receipt of this letter**.

FDOS understands that your office has the ability to determine an individual’s immigration or citizenship status very quickly and without the numeric-identifiers required by the SAVE database. We further understand that the Person Centric Query System allows for verification of immigration or citizenship status with a very limited amount of basic information such as name, date of birth, and address. For each of the seven individuals included in Exhibits 2-9, I have provided you the name, date of birth, address, and any other identifiers or pertinent information FDOS has in its possession.

The immediate need for accurate citizenship information is critical as we are less than ninety days from the next general election. Given that the law is clear and USCIS’s obligations are mandatory, any delay in fulfilling FDOS’s (very reasonable) request for 7 individual determinations will undoubtedly undermine FDOS’s ability to fulfill its statutory obligations to protect the integrity of Florida’s election and maintain current and accurate voter registration rolls. We appreciate your expeditious assistance on this matter. If verification is not provided within the time requested, Florida will pursue other remedies, including potential litigation.

Sincerely,



Brad McVay  
Deputy Secretary of State  
for Legal Affairs & Election Integrity/  
Chief Legal Counsel  
Florida Department of State  
brad.mcvay@dos.fl.gov

cc:

Ur M. Jaddou, Director, U.S. Citizenship and Immigration Services  
Jennifer B. Higgins, Deputy Director, U.S. Citizenship and Immigration Services  
Felicia Escobar Carrillo, Chief of Staff, Office of the Director  
A. Ashley Tabaddor, Chief Counsel, Office of Chief Counsel

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<sup>7</sup> Florida does not allow illegal aliens to obtain driver’s licenses and does not recognize driver’s licenses issued in other states to illegal aliens. *See* § 322.033, Fla. Stat.

# EXHIBIT

# C

August 1, 2024

Tammy Meckley  
Associate Director  
Immigration Records and Identity Services Directorate  
U.S. Citizenship and Immigration Services  
5900 Capital Gateway Drive  
Camp Springs, MD 20746

Dear Associate Director Meckley:

The South Carolina State Election Commission (SEC) writes United States Citizenship and Immigration Services (USCIS) to request assistance in ensuring that individuals who have registered to vote in South Carolina are citizens of the United States entitled to vote in elections.

We write this request pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644. These federal statutes provide state agencies a mechanism for obtaining information about individuals' citizenship or immigration status. Section 1373 states in part:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information *regarding the citizenship or immigration status, lawful or unlawful, of any individual.*<sup>1</sup>

8 U.S.C. § 1373(a)

Further, at Subsection 1373(c), this statute states “[t]he Immigration and Naturalization Service shall respond to an inquiry by a federal, state, or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency *for any purpose authorized by law.*”

The Executive Director of the SEC is required to establish and maintain a statewide voter registration database and maintain a complete file of all qualified electors by county and by precincts. He is required to delete the name of any registered person who is not qualified to vote. To ensure that only qualified electors are registered, he is authorized by law to obtain information from any source that may assist him to do so.<sup>2</sup> See S.C. Code § 7-3-20(D).

<sup>1</sup> Similarly, 8 U.S.C. 1644 states “Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service *information regarding the immigration status, lawful or unlawful, of an alien in the United States.*”

<sup>2</sup> Federal law also requires states to conduct programs to remove ineligible voters from the rolls. See 52 U.S.C. 20507(c); see generally 52 U.S.C. § 20501 et seq.

**COMMISSIONERS**

HON. DENNIS W. SHEDD  
Chairman

JOANNE DAY

CLIFFORD J. EDLER

LINDA MCCALL

SCOTT MOSELEY

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HOWARD M. KNAPP  
Executive Director

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The SEC is a member of the Systematic Alien Verification for Entitlements (SAVE) Program. However, this Program is only useful when the agency already has a reason to question a particular person's citizenship status and when an identifier such as an Alien Registration Number exists. We understand that there are other avenues for determining a person's immigration or citizenship status such as the Person Centric Query Service that allows searches on individuals to be run that can access multiple information systems and databases maintained by or accessible to USCIS. These searches appear to allow for a more expansive set of search terms than are available using SAVE. Thus it appears that USCIS is capable of running searches based on queries that provide name, date of birth, address, and other information the SEC will possess as a matter of course as part of a person's voter registration information.

We would like to be able to verify the citizenship or immigration status of newly registered voters in South Carolina. We are prepared to provide lists of those who have registered to vote here for the first time. As authorized by South Carolina law and United States Code of Law Sections 8 U.S.C. § 1373 and 8 U.S.C. § 1644 we are requesting that you allow us to provide you with these lists so that you can check them against the information systems and databases maintained and accessible by USCIS for the purpose of verifying registrant's citizenship status so that only eligible voters are present on South Carolina's voter rolls.

Please provide us with guidance on the best format in which to provide you with the lists of new registrants we would like verified. Please respond by August 30, 2024. We will appreciate your assistance in carrying out our duty to maintain a current and accurate voter registration database.

Sincerely,



Howard M. Knapp  
Executive Director, South Carolina State Election Commission

cc:

Ur M. Jaddou, Director, U.S. Citizenship and Immigration Services  
Jennifer B. Higgins, Deputy Director, U.S. Citizenship and Immigration Services  
Felicia Escobar Carrillo, Chief of Staff, Office of the Director  
A. Ashley Tabaddor, Chief Counsel, Office of Chief Counsel

COMMISSIONERS

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Chairman

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Executive Director

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# EXHIBIT

# D



1 **AMERICA FIRST LEGAL FOUNDATION**

**JENNIFER WRIGHT ESQ., PLC**

2 James K. Rogers (No. 027287)  
3 *Senior Counsel*  
4 611 Pennsylvania Ave., SE #231  
5 Washington, D.C. 20003  
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7 *Attorneys for Amici Curiae Strong Communities Foundation of Arizona Incorporated*  
8 *and Yvonne Cahill*

9 **IN THE SUPREME COURT**  
**STATE OF ARIZONA**

10 MARICOPA COUNTY RECORDER  
11 STEPHEN RICHER, in his Official  
12 Capacity;

13 Petitioner,

14 v.

15 ARIZONA SECRETARY OF STATE  
16 ADRIAN FONTES, in his Official  
17 Capacity;

18 Respondent.

No. CV-24-0221-SA

**DECLARATION OF JENNIFER  
WRIGHT**

19  
20 I, Jennifer Wright, declare as follows:

21 1. I am over 18 years of age and competent to testify, and the following facts  
22 are based on my personal knowledge.

23 2. I am an Arizona attorney and a member in good standing with the State  
24 bar of Arizona.

25 3. I represent *amici* Strong Communities Foundation of Arizona Incorporated  
26 and Yvonne Cahill in this matter.

27 4. On Wednesday, September 18, 2024, I contacted the National Association  
28 for Public Health Statistics and Information Systems (“NAPHSIS”) via phone and  
spoke with NAPHSIS’s Chief Information Officer, Caprice Edwards (“CIO”).

1           5.     I explained that the Arizona Secretary of State (“Secretary”) has identified  
2 over 97,000 voter registrants who did not provide proof of citizenship and that they  
3 may be prevented from voting in state and local races as a result of this litigation if their  
4 citizenship cannot be confirmed.

5           6.     I asked the CIO how long it would take the Secretary to negotiate a con-  
6 tract with NAPHSIS to query the Electronic Verification of Vital Events (“EVVE”)  
7 database. She indicated that it could take a month or more for the Secretary to negotiate  
8 the contract, but that this timeline was mostly dependent on the extent of the Secretary’s  
9 proposed redlines to the contract.

10          7.     I asked the CIO once a contract was negotiated and signed, how long  
11 would it take to gain access to the EVVE database. She indicated that it usually took  
12 about one to two weeks for access to be granted by participating jurisdictions whose  
13 state laws allow the use by the requesting organization, and that each jurisdiction man-  
14 ages access to their database.

15          8.     However, the CIO stated that the Arizona Bureau of Vital Records within  
16 the Arizona Department of Health Services (“Bureau”) has access to the EVVE data-  
17 base and has the capabilities to query the database using the name, date of birth, and  
18 state of birth. However, the User Agreement Form permits only vital records personnel  
19 to perform an “Interjurisdictional Fraud Query” and the results of the query may be  
20 restricted.

21          9.     The CIO also indicated that the EVVE records have a “living indicator”  
22 that would identify any registrants that have a verified death record on file from any of  
23 the member states.

24          10.    The CIO did note that, as it relates to the traditional EVVE birth records,  
25 the states of Texas and New York do not participate, and therefore birth records from  
26 those states cannot be queried and confirmed, except that the city of New York does  
participate.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed by me on September 18, 2024 Arizona.

  
\_\_\_\_\_  
Jennifer J. Wright