

1 Ernest Herrera (Cal Bar No. 335032)*
2 Luis L. Lozada (Cal Bar No. 344357)*
3 MEXICAN AMERICAN LEGAL DEFENSE
4 AND EDUCATIONAL FUND
5 634 South Spring Street, 11th Floor
6 Los Angeles, CA 90014
7 Telephone: (213) 629-2512
8 Facsimile: (213) 629-0266
9 Email: eherrera@maldef.org
10 llozada@maldef.org

11 Daniel R. Ortega Jr.
12 ORTEGA LAW FIRM
13 361 East Coronado Road, Suite 101
14 Phoenix, AZ 85004-1525
15 Telephone: (602) 386-4455
16 Email: danny@ortegalaw.com

17 *pro hac vice

18 *Attorneys for Plaintiffs*

19 UNITED STATES DISTRICT COURT
20 DISTRICT OF ARIZONA

21 Promise Arizona; and Southwest Voter
22 Registration Education Project,

23 Plaintiffs,

24 vs.

25 Katie Hobbs, in her official capacity as
26 Arizona Secretary of State, et al.,

27 Defendants.

28 Case No.: 2:22-cv-01602-SRB

**Plaintiffs' Opposition to State's
Motion to Consolidate; Memorandum
of Points and Authorities**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Promise Arizona and Southwest Voter Registration Education Project (hereinafter, “Plaintiffs”) submit this Memorandum in opposition to the “State’s Motion to Consolidate” (the “Motion”), Dkt. No. 12, filed by Arizona Attorney General Mark Brnovich (“Defendant”). In the Motion, without providing sufficient support or clarification, Defendant states that the above-captioned action should be consolidated in order to promote judicial efficiency. Plaintiffs contend that consolidation is inappropriate at this junction of litigation because, compared to the cases already consolidated, this action is different in terms of named defendants, allegations, causes of action, and unitary challenge to Arizona House Bill 2243 (“H.B. 2243”). Defendant fails to provide evidence that consolidation would promote judicial efficiency; instead, there is a risk of prejudice to Plaintiffs that is greater than any convenience sought through consolidation. Plaintiffs, thus, respectfully request that the Court deny the Motion because this action is distinct from the consolidated cases and there is a significant risk of prejudice from consolidation. Plaintiffs filed this responsive memorandum in accordance with Local Rule Civil 42.1.

II. BACKGROUND

On March 31, 2022, Mi Familia Vota filed a complaint against Arizona Secretary of State Katie Hobbs, Arizona Attorney General Mark Brnovich, and Arizona county recorders, initiating *Mi Familia Vota v. Hobbs*, No. 2:22-cv-00509-SRB (the “Lead Case”), to challenge Arizona House Bill 2492 (“H.B. 2492”) concerning voter registration. Lead Case, Dkt. No. 1. The Court subsequently entered orders consolidating the following cases into the Lead Case: (1) *Living United for Change in Arizona v. Hobbs*, No. 2:22-cv-00519-SRB; (2) *United States of America v. State of Arizona*, No. 2:22-cv-01124-SRB; (3) *Poder Latinx v. Hobbs*, No. 2:22-cv-01003-SRB; and (4) *Democratic National Committee v. Hobbs*, No. 2:22-cv-01369-SRB (collectively, the “Consolidated Cases”). See Lead Case, Dkt. Nos. 39, 69, 79, 91. The Consolidated Cases raised various causes of action

1 challenging H.B. 2492, with only two cases referencing Arizona Revised Statutes
2 (“A.R.S.”) 16-165, Subsection (H) as amended by H.B. 2243 concerning causes of
3 cancellation. Lead Case, Dkt Nos. 38, 65, 67, 106. The consolidation orders do not specify
4 whether the Consolidated Cases are consolidated in all respects, including discovery and
5 trial, or for the purpose of reducing the administrative burden placed on the Court to
6 adjudicate pending motions.

7 On September 20, 2022, Plaintiffs filed their complaint (the “Complaint”), initiating
8 the above-captioned action, against numerous parties, including Defendant, to challenge
9 the implementation and enforcement of H.B. 2243. Dkt. No. 1. In the Complaint, Plaintiffs
10 argue that the provisions of H.B. 2243 violates the First, Fourteenth, Fifteenth
11 Amendments to the United States Constitution, and Section 8 of the National Voter
12 Registration Act of 1993 (“NVRA”) because it targets native-born Latino U.S. citizens and
13 naturalized Latino U.S. citizens based on race, national origin, and alienage. *See id.* Unlike
14 the Consolidated Cases, Plaintiffs’ Complaint challenges only H.B. 2243, not H.B. 2492,
15 and provides a detailed analysis of the other provisions of A.R.S. Sec. 16-165 as amended
16 by H.B. 2243, in addition to Subsection (H), as well as the legislative history of H.B. 2243.

17 On September 26, 2022, Defendant filed the Motion. Dkt. No. 12. In the Motion,
18 Defendant argues that, because Plaintiffs’ Complaint raises causes of action under the
19 Fourteenth and Fifteenth Amendments, and the NVRA similar to the Consolidated Cases,
20 Plaintiffs’ case should be consolidated into the Lead Case. Defendant further argue that,
21 because the parties in the Consolidated Cases sought consolidation and the Court has
22 entered orders consolidating four cases into the Lead Case, Plaintiffs’ case should also be
23 consolidated based on common questions of law and fact, and judicial convenience.

24 III. LEGAL STANDARDS

25 Rule 42 of the Federal Rules of Civil Procedure provides, in relevant part, that “[i]f
26 actions before the court involve a common question of law or fact, the court may: (1) join
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1 for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or
2 (3) issue any other orders to avoid unnecessary cost or delay.” Fed. R. Civ. P. 42(a).

3 In reviewing a motion to consolidate, the court “weighs the saving of time and effort
4 consolidation would produce against any inconvenience, delay, or expense that it would
5 cause.” *Owen v. Labor Ready Inc.*, 146 Fed. Appx. 139, 141 (9th Cir. 2005) (citation
6 omitted). “[T]he fact that a common question is present does not guarantee consolidation.”
7 *Sapiro v. Sunstone Hotel Investors, LLC*, 2006 WL 898155, at *1 (D. Ariz. Apr. 4, 2006)
8 (citation omitted).

9 “In determining whether consolidation is appropriate, a court must balance the
10 interest of judicial convenience against the potential for delay, confusion and prejudice that
11 may result from such consolidation.” *Sapiro*, 2006 WL, at *1 (internal quotation marks
12 and citation omitted). Moreover, “even where cases involve some common issues of law
13 or fact, consolidation may be inappropriate where individual issues predominate.” *Lewis*
14 *v. City of Fresno*, 2009 WL 1948918, at *1 (E.D. Cal. July 6, 2009). A court considering
15 a motion for consolidation must consider:

16 [W]hether the specific risks of prejudice and possible confusion [are]
17 overborne by the risk of inconsistent adjudications of common factual and
18 legal issues, the burden on parties, witnesses, and available judicial resources
19 posed by multiple lawsuits, the length of time required to conclude multiple
20 suits as against a single one, and the relative expense to all concerned of the
21 single-trial, multiple-trial alternatives.

22 *Malcolm v. National Gypsum Co.*, 995 F.2d 346, 350 (2nd Cir. 1993).

23 “The party seeking consolidation bears the burden of demonstrating that
24 convenience and judicial economy would result from consolidation.” *Excel Fortress*
25 *Limited v. Wilhelm*, 2018 WL 6067255, at *6 (D. Ariz. Nov. 20, 2018).

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IV. DISCUSSION

a. There is No Common Law and Fact Shared with the Consolidated Cases

This action should not be consolidated with the Lead Case because: (1) the matters do not involve a common question of law and fact; and (2) the discretionary factors weigh against consolidation. Defendant argues that, because Plaintiffs' complaint contains causes of action under the Fourteenth and Fifteenth Amendments, and the NVRA in challenging H.B. 2243, it necessarily implies that this action shares a "common question of law and fact" with the Consolidated Cases. Motion, Dkt. No. 12 at 1.

Defendant is mistaken that Plaintiffs' action is the same as the Consolidated Cases. Although, Plaintiffs raised causes of action under the Fourteenth and Fifteenth Amendment, and the NVRA, similar to the Consolidated Cases, Plaintiffs' claims are distinct to warrant separate adjudication of their claims apart from the Consolidated Cases. *See Toyo Tire & Rubber Co.*, 2016 WL 11525318, at *1 (C.D. Cal. Oct. 26, 2016) ("[T]he mere existence of common issues, a prerequisite to consolidation, does not require consolidation."). Specifically, Plaintiffs' action challenges A.R.S. Secs. 16-165(A)(9), (A)(10), (F), (G), (H), (I), (J) as amended by H.B. 2243. Unlike the Consolidated Cases, Plaintiffs' action does not seek to challenge H.B. 2492. Moreover, as discussed above, only two of the five consolidated cases reference H.B. 2243, and to the extent that those two cases challenge H.B. 2243, they seek to challenge A.R.S. Sec. 16-165(H) as amended by H.B. 2243 regarding the Systematic Alien Verification for Entitlements (SAVE) program maintained by United States Citizenship and Immigration Services. Those two cases do not seek to challenge the remaining provisions of H.B. 2243 involving, among other things, the Arizona driver license database, or the Social Security Administration database. *See Sapiro*, 2006 WL 898155, at *1 ("[T]he fact that a common question is present does not guarantee consolidation."). Additionally, Plaintiffs' action brings claims that are unique compared to the Consolidated Cases by challenging H.B. 2243 based on

1 race, national origin, and alienage. Plaintiffs’ action, then, does not share a common
2 question of law and fact that would support consolidation.

3 ***b. Consolidation Creates a Significant Risk of Prejudice Against Plaintiffs***

4 Consolidation is inappropriate because it will result in unfair prejudice to Plaintiffs.
5 Defendant argues that “[c]onsolidation will promote efficiency and conserve the resources
6 of this Court and the parties, as well as protecting the parties from the potential prejudice
7 that could result from separate resolutions.” Motion, Dkt. No. 12 at 1. Defendant further
8 proffers that this action should be consolidated because four cases have already been
9 consolidated into the Lead Case, with some parties affirmatively seeking consolidation, in
10 order to avoid any anomalies between this action and the Consolidated Cases.

11 In this case, individual issues predominate that would go against consolidation. *See*
12 *Lewis*, 2009 WL 1948918, at *1 (“[E]ven where cases involve some common issues of law
13 or fact, consolidation may be inappropriate where individual issues predominate.”). Unlike
14 the parties in the Consolidated Cases, Promise Arizona (“PAZ”) is a membership
15 organization, meaning that PAZ’s interest in this litigation differs from the other parties
16 because PAZ has a duty to promote and represent the interest of its members. In other
17 words, any factual finding involving PAZ would be distinct from findings of fact in the
18 Consolidated Cases. *See Silaev v. Swiss-America Trading Corp.*, 2015 WL 12938977, at
19 *2 (D. Ariz. July 22, 2015) (Because “[t]he factual determinations to be made in each case
20 will be mostly unrelated,” consolidation will likely not promote judicial economy.). As
21 such, courts “balance the interest of judicial convenience against the potential for delay,
22 confusion and prejudice that may result from such consolidation.” *Dishon v. Gorham*,
23 2018 WL 4257936, at *5 (D. Ariz. Sept. 6, 2018) (internal quotation marks omitted). The
24 fact that four separate cases have been consolidated into the Lead Case is insufficient to
25 overcome the confusion and prejudice that PAZ would face if this action is consolidated.
26 Plaintiffs’ action, then, should not be consolidated because there is little or no judicial
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1 convenience gained from consolidation and the risk of inconsistent adjudications of
2 common factual and legal issues are minimal.

3 **V. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request that the Court deny
5 Defendant's motion for consolidation.

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7 Dated: October 7, 2022

8
9 Respectfully submitted,

MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND

/s/Luis L. Lozada

Ernest Herrera

Luis L. Lozada

MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND

Daniel R. Ortega Jr.
ORTEGA LAW FIRM

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2022, I electronically submitted the foregoing **PLAINTIFFS’ OPPOSITION TO STATE’S MOTION TO CONSOLIDATE; MEMORANDUM OF POINTS AND AUTHORITIES** to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

David Andrew Gaona
Kristen Michelle Yost
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1900
Phoenix, AZ 85004
agaona@cblawyers.com
kyost@cblawyers.com

Sambo Dul
STATES UNITED DEMOCRACY CENTER – TEMPE, AZ
8205 South Priest Drive, Suite 10312
Tempe, AZ 85284
bo@statesuniteddemocracy.org

Counsel for Defendant Arizona Secretary of State Katie Hobbs

Drew Curtis Ensign
OFFICE OF THE ATTORNEY GENERAL – PHOENIX
2005 North Central Avenue
Phoenix, AZ 85004-1592
drew.ensign@azag.gov

Counsel for Defendant Arizona Attorney General Mark Brnovich

John S. Halikowski
Director of the Arizona Department of Transportation
206 South 17th Avenue, Mail Drop 100A
Phoenix, AZ 85007

Apache County Recorder Larry Noble
Apache County Recorder’s Office
P.O. Box 425
St. Johns, AZ 85936

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25
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27
28

Celeste M. Robertson
crobertson@apachelaw.net

Counsel for Defendant Apache County Recorder Larry Noble

Cochise County Recorder David W. Stevens
Cochise County Recorder's Office
Building B
Bisbee, AZ 85603

Christine Joyce Roberts
croberts@cochise.az.gov

Counsel for Defendant Cochise County Recorder David W. Stevens

Coconino County Recorder Patty Hansen
Coconino County Recorder's Office
110 East Cherry Avenue
Flagstaff, AZ 86001

Rose Marie Winkeler
FLAGSTAFF LAW GROUP
702 North Beaver Street
Flagstaff, AZ 86001
rose@flaglawgroup.com

Counsel for Defendant Coconino County Recorder Patty Hansen

Gila County Recorder Sadie Jo Bingham
Gila County Recorder's Office
1400 East Ash Street
Globe, AZ 85501

Graham County Recorder Wendy John
Graham County Recorder's Office
921 Thatcher Boulevard
2nd Floor
Safford, AZ 85546

Jean Ann Roof
jroof@graham.az.gov

1 *Counsel for Graham County Recorder Wendy John*

2 Greenlee County Recorder Sharie Milheiro
3 Greenlee County Recorder's Office
4 253 Fifth Street
5 P.O. Box 1625
6 Clifton, AZ 85533

7 La Paz County Recorder Richard Garcia
8 La Paz County Recorder's Office
9 1112 Joshua Avenue, # 201
10 Parker, AZ 85344

11 Ryan Norton Dooley
12 LA PAZ COUNTY ATTORNEY'S OFFICE
13 1320 Kofa Avenue
14 Parker, AZ 85344
15 rdooley@lapazcountyaz.org

16 *Counsel for La Paz County Recorder Richard Garcia*

17 Maricopa County Recorder Stephen Richer
18 Maricopa County Recorder's Office
19 111 South Third Avenue
20 Phoenix, AZ 85003

21 Anna Griffin Critz
22 Jack L O'Connor, III
23 Joseph Eugene LaRue
24 MARICOPA COUNTY ATTORNEY'S OFFICE
25 225 West Madison Street
26 Phoenix, AZ 85003
27 critza@mcao.maricopa.gov
28 oconnorj@mcao.maricopa.gov
laruej@mcao.maricopa.gov

Counsel for Defendant Maricopa County Recorder Stephen Richer

Mohave County Recorder Kristi Blair
Mohave County Recorder's Office
P.O. Box 7000
Kingman, AZ 86402

1 Navajo County Recorder Michael Sample
2 Navajo County Recorder's Office
3 P.O. Box 668
4 Holbrook, AZ 86025

5 Jason S. Moore
6 Jason.moore@navajocountyaz.gov

7 *Counsel for Defendant Navajo County Recorder Michael Sample*

8 Pima County Recorder Gabriella Cazares-Kelly
9 Pima County Recorder's Office
10 P.O. Box 3145
11 Tucson, AZ 85702-3145

12 Daniel S. Jurkowitz
13 PIMA COUNTY ATTORNEY'S OFFICE
14 32 North Avenue, Suite 2100
15 Tucson, AZ 85701
16 Daniel.jurkowitz@pcao.pima.gov

17 *Counsel for Defendant Pima County Recorder Gabriella Cazares-Kelly*

18 Pinal County Recorder Dana Lewis
19 Pinal County Recorder's Office
20 P.O. Box 848
21 Florence, AZ 85132

22 Craig Charles Cameron
23 PINAL COUNTY ATTORNEY'S OFFICE
24 P.O. Box 887
25 Florence, AZ 85132
26 craig.cameron@pinal.gov

27 *Counsel for Pinal County Recorder Dana Lewis*

28 Santa Cruz County Recorder Suzanne Sainz
Santa Cruz County Recorder's Office
2150 North Cosgrove Drive
Suite 101
Nogales, AZ 85621

1 James J. D'Antonio
2 Kimberly Janiece Hunley
3 Laura Louise Roubicek
4 SANTA CRUZ COUNTY ATTORNEY
5 2150 North Congress Drive, Suite 201
6 Nogales, AZ 85621-1090
7 jdantonio@santacruzcountyaz.gov
8 khunley@santacruzcountyaz.gov
9 lroubicek@santacruzcountyaz.gov

10 *Counsel for Defendant Santa Cruz County Recorder Suzaane Sainz*

11 Yavapai County Recorder Michelle M. Burchill
12 Yavapai County Recorder's Office
13 1015 Fair Street
14 Prescott, AZ 86305

15 Yuma County Recorder Richard Colwell
16 Yuma County Recorder's Office
17 102 South Main Street
18 Yuma, AZ 85364

19 William J. Kerekes
20 OFFICE OF THE YUMA COUNTY ATTORNEY
21 250 West 2nd Street, Suite G
22 Yuma, AZ 85364
23 bill.kerekes@yumacountyaz.gov

24 *Counsel for Defendant Yuma County Recorder Richard Colwell*

25 Dated: October 7, 2022

26 /s/ Luis L. Lozada
27 Luis L. Lozada