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18 UNITED STATES DISTRICT COURT
 19 DISTRICT OF ARIZONA

20 Promise Arizona; and Southwest Veter
 21 Registration Education Project,

22 Plaintiffs,

23 vs.

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

26 Defendants.

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

28 **Plaintiffs' Opposition to State's
 Motion for Leave Regarding Motion to
 Dismiss; and Motion to Strike Lodged
 Proposed Consolidated Motion to
 Dismiss**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Promise Arizona and Southwest Voter Registration Education Project
4 (hereinafter, “Plaintiffs”) submit this Memorandum in opposition to the “State’s Motion
5 for Leave Regarding Motion to Dismiss” (the “Motion for Leave”) and move that the
6 Court strike the improper “Lodged Proposed Consolidated Motion to Dismiss” (the
7 “Lodged Motion”) filed on October 26, 2022 by Arizona Attorney General Mark
8 Brnovich (“Defendant”). Dkt. Nos. 47, 48. In the Motion for Leave, without citing any
9 legal authority, Defendant requests leave of court to “treat and file” the consolidated
10 motion to dismiss filed in *Mi Familia Vota v. Hobbs*, 2:22-cv-00509-SRB, as a motion to
11 dismiss in the above-captioned action in the name of judicial economy. Subsequently,
12 without permission from the Court, Defendant filed the consolidated motion to dismiss in
13 the above-captioned action as the Lodged Motion.

14 The consolidated motion to dismiss filed in *Mi Familia Vota* is inadequate to
15 address Plaintiffs’ causes of action in challenging Arizona House Bill 2243 (“H.B.
16 2243”). Specifically, that consolidated motion to dismiss addresses the causes of action
17 brought by the consolidated plaintiffs in *Mi Familia Vota* challenging Arizona House Bill
18 2492 (“H.B. 2492”), and to some extent H.B. 2243, and fails to address Plaintiffs by
19 name. Furthermore, the consolidated motion is interwoven with immaterial and unrelated
20 information concerning Plaintiffs’ sole challenge against H.B. 2243. Defendant fails to
21 provide evidence that the consolidated motion to dismiss filed in *Mi Familia Vota* would
22 promote judicial economy; rather, there is a risk of prejudice to Plaintiffs from confusion
23 in responding to a consolidated motion to dismiss addressed to different plaintiffs and
24 different causes of action. Similarly, Plaintiffs contend that the Lodged Motion
25 represents an improper filing that should be stricken.

1 Plaintiffs thus respectfully request that the Court deny the Motion for Leave
2 because there is a significant risk of prejudice to Plaintiffs, and the Court should not have
3 the burden of determining which issues from the consolidated motion to dismiss filed in
4 another case are germane to this action. Plaintiffs further respectfully request that the
5 Court strike the Lodged Motion because it is improper. Plaintiffs filed this responsive
6 memorandum in accordance with Local Rule Civil 7.2.

7 II. BACKGROUND

8 On March 31, 2022, Mi Familia Vota filed a complaint against Arizona Secretary
9 of State Katie Hobbs, Arizona Attorney General Mark Brnovich, and Arizona county
10 recorders, initiating *Mi Familia Vota v. Hobbs*, No. 2:22-cv-00509-SRB (the “Lead
11 Case”), to challenge H.B. 2492 concerning voter registration. Lead Case, Dkt. No. 1.
12 The Court subsequently entered orders consolidating the following cases into the Lead
13 Case: (1) *Living United for Change in Arizona v. Hobbs*, No. 2:22-cv-00519-SRB; (2)
14 *United States of America v. State of Arizona*, No. 2:22-cv-01124-SRB; (3) *Poder Latinx*
15 *v. Hobbs*, No. 2:22-cv-01003-SRB; and (4) *Democratic National Committee v. Hobbs*,
16 No. 2:22-cv-01369-SRB (collectively, the “Consolidated Cases”). See Lead Case, Dkt.
17 Nos. 39, 69, 79, 91. On September 16, 2022, Attorney General Brnovich—Defendant in
18 this case and the consolidated cases—filed the consolidated motion to dismiss seeking to
19 dismiss the Consolidated Cases based on failure to state a claim. Lead Case, Dkt. No.
20 127.

21 On September 20, 2022, Plaintiffs filed their complaint, initiating the above-
22 captioned action, against numerous parties, including Defendant Attorney General
23 Brnovich, to challenge the implementation and enforcement of H.B. 2243. Dkt. No. 1.

24 On September 26, 2022, Defendant filed a motion to consolidate this action with
25 the Consolidated Cases. Dkt. No. 12. On October 25, 2022, Defendant emailed
26 Plaintiffs’ counsel informing them of their intent to file a motion to dismiss and inquiring
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1 whether counsel would file an amended complaint. On October 26, 2022, Plaintiffs’
2 counsel informed Defendant that they would not file an amended complaint. *See* Ex. 1,
3 Email between Defendant and Counsel, dated October 26, 2022. On that same day,
4 Defendant filed the Motion for Leave and the Lodged Motion. Dkt. Nos. 47, 48.

5 III. LEGAL STANDARDS

6 “[A] district court possesses inherent powers that are ‘governed not by rule or
7 statute but by the control necessarily vested in courts to manage their own affairs so as to
8 achieve the orderly and expeditious disposition of cases.’” *Dietz v. Bouldin*, 579 U.S. 40,
9 45 (2016) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962)). “It is well
10 established that district courts have inherent power to control their docket.” *Ready*
11 *Transp. v. AAR Mfg.*, 627 F.3d 402, 404 (9th Cir. 2010) (internal quotation marks and
12 citation omitted); *see also Roadway Express v. Piper*, 447 U.S. 752, 764 (1980) (“The
13 inherent powers of federal courts are those which are necessary to the exercise of all
14 others.”) (internal quotation marks and citation omitted).

15 IV. ARGUMENT

16 *a. The Motion for Leave Places an Undue Burden on the Court and Risk of* 17 *Prejudice to Plaintiffs.*

18 Plaintiffs respectfully request that the Court deny the Motion for Leave because
19 Defendant has not cited any legal authority to file the motion. Defendant argues that,
20 because this action, “like many challenges in the Consolidated Matter, challenge[s] HB
21 2243 under equivalent constitutional and statutory grounds,” the Court should allow the
22 consolidated motion to dismiss to be applicable to the present action based on “the
23 interests of judicial economy[.]” Motion for Leave, Dkt. No. 47 at 1. However, there are
24 serious problems with allowing Defendant to file the consolidated motion to dismiss from
25 the Consolidated Cases in this action.

1 First, the Court has not adjudicated the pending motion to consolidate filed by
2 Defendant regarding whether this action should be consolidated with the Consolidated
3 Cases. As such, the consolidated motion to dismiss does not address Plaintiffs by name,
4 nor does the consolidated motion to dismiss address Plaintiffs' specific causes of action
5 challenging only H.B. 2243. Instead, the consolidated motion to dismiss is interwoven
6 with immaterial and unrelated information concerning H.B. 2492, such as materiality and
7 Section 2 of the Voting Rights Act, that has no possible relation or bearing on the issues
8 in Plaintiffs' case. Defendant cites no legal authority in support for the proposition that a
9 defendant may "treat and file" a motion to dismiss filed in another case as proper and
10 applicable to challenge a plaintiff's complaint.

11 Moreover, in the Motion for Leave, Defendant appears to suggest that, because
12 Plaintiffs' counsel informed Defendant that they will not file an amended complaint,
13 Plaintiffs implicitly granted permission for Defendant to file the consolidated motion to
14 dismiss in *Mi Familia Vota* rather than Defendant submitting a new motion germane to
15 Plaintiffs' allegations and causes of action. This could not be further from the truth. To
16 the extent that Plaintiffs informed Defendant that it did not seek to file amended
17 complaint, it was not an invitation for Defendant to file exactly the same motion to
18 dismiss from another case, and addressed to different plaintiffs, in response to Plaintiffs'
19 complaint. Therefore, the Motion for Leave should be denied because there is no legal
20 authority allowing a motion to dismiss to be filed from another case, especially when
21 separate cases have not been formally consolidated.

22 Second, the Motion for Leave places an undue burden on the Court and creates a
23 significant risk of prejudice to Plaintiffs. As discussed above, the consolidated motion to
24 dismiss does not address Plaintiffs by name and is interwoven with immaterial and
25 unrelated information concerning H.B. 2492 that has no bearing to Plaintiffs' allegations
26 and causes of action. As a result, the Court should not accept a motion to dismiss filed in
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1 another case and the Court should not have the burden to determine which issues are
2 germane to this action. Furthermore, without clarification concerning the applicable
3 grounds for dismissal put forth by Defendant, Plaintiffs will have difficulty responding to
4 the consolidated motion to dismiss and face prejudice as a result. Plaintiffs are not
5 arguing that Defendant cannot file a motion to dismiss; instead, Plaintiffs seek clarity
6 regarding which grounds, if any, Defendant believes warrant dismissal of Plaintiffs' case.
7 To prevent the Court from having the burden of determining which issues are germane to
8 this case and to avoid unfair prejudice to Plaintiffs, the Motion for Leave should be
9 denied.

10 ***b. The Lodged Motion Represents an Improper Filing.***

11 Plaintiffs respectfully request that the Court strike the Lodged Motion because it is
12 an improper filing. Without the Court's permission, Defendant filed the consolidated
13 motion to dismiss styled and noted in the electronic filing system as the Lodged Motion.
14 Dkt. No. 48. Therefore, under the Court's inherent power, the Lodged Motion should be
15 stricken based on failure to follow the Court's orders and procedures.

16 District of Arizona Local Rule Civil 7.2(m) provides, in relevant part, that a
17 motion to strike may be filed if "authorized by statute or rule [...] or if it seeks to strike
18 any part of a filing or submission on the ground that it is prohibited (or not authorized) by
19 a statute, rule, or court order." LRCiv 7.2(m). "Broad deference is given to a district
20 court's interpretation of its local rules." *Bias v. Moynihan*, 508 F.3d 1212, 1223 (9th Cir.
21 2007).

22 "Although Federal Rule of Civil Procedure 12(f) provides authority only to strike
23 pleadings, a district court has the inherent power to strike a party's submissions other
24 than pleadings." *See Gomez v. Am. Med. Sys., Inc.*, 2020 WL 7310586, at *2 (D. Ariz.
25 Dec. 11, 2020); *see also Delvecchia v. Frontier Airlines, Inc.*, 2021 WL 1214778, at *2
26 (D. Nev. Mar. 30, 2021) ("[T]he Court has inherent authority to strike any improper filing
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1 and control its docket.”). For example, “based on its inherent powers, a court may strike
2 material from the docket, including portions of a document, reflecting procedural
3 impropriety or lack of compliance with court rules or orders.” *Jones v. Metro. Life Ins.*
4 *Co.*, 2010 WL 4055928, at *6 (N.D. Cal. Oct. 15, 2010) (collecting cases).

5 Here, Defendant’s Lodged Motion was filed without the Court granting the related
6 Motion for Leave. Because it was filed without permission and seeks to contravene the
7 Court’s rules and procedures, the Lodged Motion is improper. Therefore, the Court
8 should strike the unauthorized submission under its inherent power. *See Centillum*
9 *Communs., Inc. v. Atl. Mut. Ins. Co.*, 2008 WL 728639 (N.D. Cal. Mar. 17, 2008)
10 (striking a procedurally improper motion under the court’s inherent power).

11 V. CONCLUSION

12 For the foregoing reasons, Plaintiffs respectfully request that the Court deny
13 Defendant’s motion for leave of court and strike the lodged motion.

14 If the requested relief is not granted, in the alternative, Plaintiffs respectfully
15 request that the Court require clarification from Defendant concerning what grounds for
16 dismissal are germane to Plaintiffs’ response to the Lodged Motion (i.e., consolidated
17 motion to dismiss) [Dkt. No. 48] to avoid any undue burden placed on the Court and risk
18 of prejudice to Plaintiffs and request that the Court issue a schedule for briefing on any
19 motion to dismiss.

1 Dated: November 9, 2022

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3 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2022, I electronically submitted the foregoing **PLAINTIFFS' OPPOSITION TO STATE'S MOTION FOR LEAVE REGARDING MOTION TO DISMISS; AND MOTION TO STRIKE LODGED PROPOSED CONSOLIDATION MOTION TO DISMISS** 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:

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