

Exhibit A

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17
18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF ARIZONA**

20 Scot Mussi; Gina Swoboda, in her capacity
as Chair of the Republican Party of
21 Arizona; and Steven Gaynor,

22 Plaintiffs,

23 v.

24 Adrian Fontes, in his official capacity as
Arizona Secretary of State,

25
26 Defendant.

NO. CV-24-01310-PHX-DWL

**BRIEF OF AMICUS CURIAE THE
BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW IN
SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

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1 **STATEMENT OF INTEREST**

2 *Amicus curiae* the Brennan Center for Justice at New York University School of
3 Law¹ (the “Brennan Center”) hereby submits this Brief in Support of Defendant’s Motion
4 to Dismiss.

5 The Brennan Center is a nonprofit, non-partisan law and public policy organization
6 that seeks to strengthen, revitalize, and defend our country’s systems of democracy and
7 justice. Protecting free and fair elections against threats, including from disinformation
8 campaigns about their integrity, is central to its mission. As part of that work, the Brennan
9 Center engages with election administrators and community groups nationwide to help
10 safeguard full and equal access to voting. It conducts empirical, qualitative, historic, and
11 legal research on electoral practices, including on voter list maintenance practices, and on
12 the risks and consequences of disinformation, particularly for election administrators. The
13 Brennan Center regularly participates as counsel or *amicus curiae* in federal and state
14 litigation related to voting rights and election integrity and security.

15 **SUMMARY OF ARGUMENT**

16 This case is the latest in a barrage of strikingly similar lawsuits filed across the
17 country in recent years, brought under the National Voter Registration Act (NVRA),
18 seeking to force election officials to purge voter rolls beyond what the NVRA requires or
19 permits. *Amicus curiae* submits this Brief to contextualize Plaintiffs’ Complaint—which
20 Defendant rightly describes as a “cookie-cutter lawsuit[,]” ECF No. 20 at 8—as part of a
21 broader national effort that risks disenfranchising eligible voters and conflicts with the
22 main objectives of the NVRA. Other courts have consistently rejected these claims, which
23 are based on unreliable statistical analysis and misleading metrics, and this Court should
24 do the same.

25 Plaintiffs’ Complaint is premised on allegations that Arizona maintains voter
26 registrants at a higher rate than national and state averages, and in some counties, higher
27 than its voting-eligible population. Plaintiffs make the conclusory assertion that this rate

28 _____
¹ This brief does not purport to convey the position, if any, of New York University School of Law.

1 reflects a failure by the Defendant to undertake reasonable efforts to remove ineligible
2 voters from Arizona’s voter rolls. Defendant’s Motion to Dismiss highlights the many
3 problems with the Complaint, including Plaintiffs’ lack of standing and the distorted data
4 analysis that underpins Plaintiffs’ allegations and renders their NVRA claim implausible.
5 ECF No. 20 at 1-2. Indeed, as Defendants’ Motion to Dismiss makes clear, Arizona has
6 robust procedures in place to comply with the NVRA, which was designed to strike a
7 delicate balance among the competing goals of increasing registration of eligible voters,
8 protecting registered voters from inappropriate purges, and maintaining accurate voter
9 rolls. ECF No. 20 at 12-15.

10 Plaintiffs’ Complaint is also part of a spate of eleventh-hour challenges brought to
11 state election administration practices across the country, all of which appear to be
12 calculated to weaponize the judicial process, sow chaos in the electoral process, and erode
13 faith in elections. Allowing protracted litigation based on unfounded claims like the ones
14 alleged in this case could provide fodder for future, baseless efforts to challenge legitimate
15 election results. Worse still, bringing such litigation so close to an election could contribute
16 to an already heightened climate of harassment and violence against election officials and
17 workers. This and similar cases also force election officials, who are already stretched and
18 strained, to divert limited resources to defending against lawsuits and away from the
19 important and time-consuming task of administering elections. This Court should reject
20 Plaintiffs’ attempt to use the court system as a vehicle to diminish public confidence in the
21 electoral process, a risk that is particularly acute and dangerous in an election year.

22 ARGUMENT

23 **I. Plaintiffs’ Complaint is Premised on Unreliable Methodology That Is At** 24 **Odds With the Pro-Voter Purposes of the NVRA.**

25 The allegations in Plaintiffs’ Complaint recycle conclusory allegations and
26 methodological flaws that have been raised in NVRA suits across the country. Citing
27 “discrepancies” between single snapshots of state voter rolls and population statistics
28 captured over time, Plaintiffs compare apples to oranges as a basis for alleging that the

1 Defendant is violating the NVRA. ECF No. 1 at ¶¶ 76-77, 80-81. But this copy-and-paste
2 methodology has been repeatedly discredited and disclaimed by courts, and the same result
3 is appropriate here.

4 For example, in *Bellitto v. Snipes*, the plaintiffs relied on Census data to support
5 their claim that the voter rolls in Broward County, Florida “contained either more total
6 registrants than eligible voting-age citizens or, at best, an implausibly high number of
7 registrants.” Complaint ¶ 11, *Bellitto v. Snipes*, No. 1:16-cv-61474-BB (S.D. Fla. June 27,
8 2016). The district court concluded that comparing data regarding registered voters to
9 Census data regarding eligible voters was “misleading,” because the data sources “reflect[]
10 snapshots” of “different groups of voters from different time periods” and therefore are not
11 “commensurate.” Order at 18-20, *Bellitto*, No. 0:16-cv-61474-BB (S.D. Fla. Mar. 30,
12 2018). The Eleventh Circuit affirmed, crediting the district court’s conclusion that the
13 plaintiffs’ methodology was misleading and concluding that the plaintiffs’ argument that
14 the county’s registration rates were unreasonably high could not “salvage [the] claim that
15 [the defendant] violated the NVRA’s list-maintenance requirements.” *Bellitto v. Snipes*,
16 935 F.3d 1192, 1208 (11th Cir. 2019).

17 Similarly, in *Judicial Watch, Inc. v. Commonwealth of Pennsylvania*, 524 F. Supp.
18 3d 399 (M.D. Pa. 2021), the court dismissed an NVRA complaint that was premised on
19 “abnormally high” voter registration rates calculated by comparing voter registration
20 information and Census data. *Id.* at 403-04. The court concluded that Judicial Watch had
21 not plausibly alleged a failure to conduct reasonable list maintenance because the datasets
22 it relied on in the complaint were outdated and “no longer valid.” *Id.* at 405. So too, here.
23 Plaintiffs’ Complaint is premised on citizen voting age population (CVAP) data from the
24 U.S. Census Bureau’s American Community Survey (“ACS”) which, as the Complaint
25 acknowledges, is “gathered and released on a rolling basis.” ECF No. 1 ¶ 76. But Plaintiffs
26 compare these CVAP datasets to a single snapshot of the total number of voter registrants
27 that the Arizona Secretary of State reported to the U.S. Election Assistance Commission
28 for the year 2022. ECF No. 1 ¶ 80, n. 6; ECF No. 20, Ex. A at 162 (listing 4,833,160 total

1 reported registrants). Thus, in addition to the inappropriate inclusion of inactive voter
2 registrants, *see* ECF No. 20 at 10-11, 15-17, the methodology underpinning Plaintiffs’
3 allegations is invalid for another reason. Similar to the use of an outdated dataset in *Judicial*
4 *Watch*, Plaintiffs’ reliance on multi-year datasets here does not provide the appropriate
5 comparator to data that the Secretary of State reported for 2022 alone. And as in *Judicial*
6 *Watch*, that fundamental flaw “effectively torpedo[es]” Plaintiffs’ theory that the
7 Defendant is not conducting reasonable list maintenance. 524 F. Supp. 3d at 406.

8 Beyond their misguided statistical analysis, Plaintiffs provide scant allegations to
9 support their claim that the Defendant is not complying with the NVRA’s requirement to
10 engage in “reasonable efforts” to conduct list maintenance. 52 U.S.C. § 20507(a)(4). But
11 simply claiming the Secretary of State does not have adequate voter list maintenance
12 procedures in place without plausible factual allegations does not make it so. Indeed, quite
13 the opposite is true, as detailed in Defendant’s Motion to Dismiss. ECF No. 20 at 12-15.
14 Courts in these circumstances have not hesitated to dismiss a complaint for failure to state
15 a claim under the NVRA. *See Judicial Watch*, 524 F. Supp. 3d at 405-06; Order, *Va.*
16 *Voter’s Alliance, Inc. v. Leider*, No. 1:16-cv-00394 (E.D. Va. June 17, 2016); Transcript,
17 *Va. Voter’s Alliance, Inc. v. Leider*, No. 1:16-cv-00394 (E.D. Va. June 29, 2016)
18 (dismissing NVRA complaint based on similar methodology in open court for failure to
19 allege facts with specificity).

20 Without identifying any specific deficiencies in Arizona’s list-maintenance
21 procedures, Plaintiffs nevertheless ask this Court to impose a more aggressive purge of
22 Arizona’s voter rolls, risking indiscriminate disenfranchisement of eligible voters. As other
23 courts have recognized, such an outcome would turn the NVRA on its head. The NVRA
24 was passed, in part, to address a “long history” of overly aggressive voter “purge systems”
25 that “violate the basic rights of citizens,” particularly “minority communities.” S. Rep. No.
26 103-6, at 18 (1993). To be sure, Congress was mindful of the need to “ensur[e] that voter
27 rolls remain accurate and current,” but the NVRA also expressly embodies Congress’s
28 intent “to increase voter registration and to limit purging efforts that could impede the

1 exercise of the franchise.” *Bellitto*, 935 F.3d at 1201; *see also Pub. Int. Legal Found. v.*
 2 *Benson*, No. 1:21-CV-929, 2024 WL 1128565, at *12 (W.D. Mich. Mar. 1, 2024)
 3 (“Congress passed the NVRA to not only protect election integrity and ensure accurate and
 4 current voter rolls but also establish procedures that increase voter participation.”). By
 5 seeking to invoke the NVRA as a tool to pressure administrators into *more* aggressive
 6 purges, suits like this fail to account for the voter-protection purposes underlying the
 7 statute. 52 U.S.C. § 20501(b); *see also Bellitto*, 935 F.3d at 1201 (rejecting the plaintiff’s
 8 argument that Congress intended “to create a mandatory general obligation on the states to
 9 remove voters from the rolls for many reasons” because it failed to account for the NVRA’s
 10 “carefully balanced objectives”).

11 **II. This Lawsuit Should Be Understood as Part of a Dangerous Movement to**
 12 **Use the Courts to Sow Doubt About the 2024 Election.**

13 Notwithstanding the failure of similar efforts, at least a dozen lawsuits seeking to
 14 interfere with the orderly administration of elections—including NVRA suits like this
 15 one—have been filed in this election season. *See, e.g.,* Complaint, *Petersen v. Fontes*, No.
 16 CV2024-001942 (Ariz. Sup. Ct. Jan. 31, 2024) (election administration challenge);
 17 Complaint, *Judicial Watch v. Ill. State Bd. Of Elec.*, No. 1:24-cv-01867 (E.D. Ill. Mar. 5,
 18 2024) (NVRA suit); Complaint, *Republican Nat’l Comm. v. Benson*, No. 1:24-cv-00262
 19 (W.D. Mich. Mar. 13, 2024) (NVRA suit); Complaint, *Republican Nat’l Comm. v. Aguilar*,
 20 No. 2:24-cv-00518 (D. Nev. Mar. 18, 2024), (NVRA suit); Amended Complaint, *Md.*
 21 *Election Integrity, LLC v. Md. State Bd. of Elections*, No. 1:24-cv-672 (D. Md. Apr. 8,
 22 2024), ECF No. 16 (voter list maintenance challenge); Complaint, *Republican Nat’l.*
 23 *Comm. v. Burgess*, No. 3:24-cv-00198 (D. Nev. May 3, 2024), (challenge to ballot receipt
 24 deadline); Complaint, *Judicial Watch v. Weber*, No. 2:24-cv-03750 (W.D. Cal. May 6,
 25 2024) (NVRA suit); Complaint, *Kraus v. Burgess*, No. CV24-01051 (Nev. Dist. Ct. May
 26 10, 2024) (NVRA suit); Complaint, *Adams v. Fulton Cnty. Bd. Of Elections & Admin.*, No.
 27 24CV006566 (Ga. Sup. Ct. May 22, 2024) (challenge to state certification laws);
 28 Complaint, *Macini v. Delaware Cnty.*, No. 2:24-cv-02425 (E.D. Pa., June 4, 2024)

1 (challenge to use of election machines); Complaint, *United Sovereign Americans, Inc. v.*
2 *Commonwealth of Pa.*, No. 1:24-cv-1003 (M.D. Pa. June 18, 2024) (voter list maintenance
3 challenge); Complaint, *Kraus v. Portillo*, No. A-24-896151-W (Nev. Dist. Ct. June 25,
4 2024) (NVRA suit).

5 Two of the suits filed earlier this year asking the court for more aggressive voter
6 purges have already been dismissed at the motion to dismiss stage—the same outcome the
7 Court should reach here. *Md. Election Integrity*, No. 1:24-cv-672, 2024 WL 2053773 (D.
8 Md. May 8, 2024); Minutes of Proceedings, *Aguilar*, No. 2:24-cv-00518 (D. Nev. June 18,
9 2024), ECF No. 97 (“[A]s stated on the record the Court grants motion to dismiss without
10 prejudice for lack of standing.”). And the complaint in one of those now-dismissed cases,
11 *Republican National Committee v. Aguilar*, contains numerous paragraphs that are literally
12 identical to the Complaint filed in this case. Compare Complaint ¶¶ 6, 30-38, 43-47,
13 *Aguilar*, No. 2:24-cv-00518, with ECF No. 1 ¶¶ 18, 35-43, 47-51. Some of that duplication
14 is rhetoric about voter fraud, a myth that continues to persist despite being consistently and
15 conclusively debunked. See, e.g., Brennan Center for Justice, *Debunking the Voter Fraud*
16 *Myth* (Jan. 31, 2017), <https://tinyurl.com/5fuv4ztz> (citing sources). In other words, this
17 coordinated effort appears to be as much about sowing doubts about election integrity as
18 about obtaining relief from courts. See, e.g., Patrick Marley et al., *With push from Trump,*
19 *Republicans plan blitz of election-related lawsuits*, Wash. Post (Mar. 22, 2024),
20 <https://tinyurl.com/yc75kx8t>.

21 These cases are part of a broader effort to attack elections by spreading
22 misinformation. Lawrence Norden, Mekela Panditharatne & David Harris, *Multiple*
23 *Threats Converge to Heighten Disinformation Risks to This Year’s US Elections*, Just
24 Security (Feb. 16, 2024) <https://tinyurl.com/5n737aab>. In fact, one of the Plaintiffs here,
25 Gina Swodoba, is helping to lead that attack. She founded and heads the Vote Reference
26 Foundation (“VoteRef”), an organization that has engaged in a years-long fishing
27 expedition to find discrepancies in voter rolls. VoteRef has been publishing one-time
28 snapshots of state voter rolls on their website for years, compromising voter privacy and

1 encouraging private individuals to investigate others' eligibility. Home Page, voteref.com
2 (last visited July 2, 2024); Megan O'Matz, *Billionaire-Backed Group Enlists Trump-*
3 *Supporting Citizens to Hunt for Voter Fraud Using Discredited Techniques*, ProPublica
4 (Mar. 7, 2022), <https://tinyurl.com/57h38km9>. The site misleadingly flags "discrepancies"
5 between cast ballot totals and voter roll histories, suggesting that these reflect voter fraud
6 when in fact they simply reflect that when voters move, they are removed from local voter
7 rolls and their voting history is likewise removed from those rolls. Ailsa Chang, Vincent
8 Acovine & Justine Kenin, *A new group takes aim at voter rolls — but critics say their*
9 *methodology is flawed*, NPR (Mar. 10, 2022), <https://tinyurl.com/hjpkkstv>. This case is
10 simply one more platform, like VoteRef itself, for undermining public confidence in
11 elections.

12 This lawsuit and others like it also fit within a broader post-2020 effort to disrupt
13 the democratic system and undermine confidence in elections through baseless litigation.
14 Almost universally, courts have understood the nature of this attack, and rejected it. *See*
15 *generally* Rosalind S. Helderman & Elise Viebeck, *The last wall: How dozens of judges*
16 *across the political spectrum rejected Trump's efforts to overturn the election*, Wash. Post
17 (Dec. 12, 2020), <https://tinyurl.com/2rz3uc9x> (finding that, "[i]n a remarkable show of
18 near-unanimity across the nation's judiciary," at least 86 judges rejected at least one post-
19 election lawsuit); *see also, e.g., Bowyer v. Ducey*, 506 F. Supp. 3d 699, 724 (D. Ariz. 2020)
20 (dismissing case for lack of standing, and noting that "gossip and innuendo cannot be a
21 substitute for earnest pleadings and procedure in federal court"). This lawsuit demands the
22 same result.

23 A prompt dismissal is especially important here because Plaintiffs' unsupported
24 allegations themselves pose a threat to the integrity of American elections. Misleading
25 claims of widespread election errors not only erode public confidence in the electoral
26 system, but also contribute to increased threats, harassment, and intimidation against
27 election officials. *See* Brennan Center for Justice, *Local Election Officials Survey* (May
28 2024), <https://tinyurl.com/22anu35c>; Brennan Center for Justice & First Draft, *Information*

1 Gaps and Misinformation in the 2022 Elections (Aug. 2022), <https://tinyurl.com/5aueuz69>;
 2 *see also* Brief of *Amici Curiae* Election Officials in Support of Neither Party at 8, *Murthy*
 3 *v. Missouri*, No. 23-411 (U.S. 2023), <https://tinyurl.com/bdns6a3y>; *O'Rourke v. Dominion*
 4 *Voting Sys. Inc.*, 552 F. Supp. 3d 1168, 1176 (D. Colo. 2021) (sanctioning attorneys for
 5 bringing baseless voter fraud allegations that “if accepted as true by large numbers of
 6 people, are the stuff of which violent insurrections are made”), *modified on*
 7 *reconsideration*, No. 20-CV-03747- NRN, 2021 WL 5548129 (D. Colo. Oct. 5, 2021), *and*
 8 *appeal dismissed*, No. 21-1394, 2021 WL 8317149 (10th Cir. Dec. 23, 2021).

9 Additionally, responding to unfounded claims about election administration
 10 generates significant costs—in time, resources, and taxpayer dollars. *See, e.g.*, Toluse
 11 Olorunnipa & Michelle Ye Hee Lee, *Trump’s lie that the election was stolen has cost \$519*
 12 *million (and counting) as taxpayers fund enhanced security, legal fees, property repairs*
 13 *and more*, Wash. Post (Feb. 6, 2021), <https://tinyurl.com/urfmhpb5> (reporting that states
 14 incurred at least \$2 million in costs related to legal challenges and security for election
 15 officials following the 2020 election and acknowledging that “[h]ow much taxpayers
 16 ultimately had to spend to beat back Trump’s efforts to delay certification or overturn the
 17 results remains unknown, because many state officials did not specifically track their legal
 18 expenses”); Ruby Edlin & Larry Norden, Brennan Center for Justice, *Poll of Election*
 19 *Officials Shows High Turnover Amid Safety Threats and Political Interference* (Apr. 25,
 20 2023), <https://tinyurl.com/4bcudpyc> (reporting on research from 2022 showing that the
 21 cost of responding to new threats against election workers, along with “protecting against
 22 insider threats as a result of growing belief in conspiracy theories around elections,” could
 23 exceed \$600 million over a 5-year period). Understaffed and overworked election officials
 24 bear the burden of those costs most acutely in an election year, which means that
 25 responding to baseless lawsuits requires them to divert already strained resources away
 26 from administering free and fair elections. *See, e.g.*, Leadership Conference on Civil and
 27 Human Rights, *National and State Organizations and Local Elected Officials Support*
 28 *Federal Funding for Election Administration*, (Sept. 28, 2023),

1 <https://tinyurl.com/52e7vupy> (providing letter to Congress that highlights “urgent gaps in
2 equipment, personnel, and facilities” and explains that “[w]hen election administration is
3 not adequately resourced, the core functions of our elections and the democratic process
4 are threatened”).

5 **CONCLUSION**

6 For all of these reasons, this Court should reject Plaintiffs’ attempt to entangle the
7 judicial system in what appears to be an aggressive campaign to disrupt and undermine
8 confidence in the 2024 elections not only in Arizona, but across the country.

9 DATED this 2nd day of July, 2024.

10
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July, 2024, I electronically submitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel of record.

Further, I caused a courtesy copy of this document to be sent via U. S. First Class Mail to the following recipient(s):

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