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UNITED STATES DISTRICT COURT

Mi Familia Vota, et al.
Plaintiffs,

v.

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

Defendants,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

AND CONSOLIDATED CASES.

Case No. 22-00509-PHX-SRB

(Lead)

CONSOLIDATED NON-U.S. PLAINTIFFS' RESPONSE TO RNC MOTION FOR ENTRY OF PARTIAL FINAL JUDGMENT

No. CV-22-00519-PHX-SRB
No. CV-22-01003-PHX-SRB
No. CV-22-01124-PHX-SRB
No. CV-22-01369-PHX-SRB
No. CV-22-01381-PHX-SRB
No. CV-22-01602-PHX-SRB
No. CV-22-01901-PHX-SRB

Nearly a month after this Court issued its summary-judgment decision, and with less than a month until trial begins, intervenor-defendant the Republican National Committee (RNC) asks this Court to exercise its discretion to enter partial final judgment under Federal Rule of Civil Procedure 54(b). That request should be denied. A final judgment will likely be forthcoming in just a few months, and granting the RNC's motion would not streamline trial (or have any other benefit). Granting it would, however, disserve judicial economy, because there is substantial overlap between the claims already adjudicated and those still to be tried; both sets of claims challenge the same statutes, which concern the same voter-registration system (involving the same forms and burdening the same voters, etc.), as implemented by the same officials. That means entering partial final judgment would likely require two Ninth Circuit panels to familiarize themselves with the same background. It could also force the court of appeals to make otherwise-unnecessary rulings, and would waste the parties' resources.

ARGUMENT

1. Entering partial final judgment would burden the Ninth Circuit because there is significant overlap between the claims on which the RNC seeks partial final judgment and the claims that remain for trial—namely, provisions of H.B. 2492 and 2243 that make it harder to register to vote, harder to stay on the voting rolls, and harder to cast a ballot. To take just one example, this Court granted plaintiffs summary judgment on their claim that the Civil Rights Act's materiality provision preempted H.B. 2492's requirement that people indicate through a checkbox that they are U.S. citizens but reserved for trial the corresponding requirement that people also provide their birthplace. Entering partial final judgment would thus require two different Ninth Circuit panels to familiarize themselves with the relevant background and the interrelated issues in this complex case. Hence, even if the claims on which this Court has ruled are sufficiently "separate" from those still to be tried to satisfy the threshold Rule 54(b) requirement, *Jewel v. Nat'l Sec. Agency*, 810 F.3d 622, 627-628 (9th Cir. 2015), not burdening the court of appeals provides a "just reason for delay," Fed. R. Civ. P. 54(b). Indeed, entering partial final judgment during or after trial

would likely mean that the appeal from the summary-judgment would still be ongoing when appeal from the final judgment began. Having two appeals from the same underlying litigation pending before the Ninth Circuit at the same time (but several months apart) is manifestly inefficient as well as burdensome.

Relatedly, entering partial final judgment could require the Ninth Circuit to make unnecessary rulings. If appeal is taken only from a final judgment, the Ninth Circuit may well be able to make rulings on certain issues that obviate the need for it to decide other issues. That is far less likely if the Ninth Circuit faces piecemeal challenges, with the issues divided across two appeals (or two sets of appeals).

For similar reasons, entering partial final judgment would prejudice and burden plaintiffs, who would have to invest the time and other resources needed to brief and argue multiple appeals. Indeed, the other defendant-intervenors in this case (the legislators) have already necessitated appellate briefing and argument *in the midst of trial* through their mandamus petition. Granting the RNC intervenors' Rule 54(b) motion would open yet another round of appellate proceedings while proceedings in this Court are still underway. If a 54(b) appeal was heard on an expedited basis, it would likely coincide with the parties' preparing post-trial findings of fact and conclusions of law and also preparing for closing arguments in this Court. Conversely, if the appeal was *not* heard on an expedited basis, then the entire rationale for the motion would disappear, as any benefit from entering partial final judgment so soon before final judgment would be so minimal as to be outweighed by the other downsides discussed herein.

2. The RNC's arguments in favor of partial final judgment lack merit.

a. The RNC asserts (Mot. 4) that "the claims the RNC seeks to appeal rest on entirely independent legal theories and facts as compared to the still-pending claims that will proceed to trial" (quotation marks omitted). That assertion—for which the RNC offers no elaboration—is incorrect. As noted, there is substantial overlap between the claims already decided and those still to be tried. Both sets of claims challenge the same two statutes, addressing the same voter-registration system (involving the same registration forms and

burdening the same sets of voters, etc.) as implemented by the same state officials. That, again, is why it would be highly inefficient to enter partial final judgment, not only for the parties but also for the Ninth Circuit.

b. The RNC also argues (Mot. 5) that entering partial final judgment "would streamline the ensuing litigation" (quotation marks omitted). Here too the RNC offers no elaboration for this claim, and here too the claim is wrong. All the streamlining benefits for trial have already occurred by virtue of the Court having ruled on the relevant claims prior to trial. Whether those claims lie in wait until final judgment or the Court enters partial final judgment on them now will have no effect whatsoever on the trial.

c. The RNC next offers its main argument in support of partial final judgment, contending (Mot. 5) that denying the motion would prejudice it and the state because "their right to appeal the resolved claims is … deferred until the Court enters a final judgment." To begin with, however, the RNC is poorly situated to make a plea for "equitable" relief (Mot. 4) based on the supposed prejudice from delay when it waited nearly a *month* after this Court's summary-judgment ruling to file its (under-seven-page) motion. In fact, that delay is doubly damning for the RNC's prejudice argument: It belies any notion that the RNC *would* be prejudiced in any genuine way from delay (if it would be, then the RNC would have acted promptly), and it means that even if delay would cause any genuine prejudice, that prejudice is substantially diminished because the delay from denying the motion is a month less now than it could have been.

All that aside, save in the rare cases in which an appellate court has collateral-order jurisdiction, there simply is no "right to appeal" before "th[is] Court enters a final judgment" (Mot. 5). Indeed, the RNC's argument could be made *every* time partial final judgment is requested. If the "prejudice" from having to wait for final judgment were enough, partial final judgment would always be entered. That is not the law.

The RNC recognizes this, acknowledging—albeit with considerable understatement—that "the harm of delayed appeal is not novel." Mot. 5 (quotation marks omitted). But it says that this case is different from most because of the impending 2024 elections. In

particular, the RNC raises *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), which bars federal courts from changing the status quo by enjoining, too close to an election, state laws that are already in effect, *see id.* at 4-5. Plaintiffs agree that a prompt resolution of their claims is important, which is why they have worked with defendants and the Court throughout the litigation to move the case along at an extremely expedited rate. But any minimal difference between when some claims would be finally resolved with and without a partial final judgment is outweighed by the other considerations discussed herein, such as burdening the plaintiffs and the Ninth Circuit, including by possibly requiring the court of appeals to make unnecessary rulings. And *Purcell* is not relevant here because the challenged provisions of H.B. 2492 and 2243 are not in effect; as the RNC notes (Mot. 6), defendants have not been implementing those provisions pending the courts' resolution of all of plaintiffs' claims. The entry of an injunction against the enforcement of those provisions would therefore not cause the voter confusion or any other kind of "disruptive change" (*id.*) with which *Purcell* is concerned. To the contrary, the status quo is being preserved—not altered—by the pendency of this litigation.

Seeking to turn this crucial fact in its favor, the RNC asserts (Mot. 6) that "[t]he prejudice of delay is greater" because the challenged laws are not in effect. But it never explains why that is so. It simply goes on to recount that the county recorders agreed not to implement the challenged provisions pending this litigation, and then says (Mot. 7) that a "final judgment would allow some of those issues to be resolved on the merits before the election, rather than by assurances and agreements." That is true but it does *nothing* to show any prejudice to the RNC (or anyone else) from having to follow what is by far the most common course of waiting for a final judgment to appeal. There is no such prejudice.

d. Finally, the RNC argues (Mot. 7) that a "separate appeal will permit the parties and the Ninth Circuit the chance to give each issue the time and attention it deserves," whereas "[w]aiting for a host of other unrelated issues to come all at once will only increase briefing burdens and further delay resolution of the case." But even putting aside that the issues to be tried are, as explained, not "unrelated," litigants are not entitled to appeal every

adverse ruling they want. The Ninth Circuit, like every other appellate court, instead expects litigants to select a small number of issues to raise, which is why appellate briefs have specific word limits. The RNC (like any other litigant) would of course be entitled to ask the Ninth Circuit to increase those limits for an appeal after final judgment, but it has no right to double those limits—and consume twice as much of the Ninth Circuit's "attention"—by splitting its appeal in two. As discussed, doing so would prejudice the plaintiffs and unnecessarily burden the Ninth Circuit. The Court should exercise its broad discretion in this area not to do so.

CONCLUSION

The RNC's motion for entry of partial final judgment should be denied.

Dated this 31st day of October, 2023.

Respectfully submitted,

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/s/Bruce Samuels
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CERTIFICATE OF SERVICE

On this 31st day of October, 2023, I caused the foregoing to be filed and served electronically via the Court's CM/ECF system upon counsel of record.

/s/Bruce Samuels
Bruce Samuels