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

League of United Latin American Citizens
of Arizona; Arizona Students' Association,

No. CV17-4102-PHX DGC

Plaintiffs,

CONSENT DECREE

v.

Michele Reagan, in her official capacity as
Secretary of State of Arizona; Adrian
Fontes, in his official capacity as Maricopa
County Recorder,

Defendants.

Before the Court is the Joint Motion Requesting Entry of Consent Decree, filed by Plaintiff League of United Latin American Citizens of Arizona (“LULAC-Arizona”), Plaintiff Arizona Students’ Association (“ASA”), Defendant Michele Reagan, in her official capacity as Secretary of State of Arizona (the “Secretary”), and Defendant Adrian Fontes, in his official capacity as Maricopa County Recorder (“Recorder Fontes”). Doc. 36. All Plaintiffs and Defendants shall hereafter be referred to as the “Parties.”

On November 7, 2017, LULAC-Arizona and ASA initiated this action against the Secretary and Recorder Fontes. The complaint alleged that Arizona’s dual voter registration policies violate the First and Fourteenth Amendments to the United States Constitution. Specifically, LULAC-Arizona and ASA alleged that Arizona treats voter

1 registration applicants differently depending on whether they use Arizona's state
2 registration form (the "State Form") or the national registration form (the "Federal
3 Form"). At the time the lawsuit was filed, fourteen of Arizona's County Recorders
4 rejected State Form applications submitted without valid documentary proof of
5 citizenship ("DPOC"). Federal law required the County Recorders to accept Federal
6 Form applications, even when they are submitted without DPOC. The Motor Vehicles
7 Department ("MVD") Proxy Table was then electronically checked through an
8 automated process to determine whether the Federal Form applicants had a valid driver's
9 license, which indicates that DPOC is supposed to be on file with the MVD. Those with
10 DPOC on file are eligible to vote in both state and federal elections ("Full Ballot Voter").
11 Those who did not have DPOC on file with the MVD were only able to vote in federal
12 elections ("Fed Only Voter").

13 As a result, whether one who does not present valid DPOC is registered to vote in
14 federal elections is entirely dependent on which form the applicant uses to register.
15 Those using the Federal Form but not providing DPOC, are registered to vote in federal
16 elections; and, depending on the results of the Secretary's automated review of the MVD
17 database, may be registered to vote in state elections as well. But those using the State
18 Form, and not providing valid DPOC, are not registered to vote in any elections because
19 the application is rejected in its entirety. LULAC-Arizona and ASA alleged that this dual
20 voter registration process violated the First and Fourteenth Amendments.

21 The Secretary denies that Arizona's voter registration policies violate the First
22 and Fourteenth Amendments or are otherwise illegal under state or federal law. The
23 Secretary asserts that Federal and State Form applicants are not similarly situated for
24 equal protection purposes. The Secretary asserts that Arizona is constitutionally
25 permitted to require those applying to register to vote using the State Form to personally
26 provide DPOC at the time that they submit their State Form. The Secretary further
27 asserts that there is no constitutional or statutory requirement that Arizona election
28 officials register applicants for federal elections when they have chosen to use the State
Form to register to vote rather than the Federal Form.

1 which is established pursuant to A.R.S. § 36-2902. AHCCCS is Arizona’s Medicaid
2 agency that offers health care programs to serve Arizona residents.

3 3. “Applicant” means an individual who has submitted an application to
4 register to vote in the State of Arizona.

5 4. “AVID Database” means the voter registration database, currently being
6 developed for the state of Arizona and intended to replace the current Database. The
7 AVID Database is projected to be operational sometime in 2019 or early 2020, but shall
8 be operational no later than July 1, 2020 except as provided in subparagraph (a), below.

9 (a) The date of July 1, 2020, contemplated for the operational function of the
10 AVID Database, is contingent on the vendor with whom the Secretary has contracted to
11 develop AVID fulfilling its obligations to have AVID operational in 2019 or early 2020
12 at the latest. Should the vendor be unable to meet this contingency, or should the
13 implementation of the AVID Database otherwise be delayed, the Secretary shall notify
14 the Court and the Parties to this Consent Decree, in writing, and shall indicate in writing
15 the date by which the vendor believes that AVID will be operational. Plaintiffs retain the
16 right to seek a remedy from the Court to enforce this agreement if the implementation of
17 the AVID database is unduly delayed.

18 (b) The provisions in this consent decree that apply to the AVID database will
19 also apply to any future voter registration system adopted by the Secretary of State’s
20 office.

21 5. “County Recorder” means the County Recorder of each of Arizona’s
22 fifteen counties, and includes all county election officials working in or in conjunction
23 with their offices.

24 6. “Database” means the existing electronic storage system developed and
25 administered by the Secretary that contains the official voter registration record for every
26 voter in the state. *See* A.R.S. § 16-168(J).

27 7. “DES” means the Arizona Department of Economic Security, which is
28 established pursuant to A.R.S. § 41-1952.

8. “Designated voter registration agencies” are agencies that are required to

1 provide voter registration services pursuant to the National Voter Registration Act.

2 9. “DHS” means the Arizona Department of Health Services, which is
3 established pursuant to A.R.S. § 36-102.

4 10. “DPOC” means documentary proof of citizenship, and is limited to the
5 forms of satisfactory evidence of citizenship listed in A.R.S. § 16-166(F).

6 11. “F-type License” means the designation that the MVD uses in its database
7 to distinguish Arizona driver’s license holders who, at the time that their driver’s licenses
8 were issued, were presumed by MVD to not be United States citizens.

9 12. “Fed Only Voter” means an individual who is registered to vote solely in
10 Arizona elections for federal office.

11 13. “Federal Form” means the National Mail Voter Registration Form,
12 provided by the U.S. Elections Assistance Commission and used to register to vote in
13 elections for federal office, as well as the Federal Write-in Absentee Ballot and Federal
14 Post Card Application as those terms are used in 52 U.S.C. §§ 20302 and 20303.

15 14. “Federal Office” means the office of President or Vice President; or of
16 Senator or Representative in, or Delegate or Resident Commissioner to, the United States
17 Congress. 52 U.S.C. § 20502(2).

18 15. “Full Ballot Voter” means an individual who is registered to vote in
19 Arizona elections for federal, state, and local office.

20 16. “Guidance” means formal guidance on voter registration procedures that
21 the Secretary of State will provide to the County Recorders pursuant to her role as chief
22 election official responsible for prescribing uniform procedures for voting. *See* A.R.S. §
23 16-142. The Secretary will provide Plaintiffs’ counsel with copies of her Guidance
24 before it is sent to the County Recorders.

25 17. “MVD” means the Arizona Motor Vehicles Division.

26 18. “MVD database” means the electronic storage system developed and
27 administered by the Arizona Motor Vehicle Department.

28 19. “MVD Proxy Table” means the MVD data provided to the Secretary of
State that includes the nightly updates of MVD transactions that occurred in the past

1 twenty-four hours that MVD sends to the Secretary in batch form.

2 20. “Procedures Manual” means the State of Arizona Elections Procedures
3 Manual, which provides the rules related to voting and the conduct of elections. A.R.S. §
4 16-452. The Secretary is required to develop the Procedures Manual in conjunction with
5 the fifteen County Recorders. *Id.* The Procedures Manual has the force of law. A.R.S. §
6 16-452(C). The Procedures Manual, 2018 Edition, has been drafted by the Secretary and
7 submitted to the Governor and Attorney General as required by law for their review. *Id.*

8 21. “Protected Voter Registration” means the program to ensure anonymity to
9 survivors of stalking, domestic violence, and sexual assault through the Address
10 Confidentiality Program provided by A.R.S. § 41-161, et seq., and certain other
11 individuals pursuant to A.R.S. § 16-153.

12 22. “Secretary” means the Arizona Secretary of State and her office, as well as
13 successors in office.

14 23. “State Form” means the options for voter registration created and provided
15 by the State of Arizona and its agencies, including but not limited to the online
16 registration available through Service Arizona, the paper application available on the
17 Secretary of State’s website, the paper application available at all County Recorder
18 offices, and the Protected Voter Registration process.

19 24. “State Office” means any elected statewide, county-wide, or municipal
20 public office, other than a Federal Office, for which a voter registered in the State of
21 Arizona is eligible to vote.

22 **ORDER**

23 Accordingly, the Parties having freely given their consent, and the terms of the
24 Consent Decree being fair, reasonable, and consistent with the requirements of state and
25 federal law,

26 **IT IS ORDERED** as follows:

- 27 1. The Joint Motion for Approval of Consent Judgment (Doc. 36) is **granted**.
28 2. **The Procedures Manual**. The Parties are aware that the draft Procedures
Manual, 2018 Edition has been submitted by the Secretary to Arizona’s Governor

1 and Attorney General for their review as required by statute. *See* A.R.S. § 16-
2 452(B). Within thirty days after entry of this Consent Decree, the Secretary shall
3 revise the Procedures Manual to incorporate the terms of this Consent Decree
4 (“Procedures Manual Revisions”) and send the Procedures Manual Revisions,
5 together with the Secretary’s recommendation of approval, to the Governor and
6 Attorney General for their review, *see* A.R.S. § 16-452(B), and also to Plaintiffs’
7 counsel. If Plaintiffs determine that the Procedures Manual Revisions do not
8 comply with this Consent Decree, Plaintiffs may seek review by this Court
9 through the Court’s procedures for motions. If the Governor and Attorney General
10 do not approve the Procedures Manual Revisions or request modifications, the
11 Secretary will send the Attorney General and/or Governor’s rejections or
12 proposed modifications to Plaintiffs’ counsel. If those rejections or proposed
13 modifications are in any respect inconsistent with this Consent Decree, Plaintiffs
14 may use any available legal remedies to secure compliance with this Consent
15 Decree.

16 **2. State Form Applications Submitted Without DPOC.** Within thirty days
17 after entry of this Consent Decree, the Secretary shall, in writing:

- 18 a. provide guidance to the County Recorders to accept State Form
19 applications submitted without DPOC;
- 20 b. provide guidance to the County Recorders to enter all such
21 applications in the Database (or, in the case of Maricopa County and
22 Pima County, to enter all such applications in their county voter
23 registration databases and transmit such entries to the Database);
- 24 c. provide guidance to the County Recorders to immediately register
25 the applicants for federal elections, provided the applicant is
26 otherwise qualified and the voter registration form is sufficiently
27 complete; and
- 28 d. check all State Form applications submitted without DPOC against
the MVD database Proxy Table, via the automated processes in the

1 Database, to determine whether the MVD has DPOC on file for the
2 applicants. If DPOC is located, the Secretary shall promptly notify
3 the applicable County Recorder via the automated processes in the
4 Database that the State Form applicant has DPOC on file with the
5 MVD and so must be made a Full Ballot Voter via the automated
6 process in the Database.

7 i. if the Secretary's check performed by the automated
8 processes in the Database against the MVD database Proxy
9 Table indicates that a State Form applicant holds an F-Type
10 License, the Secretary shall promptly notify the applicable
11 County Recorder of that fact via the automated processes of
12 the Database. The automated processes of the Database will
13 also flag this issue so that the County Recorder will know to
14 change that applicant's voter registration status to "not
15 eligible." The Secretary shall provide guidance to the County
16 Recorders that the County Recorders shall notify the
17 applicant by U.S. Mail within ten business days after
18 receiving notice via the automated process in the database,
19 according to information on file with the MVD database, that
20 the applicant holds an F-Type License indicating non-
21 citizenship and so will not be registered to vote. The
22 notification from the County Recorder shall also inform the
23 applicant that the applicant can provide valid DPOC to the
24 County Recorder in order to become a Full Ballot Voter. The
25 notification will be accompanied by the form described in
26 Paragraph 3 (the "DPOC Submission Form"). The applicant
27 may submit DPOC to the County Recorder through the
28 process described in Paragraph 3 to become a Full Ballot
Voter.

1 ii. if the Secretary’s check via the automated features of the
2 Database determines that a State Form applicant does not
3 hold an F-Type License, but also does not have DPOC on file
4 with the MVD, the Secretary shall promptly notify the
5 applicable County Recorder of that result via the automated
6 processes of the Database. The County Recorder shall notify
7 these applicants by U.S. Mail within ten business days after
8 receiving notice from the Secretary that (1) the County
9 Recorder does not have the requisite DPOC to process their
10 application; (2) they must submit DPOC if they wish to be a
11 Full Ballot Voter; and, (3) until such time as they submit
12 DPOC, they will be a Fed Only Voter and so will only be
13 eligible to vote in Federal elections. The notification shall be
14 accompanied by the form described in Paragraph 3 (the
15 “DPOC Submission Form”). The applicant may submit
16 DPOC to the County Recorder through the process described
17 in Paragraph 3 to become a Full Ballot Voter. Until and
18 unless the applicant submits valid DPOC, the County
19 Recorders shall cause those voter registration applicants to be
20 made Fed Only Voters.

21 **3. Provision of DPOC After the Submission of a State Form Application.**

22 Applicants who do not submit DPOC with their State Form application and do not have
23 DPOC on file with MVD, and are notified by the applicable County Recorder that they
24 will be Fed Only Voters unless and until they submit DPOC, may submit valid DPOC to
25 become a Full Ballot Voter. To do so, they shall submit their DPOC to the County
26 Recorder with a form provided to them by that official. This form (the “DPOC
27 Submission Form”), which shall be developed by the Secretary and the County
28 Recorders within thirty days after entry of this Consent Decree, shall contain sufficient
information to allow the County Recorder to link the voter registration applicant’s DPOC

1 with his or her State Form application already on file in the Database.

2 A. Applicants who submit their State Form application at least twenty-nine
3 days before an election as required by statute, A.R.S. §§ 16-120(A), -134(C), and whose
4 valid DPOC with the DPOC Submission Form is received by their County Recorder by 5
5 p.m. local time on the Thursday before the election, will be made Full Ballot Voters by
6 the County Recorder and may vote in the upcoming election as a Full Ballot Voter. The
7 registrations of such applicants shall be deemed to have occurred on the date that they
8 originally submitted their State Form application. If the County Recorder has already
9 transmitted a Fed Only early ballot to that voter, the voter will have the option to vote
10 either that Fed Only early ballot or else vote a provisional Full Ballot at the polling place
11 or vote center and comply with the rules regarding provisional ballots.

12 B. Applicants who submit their State Form application at least twenty-nine
13 days before an election, and whose valid DPOC is received by 5 p.m. local time on the
14 Thursday before the election, but who do not submit the DPOC Submission Form, may
15 be made Full Ballot Voters by the County Recorder if the County Recorder has sufficient
16 information to link the voter registration applicant's DPOC with the applicant's State
17 Form application already on file in the Database. If the County Recorder makes such an
18 applicant a Full Ballot Voter, and if the County Recorder has already transmitted a Fed
19 Only early ballot to that voter, the voter will have the option to vote either that Fed Only
20 early ballot or else vote a provisional Full Ballot at the polling place or vote center and
21 comply with the rules regarding provisional ballots.

22 C. Applicants who do not submit their State Form application at least twenty-
23 nine days before an election as provided by statute, or whose valid DPOC is received by
24 their County Recorder after 5 p.m. local time on the Thursday before the election, will
25 not be made Full Ballot Voters for the upcoming election. The County Recorder shall
26 make such applicants Full Ballot Voters within five business days after processing
27 provisional ballots, and they shall be Full Ballot Voters for subsequent elections.

28 D. For all applicants who submit State Form applications without valid
DPOC, but subsequently submit valid DPOC and do not submit the DPOC Submission

1 Form, the County Recorder may make the applicant a Full Ballot Voter if the County
2 Recorder has sufficient information to link the voter registration applicant's DPOC with
3 the applicant's State Form application already on file in the Database. If the County
4 Recorder lacks sufficient information to link the DPOC to the voter's application in
5 order to make the applicant a Full Ballot Voter, the County Recorder may follow up with
6 the applicant to seek the missing information if the County Recorder has sufficient
7 information to do so. Applicants who subsequently provide the missing information
8 necessary to link their DPOC to their applications shall be made Full Ballot Voters by
9 the County Recorder within ten business days.

10 4. **State Form Applications Submitted On or After January 1, 2017.** This
11 Consent Decree will govern all voter registration applications submitted after entry of
12 this Consent Decree, including applications submitted within thirty days after entry of
13 this Consent Decree. However, within thirty days after entry of this Consent Decree, the
14 Secretary shall also provide written guidance to all County Recorders except the
15 Maricopa County Recorder that, pursuant to the Consent Decree, they may, at their
16 discretion, implement the new procedures outlined in Paragraphs 2–3 of this Consent
17 Decree for State Form applications dating back to January 1, 2017, provided that they
18 have the capability to ensure that such applicants have not moved, become deceased, or
19 otherwise subsequently already registered to vote. Any applicants whose applications
20 were filed before entry of this Consent Decree who are newly registered as Fed Only or
21 Full Ballot Voters as a result of that process will be given the proper notice of their new
22 registration status by U.S. Mail.

23 Within ninety days of entry of this Consent Decree, the Maricopa County
24 Recorder shall implement the new procedures outlined in Paragraphs 2–3 of this Consent
25 Decree for State Form applications dating back to January 1, 2017. This process shall
26 include: (1) entering all State Forms submitted without DPOC into the database and
27 immediately registering those applicants for federal elections, (2) checking the
28 applicants' status against the MVD database, and (3) sending the applicants notification
of their new registration status.

1 5. **Federal Form Applications.** Within thirty days after entry of this Consent
2 Decree, the Secretary shall provide written guidance to the County Recorders to
3 promptly register all applicants who submit their Federal Form application with valid
4 DPOC as Full Ballot Voters and promptly register all applicants who submit their
5 Federal Form application without valid DPOC as Fed Only Voters. From the date of the
6 entry of the Consent Decree, the Secretary shall also cause all new Federal Form
7 applications submitted without DPOC to be checked against the MVD Proxy Table
8 promptly upon entry into the Database, via the automated processes in the Database, to
9 determine whether the MVD has DPOC on file for such Federal Form applicants, and
10 take the following steps:

11 a. If this check determines that the MVD Proxy Table has DPOC on file for
12 any Federal Form applicant, the Secretary shall promptly notify the applicable County
13 Recorder via the automated process in the Database that the applicant has DPOC on file
14 with MVD and so must be made a Full Ballot Voter via the automated process in the
15 Database.

16 b. If this check determines that the MVD Proxy Table has information
17 indicating that any Federal Form applicant holds an F-Type License, the Secretary shall
18 promptly notify the applicable County Recorder of that fact via the automated processes
19 of the Database and flag this record for the County Recorder to change that applicant's
20 voter registration status to "not eligible." The County Recorder shall notify the applicant
21 by U.S. Mail within ten business days after receiving notice from the Secretary that,
22 according to information on file with the MVD database, the applicant holds an F-Type
23 License indicating non-citizenship and so will not be registered to vote. The County
24 Recorder's notice shall also inform the applicant that, if this information is not correct,
25 the applicant may provide valid DPOC in order to become a Full Ballot Voter. The
26 notification will be accompanied by the DPOC Submission Form described in Paragraph
27 3. The applicant may submit valid DPOC to the County Recorder through the process
28 described in Paragraph 3 to become a Full Ballot Voter.

 c. If this check determines for any applicant that the MVD database does not

1 have DPOC on file and also that the applicant does not hold an F-Type License, the
2 Secretary shall promptly notify the applicable County Recorder of that result via the
3 automated processes of the Database. The County Recorder shall notify these applicants
4 by U.S. Mail within ten business days after receiving notice from the Secretary that (1)
5 the County Recorder does not have the requisite DPOC to process their application; (2)
6 they must submit valid DPOC if they wish to be a Full Ballot Voter; and, (3) until such
7 time as they submit valid DPOC, they will be a Fed Only Voter and so will only be
8 eligible to vote in Federal elections. The notification will be accompanied by the DPOC
9 Submission Form described in Paragraph 3. The applicant may submit valid DPOC to
10 the County Recorder through the process described in Paragraph 3 to become a Full
11 Ballot Voter. Until and unless the applicant submits valid DPOC, the County Recorders
12 shall cause those voter registration applicants to be made Fed Only Voters.

13 d. Federal Form applicants who subsequently submit valid DPOC shall be
14 made Full Ballot Voters according to and in conformity with the process described in
15 Paragraph 3.

16 **6. Registered Voters Who Move From One Arizona County to Another.**
17 The AVID Database or another voter registration database similar to the AVID Database
18 shall be operational as described, and according to the terms set forth, in the Definitions
19 section of this consent decree. When the AVID Database is operational, the Secretary
20 and County Recorders will be able to verify DPOC and append that information to
21 applicants' voting records when those applicants change voter registration from one
22 Arizona county to another. Consequently, once the AVID Database is operational and in
23 use by the Secretary and the County Recorders, registered Full Ballot Voters will not be
24 required to independently submit DPOC to their new County Recorder, so long as their
25 DPOC is in the AVID Database.

26 **7. Application to Other Forms of Registration.** The procedures outlined
27 above for processing voter registration applications submitted without valid DPOC will
28 apply equally to all forms of voter registration, including voter registration through
designated voter registration agencies, the Federal Post Card Application (FPCA), the

1 Federal Write-In Absentee Ballot, and the In-Person EZ Voter Registration system.

2 8. **Education of the Public.** The Secretary shall continue to make reasonable
3 efforts to better educate the citizens of Arizona concerning their opportunities to register
4 to vote, including opportunities presented by the Federal Form. The Secretary will
5 provide Plaintiffs' counsel with a copy of the planned notice that she intends to place on
6 her website. Within thirty days after the entry of this Consent Decree, the Secretary shall:

7 a. Update her website to explain that:

8 i. the State Form requires valid DPOC for state elections only;

9 ii. submission of a sufficiently complete State Form with valid DPOC will
10 make the applicant a Full Ballot Voter;

11 iii. submission of a sufficiently complete State Form without DPOC will
12 make the applicant a Fed Only Voter;

13 iv. the Federal Form does not require DPOC;

14 v. submission of the Federal Form without valid DPOC will make the
15 applicant a Fed Only Voter; and

16 vi. submission of the Federal Form with valid DPOC will make the
17 applicant a Full Ballot Voter.

18 b. Provide guidance to the County Recordors that they should provide the
19 information required in this Section 8 on their websites;

20 c. Notify ADOT, DHS, AHCCCS, and DES of the changes in voter
21 registration procedures outlined in this Consent Decree;

22 d. Within four months after the entry of this Consent Decree, the Secretary
23 shall create a new State Form that explains that citizens who do not submit DPOC with
24 their registration forms will be registered only for federal elections until the appropriate
25 proof of citizenship is provided or acquired. The Secretary will provide notice to
26 Plaintiffs' counsel regarding the form of the explanation described in the previous
27 sentence. The Secretary will create the new State Form within three months if the
28 Secretary determines that it is possible to do so. The Secretary shall provide guidance to
the County Recordors and all State Offices that disseminate voter registration forms,

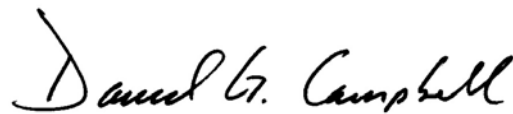
1 including designated voter registration agencies, that they should utilize the new State
2 Form as soon as practicable. *See* A.R.S. § 16-352(C). Within thirty days after entry of
3 the Consent Decree, the Secretary will provide written notice to the County Recorders
4 that there will be changes made to the State Form within four months after the date the
5 Consent Decree was entered.

6 10. **Continuing Jurisdiction.** The Court shall retain jurisdiction over this
7 action until December 31, 2020 to enter such further relief as may be necessary for the
8 effectuation of the terms of this Consent Decree.

9 11. **Attorneys' Fees and Costs.** The Parties will continue to confer regarding
10 what amount, if any, the State Defendants should pay to Plaintiffs for their attorneys'
11 fees and costs. If the Parties are unable to agree privately upon payment of fees and
12 costs, Plaintiffs will file a motion for attorneys' fees and costs pursuant to 42 U.S.C. §
13 1988 within forty-five days after entry of this consent decree.

14 The Clerk of Court is directed to terminate this action.

15 Dated this 18th day of June, 2018.

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David G. Campbell
United States District Judge