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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mi Familia Vota, et al.,

Plaintiffs,

v.

Adrian Fontes, et al.,

Defendants.

No. CV-22-00509-PHX-SRB (Lead)

**DEFENSE MOTION FOR
CLARIFICATION AS TO TRIAL OF
CLAIMS SEEKING “ALTERNATIVE
GROUNDS” FOR RELIEF**

**(EXPEDITED RULING
REQUESTED)**

AND CONSOLIDATED CASES.

No. CV-22-00519-PHX-SRB
No. CV-22-01003-PHX-SRB
No. CV-22-01124-PHX-SRB
No. CV-22-01369-PHX-SRB
No. CV-22-01381-PHX-SRB
No. CV-22-01602-PHX-SRB
No. CV-22-01901-PHX-SRB

1 The Court resolved some claims on summary judgment. *See* Doc. 534. The parties
2 recently discovered that they have different views on which types of claims remain for trial.
3 This motion seeks clarification on a basic question: whether trial will include claims that
4 seek alternative grounds for relief already granted on summary judgment.

5 **I. Brief Context**

6 In pretrial discussions, counsel for Non-US Plaintiffs have stated that they expect to
7 present at trial any claims that survived summary judgment and the motion to dismiss,
8 including:

- 9 (1) claims that would provide “different or broader” relief than the relief granted
10 by the Court’s summary judgment ruling, and
11 (2) claims that provide “alternative grounds” for the relief granted by the Court’s
12 summary judgment ruling.

13 Defendants¹ acknowledge that trial will include Non-US Plaintiffs’ claims for
14 “different or broader relief” than granted at summary judgment.² However, Defendants are
15 not convinced that trial should include claims seeking “alternative grounds” for relief
16 already granted at summary judgment.

17 The Court has already ruled that it need not decide claims of this type. For example,
18 after concluding that NVRA Section 6 preempts parts of HB 2492, the Court ruled that it
19 “need not address the parties’ arguments regarding the effect of [NVRA] Section 8(a) in
20 these respects,” and further, it “need not address the parties’ arguments as they relate to the
21 Materiality Provision” in related respects. Doc. 534, pgs. 21 n.12, 23 n.14.

22 In addition, some of the Non-US Plaintiffs’ claims are constitutional challenges
23 which, though not raised at summary judgment, are aimed at parts of HB 2492 that the
24 Court deemed unlawful on nonconstitutional grounds. “A fundamental and longstanding

25
26 ¹ Here the term “Defendants” refers to the State of Arizona and the Arizona Attorney
27 General, the Arizona Secretary of State, Intervenor-Defendants Arizona House Speaker
Toma and Arizona Senate President Petersen, and Intervenor-Defendant RNC.

28 ² Defendants also acknowledge that trial will include the United States’ claim that HB
2492’s birth place requirement violates the Materiality Provision of the Civil Rights Act.

1 principle of judicial restraint requires that courts avoid reaching constitutional questions in
2 advance of the necessity of deciding them.” *Lyng v. Nw. Indian Cemetery Protective Ass’n*,
3 485 U.S. 439, 445 (1988). “Generally, a court will not decide a constitutional question if
4 there is some other nonconstitutional ground upon which to dispose of the case.” 16 C.J.S.
5 Constitutional Law § 213 (collecting cases).

6 **II. Requested Clarification**

7 Defendants suggest that the Court clarify as follows: Although trial will include
8 claims for different or broader relief than granted at summary judgment, trial should not
9 include claims that seek “alternative grounds” for relief granted at summary judgment.

10 Defendants believe that clarification of this basic question will help ensure the
11 parties are on the same page regarding trial preparation. Defendants are happy to proceed
12 however the Court directs, including being available for a conference call.

13 **III. Defendants’ Understanding of Non-US Plaintiffs’ Position**

14 Counsel for Defendants conferred with counsel for Non-US Plaintiffs but could not
15 reach agreement on this issue. Counsel for Defendants suggested a joint motion for
16 clarification and circulated a draft, inviting counsel for Non-US Plaintiffs to add their
17 position. Counsel for Non-US Plaintiffs declined.

18 Counsel for Non-US Plaintiffs stated that they oppose Defendants’ requested
19 clarification, explaining: “[W]e believe it is imperative to have the issues in these
20 consolidated cases definitively resolved in advance of the 2024 elections. As at least some
21 of the defendants evidently plan to appeal Judge Bolton’s partial summary judgment ruling,
22 we believe the better course is to resolve the remaining claims now so that any rulings could
23 be addressed in a single appeal, rather than risk putting Judge Bolton – and the parties – in
24 the position of conducting a trial on the remaining claims in 2024.”

1 DATED this 5th day of October, 2023.

2
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