**ELIAS
LAW
GROUP**

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January 20, 2023

VIA CM/ECF

Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

  Re: Notice of Supplemental Authority in *Arizona Alliance for Retired Americans v. Clean Elections USA, Inc.*, No. 22-16689

Dear Clerk Dwyer:

  Pursuant to Fed. R. App. P. 28(j), Appellants notify the Court that they have now voluntarily dismissed the underlying district court case from which this interlocutory appeal was taken. *See Ariz. Alliance for Retired Ams. v. Clean Elections USA, Inc.*, No. 2:22-cv-01823-MTL, ECF No. 75 (D. Ariz. Jan. 18, 2023).

  With one exception, Appellants' voluntary dismissal of the underlying district court case does not affect Appellants' pending Suggestion of Mootness and Motion to Vacate the District Court Judgment, ECF No. 20. As that motion explains, this appeal became moot on November 8, 2022, when the 2022 general election ended, so it was already moot long before Appellants dismissed their case and became moot for reasons unrelated to that dismissal. And the Court's authority to vacate judgments where appeals become moot before review can occur does not depend upon the existence of a continuing case or controversy. *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 20–22 (1994).

  The only impact that dismissal of the case below has on the pending motion involves Appellants' discussion of what this Court should do if it decides that the appeal from the preliminary injunction decision did *not* become moot after election day. In Appellants' reply, they argued that, in such a situation, the Court should deny the motion to vacate and hear the appeal on the merits. ECF No. 24-1 at 7. That course of action is no longer viable after Appellants' dismissal of their case below. But, as discussed at length in Appellants' motion and reply, this appeal became moot on November 8, so vacatur remains appropriate.

          Respectfully submitted,

          /s/ David R. Fox
          Counsel for Appellants