

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
3 Joseph A. Kanefield (No. 15838)
4 *Chief Deputy & Chief of Staff*
5 Drew C. Ensign (No. 25463)
6 *Deputy Solicitor General*
7 Robert J. Makar (No. 33579)
8 *Assistant Attorney General*
9 2005 N. Central Avenue
10 Phoenix, Arizona 85004
11 Telephone: (602) 542-5200
12 Drew.Ensign@azag.gov

13 *Attorneys for Defendant*
14 *Mark Brnovich, Arizona Attorney General*

15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF ARIZONA**

17 Promise Arizona, et al.

18 Plaintiffs,

19 vs.

20 Katie Hobbs, in her official capacity as
21 Arizona Secretary of State, et al.,

22 Defendants.

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

**STATE'S MOTION FOR LEAVE
REGARDING MOTION TO DISMISS**

MOTION FOR LEAVE

1
2 Defendant Mark Brnovich (the “State”) respectfully moves this Court leave (1) to
3 treat and file the lodged Consolidated Motion to Dismiss that was filed on September 16
4 in *Mi Familia Vota v. Hobbs*, 2:22-cv-00509-SRB (D. Ariz.) (the “Consolidated Matter”) as a
5 Motion to Dismiss in the instant matter. Pursuant to LRCiv 12.1(c), counsel for
6 Defendant contacted counsel for Plaintiffs on October 25 via email with the issues asserted
7 in the proposed Motion to Dismiss, and Plaintiffs declined to amend their Complaint.

8 Given that this suit, like many challenges in the Consolidated Matter, challenge HB
9 2243 under equivalent constitutional and statutory grounds, the interests of judicial
10 economy strongly favor briefing addressing all issues in a consolidated manner rather than
11 in piecemeal approach. A consolidated motion to dismiss is warranted for all of the reasons
12 explained in the State’s motion to consolidate. *See* Doc. 59.

13 To the arguments that the State has previously advanced, the State also needs to add
14 one small additional one here. As explained in the State’s reply in support of its motion to
15 consolidate *Promise Arizona* with the Consolidated Matter, virtually all of the claims
16 advanced by *Promise Arizona* duplicate those raised by existing plaintiffs. *See* Doc. 149 at
17 1-2. There is one exception: *Promise Arizona*’s contention that HB 2243 discriminates on
18 the basis of “alienage”—*i.e.*, against those that are not citizens of the United States. *Id.* at
19 1 n.1

20 That novel and unique claim is not viable. Unchallenged federal law expressly bars
21 noncitizens from voting in elections with candidates for Federal office on the ballot. 18
22 U.S.C. § 611. And States retain the power to exclude aliens from State elections. “[I]mplicit
23 in many of this Court’s voting rights decisions is the notion that citizenship is a permissible
24 criterion for limiting such rights.” *Sugarman v. Dougall*, 413 U.S. 634, 649 (1973). “[A]
25 State’s historical power to exclude aliens from participation in its democratic political
26 institutions [is] part of the sovereign’s obligation to preserve the basic conception of a
27 political community.” *Foley v. Connelie*, 435 U.S. 291, 295-96 (1978) (citations omitted).
28 “Thus, it is clear that a State may deny aliens the right to vote or to run for elective office,
for these lie at the heart of our political institutions.” *Id.* at 296.

1 Because the State may permissibly deny the right to vote on the basis of
2 (non)citizenship, Promise Arizona's challenge to HB 2243 that it discriminates in ability
3 to vote in Arizona elections on the basis of alienage (*i.e.*, noncitizenship) necessarily fails.

4
5 RESPECTFULLY SUBMITTED this 26th day of October, 2022.

6 **MARK BRNOVICH**
7 **ATTORNEY GENERAL**

8 By: s/ Drew C. Ensign

9 Joseph A. Kanefield (No. 15838)

10 *Chief Deputy & Chief of Staff*

11 Drew C. Ensign (No. 25463)

12 *Deputy Solicitor General*

13 Robert J. Makar (No. 33579)

14 *Assistant Attorney General*

15 2005 N. Central Avenue

16 Phoenix, Arizona 85004

17 Telephone: (602) 542-5200

18 Drew.Ensign@azag.gov

19 *Attorneys for Defendant Mark Brnovich,*

20 *Arizona Attorney General*

RETRIEVED FROM DEMOCRACY.ORG

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LOCAL RULE 12.1 CERTIFICATION

Pursuant to Local Rule 12.1, I certify that before filing the instant motion I contacted opposing counsel on October 25, and informed them of the State’s intention to file seek dismissal of all Complaints. Plaintiff Promise Arizona indicated that it did not intend to amend its complaint.

s/ Drew C. Ensign
Drew C. Ensign
*Counsel for Defendants the State of Arizona
and Mark Brnovich, Arizona Attorney General*

RETRIEVED FROM DEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 26th 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
Attorneys for Defendant Mark Brnovich,
Arizona Attorney General

RETRIEVED FROM DEMOCRACYDOCKET.COM