No. 22-16689

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARIZONA ALLIANCE FOR RETIRED AMERICANS, *et al.*,

Plaintiffs-Appellants,

v.

CLEAN ELECTIONS USA, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Arizona
Case No. 2:22-cv-01823-PHX-MTL (Hon. Michael T. Liburdi)

DEFENDANTS'-APPELLEES' RESPONSE TO PLAINTIFFS-APPELLANTS' EMERGENCY MOTION

Alexander Kolodin
Veronica Lucero
Davillier Law Group, LLC
4105 North 20th Street, Suite 110
Phoenix, AZ 85016
Tel: 602-730-2985
akolodin@davillierlawgroup.com
vlucero@davillierlawgroup.com
phxadmin@davillierlawgroup.com

Attorneys for Defendants-Appellees

INTRODUCTION[1]

Plaintiffs-Appellants have grossly mischaracterized Defendants'-Appellees' activities, arguing that they "have incited and engaged in a campaign of voter intimidation" for the past two weeks. Pls.' ER Mot. ("Mot.") at 1. Not only are Appellants' allegations unproven, however; they are also entirely untrue. There is simply no evidence linking any reported cases of "voter intimidation" in Arizona to Appellee Melody Jennings or her organization, Clean Elections USA ("CEUSA"), a "grassroots organization committed to election integrity" via its "legal presence." *See* https://cleanelectionsusa.org/ ("Who We Are") (last accessed Oct. 31, 2022). And while Appellees are sympathetic to anyone who has objectively experienced voter intimidation, Appellants' attempt to scapegoat Appellees for every instance of reported "intimidation" in Arizona—without *any* evidence that Ms. Jennings or her organization have ever intimated anyone—must not succeed. For to strip Appellees of their right to peaceably assemble, to associate with others who are committed to election integrity, and to express those views (based solely on unfounded allegations and misplaced pathos) is not only unwarranted and unprecedented but, worse, unconstitutional.

[1] Due to the time constraints involved in addressing Appellants' emergency motion in this Court, Appellees respectfully request leave to dispense with a Table of Contents and a Table of Authorities.

PROCEDURAL BACKGROUND[2]

Plaintiffs-Appellants filed their complaint and motion for a temporary restraining order and preliminary injunction Monday, October 24. Prior to Ms. Jennings retaining legal counsel, the district court held a status conference on Tuesday, October 25, and set an evidentiary hearing for Wednesday, October 26, at 1:00 p.m., also ordering Defendants-Appellees to file any opposition by 11:00 a.m. Due to the truncated nature of the proceedings, Ms. Jennings was not able to secure representation with enough time to file a written opposition to Plaintiffs' motion. However, Defendants orally opposed the motion at the hearing. And while Defendants were not able to gather witnesses or present exhibits in time for the hearing, Defendants showed that Plaintiffs' witnesses and exhibits do not and cannot support their allegations of voter intimidation by Defendants.

The district court agreed. After considering the evidence, the witnesses' testimony, and arguments by counsel, the court denied Plaintiffs' motion. Plaintiffs then filed their notice of appeal and a motion for injunction pending appeal on Friday, October 28, which the district court denied on October 31, 2022. Defendants also filed the instant motion in this Court on Friday, October 28.

[2] These facts are supported by the district court order that Appellants are challenging in this Court, which appears in Appellants' Excerpts of Record, as well other portions of the Appellants' excerpts.

FACTUAL BACKGROUND

For the same of brevity and because of time constraints, Appellees adopt the factual background provided by the district court for the purpose of this response only.

STANDARD OF REVIEW

The Court "review[s] the denial of a preliminary injunction for abuse of discretion and the district court's factual findings for clear error." *Doe v. Snyder*, 28 F.4th 103, 106 (9th Cir. 2022) (citation omitted). "Clear error exists if the finding is illogical, implausible, or without support in inferences that may be drawn from the facts in the record." *Id.* (cleaned up).

"[F]or a preliminary injunction to issue, a plaintiff must establish a likelihood of success on the merits, irreparable harm in the absence of preliminary relief, a balance of equities in the movant's favor, and that the injunction is in the public interest." *Id.* at 111 (citations omitted). Additionally, the Court has "applied a 'sliding scale' to this standard, allowing a stronger showing of one element to offset a weaker showing of another." *Id.* at 111 (citation omitted).

An emergency injunction pending appeal is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Tandon v. Newsom*, 992 F.3d 916, 917 (9th Cir. 2021) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)) (cleaned up).

ARGUMENT

I. Appellants' motion must be denied because they failed to comply with FRAP 8 and Circuit Rule 27-3.

As an initial matter, Appellants' motion must be denied for non-compliance with the applicable rules. A party must move in the district court for "an order suspending, modifying, restoring, or granting an injunction while an appeal is pending" before such a motion at the Circuit Court level. FRCAP 8(a)(1)(C). If a party fails to move in the district court first, it must "explain…why the motion should not be remanded or denied." Circuit Rule 27-3. Only two excuses suffice. Neither applies here. The *first* is where the moving party can make a showing that moving first in the district court would be impractical. *Id*. (a)(2)(A). But moving first in the district court was not impractical; indeed, Plaintiffs did so. The second exception is where "a motion having been made, the district court denied the motion or failed to afford the relief requested." *Id*. at (a)(2)(A)(ii). But the district court had no chance to rule on the motion because appellants filed their brief in this court the same day that it sought similar relief in the district court.

Thus, under both the federal rules of civil appellate procedure and our circuit rules, the motion should be denied, or alternatively, remanded to the district court for its consideration.

II. Appellants are not likely to succeed on the merits of their appeal.

Appellants cannot succeed in showing that the district court abused its discretion in denying their motion for preliminary injunction because, on this record, there is no evidence that Appellees have violated either Section 11(b) of the Voting Rights Act or the Support or Advocacy Clause of the Ku Klux Klan Act. Moreover, under the First Amendment of the Constitution, Appellees have the right to peaceably assemble 75 feet away from unmonitored ballot drop boxes (even for the purpose of monitoring the drop boxes), to associate with one another while doing so, and to express their views and concerns that election integrity is undermined when bad actors violate Arizona's ballot harvesting law.

Appellants' requested relief is therefore not only unwarranted and untenable, but it would also chill Appellees' First Amendment freedoms because the injunction Appellants seek is overly broad rather than narrowly tailored to address actual cases of voter intimation (which Appellees are not responsible for). Under federal and state law, the least restrictive means of addressing voter intimidation already exists. These laws already protect voters from intimidation and provide the means to punish bad actors who violate the law. But issuing an injunction that would categorically prohibit Appellees from peaceably assembling within 250 of drop boxes—an activity that is both protected and harmless—is an unconstitutional infringement of their rights under the First Amendment.

A. Appellees' legal actions do not violate Section 11(b) of the Voting Rights Act.

Appellants are unlikely to succeed on the merits of their appeal because Appellees' peaceable and legal actions do not violate the Voting Rights Act. Section 11(b) of the act provides that no person, "whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." 52 U.S.C. § 10307(b). The district court explained that "intimidate" means "to make timid or fearful" or "inspire or affect with fear," especially "to compel action of inaction (as by threats), and "threaten" means to "utter threats against" or "promise punishment, reprisal, or other distress." Oct. 28, 2022, Ariz. D. Ct. Order ("Order") at 6 (quoting Webster's Third New International Dictionary 1183, 2381 (1966)). Further, "intimidation includes messages that a reasonable recipient, familiar with the context of the message, would interpret as a threat of injury—whether physical or nonviolent—intended to deter individuals from exercising their voting rights." *Id.* (quoting *Nat'l Coal. On Black Civic Participation v. Wohl*, 512 F. Supp. 3d 500, 509 (S.D.N.Y. 2021)). And the Act does not require a showing of a specific intent to intimidate or threaten voters.

Nevertheless, the district court found that, "[o]n this record, Defendants have not made any statements threatening to commit acts of unlawful violence to a particular individual or group of individuals." Order at 9. The court also found that

"[t]here is no evidence that Defendants have publicly posted any voter's names, home addresses, occupations, or other personal information." *Id.* Nor does Appellees' conduct "fall into any traditionally recognized category of voter intimidation." *Id.* In fact, as the court's factual findings show, "Jennings continuously states that her volunteers are to 'follow laws' and that '[t]hose who choose to break the law will be seen as infiltrator intend on causing [CEUSA] harm." *Id.* The court's factual findings do not constitute clear error, which exists if the finding[s] [are] illogical, implausible, or without support in inferences that may be drawn from the facts in the record." *Snyder*, 28 F.4th at 106 (cleaned up).

Appellants claim that their evidence "showed a range of problematic conduct perpetrated against voters directly by Defendants," including "harassment, photographing, videotaping, trailing, doxing, and intimidation through the presence of large groups and, in some instances, armed individuals, gathered around drop boxes. Mot. at 8. However, the evidence they cite does not in fact directly implicate Appellees.

- Pls.' ER098 is a copy of a "voter incident" statement submitted to the Arizona Secretary of State ("AZSOC"). Regardless of whether the statement is true (it was not made under oath), there is nothing in the statement that proves the "group of people hanging out near the ballot dropbox" are members of CEUSA.

- Pls.' ER109 are photos of three people peaceably siting in camp chairs and do not demonstrate any type of intimidation.
- Pls.' ER111 is another copy of a "voter incident" statement (not made under oath) filed with the AZSOS. The statement complains that "a group of 5 or 6 20-30 yr old men [were] standing in the parking lot." The filer complains that "two individuals" intimidated and harassed him by supposedly photographing his car and license plate, yet no one from the group—based on the statement—ever approached the filer. It is the filer who approached the group and felt safe enough to confront them to ask "what they were doing." Further, there is nothing in the statement that affiliates the group with CEUSA.
- Pls.' ER113 is another copy of a statement (not made under oath) filed with the AZSOS. Again, the filer is the one who approached "these conspiracy idiots," and there is nothing in the statement that affiliates the so-called "[c]amo clad people" with CEUSA.
- Pls.' ER115 is a tweet connecting the three people shown in Pls.' ER109 (who were peaceably siting in camp chairs) with CEUSA. This merely shows that those who claim to be affiliated with CEUSA are in fact doing nothing more than peaceably observing unmonitored ballot drop boxes.

- Pls.' ER116 is a photo of two masked individuals who appear to be wearing tactical gear and possibly open-carrying their guns (which is in fact legal to do in Arizona). ER 117 is an internet statement that a video of the individuals does not show any illegal activity.
- Pls.' ER120 is an internet statement by Ms. Jennings explaining that "Someone called in seeing 2 of our people in tactical gear and armed. They will always gear up for a call like that…." While this statement appears to directly affiliate the men with Appellees, it is not a statement made under oath. Moreover, the individuals do not appear to have intimidated anyone, regardless of the legality or propriety of their decision to appear in public this way.
- Pls.' ER121 is an internet post by Ms. Jennings that shows someone covering up his license plate. The photo does not indicate Appellees, nor does it prove Appellees intimidated anyone.

What Appellants have done is gather a host of internet postings in an attempt to link them to voter incidents filed with the AZSOS and then in turn to link these complaints of intimidation to Appellees. However, the record does not show any illegal intimidation by Appellees. Instead, as the district court found after weighing all the evidence, the "record shows that Defendants' objective is deterring supposed illegal voting and illegal ballot harvesting." Order at 7. Ballot harvesting

is *illegal* in Arizona. *See* Ariz. Rev. Stat. § 16-1005. Electioneering and taking photographs or videos is only illegal in Arizona if it occurs *within 75 feet of a polling place*. *See* Ariz. Rev. Stat. § 16-515. Thus, not only is it legal for anyone in Arizona—including followers of CEUSA—to "knowingly, intentionally, by verbal expression and in order to induce or compel another person to vote in a particular manner or to refrain from voting," Ariz. Rev. Stat. § 16-515(I), to electioneer 75 feet outside of a polling place,[3] but it is also certainly legal to merely observe ballot drop boxes—and to document and report instances of suspected illegal activity at drop boxes to authorities.

B. Appellees have not violated the Support or Advocacy Clause of the Ku Klux Klan Act.

Appellants are also unlikely to succeed on their merits of their appeal because Appellees' peaceable and legal actions do not violate the Support or Advocacy Clause of the Klan Act, which requires proof that Appellees have engaged in "(1) a conspiracy; (2) the purpose of which is to force, intimidate, or threaten; (3) an individual legally entitled to vote who is engaging in lawful activity related to voting in federal elections." *Nat'l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 486-87 (S.D.N.Y. 2020). As the

[3] Not to mention that ballot drop boxes are not polling places, and Arizona law does not clarify whether these restrictions even apply to drop boxes or to post offices and mail boxes, where voters mail in their ballots.

district court recognized, "the Klan Act contains language requiring intent," but "Plaintiffs have not provided the Court with evidence that Defendants intend to prevent lawful voting." Order at 11. "Rather, Defendants stridently maintain that they seek to prevent what they perceive to be widespread illegal voting and ballot harvesting." *Id.*

In their emergency motion to this Court, Appellants argue that "[i]t cannot possibly be that individuals may harass and intimate voters with impunity based on objectively unreasonable, baseless beliefs that the voter is not legally permitted to vote[4]; rather, the Klan Act's intent requirement is tied to the intent to use 'force, intimidation, or threat,'" which Appellants assert is present here. However, this is simply not true regarding Appellees. There is not one documented instance of anyone affiliated with CEUSA using or intending to use force, intimidation, or threat to prevent anyone from voting legally. As the district court found, "Plaintiffs have not provided the Court with evidence that Defendants intend to prevent lawful voting." Order at 11. These findings do not constitute clear error, as they are

[4] As Defendants noted above, ballot harvesting is illegal in Arizona. Moreover, ballot harvesting happens in Arizona. *See* https://www.azag.gov/press-release/yuma-county-women-sentenced-their-roles-ballot-harvesting-scheme. Thus, regardless of Plaintiffs' repeated attempts to paint Defendants as conspiracy theorists, Defendants have a right to express their views that ballot harvesting—which is not a conspiracy theory—harms election integrity. Moreover, Defendants' right to assemble together at ballot drop boxes to deter ballot harvesters with their "legal presence" should not be infringed because Plaintiffs believe this constitutes "intimidation," regardless of the evidence to the contrary.

not "illogical, implausible, or without support in inferences that may be drawn from the facts in the record." *Snyder*, 28 F.4th at 106 (cleaned up).

Appellants point out that Ms. Jennings "has acknowledged surveilling an ordinary voter submitting a single ballot." Mot. at 9. But they are incorrect that ballot harvesting must occur in batches to be recognized at illegal. Moreover, it is irrelevant whether Appellees are able to recognize illegal ballot harvesting if and when it occurs, as they only wish to deter it with their "legal presence." Appellants' contention that this "will necessarily intimidate and threaten ordinary voters" is purely speculative and cannot justify the Court imposing a broad restriction on Appellees' right to assemble, associate, and express their views under the First Amendment.

Because "Plaintiffs have not provided the Court with evidence that Defendants intend to prevent lawful voting," Order at 11, they are unlikely to succeed on the merits of their claim.

C. Appellees' legal actions are protected by the First Amendment.

Appellants do not address the fact that the First Amendment also protects Appellees' right of assembly and association and instead argue that Appellees' conduct is not protected by the First Amendment because much of it is not expressive, and the conduct that *is* expressive consists of unprotected incitement and true threats. Mot. at 9. However, the district court correctly found that "a

reasonable observer could interpret the conduct as conveying some sort of message, regardless of whether the message has any objective merit." Order at 7. And as the court recognized, "it is well-established" that the First Amendment protects the right to film matters of public interest and to gather news and that the public has a right to receive information and ideas. *Id.* Additionally, Appellees have failed to prove actual intimidation, much less any "incitement," and the district court found that the true threats exception does not apply on this record. *Id.* at 8-9.

In *United States v. Bagdasarian*, the 9th Circuit reversed the conviction of a defendant "found guilty on two counts of making the following statements on an online message board two weeks before the [2008] presidential election: (1) 'Re: Obama fk the niggar, he will have a 50 cal in the head soon' and (2) 'shoot the nig.'" 652 F.3d 1113, 1115 (9th Cir. 2011). The *Bagdasarian* court opined that "[t]hese statements are particularly repugnant because they directly encourage violence." *Id.* Nonetheless, it held that "[a] statement that the speaker does not intend as a threat is afforded constitutional protection and cannot be held criminal" and that these statements did not constitute threats beyond the ambit of First Amendment protection, explaining:

> [T]he prediction that Obama "will have a 50 cal in the head soon" is not a threat on its face because it does not convey the notion that Bagdasarian himself had plans to fulfill the prediction that Obama would be killed, either now or in the future. Neither does the "shoot

> the nig" statement reflect the defendant's intent to threaten that he himself will kill or injure Obama. Rather, "shoot the nig" expresses the imperative that some unknown third party should take violent action. The statement makes no reference to Bagdasarian himself and so, like the first statement, cannot reasonably be taken to express his intent to shoot Obama.

Id. at 1122. The *Bagdasarian* Court further explained that for a statement to constitute a threat beyond the protection of the First Amendment requires that objective intent be evident from the face of the statement. *Id.* Here, as the district court found, there is simply no evidence of intent. Order at 9.

Additionally, in *Arizona Democratic Party v. Arizona Republican Party*, Plaintiff Arizona Democratic Party ("ADP") filed suit to enjoin a program of poll observation. The ADP claimed that Defendants' statements encouraging people to conduct "exit polls" and "to be present and observe the activities of other voters at polling places, to follow other voters and interrogate them as to their votes, to record other voters' license plates, to photograph and video-record other voters, and to call 911 if they suspect someone has engaged in voter fraud constitute at least an attempt to intimidate and/or threaten voters for voting or attempting to vote" violated the exact same laws at issue in this case. *Ariz. Democratic Party v. Ariz. Republican Party*, 2016 U.S. Dist. LEXIS 154086, at *15 (D. Ariz. Nov. 4, 2016). The court denied the injunction. *Id*. at *14-15.

Appellants can criticize and ridicule Appellees and their supporters all they want because Appellees wish to deter illegal ballot harvesting by peaceably

assembling together at drop boxes, but Appellees are well within their constitutional and statutory rights to assemble, associate together, and express their views near drop boxes and also to take photographs and to record video while doing so. Appellees may take photographs near drop boxes, at polling places (provided they are 75 away), while stuck in traffic, at the grocery store, or anywhere else where taking photographs and recording video are not prohibited by law. And, if people are truly and objectively intimidated by being photographed and recorded, they should never leave their homes, as it is impossible to escape surveillance in the modern world. "A person traveling…on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *United States v. Jones*, 565 U.S. 400, 403 (2012) (cleaned up). "What a person knowingly exposes to the public" does not give rise to an "expectation of privacy" that "society is prepared to honor." *Florida v. Riley*, 488 U.S. 445, 449-50 (1989) (cleaned up).

To issue an injunction categorically prohibiting Appellees from assembling near drop boxes and from taking photographs is not only overly broad and therefore not the least restrictive means of preventing voter intimidation, but it would also chill the rights of everyone—not just Appellees—from exercising their constitutional rights. It is untenable to enforce an injunction so broad that anyone found with a camera phone near a drop box could be swept up by the injunction.

And how would such an injunction even be enforced against CEUSA but not against other bystanders who are unaffiliated with Appellees but wish to assemble near drop boxes?

D. The requested injunction does not satisfy strict scrutiny.

Moreover, because Appellants' proposed injunction singles out the activity of video recording drop boxes, it is a content-based restriction and is therefore subject to strict scrutiny. *See Ariz. Broads. Ass'n v. Brnovich,* 2022 U.S. Dist. LEXIS 163140, at *6 (D. Ariz. Sep. 9, 2022) ("Plaintiffs next argue that HB2319 is a content-based restriction and is therefore subject to strict scrutiny. The Court agrees. HB2319 singles out the activity of video recording law-enforcement activity, and in doing so, it 'singles out specific subject matter for differential treatment.'") (citing *Reed v. Town of Gilbert*, 576 U.S. 155, 166 (2015), *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020)).

For a government action subject to strict scrutiny to be upheld, it must be "necessary to serve a compelling state interest" and "narrowly drawn to achieve that end." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). "[E]ven then the law must restrict as little speech as possible to serve the goal." *Turner Broad. Sys., et al. v. Fed. Commc'n Comm'n, et al.*, 512 U.S. 622, 680 (1994).

Here, the injunction that Appellants seek sweeps far too broadly to survive this test. For example, they seek to prohibit Appellees from "Gathering in groups of more than two individuals within 250 feet of drop boxes," taking pictures of individuals delivering ballots to drop boxes (from any distance), or posting online images and recordings of activities at drop boxes. Pls.' ER 166. Appellants should be careful what they wish for; if taking pictures of those delivering ballots to drop-boxes constitutes voter intimidation, then the Washington Post,[5] the Daily Beast,[6] and ABC 15[7] are all guilty. Appellees have the right to photograph the same activities that reporters routinely photograph and comment on via television news, print and internet news, and social media. The proposed injunction is both overly broad and yet fatally underinclusive.

As noted above, Arizona law already provides a narrowly tailored solution to address the state's compelling interest in preventing voter intimation. And, as the court in *Arizona Democratic Party v. Arizona Republican Party* acknowledged:

> Arizona law also includes an anti-voter intimidation provision, which states it is a class 1 misdemeanor for a person, directly or indirectly, to

[5] *See* https://www.washingtonpost.com/politics/2022/10/20/arizona-ballot-drop-boxes/ (last accessed Oct. 31, 2022).
[6] *See* https://www.thedailybeast.com/doj-alerted-to-creepy-surveillance-attempt-at-maricopa-county-arizona-drop-box (last accessed Oct. 31, 2022).
[7] *See* https://www.abc15.com/news/political/elections/intimidation-complaint-claims-voter-was-filmed-accused-of-being-mule-at-mesa-dropbox (last accessed Oct. 31, 2022).

> knowingly "practice intimidation" or "inflict or threaten infliction" of "injury, damage, harm or loss" in order "to induce or compel" a voter "to vote of refrain from voting for a particular person or measure at any election provided by law, or on account of such person having voted or refrained from voting at an election." A.R.S. § 16-1013. In addition, Arizona more stringently controls the area within 75 feet of a polling place as posted by election officials. A.R.S. § 16-515.

No. CV-16-03752-PHX-JJT, 2016 U.S. Dist. LEXIS 154086, at *11.

And while the Court "may only enjoin Defendants and their co-conspirators, if any, the injunction may nonetheless have a chilling effect on protected First Amendment speech by others." *Id.* at *41. *See also Rodriguez v. Robbins*, 715 F.3d 1127, 1133 (9th Cir. 2013) ("An overbroad injunction is an abuse of discretion.").

III. Appellants will not be irreparably harmed by *Appellees* absent an injunction. Appellees will be irreparably harmed if an injunction issues.

Appellants will not be irreparably harmed by *Appellees* absent an injunction because Appellees are not engaging in voter intimidation, and there is no evidence that they have deprived anyone of their constitutional rights, which would "'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns,* 427 U.S. 347, 373 (1976)). On the other hand, Appellants' proposed injunction is not only *likely* to harm Appellees but *will most certainly harm them* by preventing them and others from exercising their constitutional right to assemble, associate together, and freely express their views in a non-threatening manner.

As the district court recently explained in a different case successfully challenging an Arizona law banning the recording of police officers, "for purposes of the Court's preliminary injunction analysis," the "'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Ariz. Broads. Ass'n v. Brnovich*, No. CV-22-01431-PHX-JJT, 2022 U.S. Dist. LEXIS 163140, at *8 (D. Ariz. Sep. 9, 2022) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

On the other hand, Appellants assert that *if* "'potential members of the electorate suffer intimidation, threatening conduct, or coercion such that their right to vote freely is abridged, or altogether extinguished," that harm is irreparable. *Ariz. Democratic Party v. Ariz. Republican Party*, No. CV-16-03752-PHX-JJT, 2016 WL 8669978, at *11 (D. Ariz. Nov. 4, 2016). While both Appellants and Appellees face irreparable harm in this case, the difference is that Appellees are not responsible for any harm Appellants may experience, but Appellants' proposed injunction will directly cause irreparable harm to Appellees because the "'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Ariz. Broads. Ass'n*, No. CV-22-01431-PHX-JJT, 2022 U.S. Dist. LEXIS 163140, at *8.

IV. The balance of equities and public interest do not support an injunction.

As Appellants note, "It is always in the public interest to prevent the violation of a party's constitutional rights." Mot. at 21 (citation omitted). Here, an injunction would undoubtedly infringe on Appellees' constitutional rights while doing nothing to address Appellants' complaints of voter intimidation because Appellees are not "intimidating" voters. On the other hand, the State of Arizona has already addressed voter intimidation in multiple other ways that are narrowly tailored to serve this compelling state interest, allowing bad actors to be punished while protecting the constitutional rights of those who are not engaging in voter intimidation. Thus, maintaining the status quo is in the public interest, and the balance of equities tips in Appellees' favor.

CONCLUSION

For all these reasons, the Court should deny Appellants' motion.

Respectfully submitted this 31st day of October 2022.

/s/ Veronica Lucero
Alexander Kolodin
Veronica Lucero
Davillier Law Group, LLC
4105 North 20th Street, Suite 110
Phoenix, AZ 85016
Tel: 602-730-2985
akolodin@davillierlawgroup.com
vlucero@davillierlawgroup.com
phxadmin@davillierlawgroup.com

Attorneys for Defendants-Appellees

CERTIFICATE OF SERVICE

I certify that, on October 31, 2022, a copy of the foregoing was served on all counsel of record via the Court's ECF system and via electronic mail.

/s/ Veronica Lucero

CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 4,579 words. This motion complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

Dated: October 31, 2022 */s/ Veronica Lucero*