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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Arizona Asian American Native Hawaiian And Pacific Islander For Equity Coalition, Plaintiff, vs. Katie Hobbs, in her official capacity as Arizona Secretary of State, et al., Defendants.	Case No: 2:22-cv-01381-SRB **STATE'S REPLY SUPPORTING CONSOLIDATION**

REPLY

Amongst the six Plaintiffs of the consolidated suit and this one, Arizona Asian American Native Hawaiian And Pacific Islander For Equity Coalition ("AAANHPI") is a uniquely unreasonable, high-maintenance litigant—making consolidation particularly appropriate to prevent its distinctly burdensome approach from causing needless waste of this Court and Defendants' resources.

A quick comparison to AAANHPI's fellow co-Plaintiff readily confirms the distinct unreasonability of its litigation strategy here:

- *All* other Plaintiffs—including the United States, which as a sovereign government has unique interests apart from private plaintiffs—either moved for consolidation themselves or consented to it. Alone amongst Plaintiffs, AAANHPI has not only opposed consolidation, but instead filed a lengthy brief in opposition that exceeds the length of all other previous consolidation-related filings in this case *combined*.

- All other Plaintiffs were satisfied with the Attorney General's level of detail provided by email in connection with Local Rule 12.1 and not a single one had any issue with it. Alone amongst Plaintiffs, AAANHPI objected and required a lengthy email exchange that was ultimately pointless since—as was obvious from the beginning—AAANHPI had no intention of amending its complaint. AAANHPI insisted upon a resource-draining exchange that was quixotic since—as all other Plaintiffs recognized—there was no meaningful chance that the parties would resolve their disputes by amendment. *See* Ex. A.

- Not one of the other Plaintiffs has attempted to compel conducting a Rule 26(f) conference without knowing whether the cases will be consolidated. That approach is plainly wasteful, since any deadlines agreed to would need to be reset post-consolidation. But even though *both* the Attorney General and the Secretary of State objected to this wasteful approach, AAANHPI has insisted upon conducting such conferences today and tomorrow (October 3 and 4). *See* Ex. B.[1]

It is against that backdrop of unreasonable litigation conduct that AAANHPI's unreasonable opposition to consolidation arises. AAANHPI faults the State for the brevity of its motion. But given the glaringly obvious appropriateness of consolidation, the State's

[1] In the first of its two Rule 26(f) conferences, AAANHPI expressed its desire to eliminate this Court's presumptive limit on document requests to 25 RFPs and instead permit unlimited RFPs—again underscoring the hyper-aggressive and unreasonable approach that AAANHPI is continuing to take. That in turn underscores the desirability of consolidation for resolving contested discovery matters, rather than having them addressed piecemeal.

brief was appropriately brief. Indeed, when the United States, Poder Latinx, and DNC moved for consolidation, their motions were quite understandably short as well. *See* Docs. 68 (1¼ pages), 78 (1 page), 90 (1¼ pages). But once again, AAANHPI rejects the more-reasonable approach of its co-Plaintiffs and instead embarks upon a more resource-intensive one of its own.

The problem here is not the shortness of the Attorney General's motion, but rather then length of AAANHPI's opposition—which is just yet another manifestation of its consistently burdensome approach to this suit.

Ultimately, Plaintiffs' five fellow co-Plaintiffs provide a useful yardstick defining the limits of reasonable litigation conduct in this suit. AAANHPI is consistently well beyond the bound of it. Its opposition to consolidation is yet another example of it, which this Court should reject and instead grant the State's motion to consolidate.

Consolidation is appropriate when "actions before the court involve a common question of law or fact." Fed. R. Civ. P. 42(a). Five challenges to the precise enactments at issue in the instant case have already been consolidated in 2:22-cv-00509. These challenges are effectively coterminous, challenging HB 2492 under a range of legal theories, with several also challenging HB 2243 (collectively, the "Acts"). Indeed, AAANHPI strains in Response to identify *any* substantive differences between the instant claims and the consolidated claims. AAANHPI instead relies upon differences in *timing* at which such equivalent claims were added to various consolidated matters (at 7), but provides no detail whatsoever to *any* differences in the "legal challenges" made against the Acts between the instant case and the consolidated cases. *See also* Op. at 2 (conclusory assertion that "the claims are different"). That does not suffice, and the manifest overlap between AAANHPI's suit and the five prior ones amply warrants consolidation.

AAANHPI itself recognized the obvious commonality and judicial economy here by moving to transfer this case itself. Those same considerations warrant consolidation here too. Indeed, the most AAANHPI will say on that front is its underwhelming contention that the same overlap that warranted transfer "*does not compel* consolidation." Opp. at 8

(emphasis added). True, but those same factors that AAANHPI itself recognized strongly militate in favor of consolidation here.

Strangely, AAANHPI asserts (at 8) "entirely uniform resolutions across all cases is not a pre-ordained result" as a reason weighing *against* consolidation. These are equivalent constitutional and federal statutory challenges to the same State statutes before the same Court: there *should* be a uniform resolution. It would be bizarre, for example, if AAANHPI were to prevail on its NVRA challenge to HB 2492 and the United States failed on its substantively identical challenge to it. It further is inequitable to permit all Plaintiffs collectively multiple bites at the apple, and to expose the State to duplicative proceedings and the risk of inconsistent judgments.

AAANHPI (at 7) touts this Court's order resolving its motion for a preliminary injunction. But this Court's September 8 order resolving AAANHPI's motion for a preliminary injunction provides no basis to deny consolidation. *See* Doc. 54. As an initial matter, it is fully resolved so any relevance that ever attached to it is now moot.

But it was hardly relevant to consolidation even when pending. That motion was resolved because the Attorney General, Secretary of State, all county recorders and AAANHPI ultimately agreed that the laws at issue, by their enacted terms, were not intended to be effective/operative before the November 2022 election. There was thus no need for any injunction since there was no law actually then in-force to enjoin. That order—not actually styled an injunction, *see* Doc. 54—in fact enjoins nothing because the parties agreed there is no legal operation of HB 2243 to enjoin.

AAANHPI, however, was unwilling to accept any memorialization of that agreement except by court order, to which Defendants reluctantly agreed to avoid needlessly imposing a fire drill upon this Court when the parties were in fact in agreement about the core issues. But AAANHPI now seeks to weaponize that agreement (at 7) to oppose consolidation. It provides no basis for doing so. It is a mere codification of all respective parties' agreement that the law is not intended to be in effect at the relevant times, and hence will not. And AAANHPI's attempted exploitation of *agreement* between

the parties—twisting a reasonable *agreement* into an unreasonable basis to oppose consolidation—further underscores the imprudence and onerousness of AAANHPI's approach to litigation here.

* * *

There is a reason that *all* other Plaintiffs have either sought consolidation here or consented to it. Consolidation is eminently appropriate and entirely reasonable. It eliminates the risk of inconsistent judgments and substantially reduces the burdens upon the parties and this Court.

AAANHPI presumably opposes consolidation precisely because it intends to continue to litigate this case unreasonably—as the contrast between its actions and those of its five co-Plaintiff groups consistently demonstrates. Consolidation would necessarily frustrate that desire. But that is a feature of consolidation and not a bug, and makes consolidation all the more warranted here.

CONCLUSION

The State's motion to consolidate this action should be granted.

RESPECTFULLY SUBMITTED this 3rd day of October, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2022, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

s/ Drew C. Ensign
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