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21 **UNITED STATES DISTRICT COURT**
22 **DISTRICT OF ARIZONA**

23 Mi Familia Vota, et al.,
24 Plaintiffs,

25 v.

26 Adrian Fontes, et al.,
27 Defendants.

Case No: 2:22-cv-00509-SRB (Lead)

**INTERVENOR REPUBLICAN
NATIONAL COMMITTEE'S
MOTION FOR ENTRY OF
RULE 54(B) JUDGMENT**

AND CONSOLIDATED CASES

INTRODUCTION

1
2 A partial final judgment is warranted when a court has resolved a claim and there
3 is no just reason for delay. *See* Fed. R. Civ. P. 54(b); *Pakootas v. Teck Cominco Metals,*
4 *Ltd.*, 905 F.3d 565, 574 (9th Cir. 2018). A straightforward application of these two factors
5 confirms that a partial final judgment is warranted on several claims resolved in this
6 Court’s summary judgment order. *See* Doc. 534.

7 The Court fully resolved the claims on which it granted summary judgment. On
8 September 14, the Court issued a summary judgment order on “issues that could be
9 adjudicated without discovery.” Doc. 534 at 6. The Court resolved several claims, and it
10 reserved others for trial. The legal claims the Court resolved are final—they require no
11 factual development, no litigation, and no further decisions by the Court. The only thing
12 preventing the parties from immediately appealing those claims is the need for a final
13 judgment.

14 There is no just reason for delay on these fully resolved claims. A final judgment
15 on the purely legal issues the Court recently resolved is necessary to ensure final
16 resolution of those claims before the 2024 elections. Delaying appeal of those issues
17 serves no benefit—it will only prejudice the parties, cause confusion for voters, and
18 muddle later appeals. Thus, the Republican National Committee respectfully requests that
19 the Court enter a final judgment on the claims resolved in the following orders:

- 20 • The Court’s order that Section 6 of the NVRA preempts H.B. 2492’s restriction
21 on registration for presidential elections.
- 22 • The Court’s order that Section 6 of the NVRA preempts H.B. 2492’s restriction
23 on registration for voting by mail.
- 24 • The Court’s order that H.B. 2243 violates Section 8(c) of the NVRA by allowing
25 systematic cancellation of registrations within 90 days of an election.
- 26 • The Court’s order that the checkbox requirement violates the Materiality Provision
27 of the Civil Rights Act when an applicant provides evidence of citizenship.

- 1 • The Court’s order that Arizona must abide by the LULAC Consent Decree and
2 register otherwise eligible state form users without documentary proof of
3 citizenship for federal elections.
- 4 • The Court’s order that Arizona may not reject any state form without
5 accompanying documentary proof of citizenship.

6 ARGUMENT

7 Rule 54(b) allows district courts to enter partial final judgments. When an action
8 involves multiple claims or parties and “there is no just reason for delay” of an appeal,
9 “the court may direct entry of a final judgment as to one or more, but fewer than all,
10 claims or parties.” Fed. R. Civ. P. 54(b). There are two steps to a Rule 54(b) judgment.
11 First, the court “must render ‘an ultimate disposition of an individual claim.’” *Pakootas*,
12 905 F.3d at 574. Second, the court “must find that there is no just reason for delaying
13 judgment on this claim.” *Id.* Both elements are met here: the RNC seeks final judgment
14 on only the legal issues that the Court has definitely resolved, and a final judgment and
15 appeal of those claims would simplify the case before the upcoming elections and avoid
16 the *Purcell* issues that a later judgment would inevitably run into.

17 1. The Court reached a final decision on the merits of the purely legal 18 claims.

19 When claims are “‘separate and distinct’ from the remainder of the counts in the
20 complaint,” they are appropriate candidates for a partial final judgment. *Ariz. State*
21 *Carpenters Pension Tr. Fund v. Miller*, 938 F.2d 1038, 1040 (9th Cir. 1991). The Ninth
22 Circuit takes a “pragmatic approach” to differentiating claims. *Pakootas*, 905 F.3d at 575.

23 The claims on which the RNC seeks a final judgment are distinct legal issues. This
24 Court has already confirmed that by ordering the parties to brief “only legal issues,” Doc.
25 362, and resolving only claims “that could be adjudicated without discovery.” Doc. 534
26 at 6. In resolving these claims, the Court concluded there were no “genuine issues of
27 material fact” as to whether the NVRA requires Arizona to use the federal registration

1 form for presidential elections and mail-in voting. Doc. 534 at 9. The Court ruled that, as
2 a matter of law, H.B. 2243’s systematic removal program violates the 90-day safe harbor
3 provision in the NVRA. Doc. 534 at 9. It found that whether Arizona’s laws violate the
4 materiality provision of the Civil Rights Act is also “a question of law.” Doc. 534 at 24.
5 Finally, as to whether the NVRA requires Arizona to register state form applicants who
6 don’t submit proof of citizenship for federal elections, the Court ruled that “[t]his claim
7 is resolved by the existing LULAC Consent decree.” Doc. 534 at 21. In sum, all orders
8 on which the RNC seeks a final judgment are purely legal issues that are “‘separate and
9 distinct’ from the remainder of the counts in the complaint.” *Ariz. State Carpenters*
10 *Pension Tr. Fund*, 938 F.2d at 1040.

11 Indeed, the Court has already separated these legal claims from the factual claims
12 that will proceed to trial, making this a straightforward Rule 54(b) situation. In more
13 difficult cases, even “[c]laims with partially ‘overlapping facts’ are not ‘foreclosed from
14 being separate for purposes of Rule 54(b).’” *Pakootas*, 905 F.3d at 575 (quoting *Wood v.*
15 *GCC Bend, LLC*, 422 F.3d 873, 881 (9th Cir. 2005)); *see also Purdy Mobile Homes, Inc.*
16 *v. Champion Home Builders Co.*, 594 F.2d 1313, 1316 (9th Cir. 1979) (“[T]hat some facts
17 are common to all of [Plaintiffs’] ‘theories of recovery’” does not mean there aren’t
18 “multiple claims.”). But claims remain distinct when, for example, “each requires a
19 factual showing not required by the other.” *Pakootas*, 905 F.3d at 575. This case is easier,
20 since the Court’s order resolved legal claims that required *no* factual showings.

21 In addition, the Court’s decision on these claims is final. “A decision is final under
22 28 U.S.C. § 1291 if it ‘ends the litigation on the merits and leaves nothing for the court to
23 do but execute the judgment.’” *Ariz. State Carpenters Pension Tr. Fund*, 938 F.2d at 1039
24 (quoting *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 275 (1988)).
25 The RNC moves for final judgment only on claims that the Court has definitely resolved.
26 *See* Doc. 534 at 33-35. Those claims require no further litigation from the parties, and the
27

1 only action they require from the Court is to “execute the judgment.” *Id.* There is no
2 reason the Court should wait months from now to execute the judgment.

3 **2. There is no just reason to delay appeal of the purely legal issues the**
4 **Court has already resolved.**

5 Rule 54 “was adopted specifically to avoid the possible injustice of delaying
6 judgment on a distinctly separate claim pending adjudication of the entire case. The Rule
7 thus aimed to augment, not diminish, appeal opportunity.” *Jewel v. NSA*, 810 F.3d 622,
8 628 (9th Cir. 2015) (cleaned up). Courts must consider two elements to determine whether
9 there is “no just reason for delaying judgment.” Fed. R. Civ. P. 54(b). First, courts
10 determine “whether the certified order is sufficiently divisible from the other claims such
11 that the ‘case would [not] inevitably come back to this court on the same set of facts.’”
12 *Jewel*, 810 F.3d at 628 (alteration in original) (quoting *Wood*, 422 F.3d at 879). That
13 question overlaps with the first part of the Rule 54(b) test and is satisfied for the same
14 reasons: the legal issues the RNC seeks to appeal are distinct from the other claims in this
15 case. Second, courts must assess “equitable concerns,” which “focus on traditional
16 equitable principles such as prejudice and delay.” *Gregorian v. Izvestia*, 871 F.2d 1515,
17 1519 (9th Cir. 1989). Those equitable concerns favor immediate appeal to resolve several
18 important legal issues before the 2024 election. There is no just reason to delay resolution
19 of those issues.

20 *First*, the claims the RNC seeks to appeal “rest on entirely independent legal
21 theories and facts as compared to the still-pending claims” that will proceed to trial.
22 *Downing v. Lowe’s Cos.*, No. 3:22-cv-8159, 2023 WL 4867608, at *2 (D. Ariz. July 31,
23 2023). Given that this case is a consolidation of eight different cases with eight different
24 complaints, it is unsurprising that it is a good candidate for a Rule 54(b) judgment. *See*
25 *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018) (holding that “when one of several consolidated
26 cases is finally decided, a disappointed litigant is free to seek review of that decision in
27 the court of appeals,” even without a Rule 54(b) judgment).

1 In any event, Rule 54(b) “does not require the issues raised on appeal to be
2 completely distinct from the rest of the action, ‘so long as resolving the claims would
3 ‘streamline the ensuing litigation.’” *Jewel*, 810 F.3d at 628 (quoting *Noel v. Hall*, 568
4 F.3d 743, 747 (9th Cir. 2009)). It makes no sense to delay final resolution of discrete legal
5 issues for months while the parties finish litigating unrelated, factually independent
6 claims. The outcome of the trial will have no bearing on the already-resolved legal issues,
7 and the outcome of an appeal will have no bearing on the still-pending trial claims. Thus,
8 “this is *not* the sort of case where the ‘legal right to relief stems largely from the same set
9 of facts and would give rise to successive appeals that would turn largely on identical,
10 and interrelated, facts.’” *Downing*, 2023 WL 4867608, at *2 (quoting *Wood*, 422 F.3d at
11 880).

12 *Second*, delaying final judgment on the resolved claims will result in prejudice.
13 The RNC and the State suffer prejudice because their right to appeal the resolved claims
14 is indefinitely deferred until the Court enters a final judgment. They are thus forced to
15 wait until the other claims “are resolved and final judgment is entered” after trial and
16 post-trial proceedings, while the already-resolved claims “merely ‘stagnate.’” *Id.* Those
17 “equities weigh in favor of granting” a Rule 54(b) judgment even though the harm of
18 delayed appeal is “not novel.” *Id.* But delay will cause novel harms, too.

19 The most pressing reason for a final judgment is to resolve these issues before the
20 2024 elections. If the Court waits for all claims to be resolved before entering final
21 judgment, it will likely be months before the Court issues a final judgment on *any* claim.
22 Entering final judgment on that timeline runs headlong into the *Purcell* principle, which
23 is a “bedrock tenet of election law.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022)
24 (Kavanaugh, J., concurring in grant of stay applications). The *Purcell* principle holds that
25 “federal district courts ordinarily should not enjoin state election laws in the period close
26 to an election.” *Id.* At 879 (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006)). Injunctions
27

1 barring the enforcement of election laws cause “voter confusion” that encourages voters
2 to stay “away from the polls.” *Purcell*, 549 U.S. at 4-5.

3 Arizona’s elections are around the corner. The next election on March 12, 2024, is
4 only five months away. *See Secretary of State Adrian Fontes 2023-2024 Election*
5 *Calendar*, Ariz. Sec’y of State 16 (Sept. 13, 2023), <https://bit.ly/3F1omn8>. The
6 presidential preference primary election is the following week. *See id.* Registration
7 deadlines for those elections are in February. *See id.* at 14. And preparations begin as
8 early as December—just two months out. *See id.* at 12. The Supreme Court applied
9 *Purcell* to an election that was “about four months” away in *Milligan*. 142 S. Ct. at 88
10 (Kagan, J., dissenting). And the Eleventh Circuit found that four months “easily falls
11 within” *Purcell*’s reach. *League of Women Voters of Fla. v. Fla. Sec’y of State*, 32 F.4th
12 1363, 1371 (11th Cir. 2022). Other courts have applied *Purcell* six months before an
13 election. *Thompson v. Dewine*, 959 F.3d 804, 813 (6th Cir. 2020). In each of these cases,
14 the Courts measured from the time when the State would have to implement a disruptive
15 change. *See Milligan*, 142 S. Ct. at 88 (Kagan, J., dissenting) (Election is “four months
16 from now.”); *League of Women Voters*, 32 F.4th at 1371 (“[D]istrict court ... issued its
17 injunction” when the next election was “set to begin in *less* than four months”);
18 *Thompson*, 959 F.3d at 813 (“[M]oving or changing a deadline or procedure now will
19 have inevitable, further consequences.”). Every day that passes increases the risk that a
20 final judgment will cause greater disruption and confusion for the 2024 elections.
21 Resolving at least some of the issues in this case before those elections will preserve
22 voters’ confidence and promote reliable election administration.

23 The prejudice of delay is greater here because the county recorders have agreed
24 not to enforce most provisions of the laws while the litigation is ongoing. The Court
25 granted the county recorders extensions to respond to Plaintiffs’ discovery requests
26 “conditioned upon them providing written assurances to this Court that voter purges are
27 not being implemented and will not be implemented until further direction is received

1 from the Secretary of State.” Doc. 233 at 3. Subsequent discovery has confirmed that all
2 or nearly all the counties also have declined to substantively implement provisions that
3 do not entail “voter purges” (*i.e.*, the cancellation or change in status of existing
4 registrations), including provisions that are the subject of this Court’s partial summary
5 judgment order. A final judgment would allow some of those issues to be resolved on the
6 merits before the election, rather than by assurances and agreements.

7 Finally, a final judgment will simplify not only the appeal of the legal issues in
8 this motion, but also the likely appeal of other claims after trial. The party moving for a
9 Rule 54(b) judgment does not need to show “harsh or unusual circumstances.” *Curtiss-*
10 *Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 9 (1980). Rather, “Rule 54(b) certification is
11 proper if it will aid ‘expeditious decision’ of the case.” *Texaco, Inc. v. Ponsoldt*, 939
12 F.2d 794, 797 (9th Cir. 1991) (citation omitted). A separate appeal will permit the parties
13 and the Ninth Circuit the chance to give each issue the time and attention it deserves.
14 Waiting for a host of other unrelated issues to come all at once will only increase briefing
15 burdens and further delay resolution of the case.

16 CONCLUSION

17 For the foregoing reasons, this Court should issue a final judgment on the claims
18 outlined in this motion.
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RESPECTFULLY SUBMITTED this 10th day of October, 2023.

By: /s/ Kory Langhofer

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/s/ Kory Langhofer

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