No. 24-6301

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STRONG COMMUNITIES FOUNDATION OF ARIZONA, INC.; et al.,
Plaintiffs-Appellants,

v.

STEPHEN RICHER, in his official capacity as Maricopa County Recorder; et al.,
Defendants-Appellees,

On Appeal from the United States District Court for the District of Arizona

REPLY BRIEF OF PLAINTIFFS-APPELLANTS STRONG COMMUNITIES FOUNDATION OF ARIZONA, INC. AND YVONNE CAHILL

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In their Response Brief, the Maricopa County Appellees ("Maricopa County") do not contest the core arguments and evidence of Appellants Strong Communities Foundation of Arizona, Inc. (d/b/a "EZAZ.org") and Yvonne Cahill (collectively, the "Plaintiffs"). EZAZ.org's proffered evidence about the harms caused to its pre-existing core activities has gone entirely unrebutted. And that evidence shows that EZAZ.org continues to suffer harm, even after the election. This appeal, therefore, is not moot. Furthermore, Cahill and EZAZ.org have shown that the Defendants' unlawful list maintenance activities cause them injury that is actual and imminent. They, therefore, have standing.

Argument

I. This appeal is not moot.

This appeal is not moot. "The test for mootness of an appeal is whether the appellate court can give the appellant *any* effective relief in the event that it decides the matter on the merits in his favor. If it can grant such relief, the matter is not moot." *Serv. Emps. Int'l Union v. Nat'l Union of Healthcare Workers*, 598 F.3d 1061, 1068 (9th Cir. 2010) (quoting *Garcia v. Lawn*, 805 F.2d 1400, 1402 (9th Cir.1986)) (emphasis

added); *see also Powell v. McCormack*, 395 U.S. 486, 497 (1969) ("Where one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy."). The same "any effective relief" test applies to interlocutory appeals. *Akina v. Hawaii*, 835 F.3d 1003, 1010 (9th Cir. 2016).

Because effective relief is still possible, this appeal is not moot.

Maricopa County focuses only on the fact that the 2024 general election is over. But this misses the mark because the Plaintiffs did not seek a temporary injunction based only on harm from the then-impending election. Rather, in their TRO/PI Motion, the Plaintiffs alleged multiple additional harms that were independent of the election. First, they alleged that "EZAZ.org will suffer irreparable harm to its mission of civic engagement." ER-231. Second, they alleged that "the Defendants' unlawful list maintenance practices will cause EZAZ.org financial harm because it will be forced to expend its limited resources doing the Defendants' job for them—monitoring the increase in Federal-Only Voters, reporting ineligible voters to County Recorders, and educating frustrated voters." ER-232. Third, they alleged that "EZAZ.org

will waste resources on voter outreach and education to ineligible voters." *Id.* All three of these harms exist independently of the election. EZAZ.org continues to suffer them even now. The "Mootness doctrine 'addresses whether an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit.'" *Moore v. Harper*, 600 U.S. 1, 14 (2023) (quoting *W. Virginia v. EPA*, 597 U.S. 697, 719 (2022)). The Plaintiffs continue to have a personal stake in the relief they sought in their TRO/PI Motion.

EZAZ.org made this argument in its opening brief, yet Maricopa County entirely ignored it, focusing only on the fact that the 2024 general election is now over. (*Compare* Opening Brief (OB) at 43 (arguing that "The Plaintiffs claimed two types of harms in this case: pre-election harms that could only [be] addressed before the election 3-ER-231 *and* ongoing harms to EZAZ.org based on the increased costs as EZAZ.org continues to engage in its longstanding pre-existing mission of voter outreach and education and addressing Arizona's problems with Federal-Only Voters 3-ER-231-32" *with* Answering Brief (AB) at 10-11.) Maricopa County's mootness argument, therefore, fails.

II. The Plaintiffs have standing because they have established Mrs. Cahill's injury and because EZAZ.org has representational standing.

The Plaintiffs have established that the Defendants' failure to conduct proper list maintenance causes them direct injury. They have therefore established that they have standing. Maricopa County argues that the claimed injury to Mrs. Cahill is too speculative. But the alleged injury—that of being subjected to the nonuniform and discriminatory treatment of being subjected to SAVE checks as a naturalized citizen that are not performed for all other registered voters—is precisely the same injury that the District of Arizona found conferred standing in *Mi Familia Vota v. Fontes* ("*Mi Familia*"), 719 F. Supp. 3d 929, 986, (D. Ariz. 2024). In that case, the district court found that one of the organizational plaintiffs, Promise Arizona, "ha[d] representational standing" because its "members would have standing to sue in their own right. Given the impending enforcement of the Voting Laws, and because H.B. 2243's database checks would apply to all registered voters in Arizona, Promise Arizona's members face a realistic danger of sustaining a direct injury due to" Arizona's list maintenance requirements. *Id.* (cleaned up). Specifically, the injury was that Arizona law required county recorders

to investigate the citizenship of any registered voter whom a recorder had "reason to believe" was not a citizen. The district court found that this injured naturalized citizens "because SAVE requires an immigration number, county recorders can only ever conduct SAVE checks on naturalized citizens who county recorders have 'reason to believe' are non-citizens." *Id.* at 995. Thus, "[n]aturalized citizens will always be at risk of county recorders' subjective decision to further investigate these voters' citizenship status, whereas the Reason to Believe Provision will never apply to native-born citizens." *Id.* The same analysis applies here.

Maricopa County mischaracterizes (AB at 13-14) *Mi Familia* as making a blanket holding that SAVE checks for ongoing voter list maintenance would never violate the NVRA's uniformity and non-discrimination requirements. However, *Mi Familia* was limited to the facts and arguments before the court, and it never considered whether SAVE checks would be discriminatory and non-uniform if county recorders had the ability to verify with DHS the citizenship of *all* registered voters. In contrast, SAVE checks can only be performed for aliens who have an assigned alien number. Thus, Arizona's current list

maintenance practices that require citizenship checks only of persons with an alien number, but not of other persons, is non-uniform and discriminatory because 8 U.S.C. §§ 1373 and 1644 confer on Arizona's county recorders the absolute right to verify the citizenship of *all* registered voters, regardless of whether the individual has an alien number or not. This injures Cahill because, as a naturalized citizen with an alien number, she is arbitrarily subject to citizenship checks that other voters are not, even though county recorders have the ability to perform citizenship checks for *all* registered voters.

And the risk that Mrs. Cahill faces of being subjected to SAVE checks is not hypothetical. It is actual and imminent. Maricopa County does not dispute that any time a voter's registration information is updated, new SAVE checks are triggered. Rather, Maricopa County merely argues that, currently, "Arizona lacks the ability to use SAVE for voter list maintenance purposes." (AB at 13 (citing *Mi Familia*, 719 F.Supp.3d at 955). However, Arizona law *requires* that such checks be performed. *See* A.R.S. §§ 16-121.01(D)(3) and -165(I). And this Court applies a "presumption that the government obeys the law." *In re Grand*

Jury Subpoena, 75 F.3d 446, 448 (9th Cir. 1996) (quoting *In re Hergenroeder*, 555 F.2d 686, 686 (9th Cir. 1977)); *cf. Chavez v. Brnovich*, 42 F.4th 1091, 1098 (9th Cir. 2022) (acknowledging "presumption that state courts know and follow the law" (cleaned up)); *United States v. Wanless*, 882 F.2d 1459, 1464 (9th Cir. 1989) ("We think it fair to presume that ... State Troopers, as a matter of course, follow [State] law...."); *Pit River Tribe v. U.S. Forest Serv.*, 615 F.3d 1069, 1082 (9th Cir. 2010) (Ninth Circuit "presume[s] that agencies will follow the law" (citing *N. Cheyenne Tribe v. Hodel*, 851 F.2d 1152, 1157 (9th Cir.1988)); *F.C.C. v. Schreiber*, 381 U.S. 279, 296 (1965) (acknowledging "the presumption ...that [administrative agencies] will act properly and according to law").

Thus, Mrs. Cahill's injury is actual and imminent.

Furthermore, even if Mrs. Cahill's injury could be characterized as lacking imminence, EZAZ.org would still have representational injury because its large member base that is spread throughout the State of Arizona would unavoidably include persons who are still subject to SAVE checks, whether because they have not yet registered to vote or because they have not yet provided DPOC after registration. 3-ER-225-36 and 3-

ER-238-39 ¶¶ 8-11 (declaration affirming that EZAZ.org's members "are affected by the Defendants' unlawful failure to comply with required voter list maintenance practices" and setting forth membership numbers and distribution and alleging "[g]iven EZAZ.org's vast number of members across the State—the risk that one or more of them will be subject to enforcement by Defendants is clear.")

Maricopa County incorrectly implied (AB at 14) that EZAZ.org must specifically identify members who have individual standing. However, Maricopa County cited no authority for this proposition. In fact, this Court has held exactly the opposite—that, to invoke representational standing, an organization does *not* need to specifically identify individual members who have been harmed. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015) ("Where it is relatively clear, rather than merely speculative, that one or more members have been or will be adversely affected by a defendant's action, and where the defendant need not know the identity of a particular member to understand and respond to an organization's claim of injury, we see no purpose to be served by

requiring an organization to identify by name the member or members injured.").

III. EZAZ.org has organizational standing.

Glossing over EZAZ.org's substantial, unrebutted evidence (OB at 31-37) that its core mission is being harmed—not by "spend[ing] its way into standing" (AB at 15), but because of Defendants' noncompliance with the law—Maricopa County incorrectly argues that "this case is no different" (AB at 16) from *FDA v. All. for Hippocratic Medicine* ("*Hippocratic Medicine*"), 602 U.S. 367 (2024).

Rather, this case is nothing like *Hippocratic Medicine*. Specifically, unlike the plaintiff medical associations in *Hippocratic Medicine*, EZAZ.org suffers a concrete injury every time it expends resources to reach out to ineligible individuals who are nonetheless registered to vote. *See* OB at 33; *see also* 3-ER-239 ¶¶ 12-13. Because the Defendants fail to conduct statutorily required inquiries to determine the eligibility of registrants who failed to provide documentary proof of citizenship, EZAZ.org wastes resources every second it spends identifying and reaching out to individuals who are registered to vote yet who are later

determined to be ineligible, not just the secondary step of also reporting the information to county officials.

Regardless, "[a]n essential part of the mission of EZAZ.org to increase civic engagement is ensuring that Arizona's elections are free, fair, and lawfully administered[.]" *Id.* at ¶ 7. Responding to the problems created by the Defendants' failures to conduct proper list maintenance (*e.g.,* to report *ineligible* voters found through voter outreach efforts) is not just "expending money to gather information and advocate against the defendant's action[.]" *Hippocratic Medicine*, 602 U.S. at 394. Instead, reporting known ineligible voters to county officials is critical to EZAZ.org's core mission of "ensuring elections are free, fair, and lawfully administered." None of this was done in reaction to the Defendants' unlawful list maintenance procedures, but pre-existed those procedures as a core part of EZAZ.org's mission. In other words, EZAZ.org did not start gathering information and create a program simply to advocate against the Defendants, as Maricopa County suggests. Rather, EZAZ.org's pre-existing activities and limited resources are being

directly and negatively impacted by the Defendants' failure to perform its statutory list maintenance duties.

The same goes for EZAZ.org's advocacy efforts. EZAZ.org educates Arizona legislators about the issue of Federal-Only Voters and advocates for laws to "more securely protect and enhance the integrity of voter rolls[,]" (3-ER-240 ¶ 18) laws such as H.B. 2492 and H.B. 2243, passed in 2022, which require counties to conduct the specific list maintenance litigated herein. OB at 4-5. Because the Defendants are refusing to fully comply with legislative enactments, EZAZ.org must expend additional resources educating legislators on how the recently passed legislation is being circumvented and advocate for ways to address the Defendants' noncompliance, such as enacting more robust enforcement mechanisms. 2-ER-240-41 ¶¶ 18-22.

IV. The Plaintiffs' claims are redressable.

The Plaintiffs' claims are redressable. Contrary to Maricopa County's assertion, the Plaintiffs did not waive redressability, "The second and third standing requirements—causation and redressability—are often 'flip sides of the same coin.' If a defendant's action causes an injury, enjoining the action or awarding damages for the action will

typically redress that injury. So the two key questions in most standing disputes are injury in fact and causation." *Hippocratic Medicine*, 602 U.S. at 380–81 (quoting *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269, 288 (2008)). Here, like in most other cases, redressability and causation are the same thing. An injunction addressing the Defendants' unlawful practices would also entirely ameliorate the Plaintiffs' harms. Therefore, because the Plaintiffs *have* argued causation (*see* OB at 31-39), they have also argued redressability.

As explained above at 2-3, the Plaintiffs argued two types of harm. The first set of harms were those that could only be addressed before the election. The second set of harms were ongoing harms that continued independently of the election and that will continue so long as the Defendants persist in their unlawful list maintenance practices. Maricopa County's redressability arguments address only the first type of harm alleged by the Plaintiffs. The Plaintiffs concede that this first type of harm is no longer redressable. However, the Plaintiffs continue to suffer the second set of harms. By failing to argue against the second set of harms, Maricopa County has conceded that the Plaintiffs continue to

suffer them. These harms, therefore, *are* redressable. The district court's error as to redressability is the same as its error about harm covered *supra* at 1-9 and in the OB at 31-39: it ignored the Plaintiffs' allegations of ongoing harms that continue after the election.

Conclusion

Therefore, for the preceding reasons, this Court should reverse the district court's denial of the TRO/PI Motion and remand.

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Respectfully submitted

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