

Multiple Documents

Part	Description
1	Main Document
2	Proposed Order

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26 **UNITED STATES DISTRICT COURT**
27 **DISTRICT OF ARIZONA**

28 Tohono O’odham Nation and Gila River
Indian Community,

Plaintiffs,

vs.

Mark Brnovich in his official capacity as
Attorney General of Arizona, et al.,

Defendants.

Case No: 2:22-cv-1901-SRB

**STATE’S MOTION TO
CONSOLIDATE**

MOTION TO CONSOLIDATE

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2 Defendant Mark Brnovich (the “State”) hereby moves pursuant to Federal Rule of
3 Civil Procedure 42(a) and LRCiv 42.1(b) to consolidate *Tohono O’odham Nation v.*
4 *Brnovich* (“*Tohono O’odham*”), No. 2:22-cv-01901-ESW, with consolidated matter *Mi*
5 *Familia Vota v. Hobbs*, 2:22-cv-00509-PHX-SRB (the “Consolidated Matter”), which has
6 already been consolidated with six other suits: *Living United for Change in Arizona v.*
7 *Hobbs*, 2:22-cv-00519-PHX-SRB; *Poder Latinx v. Hobbs*, 2:22-cv-01003-PHX-SRB;
8 *United States v. Arizona*, 2:22-cv-01124-PHX-SRB; *DNC v. Hobbs*, 2:22-cv-01369-PHX-
9 SRB; *Promise Arizona v. Hobbs*, No. 2:22-cv-01602-SRB; and *Arizona Asian American*
10 *Native Hawaiian and Pacific Islander for Equity Coalition v. Hobbs*, No. 2:22-cv-01381-
11 SRB.

12 Counsel for the State have conferred with counsel for Plaintiffs, and they have
13 indicated that they consent to consolidation.

14 The Consolidated Matter and *Tohono O’odham* involve overlapping challenges to
15 the same recently enacted Arizona election law—HB 2492—under the National Voter
16 Registration Act of 1993 (“NVRA”) and the First and Fourteenth Amendments. Plaintiffs
17 have also recognized this overlap in seeking a motion to transfer their action on November
18 11, 2022, (Doc. 11), and marking it as a related case, (Doc. 1-1). Specifically, Plaintiffs
19 assert two claims that involve similar or virtually identical legal theories and factual
20 questions as the Consolidated Matter.

21 Plaintiffs’ first claim is that HB 2492 violates the NVRA because it requires proof
22 of residence when registering to vote with the federal form while Plaintiffs assert the federal
23 form does not. (Doc. 1 ¶¶ 44–53.) Plaintiffs in five of the actions in the Consolidated Matter
24 include a similar claim that HB 2492 violates the NVRA because HB 2492 purportedly
25 includes requirements for voter registration that the federal form does not (specifically, the
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1 proof of citizenship and/or proof of residence requirement).¹ Thus, these claims have
2 overlapping legal and factual questions.

3 Their second claim is that HB 2492 violates the First and Fourteenth Amendment by
4 creating an unconstitutional burden on the right to vote based on the proof of residence
5 requirement. (Doc. 1 ¶¶ 54–57.) Five of the actions in the Consolidated Matter also assert
6 claims that HB 2492 creates an undue burden on the right to vote that violates the
7 Constitution.² Plaintiffs’ second claim and claims in the Consolidated Matter therefore raise
8 virtually identical questions of law and fact.

9 Accordingly, the Consolidated Matter and this case plainly involve “common
10 question[s] of law [and] fact.” *See* Fed. R. Civ. P. 42(a). Consolidation will promote
11 efficiency and conserve the resources of this Court and the parties, as well as protecting the
12 parties from the potential prejudice that could result from separate resolutions.

13 Indeed, given that this Court has already consolidated *six* other actions asserting
14 NVRA challenges to HB 2492,³ it would be deeply anomalous to leave a seventh such action
15 unconsolidated. Such an approach would pointlessly combine the drawbacks of both
16 consolidation and non-consolidation while foregoing many of the corresponding benefits.
17 Put simply, it would be the worst of all worlds. Moreover, the appropriateness of

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21 ¹ These claims are raised in *Mi Familia Vota*, No. 2:22-cv-00509-SRB (Doc. 65 ¶ 97);
Living United for Change in Arizona, 2:22-cv-00519-PHX-SRB (No. 22-cv-00509, Doc.
22 67 ¶¶ 352, 358–59); *Poder Latinx*, 2:22-cv-01003-PHX-SRB (No. 22-cv-00509, Doc. 106
23 ¶¶ 147–53); *United States v. Arizona*, 2:22-cv-01124-PHX-SRB (Doc. 1 ¶¶ 63–64); *DNC*,
2:22-cv-01369-PHX-SRB (Doc. 1 ¶¶ 70–72); and *Arizona Asian American Native*
24 *Hawaiian and Pacific Islander for Equity Coalition*, No. 2:22-cv-01381-SRB (Doc. 1
25 ¶¶ 160, 165).

26 ² These claims are asserted in: *Mi Familia Vota*, No. 2:22-cv-00509-SRB (Doc. 65 ¶¶
27 77–80); *Living United for Change in Arizona*, 2:22-cv-00519-PHX-SRB (No. 22-cv-00509,
28 Doc. 67, ¶¶ 312, 316); *Poder Latinx*, 2:22-cv-01003-PHX-SRB (No. 22-cv-00509, Doc.
106 ¶¶ 121–32); *DNC*, 2:22-cv-01369-PHX-SRB (Doc. 1 ¶¶ 44–52); and *Arizona Asian*
American Native Hawaiian and Pacific Islander for Equity Coalition, No. 2:22-cv-01381-
SRB (Doc. 1 ¶¶ 115–17).

³ *Promise Arizona* solely involves a challenge to HB 2243.

1 consolidation is recognized by the fact that nearly all Plaintiffs⁴ have affirmatively sought
2 consolidation here and no Defendant has opposed it.

3 **CONCLUSION**

4 For the foregoing reasons, the State's motion to consolidate should be granted.⁵

5 RESPECTFULLY SUBMITTED this 7th day of December, 2022.

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27 ⁴ Only Arizona Asian American Native Hawaiian and Pacific Islander for Equity
Coalition and the Plaintiffs in *Promise Arizona* opposed consolidation.

28 ⁵ An equivalent motion is being filed in both the Consolidated Matter and the *Tohono*
O'odham action.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2022, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

s/ Drew C. Ensign
Attorneys for Defendant Mark Brnovich,
Arizona Attorney General

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Tohono O’odham Nation and Gila River
Indian Community,

Plaintiffs,

vs.

Mark Brnovich in his official capacity as
Attorney General of Arizona, et al.,

Defendants.

Case No: 2:22-cv-1901-SRB

ORDER

Upon Defendant Mark Brnovich’s Motion to Consolidate, and good cause shown,
IT IS THEREFORE ORDERED granting Defendant Mark Brnovich’s Motion
to Consolidate.

IT IS FURTHER ORDERED directing the Clerk of Court to consolidate the
above-captioned case into *Mi Familia Vota v. Hobbs* and that the parties shall make all
future filings under Case No. CV-22-00509-PHX-SRB.

IT IS FURTHER ORDERED that there will be no further filings in CV-22-1901-
PHX-SRB.