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15 UNITED STATES DISTRICT COURT  
16 DISTRICT OF ARIZONA

17  
18 Leslie Feldman, et al.,  
19 Plaintiffs,  
20 v.  
21 Arizona Secretary of State’s Office, et al.,  
22 Defendants.

No. CV-16-01065-PHX-DLR

**PLAINTIFFS’ JOINT RESPONSE  
IN OPPOSITION TO  
DEFENDANTS’ MOTION TO  
STRIKE**

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## INTRODUCTION

1  
2 Defendants' motion to strike is heavy on overheated rhetoric. *See* Doc. 167,  
3 Motion to Strike ("Motion") at 2 ("ambushing Defendants"); *id.* at 7 ("last-minute,  
4 sandbagging techniques"); *id.* at 8 ("chose instead to engage in sandbagging"); *id.* at 9  
5 ("ambush tactics"). It is light on discussion of the relevant facts—for good reason. *All* of  
6 the evidence at issue is responsive to facts presented or arguments raised by Defendants.

7 Having raised issues in their response, Defendants cannot now claim that Plaintiffs  
8 have unfairly addressed those issues in their reply. *See All Star Seed v. Nationwide*  
9 *Agribusiness Ins. Co.*, No. 12CV146 L BLM, 2014 WL 1286561, at \*15 (S.D. Cal. Mar.  
10 31, 2014) (denying motion to strike new evidence in reply because "the evidence plaintiff  
11 presents attached to its Reply memorandum was introduced in response to arguments  
12 raised" by defendants); *Carrillo v. Schneider Logistics, Inc.*, No. CV 11-8557 CAS  
13 (DTBx), 2013 WL 140214, at \*3 n.2 (C.D. Cal. Jan. 7, 2013) ("Walmart objects to this  
14 document because it was introduced for the first time in plaintiffs' reply brief. Since this  
15 document was submitted in response to Walmart's argument that plaintiffs[] were not  
16 bringing the amendment based on newly acquired evidence, it is properly raised in a reply  
17 brief."). In addition, the Justice Department's (DOJ) preclearance file for SB1412 was not  
18 even received by Plaintiffs in a usable format until last week.

19 Ironically, Defendants have used the Motion to make new claims with no bearing  
20 on the merits of their request to strike. *See* Motion at 3 n.5 (attacking Dr. Lichtman's  
21 credibility); *id.* at 8 n.8 (making arguments regarding Plaintiffs' VRA and constitutional  
22 claims). This improper effort to make additional arguments relating to the merits of the  
23 preliminary injunction motion is a misuse of the pages that Defendants were allotted for  
24 their motion to strike.<sup>1</sup> The Motion should thus be denied in its entirety and the portions of

25  
26 \_\_\_\_\_  
27 <sup>1</sup> These new arguments are also without merit. The opinion that Defendants cite to  
28 challenge Dr. Lichtman was reversed by the Fourth Circuit today. *See N.C. State*  
*Conference of the NAACP v. McCrory*, No. 16-1468, Doc 116 (4th Cir. July 29, 2016).  
The court found, as Dr. Lichtman had opined, that "the North Carolina General Assembly  
enacted the challenged provisions of the law with discriminatory intent." *Id.* at 11. In  
addition, the cases Defendants cite regarding disparate impact are clearly distinguishable.

1 the Motion that do not relate to its merits should be stricken.

2 **ARGUMENT**

3 **I. Dr. Lichtman’s Reply Report**

4 Dr. Lichtman’s reply report focuses directly on responding to arguments made by  
 5 the three defense experts in their rebuttal reports. This is clear at a high level from the  
 6 sections into which Dr. Lichtman’s report is divided: (1) Overview; (2) Defendants’  
 7 Expert Reports Confirm the Motivation for Republicans to Seek Partisan Advantage  
 8 Through Adoption of HB 2023; (3) Report of Sean Trende; (4) Report of Donald T.  
 9 Critchlow; (5) Report of M. V. Hood, III. *See* Lichtman Reply at 1, 10, 38, 46.

10 More granular consideration of the specific objections raised by Defendants  
 11 confirms this conclusion. The chart below lists every objection to Dr. Lichtman’s reply  
 12 raised by Defendants (some of which have been combined into a single entry because they  
 13 relate to the same topic) and identifies the defense claim to which it is responsive:

<b>Defense Claims:</b>	<b>Lichtman Counters:</b>
Hood Rpt. 13 (claiming that evidence shows that “the capacity of racial/ethnic minorities to participate in the political process in Arizona has been on a positive trajectory over the last several decades”); Critchlow Rpt. 28 (claiming minority participation in voting process on the rise)	pp. 3-4, Chart 4, Table A, Table B (explaining why minority participation in voting process is threatened despite demonstrable population gains and intermediate positive trends)
Trende Rpt. ¶ 32 (claiming Lichtman misrepresented scope of DOJ objections to SB1412)	pp. 11-12 (discussing DOJ objections to SB1412 and pointing to documents from DOJ to support the veracity of his initial statements)
Trende Rpt. ¶ 47 (“The Lichtman Report sounds a constant theme that the comparatively harsh penalties found in H.B. 2023 have some sort of significance. ...this is puzzling for a voting rights case. Such provisions are certainly relevant from	p. 15 (Lichtman discussing chilling effect <i>on voters</i> of harsh penalties contained in HB2023)

26 One is a denial of class certification, *Rollins v. Ala. Cmty. Coll. Sys.*, No. 2:09-CV-636-  
 27 WHA, 2010 WL 4269133, at \*9 (M.D. Ala. Oct. 25, 2010), while the other is a Fair  
 28 Housing Act case in which the plaintiff had presented “no evidence, statistical *or otherwise*,” of disproportionate impact, *Budnick v. Town of Carefree*, 518 F.3d 1109, 1118 (9th Cir. 2008) (emphasis added). Neither is a voting rights case.

1	the <i>ballot harvester's</i> standpoint, but not from the voter's standpoint.”)	
2	Trende Rpt. ¶¶ 51-52 (criticizing Lichtman for asserting that “radical left” is a term conservative Republicans use to refer to Democrats: “In my experience as an elections analyst, conservative Republicans rarely use ‘radical left’ to refer to Democrats wholesale.”)	p. 16 (presenting examples of Republicans, including defense expert Critchlow, referring to modern Democratic Party as “radical left”)
3		
4		
5		
6		
7	Trende Rpt. ¶ 80 (Lichtman’s report “dismisses concerns about voter confidence. It states that no backer of H.B. 2023 could cite evidence of ‘widespread public concern’ regarding ballot harvesting”)	p. 20 (presenting rebuttal evidence that voter confidence in Arizona is not an issue with respect to ballot collection )
8		
9		
10		
11	Trende Rpt. ¶ 78-79 (criticizing Lichtman for dismissing concerns of fraud because “absentee voting is a more likely source of voter fraud”)	p. 21 (explaining that while absentee voting is more susceptible to voter fraud, ballot collection does not share the same characteristics as absentee ballot fraud because, unlike typical absentee ballot fraud, “the process of gathering and delivering ballots is open and public”)
12		
13		
14		
15	Critchlow Rpt. 9 (questioning link between historic discrimination and modern political times and dismissing “the unsounded [sic] assertion of any a causal link [sic] between history and the voting discrimination [sic].”)	p. 25 (discussing why historic discrimination like Operation Eagle Eye contains important links to modern times)
16		
17		
18		
19	Trende Rpt. ¶¶ 92-105 (criticizing Lichtman’s analytical methodology used to determine racial polarization and claiming that racial polarization in Arizona is lower than national average)	p. 26, Table D (explaining methodologies and demonstrating why racial polarization in Arizona is higher than the national average)
20		
21		
22	Trende Rpt. ¶ 108 (criticizing Lichtman for “refer[ring] to the wait times experienced in Arizona as a ‘voting practice and procedure’” although “the Report points to no actual voting practice or procedure, outside of the 2016 PPE, that would lead to this outcome.”)	p. 27 (explaining how state practices and procedures directly impact wait times at the polls)
23		
24		
25		
26	Trende Rpt. ¶¶ 109- 122 (criticizing at length the soundness of Lichtman’s analytical approach and stating “I am highly dubious of the methodology	pp. 28-29 (explaining analytical method used to arrive at conclusions regarding waiting times in Arizona)
27		
28		

1	employed here”)	
2	Trende Rpt. ¶¶ 109-122 (erroneously	p. 30 (explaining how he chooses standard
3	stating that Lichtman only uses confidence	confidence levels in statistical analysis
4	levels of .05 and .01)	according to common practice and why
5	Trende Rpt. ¶ 121 (questioning Lichtman’s	p. 31 (explaining why use of Fisher’s Exact
6	conclusions because he was unable to	Test is inappropriate for the data set and
7	replicate Lichtman’s results using Fisher’s	why the Z-Test of difference of
8	Exact Test)	proportions, the test he used in his analysis,
9	Trende Rpt. ¶ 120 (incorrectly claiming	is the appropriate test to achieve the results
10	that “the only actual evidence of a racially	he cites in his initial report)
11	disparate impact from the ballot harvesting	p. 33 (explaining that this is incorrect as a
12	proposal comes from anecdotes regarding	factual matter; for example San Luis, a
13	Native Americans.”)	town specifically and repeatedly identified
14	Trende Rpt. ¶¶ 117-118 (claiming that	in legislative debates as a town heavily
15	Lichtman “ignores a related question” in	reliant on ballot collection in legislative
16	considering wait times by failing to	debates, is 98.7 percent Hispanic; this fact
17	consider “why respondents did not vote, if	was also cited in Doc. 85 n.2)
18	they did not vote.”)	p. 33 (discussing why long wait times
19	Trende Rpt. ¶¶ 130-131 (criticizing	undermine confidence in the electoral
20	Lichtman because the “only example of a	system and pointing to data from publicly
21	lack of responsiveness that the Report	available survey that shows that voters who
22	outlines here...is the failure of Arizona to	wait in line for longer periods are less
23	provide more funding for students.	likely to be confident their vote will count)
24	The only source for this is a report by	p. 36 (explaining that cite to educational
25	David Sciarra, of the Education Law	study in assessing Senate Factor 8 is
26	Center.”	appropriate and pointing to additional
27	Trende Rpt. ¶ 131 (Lichtman’s findings	publicly available corroborating evidence
28	“problematic” because “just in the last	to respond to criticism that his analysis was
	legislative session, Arizona took substantial	the “only example” to support conclusion)
	steps to increase education funding” and	p. 37 (explaining why additional
	“[t]his omission is noteworthy.”)	educational funding does not mitigate
	Trende Rpt. ¶ 134 (recent Medicaid	finding that Senate Factor 8 is present in
	expansion shows state’s responsiveness to	Arizona and pointing to additional publicly
	minority needs)	available data that the recent increase does
		not materially change Arizona’s position in
		education funding relative to other states)
		p. 38 (citing publicly available information
		that Arizona is fourth worst state in the
		percentage of children covered by health
		insurance, thus recent Medicaid expansion
		does not impact his initial conclusions)

1 Critchlow Rpt. 28, 32-33 (claiming that 2 Arizona has made advancements toward 3 racial integration because “Hispanic voters 4 in the two major cities are widely disbursed 5 residentially” and because school 6 segregation is limited)	p. 38-39 (explaining and demonstrating that Critchlow’s measure of racial segregation in schools and residences is not methodologically sound and computing accurate number based on publicly available census data)
5 Critchlow Rpt. 31-42 (attempting to 6 undermine Lichtman’s conclusions 7 regarding minority participation in political 8 process by claiming that minorities have 9 achieved great educational and social 10 advancements in Arizona)	p. 42 (presenting evidence showing that, while minorities have achieved absolute gains, they still lag behind their white peers when measuring educational and social equality)
9 Hood Rpt. 12 (claiming that “some 10 evidence exists that in contemporary 11 Arizona registration and turnout rates 12 across races and ethnicities have equalized” and presenting evidence to support conclusion)	p. 46 (explaining conclusion that minority turnout lags behind white turnout and pointing to additional publicly available evidence that “reinforce[s] the results of turnout by race ... reported in Chart 2 of my initial report.”)
13 Trende Rpt. ¶ 121 (questioning Lichtman’s 14 analytical methodologies); Hood Rpt. 12 15 (presenting evidence to suggest that “in 16 contemporary Arizona registration and turnout rates across races and ethnicities have equalized.”)	pp. 48-49 (explaining that when appropriate statistical test is employed to Hood’s data, there is a marked difference in white and minority registration and turnout)

17 As this chart shows, every single item in Dr. Lichtman’s report to which Defendants  
18 object is responsive to an argument made by one of the defense experts.<sup>2</sup> Defendants’  
19 motion to strike portions of Dr. Lichtman’s reply should therefore be denied.

## 20 II. Preclearance File for SB1412

21 Defendants’ motion to strike the preclearance file for SB1412—the first precursor  
22 bill to HB2023 and the only one submitted to DOJ—fails for four reasons. *First*, Plaintiffs

23 \_\_\_\_\_  
24 <sup>2</sup> The cases Defendants cite in their discussion of Dr. Lichtman’s reply, Motion at  
25 1-2, are readily distinguishable. In three of the cases, a party attempted to submit reply  
26 reports or rebuttal testimony from experts who had not submitted initial reports or direct  
27 testimony. *See Blake v. Securitas Sec. Servs., Inc.*, 292 F.R.D. 15, 18 (D.D.C. 2013);  
28 *Marmo v. Tyson Fresh Meats, Inc.*, 457 F.3d 748, 760 (8th Cir. 2006); *Oracle Am., Inc. v.*  
*Google Inc.*, No. C 10-03561 WHA, 2011 WL 5572835, at \*1-\*4 (N.D. Cal. Nov. 15,  
2011). In the fourth case on which Defendants rely, the report at issue was submitted long  
after the deadline and after discovery was closed; consideration of the report would have  
required re-opening discovery and contributed to delay in disposition of the case. *Beller ex*  
*rel. Beller v. United States*, 221 F.R.D. 689, 694 (D.N.M. 2003).

1 had good cause not to submit this file in connection with the filing of their motion for a  
2 preliminary injunction: Plaintiffs did not receive the file until well after their opening brief  
3 was submitted. *See* Decl. of S. Gonski in Supp. of Opp. to Mot. to Strike ¶ 4. *See*  
4 *generally Koerner v. Grigas*, 328 F.3d 1039, 1048 (9th Cir. 2003) (court of appeals “will  
5 review an issue not present in an opening brief for ‘good cause shown’”). While  
6 Defendants complain that Plaintiffs received the file eight days before the filing of  
7 Plaintiffs’ reply brief (even though Defendants have not submitted any document requests  
8 to Plaintiffs), there plainly is nothing that Defendants could have done with this then that  
9 they cannot do with it now—Plaintiffs did not receive the file until the day before  
10 Defendants’ response brief was due. Moreover, there is nothing that prevented Defendants  
11 from requesting a copy of this file, just as Plaintiffs did.

12 *Second*, Defendants cannot have suffered any prejudice, certainly not with respect  
13 to the many portions of the preclearance file of which they had knowledge. *See, e.g.,*  
14 *Beckhum v. Hirsch*, No. CV07-8129-PCT-DGCBPV, 2010 WL 582095, at \*7 (D. Ariz.  
15 Feb. 17, 2010) (Campbell, J.) (late disclosure of evidence harmless because defendant had  
16 knowledge of the evidence) (citing *Fonseca v. Sysco Food Servs. of Ariz., Inc.*, 374 F.3d  
17 840, 846 (9th Cir. 2004)). *See generally Koerner*, 328 F.3d at 1049 (court of appeals “may  
18 review an issue if the failure to raise the issue properly did not prejudice the defense of the  
19 opposing party”). Some of the documents in the file consist of correspondence between an  
20 Arizona Assistant Attorney General and the Chief of the Voting Section at DOJ. Doc.  
21 161-1 at 73-99; *see also id.* at 113. The State plainly had knowledge of these documents  
22 that it *already had in its possession*. Another critical document in the file is a summary of  
23 an interview with Amy Bjelland, then the Elections Director for Arizona. *Id.* at 111-12.  
24 Given that Ms. Bjelland was an agent of the Secretary of State, a defendant in this case,  
25 the State also clearly had knowledge of what Ms. Bjelland told DOJ.

26 *Third*, the evidence contained in the preclearance file for SB1412 directly rebuts  
27 claims made by defense witnesses. Senator Shooter asserts in his declaration that “[h]ad it  
28 not been withdrawn, I believe that S.B. 1412 would have been cleared by [DOJ]. I have

1 not seen, nor am I aware of any proof or documentation that S.B. 1412 would not have  
2 been approved by [DOJ].” Doc. 152-05 (Shooter Decl.) ¶ 14. Defense expert Sean Trende  
3 similarly argues that “we do not know ... to what extent [DOJ’s] concerns were motivated  
4 by what lawyers call ‘as applied’ concerns as opposed to ‘facial’ concerns” and that “it  
5 could simply be that Arizona’s application was incomplete.” Trende Rpt. ¶ 35. Mr. Trende  
6 further contends that DOJ only asked for additional information on the requirement that  
7 ballot collectors provide photo ID. *Id.* ¶¶ 34-35.

8 The preclearance file disproves these statements. The file contains a letter from  
9 DOJ to the State asserting that DOJ was not objecting to some portions of SB1412 but that,  
10 with respect to the photo ID requirement for individuals who delivered more than ten  
11 early ballots, “the information sent [wa]s insufficient to enable us to determine that the  
12 proposed changes have neither the purpose nor the effect of denying or abridging the right  
13 to vote on account of race, color, or membership in a language minority group.” Doc. 161-  
14 1 at 97-98. The letter then asked for detailed information and stated that “if no response is  
15 received within sixty days of this request, the Attorney General may object to the  
16 proposed changes.” *Id.* at 98-99; *see also* Lichtman Reply 11-13; Pls. Reply 2 n.2. Other  
17 parts of the file make clear that DOJ had good reason to request further information.  
18 Arizona’s then-Elections Director, who was involved in drafting SB1412, acknowledged  
19 that the bill “was targeted at voting practices in predominantly Hispanic areas in the  
20 southern portion of the state near the Arizona border” and that “[m]any in the Secretary of  
21 State’s office were worried about the Section 5 review” of the bill; the primary location  
22 from which the Yuma County Recorder’s Office received collected ballots was Marin,  
23 where “almost everyone is Hispanic”; and Representative Gallego laid out the facts  
24 demonstrating that SB1412 was aimed at and would disparately burden Latino (and  
25 possibly also Native American) voters. *See* Doc. 161-1 at 100-01, 104, 111-12.

26 The preclearance file also shows that DOJ did not only ask about the requirement  
27 that ballot collectors provide photo ID. *But see* Trende Rpt. ¶¶ 34-35. Rather, DOJ “asked  
28 for additional information ... on *all three* of the provisions of SB 1412 that related to the

1 new regulation of the collection and delivery of early-voted ballots.” Lichtman Reply 12;  
2 *accord* Doc. 161-01 at 98-99. Further, while Senator Shooter states that SB1412 was  
3 withdrawn “for specific reasons unbeknownst to” him, Shooter Decl. ¶ 14, he failed to  
4 mention that DOJ repeatedly asked to speak with him regarding the bill, but there is no  
5 record of his ever returning DOJ’s call. Doc. 161-1 at 103, 106. For each of these reasons,  
6 the preclearance file is proper rebuttal evidence.

7 *Fourth*, the central question raised by the motion for a preliminary injunction of  
8 HB2023 is whether Plaintiffs are likely to succeed on the merits *at trial*. *See* Pls. Reply 22.  
9 And the preclearance file will play a large role at trial. Consideration of the file will thus  
10 assist in making the inquiry into likelihood of success on the merits as accurate as possible.

### 11 **III. Additional Declarations**

12 Defendants also challenge all four non-attorney fact declarations submitted in  
13 connection with Plaintiffs’ reply brief. Like the materials discussed above, these  
14 declarations are responsive to arguments raised by the defense.<sup>3</sup>

15 Specifically, ARP’s brief questioned Plaintiffs’ standing to bring this case.  
16 Plaintiffs were thus entitled to address that issue. *All Star Seed*, 2014 WL 1286561, at \*15;  
17 *Carrillo*, 2013 WL 140214 at \*3 n.2.<sup>4</sup> The new declaration from Sheila Healy, the  
18 executive director of Plaintiff Arizona Democratic Party (ADP), does so by explaining  
19 that “the elimination of ballot collection through H.B. 2023 will cause ADP to divert  
20

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21 <sup>3</sup> In the cases that Defendants cite in their discussion of these declarations, Motion  
22 6-7, there is no indication that the reply evidence at issue rebutted arguments made in  
23 response filings. *See Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273 n.3 (9th Cir. 1993);  
24 *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 308 F. Supp. 2d 1208, 1214 (W.D.  
Wash. 2003), *aff’d* 372 F.3d 1330 (Fed. Cir. 2004); *McCoy v. U.S. Collections W., Inc.*,  
No. CV-14-0048-PHX-LOA, 2014 WL 3898088, at \*4 (D. Ariz. Aug. 11, 2014).

25 <sup>4</sup> *See also El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1040 (9th Cir. 2003)  
26 (“The district court did not abuse its discretion when it entertained EPL’s discovery rule  
27 tolling argument. EPL’s discovery rule argument was ‘raised for the first time in the reply  
28 brief,’ because EPL was responding to Hashim’s argument that EPL’s complaint was  
time-barred. Denying EPL the opportunity to counter this potentially dispositive argument  
would have effectively stripped EPL of its right to argue against Hashim’s defense.”);  
*Iconix, Inc. v. Tokuda*, 457 F. Supp. 2d 969, 975-76 (N.D. Cal. 2006).

1 resources; will undermine ADP's efforts to communicate with [its] supporters about  
 2 political issues; will make it harder for some of ADP's supporters to vote, in some cases  
 3 resulting in those individuals' not casting ballots; and will undermine ADP's efforts to  
 4 elect Democratic candidates." (Doc. 157), Supp. Healy Decl. ¶ 11; *accord id.* ¶¶ 4-10; *see*  
 5 *also* Pls. Reply 22 n.14.<sup>5</sup> These facts are directly relevant to ADP's organizational  
 6 standing.<sup>6</sup>

7 The declarations of Ernesto Teran (Doc. 159) and Carmen Arias (Doc. 160) also  
 8 rebut ARP's standing argument. Both of these individuals have been assisted in voting  
 9 through ballot collection by volunteers for ADP. Teran Decl. ¶ 4; Arias Decl. ¶ 4. Mr.  
 10 Teran's work makes it difficult for him to get to his polling place in time to vote, Teran  
 11

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12 <sup>5</sup> Defendants' complaint that Executive Director Healy's second declaration was  
 13 submitted after her deposition and that they cannot "test the factual assertions" made in  
 14 the other declarations at issue, Motion at 7-8, should not be well taken. As discussed in  
 15 the parties' recent telephone conference with the Court, Plaintiffs sought to depose just  
 16 two of the individuals who submitted declarations on Defendants' behalf, and Defendants  
 17 were not able to make either of those witnesses available in a timely fashion. Defendants  
 18 cannot now credibly argue that *their* inability to conduct depositions is prejudicial.

19 <sup>6</sup> *See Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007)  
 20 (plaintiff suffered injury where law "compell[ed] the party to devote resources to getting  
 21 to the polls those of its supporters who would otherwise be discouraged by the new law  
 22 from bothering to vote"), *aff'd* 553 U.S. 181 (2008); *Coal. for Sensible & Humane Sols. v.*  
 23 *Wamser*, 771 F.2d 395, 399 (8th Cir. 1985) (plaintiff had standing "on the basis of" its  
 24 individual members, who were injured by "the Board's refusal to appoint [them] as deputy  
 25 registration officials ... preventing them from registering new voters"); *People Organized*  
 26 *for Welfare & Emp't Rights (P.O.W.E.R.) v. Thompson*, 727 F.2d 167, 170 (7th Cir. 1984)  
 27 (explaining that it "might be a persuasive basis for standing if P.O.W.E.R. had been trying  
 28 to advance its goal [of improving the lot of the poor and the unemployed] by registering  
 new voters itself" and that "[a]nyone who prevented it from doing that would have injured  
 it"); *N.C. State Conference of NAACP v. McCrory*, 997 F. Supp. 2d 322, 341 (M.D.N.C.),  
*aff'd in part, rev'd in part, and remanded on other grounds sub nom League of Women*  
*Voters of N.C. v. N.C.*, 769 F.3d 224 (4th Cir. 2014) *cert. denied*, 769 F.3d 224 (2015)  
 ("Preventing an individual from registering others to vote [and from getting out the vote]  
 has been recognized as a legally sufficient injury for the purpose of standing"); *Miller v.*  
*Moore*, 169 F.3d 1119, 1123 (8th Cir. 1999) (registered voters had standing where they  
 contended that "pejorative ballot labels injure[d] them by greatly diminishing the  
 likelihood that the candidates of their choice w[ould] prevail in the election"); *Common*  
*Cause v. Bolger*, 512 F. Supp. 26, 31 (D.D.C. 1980) ("Contributors of 'lawful amounts' of  
 money to candidates for federal elective office, and 'active participants' in these  
 campaigns suffer injury regardless of the outcome of the election. The purpose of political  
 campaigns is often as much to educate the public concerning certain issues as it is to elect  
 a candidate ... The effectiveness of [campaign] contributions and campaign work will be  
 substantially undercut by the funding subsidy of each incumbent.").

1 Decl. ¶ 3, and Ms. Arias benefits from ballot collection and delivery because she cares for  
2 her great-grandchild during the day, Arias Decl. ¶ 4. Because Mr. Teran and Ms. Arias are  
3 both Democrats, *see* Teran Decl. ¶ 2, Arias Decl. ¶ 2, their declarations demonstrate that,  
4 at the very least, the Democratic National Committee and ADP also have associational  
5 standing to challenge HB2023. *See generally Ore. Advocacy Center v. Mink*, 322 F.3d  
6 1101, 1110 (9th Cir. 2003); *Doe v. Stincer*, 175 F.3d 879, 886 (11th Cir. 1999) (disability-  
7 rights “advocacy center” had “associational standing” under Article III to raise claims on  
8 behalf of its “constituents”).

9 Last, the declaration of Steven Begay (Doc. 158) is directly responsive to the  
10 declaration submitted on Defendants’ behalf by Carlyle Begay. (Doc. 152-19). Carlyle  
11 Begay, a member of the Navajo Nation and a State Senator, states in his declaration that  
12 “the use of early ballots over the last two decades in Arizona has been mostly driven by  
13 sophisticated candidates and political parties” and that “[i]t has been practice in many  
14 rural and tribal communities for political campaigns to use public events ... to encourage  
15 voters to bring ballots to designated campaign events to vote for a particular candidate.”  
16 C. Begay Decl. ¶¶ 3, 5, 8. Steven Begay, also a member of the Navajo Nation and a  
17 candidate for state senate, corrects the misimpression left by Carlyle Begay’s declaration.  
18 He makes clear that the reason ballot collection is popular on Native American  
19 reservations is *not* simply because of outreach from political organizations and campaigns,  
20 as Carlyle Begay’s declaration suggests, but because many “voters who live in rural areas  
21 that do not have home mail delivery ... rely on the kindness of friends and neighbors to  
22 transmit their mail”; “many voters live more than twenty or thirty miles from the nearest  
23 post office” and “many of these voters go into town infrequently to retrieve and send mail”  
24 “[b]ecause of the time and expense required to travel such a distance”; and that “[m]any  
25 homebound voters in the Navajo Nation also rely on friends, neighbors, and volunteers to  
26 help them vote.” S. Begay Decl. ¶¶ 3-5.

## 27 CONCLUSION

28 For the reasons set forth above, the motion to strike should be denied.

1  
2 Dated: July 29, 2016

*s/ Sarah R. Gonski*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 29, 2016, I electronically transmitted the attached Document to the Clerk’s Office using the CM/ECF System for filing and a Notice of Electronic Filing was transmitted to counsel of record.

s/ Daniel Graziano

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15 *Opposition to Defendants' Motion to Strike]*

16 UNITED STATES DISTRICT COURT  
17 DISTRICT OF ARIZONA

18 Leslie Feldman, et al.,  
19 Plaintiffs,  
20 v.  
21 Arizona Secretary of State's Office, et al.,  
22 Defendants.

No. CV-16-01065-PHX-DLR

**DECLARATION OF SARAH R.  
GONSKI IN SUPPORT OF  
PLAINTIFFS' JOINT RESPONSE  
IN OPPOSITION TO  
DEFENDANTS' MOTION TO  
STRIKE**

24 I, SARAH R. GONSKI, declare as follows:

25 1. I am an attorney with the law firm of Perkins Coie LLP, and am counsel for  
26 Plaintiffs Leslie Feldman, Luz Magallanes, Mercedes Hymes, Julio Morea, Cleo Ovalle,  
27 Former Chairman and First President of the Navajo Nation Peterson Zah, the Democratic  
28

1 National Committee, the DSCC a.k.a. Democratic Senatorial Campaign Committee, the  
2 Arizona Democratic Party, Kirkpatrick for U.S. Senate, and Hillary for America. I have  
3 personal knowledge of the matters set forth below and can competently testify to their  
4 truth.

5 2. I emailed a request to the United States Department of Justice (“DOJ”) to  
6 provide records under the Freedom of Information Act. The request asked for all records  
7 relating to Arizona’s submission of SB 1412 (2011) for preclearance under Section 5 of  
8 the Voting Rights Act.

9 3. DOJ sent responsive documents via email on July 6, 2016. Attempts to open  
10 the documents resulted only in an error message that the documents were corrupted. After  
11 various unsuccessful attempts by Perkins Coie’s informational technology department to  
12 open and/or recover the documents, Plaintiffs requested a new copy from DOJ on July  
13 13th.

14 4. DOJ re-sent the information in an accessible format on July 18th, the day  
15 before the State and ARP filed their respective responses in opposition to Plaintiffs’ Joint  
16 Motion for Preliminary Injunction of HB 2023.

17  
18 I declare under penalty of perjury that the foregoing is true and correct.

19 DATED: July 29, 2016

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21 By: s/ Sarah R. Gonski  
22 Sarah R. Gonski

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s/ Daniel R. Graziano