

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JAN 26 2023

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ARIZONA ALLIANCE FOR RETIRED  
AMERICANS; VOTO LATINO,

Plaintiffs-Appellants,

v.

CLEAN ELECTIONS USA; et al.,

Defendants-Appellees.

No. 22-16689

D.C. No. 2:22-cv-01823-MTL  
District of Arizona, Phoenix

ORDER

Before: WARDLAW, CLIFTON, and SANCHEZ, Circuit Judges.

This appeal is taken from the district court's order denying a motion by appellants for preliminary injunctive relief in connection with the November 8, 2022, election. Appellants have filed a suggestion of mootness (Docket Entry No. 20), which argues that the appeal is moot due to the passing of the election. Appellants request dismissal of this appeal as moot and vacatur of the order challenged in the appeal. Appellees agree that the appeal is moot but oppose the request for vacatur. We conclude that the appeal is moot and dismiss the appeal accordingly. *See Akina v. Hawaii*, 835 F.3d 1003, 1010 (9th Cir. 2016) ("An interlocutory appeal of the denial of a preliminary injunction is moot when a court can no longer grant any effective relief sought in the injunction request.").

This court's "established practice" when an appeal becomes moot through "happenstance" and "not the [appellant's] own actions" is to vacate the order challenged in the appeal. *See NASD Disp. Resol., Inc. v. Jud. Council*, 488 F.3d 1065, 1068-70 (9th Cir. 2007) (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950)). While appellants are not responsible for the passing of the election, we also note that appellants have more recently filed a notice of dismissal of their claims in the district court. *See ACF Indus. Inc. v. Cal. State Bd. of Equalization*, 42 F.3d 1286, 1292 (9th Cir. 1994) (dismissing appeal from denial of preliminary injunction as moot as to certain claims dismissed while appeal was pending). We nevertheless conclude that the equities support vacatur under these circumstances. *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994) (discussing principles pertaining to "equitable tradition of vacatur"). Accordingly, the district court's October 28, 2022, order challenged in this appeal is vacated.

All other pending motions are denied as moot.

**VACATED.**