

No. 22-16689

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ARIZONA ALLIANCE FOR RETIRED AMERICANS; *et al.*,

Plaintiffs-Appellants,

v.

CLEAN ELECTIONS USA, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Arizona (Phoenix Division)
Case No. 2:22-cv-01823-PHX-MTL, Before the Hon. Michael T. Liburdi

JOINT NOTICE

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The District Court has ordered the parties to immediately provide this joint notice to this Court.

The same day as Plaintiffs-Appellants' Motion was filed in this court, a second lawsuit was filed in the District of Arizona by another plaintiff, the League of Women Voters of Arizona, which also filed a TRO application. (Case No. 3:22-cv-08196-MTL.) The legal theories in these two cases are similar although they seek somewhat distinct relief. The cases were consolidated after the hearing on the motion at issue in this appeal.

Subsequently, the League of Women Voters and Melody Jennings, and Clean Elections USA ("CEU") reached certain agreements, while other areas of disagreement remain. Regarding areas of agreement, pending client approval, though negotiations are ongoing the parties in the *League* case believe they will be

able to agree today to something like the entry of the stipulated order attached as Exhibit A.

The parties to the *League* case remain in disagreement over two major items.

Pursuant to the order of the District Court, the bench brief filed last night by Defendants and the proposed order attached thereto are attached here as Exhibit B. Plaintiffs-Appellants did not review or consent to that brief and do not agree with all of the statements in it.

I. The prior restraint.

Plaintiff in the *League* case seeks the entry of a TRO which requires Defendants to cease and desist from making statements Plaintiff claims is false about Arizona's ballot collection law. The parties to the *League* case will not be able to agree to this and this will be litigated at the district court hearing today.

II. The Ban on photography and public discussion of the individuals photographed.

Though plaintiff in the *League* case and Defendants believe they will be able to agree on drop box monitors staying 75 feet away from drop boxes, plaintiff in the *League* case also seeks to prohibit Defendants from photographing and videotaping individuals and vehicles while monitoring dropboxes from this distance and from posting such photographs online. The parties to the *League* case will not be able to agree to this.

* * *

Plaintiffs-Appellants in this appeal do not object to the above agreement in the *League* case. However, the outstanding items, including but not limited to the second identified above, are among Plaintiffs-Appellants' principal forms of requested relief. As a result, Plaintiffs-Appellants believe the above agreement in the *League* case is not sufficient to protect voters and would not moot this appeal or the need for emergency relief.

Respectfully submitted,

/s/Alexander Kolodin
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ATTORNEYS FOR APPELLEES

/s/ David R. Fox
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ATTORNEYS FOR PLAINTIFFS-APPELLANTS

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the attached document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 1, 2022.

s/ David R. Fox

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