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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

Mi Familia Vota, et al., Plaintiffs, v. Adrian Fontes, et al., Defendants.	No. CV-22-00509-PHX-SRB **ORDER**

In April 2023, the Speaker of the Arizona House of Representatives Ben Toma and President of the Arizona Senate Warren Petersen (collectively, the "Legislators") moved and were granted leave to intervene as defendants in this case. (Doc. 348, Mot. to Intervene; Doc. 363, 04/26/2023 Order.) The Legislators then invoked legislative privilege in response to Plaintiffs' discovery requests. (*See, e.g.*, Doc. 500-1, Ex. D.) Non-US Plaintiffs sought to compel discovery. (Doc. 502, Hr'g. Tr. at 87:7–88:9.) The Court ordered the parties to submit simultaneous briefs on the issue of whether the legislative privilege applies, which the parties filed on August 2, 2023. (Doc. 499, Defs.' Br.; Doc. 500, Pls.' Br.; Hr'g. Tr. at 87:7–88:20.)

I. PROCEDURAL HISTORY

The history of this litigation is set out in the Court's previous Orders. (*E.g.*, Doc. 304, 02/15/2023 Order.) Plaintiffs claim that two recently enacted laws, H.B. 2243 and H.B. 2492 (the "Voting Laws"), are unlawful because they violate multiple federal laws and provisions of the Constitution. (*E.g.*, Doc. 67, LUCHA Compl. ¶¶ 329–35; Doc. 1,

1 22-cv-1381, AAANHPI Compl. ¶¶ 143–50.) No Plaintiff named the Legislators as
2 defendants. (Pls.' Br. at 1.) However, under Arizona law, both the Speaker and President
3 are "entitled to be heard" "[i]n any proceeding in which a state statute . . . is alleged to be
4 unconstitutional." A.R.S. § 12-1841(A). The Speaker and the President may in their
5 discretion either (1) intervene as a party, (2) file briefs in the lawsuit, or (3) choose not to
6 participate in the lawsuit. *Id.* § 12-1841(D). The Legislators moved to intervene "in their
7 official capacities, and on behalf of their respective legislative chambers." (Mot. to
8 Intervene at 4.) Plaintiffs assert that the Legislators have since invoked the legislative
9 privilege to "refuse to answer deposition questions regarding the enactment of the [Voting
10 Laws], and . . . have objected to designating anyone to testify on behalf of their respective
11 chambers under [Rule] 30(b)(6)" despite intervening to defend the Voting Laws on the
12 merits. (Pls.' Br. at 1–3.)

13 **II. LEGAL STANDARD & ANALYSIS**

14 Legislative immunity grants state legislators "protection from criminal, civil, or
15 evidentiary process that interferes with their 'legitimate legislative activity.'" *Puente Ariz.*
16 *v. Arpaio*, 314 F.R.D. 664, 669 (D. Ariz. 2016) (quoting *Tenney v. Brandhove*, 341 U.S.
17 367, 376 (1951)); *Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 732
18 (1980) (explaining that the legislative immunity of state legislators is "similar in origin and
19 rationale" to that of Congresspeople). The legislative privilege, a corollary to legislative
20 immunity, is a qualified privilege that shields legislators from compulsory evidentiary
21 process. *Mi Familia Vota v. Hobbs*, -- F. Supp. 3d --, 2023 WL 4595824, at *4 (D. Ariz.
22 July 18, 2023); *see United States v. Gillock*, 445 U.S. 360, 370–73 (1980) (limiting the
23 scope of the legislative privilege for state legislators "where important federal interests are
24 at stake, as in the enforcement of federal criminal statutes"). The legislative privilege is
25 personal to each legislator. *Puente Ariz.*, 314 F.R.D. at 671.

26 **A. The Legislators Waived the Legislative Privilege**

27 Plaintiffs argue that the Legislators have waived their legislative privilege by
28 voluntarily intervening in this lawsuit and putting their intent at issue. (Pls.' Br. at 5–7.)

1 Plaintiffs direct the Court to *Powell v. Ridge*, in which plaintiffs sued the Pennsylvania
2 governor and state officials claiming that the public education funding system was racially
3 discriminatory. 247 F.3d 520, 522 (3d Cir. 2001). Leaders of the state legislature intervened
4 in the lawsuit, "citing their financial and legal interests in the litigation and the need to
5 'articulate to the Court the unique perspective of the legislative branch of the Pennsylvania
6 government.'" *Id.* at 522–23. The legislators "explicitly concurred" in the other defendants'
7 motion to dismiss but asserted the legislative privilege after the plaintiffs sought discovery.
8 *Id.* at 523. The district court compelled discovery, after which the legislators appealed. *Id.*
9 In dismissing the legislators' interlocutory appeal for lack of jurisdiction, the Third Circuit
10 explained that the legislators "stray[ed] far beyond the bounds of traditional legislative
11 immunity" by fashioning a "privilege which would allow them to continue to actively
12 participate in [the] litigation by submitting briefs, motions, and discovery requests of their
13 own, yet allow them to refuse to comply with, and most likely, appeal from every adverse
14 order." *Id.* at 525.
15 The Legislators argue that *Powell* is distinguishable because the intervening
16 defendants "had no statutory authority to intervene," whereas the Legislators "intervened
17 in their official capacities pursuant to A.R.S. § 12-1841(D) to present their views on the
18 State's interests." (Defs.' Br. at 7.) This argument would allow the Arizona Legislature to
19 exercise its self-created right to intervene yet shield its leaders from ever waiving the
20 legislative privilege. Like the defendants in *Powell*, the Legislators "are not seeking
21 immunity from this suit," but instead seek to "actively participate in this litigation" yet
22 avoid the burden of discovery regarding their legislative activities. *Powell*, 247 F.3d at 525.
23 Plaintiffs did not seek discovery from the Legislators until the Legislators sought to "fully
24 defend the laws passed by the legislature." (Mot. to Intervene at 4, 11.) The Legislators
25 also specifically put their own motives for passing the Voting Laws at issue when denying
26 Plaintiffs' allegations that the Arizona Legislature enacted the Voting Laws with
27 discriminatory intent. (Pls.' Br. at 6; *see, e.g.*, Doc. 348-1, Ex. A, Ans. to AAANHPI
28 Compl. at 16–18 ¶¶ 131, 147–50, (denying allegations that the Voting Laws are

intentionally discriminatory); Doc. 348-1, Ex. A, Ans. to LUCHA Compl. at 98 ¶¶ 337–38 (same).)

The Legislators contend that they have not waived the privilege because their defense relies "solely upon the publicly available legislative history materials" instead of any privileged information or the testimony of any legislator "regarding his or her consideration of or passage of" the Voting Laws. (Defs.' Br. at 4–6.) The Legislators cite *Democratic National Committee v. Arizona Secretary of State's Office*, which considered whether political party and civic organization plaintiffs waived their First Amendment privilege by challenging state election laws. No. CV-16-01065-PHX-DLR, 2017 WL 3149914, at *4 (D. Ariz. July 25, 2017). In finding that the plaintiffs had not waived the privilege, the court noted that the plaintiffs used only publicly available information to support their claims and that "[t]he privileged information that the State Defendants [sought] evidently include[d] a substantial amount of proprietary predictive modeling and strategic communications, none of which *go to the heart of the case* or to the State Defendants' defense." *Id.* at *4–5 (emphasis added).

The Court is not persuaded by the Legislators' argument. Though the Legislators "avow[] to the Court" that they will not rely on privileged information in support of their defense, the information sought in discovery does in fact "go to the heart" of Plaintiffs claims and the constitutionality of the Voting Laws. *Id.* at 5; (Defs.' Br. at 6; *see* Plfs.' Br. at 6.) "Motive is often most easily discovered by examining the unguarded acts and statements of those who would otherwise attempt to conceal evidence of discriminatory intent." *Harris v. Ariz. Indep. Redistricting Comm'n*, 993 F. Supp. 2d 1042, 1071 (D. Ariz. 2014) (quoting *Cano v. Davis*, 193 F. Supp. 2d 1177, 1181–82 (C.D. Cal. 2002) (Reinhardt, J., concurring in part and dissenting in part)). And contrary to the Legislators' argument, the Court is not "[a]pplying a blanket waiver of legislative privilege" whenever Arizona's legislative leaders intervene under § 12-1841(D), but instead finds that the Speaker and President each waived their privilege by intervening to "fully defend" the Voting Laws and putting their motives at issue. (*See* Defs.' Br. at 3.)

The Legislators assert that finding waiver would undermine the purpose of allowing for legislative participation in federal lawsuits, specifically, that "[p]ermitting the participation of lawfully authorized state agents promotes informed federal-court decisionmaking and avoids the risk of setting aside duly enacted state law based on an incomplete understanding of relevant state interests." (*Id.* at 2–3 (quoting *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2202 (2022)). However, the *Berger* Court analyzed only whether legislative leaders possessed a legitimate interest to intervene in the lawsuit under Rule 24; the legislative privilege was not at issue. 142 S. Ct. at 2201–03 ("[F]ederal courts should rarely question that a State's interests will be practically impaired or impeded if its duly authorized representatives are excluded from participating in federal litigation challenging state law."). But the legislative privilege's animating purpose is "to allow duly elected legislators to discharge their public duties without concern of adverse consequences outside the ballot box," and "minimize[e] the distraction of diverting their time, energy, and attention from their legislative tasks to defend the litigation." *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187 (9th Cir. 2018) (citation and internal quotation marks omitted) (cleaned up); *Kay v. City of Rancho Palos Verdes*, No. CV 02–03922 MMM RZ, 2003 WL 25294710, at *11 (C.D. Cal. Oct. 10, 2003) (indicating that the "underlying policy goal" of the privilege is to "protect[] legislators from interference with their legislative duties" (citation omitted)). "[T]he only reasonable inference from the Legislators' litigation conduct is that they have decided to forego that 'protection' in pursuit of an opportunity to defend in court their decisions as legislators . . . ." *Singleton v. Merrill*, 576 F. Supp. 3d 931, 941 (N.D. Ala. 2021) (cleaned up) (observing that the intervening legislator defendants "put in issue the very facts that they now assert their immunity covers").

The Court finds that the Legislators have waived their legislative privilege.[1] The Legislators must produce communications sent or received by either the Speaker or the

[1] Because the Court finds that the Speaker and President have waived the legislative privilege, it need not consider Plaintiffs' argument that the balance of factors favor overcoming the privilege. (*See* Pls.' Br. at 7–9.)

President which have been withheld on legislative privilege grounds. Plaintiffs may also depose the Legislators about their personal perspectives of the Voting Laws' legislative process. (*See* Pls.' Br. at 2–3.) However, "[t]he legislative privilege 'is a personal one,'" and the Speaker or President could not waive the privilege for their fellow legislators. *Puente Ariz.*, 314 F.R.D. at 671 (quoting *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 298 (D. Md. 1992)). To the extent Plaintiffs seek information held by other members of the Arizona Legislature, it remains protected by the legislative privilege.

B. Plaintiffs May Not Depose the Arizona Legislature as an Entity

Federal Rule of Civil Procedure 30(b)(6) permits a party to depose a "public or private corporation, a partnership, an association, a governmental agency, or other entity," which then "must designate one or more officers, directors, or managing agents . . . to testify on its behalf." Plaintiffs seek to depose the Arizona House of Representatives and the Arizona Senate and assert that the Speaker and the President "have necessitated deposition testimony with respect to the legislature as an entity" by intervening "on behalf of their respective legislative chambers." (Pls.' Br. at 9–10.) Specifically, Plaintiffs seek to depose the Arizona Legislature about (1) the Legislature's "drafting, introduction, amendment, passage, and enactment" of the Voting Laws, (2) the Legislature's objectives, motives, and information considered when drafting and passing the Voting Laws, and (3) individual legislators' communications with other legislators or third parties. (*See* Doc. 499-1, Ex. 1, at 5–7.) The Legislators counter that Plaintiffs seek information protected by the legislative privilege and that a 30(b)(6) deposition is "unworkable in terms of preparing and identifying a single witness who can present binding testimony on behalf of the" Arizona Legislature. (Defs.' Br. at 8.)

The Court agrees with the Legislators that a 30(b)(6) deposition of the Arizona Legislature "would effectively force a waiver of every single legislator's individual legislative privilege. (Defs.' Br. at 8.) In *Alliance for Global Justice v. District of Columbia*, plaintiffs sought to compel the District of Columbia to produce a Rule 30(b)(6)

deponent to testify about the District Council's "collective knowledge" of its investigation into the District's "policing of mass demonstrations." 437 F. Supp. 2d 32, 34–35 (D.D.C. 2006). The District asserted that the Council's investigative activities were protected by the District's speech and debate statute.[2] *Id.* at 36. In declining to compel the District to produce a Rule 30(b)(6) deponent, the court explained:

> [T]he [District's] speech and debate statute shields from discovery the Council's knowledge and views of the report and of District policies. Plaintiffs are seeking testimony relating to a Council investigation, which was conducted as part of the Council's deliberative and legislative process. They also appear to be seeking testimony about the Council's understanding and interpretation of its own statutes. Both areas of testimony clearly fall within the "legislative sphere" and are shielded by the District's speech and debate statute. Therefore, to the extent that plaintiffs are arguing that the "collective knowledge" of the District includes the knowledge of and views of the Council, plaintiffs are not entitled to such testimony. *The fact that plaintiffs seek to obtain the Council's knowledge and views via a Rule 30(b)(6) deponent and disclaim any intention of directly questioning any Council member or staff is irrelevant.* By its very nature, a Rule 30(b)(6) deposition notice requires the responding party to prepare a designated representative [to testify] . . . on matters reasonably known by the responding entity. *That preparation would require the very type of intrusion into the Council's legislative activities that the speech and debate statute was intended to prevent.*

Id. at 37 (emphasis added).

Here, Plaintiffs similarly seek to compel the Arizona Legislature to designate (a) deponent(s) who "can testify as to the collective knowledge" of the Legislature.[3] (*See* Pls.'

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[2] Though the court in *Alliance for Global Justice* considered the Council's evidentiary privilege in the context of the District's speech and debate statute, this does not change this Court's analysis. Legislative immunity for state legislators derives from the "interpretation of federal law" and does "not depend on the presence of a speech or debate clause in the constitution of any State." *Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 404 (1979) (citing *Tenney*, 341 U.S. at 377); *Consumers Union of U.S., Inc.*, 446 U.S. at 732 (1980). And the logic underscoring legislative immunity "supports extending the corollary legislative privilege" to state legislators as well. *Lee*, 908 F.3d at 1187; *see Mi Familia Vota*, 2023 WL 4595824, at *7 (explaining that "both the legislative privilege and legislative immunity 'involve the core question whether a lawmaker may be made to answer—either in terms of questions or in terms of defending from prosecution'" (quoting *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 237 (5th Cir. 2023))).

[3] The parties dispute whether the appropriate defendants are the Speaker and the President or the Arizona House of Representatives and the Arizona Senate. (Doc. 500-1, Ex. C, at 45–46; Doc. 500-1, Ex. D, at 50.) The Court need not decide who is the appropriate defendant, as the legislative privilege shields the Arizona Legislature's legislative activities regardless. *See All. for Glob. Justice*, 437 F. Supp. 2d at 37 ("Regardless of who is the defendant, the speech and debate statute shields from discovery the Council's knowledge . . . .").

Br. at 9–10 (asserting that the Legislators "have necessitated deposition testimony with respect to the legislature as an entity").) And Plaintiffs' proposed deposition topics concern "legitimate legislative activities" that fall within the scope of the legislative privilege. *Tenney*, 341 U.S. at 376; *see Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 530 (9th Cir. 1983) ("Obtaining information pertinent to potential legislation or investigation is one of the things generally done in a session of the House, concerning matters within the legitimate legislative sphere." (internal citations and quotation marks omitted)); *Puente Ariz.*, 314 F.R.D. at 670–71 (finding the legislative privilege protects "a legislator's communications that bear on potential legislation" (citation and internal quotation marks omitted)); *Mi Familia Vota*, 2023 WL 4595824, at *8 (same); (Doc. 499-1, Ex. 1, at 5–7 (listing deposition topics).) The Court denies Plaintiffs' request to compel the Arizona House of Representatives and Senate to prepare a 30(b)(6) deponent to testify as to these topics because doing so would intrude upon the protections afforded by the legislative privilege. *All. for Glob. Justice*, 437 F. Supp. 2d at 37; *Puente Ariz.* 314 F.R.D. at 671 (analyzing the Arizona Legislature's waiver of the legislative privilege as an entity); *see also Marylanders for Fair Representation*, 144 F.R.D. at 299 (finding Maryland legislators' preparation and consideration of a legislative redistricting plan fell "within the sphere of legitimate legislative activity" and "*any* inquiry into the *Maryland Legislature's consideration* of [the plan] . . . [was] entirely barred" (second emphasis added)).

Plaintiffs alternatively ask the Court to prevent the Legislators from presenting arguments on behalf of the Arizona Legislature and require the Legislators to instead participate as defendants in their individual capacities. (Pls.' Br. at 10.) But the Speaker and the President are authorized to defend Arizona's statutes and the Court declines to limit their right to represent the Arizona Legislature's interests. A.R.S. § 12-1841(D); *N.C. State Conf. of the NAACP*, 142 S. Ct. at 2201 (explaining that "[s]tates possess 'a legitimate interest in the continued enforcement of their own statutes,'" which may "be practically impaired or impeded if [their] duly authorized *representatives* are excluded from participating in federal litigation challenging state law" (quoting *Cameron v. EMW*

1 *Women's Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1011 (2022)) (cleaned up) (emphasis
2 added)).

3 **III. CONCLUSION**

4 The Speaker and the President have waived their legislative privilege as to
5 information about their motives for the Voting Laws. The Speaker and President must
6 produce communications that they have sent or received relating to the Voting Laws'
7 legislative process and have withheld on legislative privilege grounds. They may also be
8 deposed about their personal involvement in the Voting Laws' legislative process.
9 Plaintiffs may not however conduct a 30(b)(6) deposition of the Arizona Legislature.

10 **IT IS ORDERED** granting in part and denying in part Plaintiffs' Motion to Compel
11 (Doc. 500).

12 **IT IS FURTHER ORDERED** that the Speaker and the President must produce
13 communications relating to the Voting Laws legislative process that they have sent or
14 received and have withheld on legislative privilege grounds.

15 Dated this 14th day of September, 2023.

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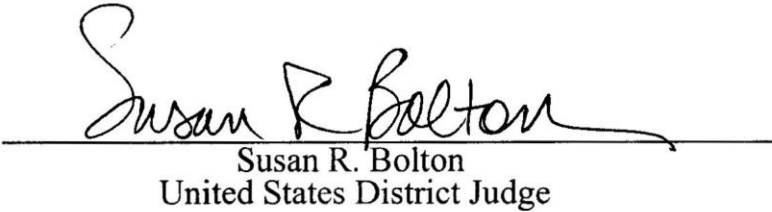

Susan R. Bolton
19 United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mi Familia Vota, et al.,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as Arizona Secretary of State, et al.,

Defendants.

AND CONSOLIDATED CASES

No. CV-22-00509-PHX-SRB

ORDER

Eight days after the Court issued its Order finding a waiver of their legislative privilege and ordering production of requested documents and their depositions, Intervenor-Defendants, Speaker of the Arizona House Ben Toma and President of the Arizona Senate, Warren Petersen filed their Motion to Stay Pending Appeal declaring their intention to seek of Writ of Mandamus from the Ninth Circuit Court of Appeals. If their request for a stay is denied, Intervenor-Defendants ask the Court to stay its September 14, 2023 Order for 10-days[1] to allow them to submit an emergency Motion to Stay to the Court of Appeals. Non-U.S. Plaintiffs responded in opposition on September 25, 2023. The Arizona Secretary of State also filed his opposition on September 25, 2023. Because

[1] Presumably Intervenor-Defendants want the Court to stay its September 25, 2023 Order for 10-days from the date of its Order denying the Stay. If granted, the Court's Order requiring production of documents and depositions would be stayed until at least October 6, 2023, one month before the start of trial.

Intervenor-Defendants requested an expedited ruling and because the Court finds the Motion to Stay without merit, it will not await a Reply before issuing this denial.

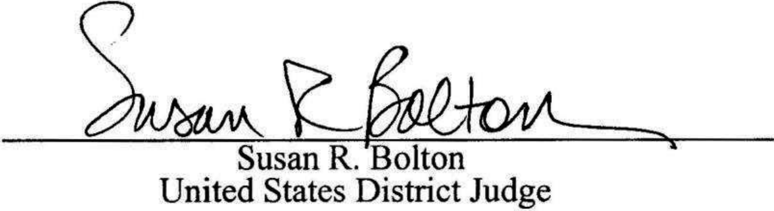
Intervenor-Defendants' arguments that they are likely to prevail on the merits of a Writ of Mandamus are unpersuasive. They re-argue the arguments already rejected by this Court in its September 25, 2023 Order. Moreover, as pointed out by the Non-U.S. Plaintiffs, they have wholly failed to show any likelihood of receiving relief from the Court of Appeals on a request for the extraordinary relief of mandamus on a discovery order.

Trial in this case is set to begin on November 6, 2023. As the parties all agreed, it is of utmost importance that the issues before this Court are decided in advance of the 2024 elections. Any stay of September 25, 2023 Order could jeopardize that trial date. The Court is persuaded by the argument of the Secretary of State that production of the documents under a Protective Order will protect the status quo and allow the parties to continue their trial preparations.

IT IS ORDERED denying Intervenor-Defendants Speaker Toma and President Petersen's Motion to Stay Pending Appeal. (Doc. 543)

IT IS FURTHER ORDERED denying the alternatively requested 10-day stay of the September 25, 2023 Order.

Dated this 26th day of September, 2023.



Susan R. Bolton
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 12 2023

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

In re: BEN TOMA, Speaker of the Arizona House of Representatives, in his official Capacity; WARREN PETERSEN, President of the Arizona Senate, in his official capacity. ______________________________ BEN TOMA, Speaker of the Arizona House of Representatives, in his official capacity; WARREN PETERSEN, President of the Arizona Senate, in his official capacity, Petitioners, v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, PHOENIX, Respondent, MI FAMILIA VOTA; et al., Real Parties in Interest.	No. 23-70179 D.C. No. 2:22-cv-00509-SRB District of Arizona, Phoenix ORDER

Before: W. FLETCHER, CALLAHAN, and BENNETT, Circuit Judges.
Order by Judges CALLAHAN and BENNETT; Dissent by Judge W. FLETCHER.

The motion to stay the district court's September 14, 2023 discovery order (Docket Entry No. 2) is granted. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (defining standard for stay pending appeal). The portions of the district court's September 14, 2023 order (1) allowing real parties in interest to depose petitioners

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about "their personal involvement in the Voting Laws' legislative process" and (2) requiring production of "communications sent or received by either the Speaker or the President which have been withheld on legislative privilege grounds" are stayed. Any communications that petitioners already produced should not be used or disclosed beyond the scope of the protective order in place. This order does not stay any other portions of the district court's orders or district court proceedings.

This petition for a writ of mandamus raises issues that warrant an answer. *See* Fed. R. App. P. 21(b). Accordingly, by October 20, 2023, real parties in interest must file an answer. The answer should address the scope and application of legislative privilege, the conditions under which a legislator waives the privilege, particularly under A.R.S. § 12-1841, and the relevance of the requested information to the constitutionality of the challenged Voting Laws.

The district court may also address the petition if it so desires. *See* Fed. R. App. P. 21(b)(4). If the district court elects to address the petition, it may file an answer with this court or issue a supplemental order and serve a copy on this court by October 20, 2023.

Petitioners may file a reply by October 25, 2023.

The Clerk will calendar this petition during the month of November 2023. *See* 9th Cir. Gen. Ord. 3.3(g). In granting a stay, we do not intend to constrain the merits panel's consideration of the merits of this petition in any way. The stay

shall remain in effect until the merits panel decides this petition or issues an order lifting the stay.

The Clerk will serve a copy of this order on the district court and District Judge Susan R. Bolton.

Judge W. Fletcher respectfully dissents.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 16 2023

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

In re: BEN TOMA, Speaker of the Arizona House of Representatives, in his official Capacity; WARREN PETERSEN, President of the Arizona Senate, in his official capacity,

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BEN TOMA, Speaker of the Arizona House of Representatives, in his official capacity; WARREN PETERSEN, President of the Arizona Senate, in his official capacity,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, PHOENIX,

Respondent,

MI FAMILIA VOTA; et al.,

Real Parties in Interest.

No. 23-70179

D.C. No. 2:22-cv-00509-SRB
District of Arizona,
Phoenix

ORDER

Before: RAWLINSON, HURWITZ, and OWENS, Circuit Judges.

The emergency stay by a motions panel of the district court's September 14, 2023 discovery order is hereby lifted, effective immediately. *See* Docket #9.

Having considered the parties' briefing and oral argument, we conclude that the circumstances no longer justify a stay order. *See United States v. Lopez-Armenta*, 400 F.3d 1173, 1175 (9th Cir. 2005) (noting that "the order of the motions panel . . . does not preclude us from reaching a contrary decision").

A written disposition containing the panel's reasoning will be filed in short order.

Arizona Revised Statutes Annotated
Title 12. Courts and Civil Proceedings
Chapter 10. Miscellaneous Special Actions and Proceedings
Article 2. Uniform Declaratory Judgments Act (Refs & Annos)

A.R.S. § 12-1841

§ 12-1841. Parties; notice of claim of unconstitutionality

Effective: July 29, 2010
Currentness

A. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding that involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and shall be entitled to be heard. In any proceeding in which a state statute, ordinance, franchise or rule is alleged to be unconstitutional, the attorney general and the speaker of the house of representatives and the president of the senate shall be served with a copy of the pleading, motion or document containing the allegation at the same time the other parties in the action are served and shall be entitled to be heard.

B. If a pleading, motion or document containing the allegation is served on the attorney general and the speaker of the house of representatives and the president of the senate pursuant to subsection A, a notice of claim of unconstitutionality shall be attached to the pleading, motion or document as the cover page and shall state the following information:

1. The name, address and telephone number of the attorney for the party alleging that a state law is unconstitutional or the name, address and telephone number of the party if the party is not represented by an attorney.

2. The case name, court name, caption and case number of the proceeding.

3. A brief statement of the basis for the claim of unconstitutionality.

4. A brief description of the proceeding, with copies of any court orders in the proceeding if the claim of unconstitutionality is asserted in a pleading, motion or document other than the pleading, motion or document that initiated the proceeding.

5. The date, time, location, judge and subject of the next hearing in the proceeding, if any.

C. If the attorney general or the speaker of the house of representatives and the president of the senate are not served in a timely manner with notice pursuant to subsection A, on motion by the attorney general, the speaker of the house of representatives or the president of the senate the court shall vacate any finding of unconstitutionality and shall give the attorney general, the speaker of the house of representatives or the president of the senate a reasonable opportunity to prepare and be heard.

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D. This section shall not be construed to compel the attorney general, the speaker of the house of representatives or the president of the senate to intervene as a party in any proceeding or to permit them to be named as defendants in a proceeding. The attorney general, the speaker of the house of representatives or the president of the senate, in the party's discretion, may intervene as a party, may file briefs in the matter or may choose not to participate in a proceeding that is subject to the notice requirements of this section.

Credits

Amended by Laws 1996, Ch. 202, § 1; Laws 2006, Ch. 348, § 1; Laws 2010, Ch. 105, § 1.

A. R. S. § 12-1841, AZ ST § 12-1841

Current through legislation of the First Regular Session of the Fifty-Sixth Legislature (2023).

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