



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>KRIS MAYES ATTORNEY GENERAL</p> <p>September 20, 2024</p>	<p>No. I24-015 (R24-015)</p> <p>Re: Treatment of State Forms not accompanied by DPOC</p>
--	--

To: Adrian Fontes
Arizona Secretary of State

Questions Presented

In light of the U.S. Supreme Court’s recent ruling in *Republican National Committee, et al. v. Mi Familia Vota, et al.*, No. 24A164 (Aug. 22, 2024), which stayed the district court’s injunction of A.R.S. § 16-121.01(C), you asked the following questions:

1. If an applicant submits a state voter registration form without Documentary Proof of Citizenship (“DPOC”), should the County Recorder perform the standard Help America Vote Act (“HAVA”) check to query the Arizona Motor Vehicle Department (“MVD”) database for DPOC prior to rejecting the form? If the applicant is otherwise eligible to register to vote and DPOC is obtained via the HAVA check, is the County Recorder required to register the applicant as a “full-ballot” voter?
2. If a County Recorder rejects a state voter registration form pursuant to A.R.S. § 16-121.01(C) and notifies the applicant that DPOC is missing pursuant to A.R.S. § 16-134(B),

and if the applicant then provides DPOC, will the date of registration relate back to the original voter registration date?

3. Pursuant to A.R.S. § 16-134(B), County Recorders must give applicants until 7:00 pm on Election Day to provide DPOC to cure and complete their voter registration. But the LULAC Consent Decree, a federal consent decree regarding how election forms should be processed, provided that DPOC must be provided no later than 5:00 p.m. on the Thursday before the election. What is the deadline by which the County Recorders must allow the applicant to supply DPOC for an incomplete voter registration?

Summary Answer

1. County recorders should perform the standard HAVA check to query the MVD database for DPOC to determine whether a state voter registration form is accompanied by DPOC or, alternatively, to determine if missing DPOC is “supplied” by the database. If an applicant is otherwise eligible to register to vote and DPOC is supplied via the HAVA check, the county recorder must register the applicant as a full ballot voter because that individual has complied with all statutory registration requirements.
2. If a county recorder issues a notice regarding missing DPOC under A.R.S. § 16-134(B) and DPOC is later supplied prior to 7:00 p.m. on election day, the applicant “is deemed to have been registered on the date the registration was first received.” A.R.S. § 16-134(B).
3. If a state registration form is not accompanied by DPOC, DPOC may be supplied by 7:00 p.m. on election day under A.R.S. § 16-134(B).

Background

Only U.S. citizens may vote in Arizona. Ariz. Const. art. VII, § 2(A); A.R.S. § 16-101(A)(1). To that end, Arizona, like other states, has long required every voter registration

applicant to sign a statement on the voter registration form swearing that the applicant is a U.S. citizen. *See, e.g., Arizona Voter Registration Form, ¶ 22, available at https://azsos.gov/sites/default/files/docs/az_voter_registration_form_standard_20240613.pdf* (containing affirmation of citizenship).

In 2004, Arizona voters went further and passed Proposition 200, requiring county recorders to reject voter registration forms that did not include “satisfactory evidence of United States citizenship.” *See Proposition 200, available at <https://apps.azsos.gov/election/2004/info/PubPamphlet/english/prop200.htm>; see also A.R.S. § 16-166(F)* (listing acceptable forms of satisfactory evidence of U.S. citizenship). This requirement is commonly referred to as the documentary proof of citizenship requirement, or “DPOC.”

When enacted, this requirement purported to apply to both the National Mail Voter Registration Form produced by the U.S. Election Assistance Commission (the “Federal Form”) and the Arizona Voter Registration Form created by the Arizona Secretary of State (the “State Form”). Litigation followed, however, and in 2013, the U.S. Supreme Court held that the DPOC requirement could not be enforced for Federal Form applicants in federal elections, because the National Voter Registration Act (“NVRA”) “precludes Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 20 (2013). With respect to the State Form though, the U.S. Supreme Court held that the NVRA did not preclude Arizona’s DPOC requirement. *Id.* at 12.

Following this ruling, Arizona developed “two distinct voter registration rolls”—one for applicants who provided DPOC and one for applicants who did not. *See Ariz. Op. Att’y Gen. No.*

I13-011 (Oct. 7, 2013) at 6, 14–16; *see also* 2014 Elections Procedures Manual, Ch. 2, *available at* https://azsos.gov/sites/default/files/docs/2014_Election_Procedures_Manual.pdf.

Under this system, if a State Form application was not accompanied by DPOC, that applicant was not registered for any elections. *See* 2014 Elections Procedures Manual, Ch. 2 at 15, 17. Conversely, if a Federal Form application was not accompanied by DPOC, that applicant *was* registered for federal elections and known as a “federal only” voter. *See id.* at 14, 24–26. And Federal Form applicants whose forms lacked DPOC could potentially be registered for *all* elections, also known as “full ballot” voters, if, upon comparison to Arizona’s Motor Vehicle Division (“MVD”) database, the applicant’s license indicated that the applicant was a U.S. citizen. *Id.*; A.R.S. § 16-166(F)(1) (specifying that satisfactory evidence of citizenship includes the “number of the applicant’s driver license or nonoperating identification license issued after October 1, 1996 by the department of transportation or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant’s driver license or nonoperating identification license that the person has provided satisfactory proof of United States citizenship”).

More litigation followed. Two organizations sued the Secretary of State and Maricopa County Recorder, alleging that Arizona’s different treatment of State Forms lacking DPOC and Federal Forms lacking DPOC violated the NVRA, the First Amendment, and the Fourteenth Amendment’s Equal Protection Clause. *See League of United American Citizens of Arizona (LULAC) v. Reagan*, 2:17-cv-04102-DGC, Doc. 37 at *1 (D. Ariz. June 18, 2018) (the “LULAC Consent Decree”).

Although the Secretary of State denied that Arizona’s dual registration system violated the U.S. Constitution or any state or federal law, the Secretary of State and Maricopa County Recorder

entered into a consent decree whereby they agreed that State Form and Federal Form applicants should be treated in the same manner with respect to DPOC requirements. *Id.* at *2–3. Following the LULAC Consent Decree, both State Form and Federal Form applicants were compared against the MVD database through an automated process that had previously been used only for Federal Forms. *See* 2019 Elections Procedures Manual, Ch. 1 at 3–4, 6–8, *available at* https://apps.azsos.gov/election/files/epm/2019_elections_procedures_manual_approved.pdf.

Thus, as of 2019, any applicant who provided DPOC with their application or for whom the MVD database supplied proof of citizenship was registered as a full ballot voter, regardless of their choice of voter registration form. *Id.* at 6. Similarly, an applicant who did not provide DPOC with their application and for whom the MVD database supplied affirmative evidence of *non*-citizenship was not registered for any election, regardless of their choice of voter registration form. *Id.* Finally, if an applicant did not provide DPOC and the MVD database did not indicate anything about citizenship, that applicant would still be registered as a federal only voter based on the applicant’s sworn statement on the registration form that the applicant was a U.S. citizen—again, regardless of which registration form was used. *Id.* at 8.

The MVD database comparison conducted by county recorders used in this process occurs automatically as part of what election officials in Arizona call a “HAVA check.”¹ To conduct a HAVA check, a county recorder enters the applicant’s information as provided on their registration form and clicks a button to compare that information with Arizona’s statewide voter database, AVID. AVID then queries MVD through an automatic connection to search for MVD records that

¹ “HAVA” refers to the federal Help America Vote Act of 2002. Among other things, HAVA requires the chief State election official and the official responsible for the State’s motor vehicle authority to enter into an agreement to match information in their respective databases, to verify accuracy of certain information provided on voter registration forms. *See* 52 U.S.C. § 21083(a)(5)(B)(i).

match the applicant. *See Mi Familia Vota et al. v. Fontes et al.*, CV-22-00509-PHX-SRB, Dkt. 709 at 15–16.

This automatic database check serves two purposes. First, HAVA checks are used to help verify the applicant’s identity by confirming that certain identifying information on the registration form matches information in the MVD or Social Security databases.² Second, when a HAVA check is run, the MVD database automatically transmits back to the county recorder information on whether the applicant’s citizenship has been previously verified by MVD. *Id.* at 15–18. If a HAVA check confirms that an applicant’s citizenship has already been verified, that individual will then be registered as a full ballot voter. *Id.* at 17; *see also* 2023 Elections Procedures Manual, Ch. 1 at 6, *available at* https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf.³

² If MVD does not return a match, the HAVA check will compare the applicant’s information with the Social Security Administration database to try to verify the applicant’s identity. *See Mi Familia Vota et al. v. Fontes et al.*, CV-22-00509-PHX-SRB, Dkt. 709 at 13; *see also* 52 U.S.C. § 21083(a)(5)(B)(ii) (requiring the State motor vehicle authority to enter into an agreement with the Social Security Commissioner).

³ Recently, the Maricopa County Recorder discovered a coding error in the HAVA check. Throughout the last two decades, the HAVA check inadvertently showed approximately 98,000 registered voters as having a post-October 1, 1996 license issuance date, thereby indicating that the individual had provided proof of citizenship to the MVD, when in actuality the individual had a pre-October 1, 1996 license issuance date and may or may not have provided proof of citizenship to the MVD. Because of this coding error, these individuals were improperly registered as full ballot voters even though MVD did not record whether they proved citizenship.

The Maricopa County Recorder and Secretary of State are currently in proceedings before the Arizona Supreme Court regarding how to treat the affected voters in the 2024 election. *See* Emergency Pet. for Special Action, *Richer v. Fontes*, No. CV-24-0221-SA (filed Sept. 17, 2024). MVD has corrected the coding discrepancy that led to this error and it will not reoccur going forward. Because this coding error will not affect future registrations, it does not impact the analysis of this Opinion. Likewise, the outcome of the proceedings before the Arizona Supreme Court for specific voters in the 2024 election has no bearing on the analysis and interpretation in this Opinion for future registrations.

In 2022, the Arizona Legislature passed House Bill 2492 to enact A.R.S. § 16-121.01(C), requiring that State Forms “shall be accompanied by satisfactory evidence of citizenship as prescribed in section 16-166, subsection F, and the county recorder or other officer in charge of elections shall reject any application for registration that is not accompanied by satisfactory evidence of citizenship.” *See* H.B. 2492 § 4, 55th Leg., 2nd Reg. Sess. (Ariz. 2022). Section 16-121.01(C) further provides that “[t]he county recorder or other officer in charge of elections shall send a notice to the applicant as prescribed in section 16-134, subsection B.”

In the same bill, the Legislature amended A.R.S. § 16-134(B), a preexisting notice and cure provision, to apply to situations in which the State Form lacks the DPOC required by § 16-121.01(C). Under this provision, if missing DPOC “is supplied before 7:00 p.m. on election day, that person is deemed to have been registered on the date the registration was first received.” A.R.S. § 16-134(B). The statute does not require that missing DPOC be “supplied” by the applicant directly; rather, it may be “supplied” by any source.

Several organizations sued in response to the enactment of H.B. 2492, arguing that § 16-121.01(C) violated the NVRA and the First and Fourteenth Amendment. *E.g.*, *Mi Familia Vota et al. v. Fontes et al.*, CV-22-00509-PHX-SRB, Dkt. 67. A federal district court initially enjoined the law. *See id.*, Dkt. 534 at 21–22; Dkt. 720 at 2 ¶ 2. Supporters of the statute filed an emergency stay request in the Ninth Circuit Court of Appeals and then an emergency application to the U.S. Supreme Court seeking to stay this injunction.⁴ On August 22, 2024, the U.S. Supreme Court

⁴ In response to the emergency application before the U.S. Supreme Court, the State of Arizona and Attorney General offered a possible reading of § 16-121.01(C) in which county recorders would be precluded from querying MVD records. This Opinion supersedes the tentative statements in that briefing. *See* Resp. to Application No. 24A164 from Arizona, et al., *Republican National Committee, et al. v. Mi Familia Vota, et al.* at *6 n.3 (qualifying the positions taken in emergency briefing as non-definitive).

issued an order staying the injunction of § 16-121.01(C) until the disposition of the appeal in the Ninth Circuit and the disposition of any writ of certiorari following from that appeal. Your opinion request followed.

Analysis

I. County recorders should continue to query the Arizona Motor Vehicle Division database for DPOC to determine if a State Form is “accompanied by” DPOC or, alternatively, to determine if missing DPOC is “supplied” by the database.

Under A.R.S. § 16-121.01(C), all State Form applications “shall be accompanied by satisfactory evidence of citizenship as prescribed in section 16-166, subsection F.” When information on an application is missing, it may be subsequently “supplied” to cure the omission. A.R.S. § 16-134(B). A voter can provide DPOC by including on the voter registration form their Arizona driver license or nonoperating identification license number, if the license was issued after October 1, 1996; the county recorder then queries the MVD database to determine whether the license number shows the applicant is a citizen. *See* 2023 Elections Procedures Manual, Ch. 1 at 3–4.

The issue here is: When an applicant does not include their license number on the State Form, should county recorders query the MVD database for citizenship information before rejecting the application for lack of DPOC? This issue turns on two questions of statutory interpretation: (1) whether MVD citizenship information “accompanies” the State Form for purposes of § 16-121.01(C), or alternatively, (2) whether MVD citizenship information “supplies”

missing DPOC for purposes of § 16-134(B). If the answer to either question is yes, county recorders should query the MVD database. In our view, the answer to both questions is yes.

A. MVD citizenship information “accompanies” the State Form for purposes of A.R.S. § 16-121.01(C).

1. The meaning of “accompanied” under A.R.S. § 16-121.01(C) is not limited to information on or attached to the State Form.

When a statute’s plain language is clear and unambiguous, that meaning should be applied. *See State v. Luviano*, 255 Ariz. 225, 530 P.3d 388, 391 ¶ 10 (2023). Only when ambiguity exists should secondary methods of statutory interpretation, “such as the statute’s subject matter, historical background, effects and consequences, and spirit and purpose,” be consulted. *Id.* (citation omitted).

When a statutory term is undefined—as “accompanied” is here—we give the term its “ordinary meaning unless it appears from the context or otherwise that a different meaning is intended.” *Id.* (citation omitted); *see also* A.R.S. § 1-213 (“Words and phrases shall be construed according to the common and approved use of the language.”). The meaning of statutory text is also assessed “in view of the entire text, considering the context and related statutes on the same subject.” *Molera v. Hobbs*, 250 Ariz. 13, 24 ¶ 34 (2020) (citation omitted). The plain meaning of statutory text controls unless it leads to an absurd result or constitutional violation. *State v. Green*, 248 Ariz. 133, 135 ¶ 8 (2020).

“Accompany,” the present tense of “accompanied,” has been defined as “to go along with (another).” *Accompany*, Black’s Law Dictionary (12th ed. 2024). Another dictionary defines accompany as “to be in association with.” *Accompany*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/accompany> (last visited Sept. 18, 2024). Neither of these dictionary definitions indicate that for an item to accompany another it must be directly attached or simultaneously provided.

Case law provides similar guidance. For example, in *Fullen v. Industrial Commission*, the Arizona Supreme Court addressed a statute that required a physician statement supporting an employee's worker's compensation claim to "accompany" the worker's petition to reopen their claim. 122 Ariz. 425, 428 (1979). In that case, the physician's statement was submitted after the claim petition. *Id.* at 426–27. Still the Court concluded that the statement had "accompanied" the claim petition, explaining a physician's statement "may follow at a reasonable length of time and still be logically considered to have accompanied the petition." *Id.* at 428. The Court noted that such an interpretation particularly made sense in the context of the worker's compensation act, liberally construed in favor of the worker. *See id.* at 429.

The Arizona Court of Appeals followed the same approach in *St. Vincent De Paul Thrift Store v. Industrial Commission of Arizona*, another worker's compensation matter. 163 Ariz. 221 (App. 1990). State law allowed for a memorandum to "accompany" a request for review. A.R.S. § 23–943(A). An administrative law judge held that this meant that the memorandum had to be filed simultaneously with the request for review. *Id.* at 222. The Court of Appeals rejected this interpretation, holding that it was "too restrictive." *Id.*

One Arizona court has embraced a more limited interpretation of the term "accompanied" in the context of petitions for involuntary treatment. *In re Maricopa Cnty. Superior Ct. No. MN 2001-001139*, 203 Ariz. 351, 353 ¶ 9 (App. 2002). There, the court held that physician affidavits must "be served as part of" a petition for involuntary treatment to be considered to have "accompanied" the petition and the affidavits cannot simply be in the court file. *Id.* ¶ 11. The court explained that because the affidavits required to accompany a petition were necessary to give notice to the person whose liberty was at issue, it would be inappropriate to adopt a more liberal reading in that statutory context. *Id.* ¶ 10–11. However, there are no similar liberty or notice

concerns at issue here and thus, we do not find this case to be persuasive in this context. Indeed, in the voting context, the State should endeavor to facilitate the registration and suffrage of all eligible citizens. *See* Ariz. Const. art. II, § 21 (“All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”).

Federal courts have also offered liberal constructions of the term “accompany.” For example, in *Kordel v. United States*, 335 U.S. 345 (1948), the U.S. Supreme Court analyzed a provision under the Federal Food, Drug, and Cosmetics Act that prohibited false or misleading labeling from “accompanying” any article. *Id.* at 347–48. The Court explained that “[o]ne article or thing is accompanied by another when it supplements or explains it, in the manner that a committee report of the Congress accompanies a bill. No physical attachment one to the other is necessary.” *Id.* at 350; *see also United States v. Lee*, 131 F.2d 464, 466 (7th Cir. 1942) (addressing the same statutory provision and explaining that materials “accompanied each other, regardless of whether, physically, they were together or apart during their journey”).

Based solely on the term’s common meaning, § 16-121.01(C)’s requirement that a State Form be “accompanied” by DPOC appears to require only that DPOC go along with or be in association with a State Form—not that DPOC must be physically attached to or simultaneously submitted with the form. Under that reading, an applicant’s record of DPOC provided to the county recorder through the HAVA check “accompanies” a State Form because it goes along with or is associated with that State Form.

Despite the plain meaning of the word “accompany,” the meaning of statutory text should also be assessed “considering the context and related statutes on the same subject,” *Molera*, 250 Ariz. at 24 ¶ 34, and so, we must examine the neighboring subsection governing the treatment of Federal Forms, A.R.S. § 16-121.01(D).

Subsection D provides that for Federal Forms “not accompanied by” DPOC,

the county recorder or other officer in charge of elections shall use all available resources to verify the citizenship status of the applicant and at a minimum shall compare the information available on the application for registration with the following, provided the county has access:

1. The department of transportation databases of Arizona driver licenses or nonoperating identification licenses.
2. The social security administration databases.
3. The United States citizenship and immigration services systematic alien verification for entitlements program, if practicable.
4. A national association for public health statistics and information systems electronic verification of vital events system.
5. Any other state, city, town, county or federal database and any other database relating to voter registration to which the county recorder or officer in charge of elections has access, including an electronic registration information center database.

A.R.S. § 16-121.01(D).

Subsection D suggests that MVD citizenship information does not “accompany” a registration form, because the text explicitly directs county recorders to review the MVD database when a Federal Form is “not accompanied by” DPOC.

Because we presume that the Legislature intended for the same word to have the same meaning within the same statute, subsection D therefore also suggests that MVD citizenship information obtained through a HAVA check does not “accompany” a State Form— notwithstanding the term’s ordinary meaning. *See Mussi v. Hobbs*, 255 Ariz. 395, 532 P.3d 1131, 1138 ¶ 34 (2023) (“It is a basic principle that courts will not read into a statute something which is not within the manifest intention of the legislature as indicated by the statute itself.”). In other

words, context raises doubt as to whether the plain meaning of “accompany” applies to § 16-121.01(C).

2. Section 16-121.01(C) should be read to avoid constitutional difficulties.

In addition to surrounding statutory text, we must also consider the constitutional provisions protecting voting when construing § 16-121.01(C). *Cf.*, *Luviano*, 530 P.3d at 393 ¶ 16 (construing statutory text against the backdrop of relevant constitutional provisions); *AZ Petition Partners LLC v. Thompson*, 255 Ariz. 254, 530 P.3d 1144, 1148 ¶ 17 (2023) (citing “our practice of construing ambiguous statutes, when possible, in a way that preserves the statute’s constitutionality”).

The Arizona Constitution provides that “[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Ariz. Const. art. II, § 21. And our State recognizes the fundamental premise that voting is “the most basic civil right” and that “[t]o deny the right to vote, where one is legally entitled to do so, is to do violence to the principles of freedom and equality.” *Harrison v. Laveen*, 67 Ariz. 337, 196 P.2d 456, 459 (1948); *see also* Andrew D. Hurwitz, *The Arizona Constitution and the Right to Vote*, 53 Ariz. St. L. J. 821, 829 (2021) (explaining that Arizona’s framers believed “the potential electorate should be as broad as possible” and “presumptively confer[ed] eligibility to vote on all citizens who meet certain age, residency, and other requirements”).

In addition to state constitutional concerns, the right to vote is also a fundamental federal constitutional right. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667–68 (1966). This fundamental right is protected by both the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. *See Burdick v. Takushi*, 504 U.S. 428, 433–44 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). Whenever a state enacts a restriction related to voting, courts assess the character and magnitude of injury to the First and Fourteenth Amendment rights

against the justifications put forward by the state for the burdens imposed by the restriction. *Id.* This review, known as an *Anderson-Burdick* analysis, works as follows: “At one end of the spectrum, severe restrictions must be narrowly drawn to advance a state interest of compelling importance. At the other end of the spectrum, important state regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions. Thus, the burdening of the right to vote always triggers a higher level of scrutiny than rational basis review, but does not always trigger strict scrutiny.” *Tedards v. Ducey*, 951 F.3d 1041, 1066 (9th Cir. 2020) (cleaned up).

In addition to claims involving burdens on the right to vote, this framework also applies to claims under the Equal Protection Clause that similarly situated persons are being treated differently with respect to voting. *See, e.g., Dudum v. Arntz*, 640 F.3d 1098, 1106 n.15 (9th Cir. 2011) (explaining equal protection concerns regarding elections laws are properly evaluated under the *Anderson-Burdick* framework).

Interpreting § 16-121.01(C) to prohibit county recorders from considering MVD’s citizenship data would raise serious questions under both the Arizona and U.S. Constitutions. Such an interpretation would deny some Arizona citizens the right to vote on the basis that the applicant is not a citizen, even though the State possesses information confirming the applicant’s citizenship and county recorders can easily access that information through an electronic database that they regularly check. It is not clear what rationale could be proffered to justify such a result, even under rational basis review. Under both Constitutions, statutes should not be interpreted to disenfranchise citizens who the State knows are lawfully entitled to vote.

Additionally, the NVRA requires that Federal Form applications lacking DPOC, but containing the applicant’s affirmation of U.S. citizenship, be registered for federal elections. *See Inter Tribal*, 570 U.S. at 20. Accordingly, the statute expressly instructs county recorders to review

databases (including the MVD database) for evidence of DPOC for Federal Form applicants and, if found, register Federal Form applicants for all elections. A.R.S. § 16-121.01(D), (E). Because of this, interpreting § 16-121.01(C) to prohibit county recorders from considering DPOC available in MVD records through the HAVA check would result in distinct treatment for State Form and Federal Form users. In the LULAC and *Mi Familia Vota* litigation, plaintiffs argued that differing treatment based on the type of form used is arbitrary and violates the Equal Protection Clause. The Defendants in the LULAC litigation chose to enter into a Consent Decree rather than counter that argument and the *Mi Familia Vota* litigation is ongoing. The ultimate merits of those arguments are beyond the scope of this opinion, but they clearly raise serious constitutional concerns, particularly given that *Anderson-Burdick* challenges are assessed with a higher level of scrutiny than rational basis review.

As a matter of statutory interpretation, we avoid constructions that raise serious constitutional concerns when a reasonable alternative interpretation exists. *See Garcia v. Butler in & for Cnty. of Pima*, 251 Ariz. 191, 195–96 ¶ 18 (2021) (explaining the policy of adopting constructions that avoid constitutional difficulties and interpreting statutes to comply with the Constitution when the relevant text allows); *see also Merrill v. Merrill*, 230 Ariz. 369, 376 ¶ 27 n.5 (App. 2012) (declining to adopt a broad statutory construction “consistent with the principle that [courts] avoid a construction of a statute that might raise constitutional concerns”). Therefore, we conclude that the ordinary meaning of “accompanied” applies under § 16-121.01(C) for State Forms, *see* Analysis § I.A.1, notwithstanding § 16-121.01(D)’s differing meaning of “accompanied” for Federal Forms. County recorders should query the MVD database for citizenship information to determine if the State Form is “accompanied” by DPOC.

B. MVD citizenship information “supplies” missing DPOC for purposes of A.R.S. § 16-134(B).

Section 16-121.01(C) directs that applicants whose forms lack DPOC be provided a notice as prescribed in § 16-134(B). Specifically, when DPOC required under § 16-121.01(C) is missing, “the county recorder shall notify the applicant within ten business days of receipt of registration form ... that the registration cannot be completed until the information is supplied.” A.R.S. § 16-134(B). And “[i]f the missing ... information is supplied before 7:00 p.m. on election day, that person is deemed to have been registered on the date the registration was first received.” *Id.*

The statutory term “supplied” is in the passive voice and does not specify that missing DPOC may be provided only by the voter directly. *See United States v. McDuffy*, 890 F.3d 796, 800 (9th Cir. 2018) (explaining that use of the passive voice in statutory language indicates that “[i]t is whether something happened—not how or why it happened—that matters”). Section 16-134(B) simply requires that the missing DPOC be “supplied.” *Supply*, Black’s Law Dictionary (12th ed. 2024) (“The act, an instance, or the process of fulfilling a requirement, need, or desire.”).

MVD citizenship data is in the State’s custody and control and is readily available to county recorders via the HAVA check process described above. It is just as accessible to a county recorder as a birth certificate or passport page in a voter’s paper file would have been in an era of physical files for each voter. *See Ariz. Op. Att’y Gen. No. I17-006* (Nov. 13, 2017) at 8–9 (explaining voter registration information in the statewide database is in the Secretary’s custody). For a county recorder to reject an application for lack of citizenship, when readily available MVD data proves citizenship, would be to ignore information that has been “supplied” to her and would undermine the purpose of a cure process.

Thus, as part of the notice and cure process, if a county recorder has not already checked the MVD database for citizenship, she should do so. In such cases, the applicant has already “supplied” DPOC to the State for purposes of § 16-134(B).

As with § 16-121.01(C), this conclusion is further supported by the rule that statutes should be interpreted to avoid unconstitutional results. *See Green*, 248 Ariz. at 135 ¶ 8. Construing § 16-134(B) to require county recorders to reject a State Form for lack of DPOC when it is readily available to them would prevent eligible citizens from registering to vote and thereby raise serious Arizona and federal constitutional concerns. *See, e.g.,* Ariz. Const. art. II, § 21 (“[N]o power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”); *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (explaining that the Fourteenth Amendment requires that “all persons similarly situated should be treated alike”).

Similarly, although § 16-134(B) directs county recorders to notify a State Form applicant when DPOC is missing, we decline to construe the statute to require such a notice in situations when the applicant has already supplied citizenship data to MVD, which is readily available to county recorders. In such situations, a notice to the applicant would be an exercise in futility because of our conclusion that a county recorder should query MVD for DPOC as part of the notice and cure process and thus, we decline to adopt that absurd construction. *See State ex rel. Montgomery v. Harris*, 237 Ariz. 98, 102 ¶ 14 (2014) (“[A] result is absurd if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion.”) (cleaned up).

As such, we conclude that if a State Form lacks DPOC, county recorders should query the MVD database for citizenship information because such information has been “supplied” for purposes of § 16-134(B). *See* Analysis § I.B, above.

If MVD citizenship information confirms that the applicant is a citizen, and the applicant is otherwise eligible to register to vote, the county recorder must register the applicant as a full ballot voter because that individual has complied with § 16-121.01 and is thus presumed to be properly registered to vote. *See* A.R.S. § 16-121.01(A), (C).

II. If missing DPOC is supplied pursuant to A.R.S. § 16-134(B), the date of registration relates back to the date the registration was first received.

If a State Form is not accompanied by DPOC (including via MVD records), the county recorder must reject the form and provide the applicant with a notice as prescribed by § 16-134(B). If, in response to the § 16-134(B) notice, the applicant (or any other source) supplies the missing DPOC prior to 7:00 p.m. on election day, the applicant “is deemed to have been registered on the date the registration was first received.” § 16-134(B). Thus, the date of registration relates back to the date the voter registration form was received by the county recorder’s office.

III. If a State Form is not accompanied by DPOC, county recorders should allow DPOC to be submitted up to 7:00 p.m. on election day pursuant to A.R.S. § 16-134(B).

As noted above, § 16-134(B) allows applicants who timely submitted voter registration forms, but failed to include DPOC or other information, to be properly registered to vote in the election if the missing information is supplied before 7:00 p.m. on election day. The LULAC Consent Decree, however, states that when an applicant receives a notice that their State Form lacked DPOC, that individual may submit DPOC up to “5 p.m. local time on the Thursday before the election.” *See* LULAC Consent Decree, 2:17-cv-04102-DGC, Doc. 37 at *11–12 ¶ 3. Your last question asks which of these deadlines controls.

At the time of the LULAC litigation, there was no statutory notice and cure deadline regarding missing DPOC. The Consent Decree’s deadline filled that statutory silence and required the defendants to give voters a cure period for DPOC. Several years later came § 16-134(B).

Generally, a consent decree does not prevent a legislature from *enacting* new laws, even those related to the subject of the decree, but those laws may not be able to be *enforced* in light of the decree. *See Hollingsworth v. Perry*, 570 U.S. 693, 705–06 (2013). For example, a state may not attempt to override a federal court consent decree by reimplementing a statute that has been enjoined by a consent decree. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (“If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery.”) (cleaned up). Nor may a state act in a way that interferes with a consent decree. *See United States v. Bd. of Cnty. Commissioners of Hamilton Cnty., Ohio*, 937 F.3d 679, 691 (6th Cir. 2019) (explaining that courts have broad power to prevent interference with consent decrees including by suspending municipal rules or limiting contracting authority); *United States v. Gov't of Virgin Islands*, 363 F.3d 276, 281 (3d Cir. 2004) (preventing government from entering a contract that would have frustrated compliance with a consent decree); *see also White v. Roughton*, 689 F.2d 118, 119 (7th Cir.1982) (“[T]he relevant purposes in interpreting a consent decree (like any other contract) are the purposes embodied in the instrument.”).

Here, the LULAC Consent Decree did not enjoin any deadline to cure and thus, § 16-134(B) is not an attempt to annul the Consent Decree. And the longer cure period in § 16-134(B) does not interfere with the remedy that the Plaintiffs obtained, and that the federal court ordered, in the LULAC Consent Decree. Likewise, § 16-134(B) does not interfere with or impede the State’s ability to comply with the purpose of the Consent Decree, which is to ensure the State “treat[s] State Form applications exactly as ... Federal Form applications” are treated with respect to DPOC. *See LULAC Consent Decree*, 2:17-cv-04102-DGC, Doc. 37 at *3. Simply put, there are no concerns here that this statute infringes on the LULAC Consent Decree.

Accordingly, the Legislature’s decision to provide voters with additional time to cure missing DPOC under § 16-134(B), extending the DPOC cure period to 7:00 p.m. on election day, now controls.

Conclusion

If a State Form lacks DPOC, county recorders should query the MVD database for citizenship information because such information “accompanies” the State Form for purposes of § 16-121.01(C), and even if voter registration applications are not “accompanied” by the applicant’s MVD citizenship data, county recorders should query that data because it has been “supplied” for purposes of § 16-134(B), which leads to the same result. If the applicant is otherwise eligible to register and the county recorder obtains DPOC from the MVD database, the county recorder must register the applicant as a full ballot voter because that individual has complied with all statutory registration requirements.

Pursuant to § 16-134(B), if missing DPOC is supplied by the statutory deadline, the date of registration relates back to the date the voter registration form was received by the county recorder’s office. County recorders should follow the deadline provided in § 16-134(B) and allow State Form DPOC to be supplied up to 7:00 p.m. on election day.

* * *

Kris Mayes
Attorney General