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(Court was called to order by the courtroom deputy.)

(Proceedings commence at 11:03 a.m.)

THE COURT: Please be seated.

THE COURTROOM DEPUTY: Civil Case 22-8196, League of Women Voters of Arizona vs. Lions of Liberty, LLC, and others. This is the time set for status conference.

Counsel, please announce your presence for the record starting with the plaintiff.

MR. DANJUMA: Good morning, Your Honor. Orion Danjuma on behalf of the plaintiffs.

MS. HOMER: Rachel Homer on behalf of the plaintiffs.

MR. BENDOR: Josh Bendor and Brandon Delgado from Osborn Maledon for the plaintiff.

THE COURT: Okay. We have Mr. Arellano.

MR. ARELLANO: Good morning. Yes, Daniel Arellano. As Your Honor's aware, I represent the plaintiffs in the related case in this Matter, Arizona Alliance for Retired Americans and Voto Latino. We weren't planning on making an appearance today. I just wanted to observe.

THE COURT: Well, I -- there's a reason I wanted you to sit there.

I figured that, Your Honor.

THE COURT: We'll get to that shortly. Mr. Arellano.

So, Mr. Danjuma --

MR. DANJUMA: Yes.

THE COURT: Did I get that correct?

MR. DANJUMA: Exactly.

THE COURT: Okay. I'm going to -- if I mess it up, just let me know, because it's -- I -- as somebody who's, you know --

MR. DANJUMA: Yes.

THE COURT: I -- I want to make sure that I pronounce your name correctly. Thank you.

And are you going to --

MR. DANJUMA: Yes.

THE COURT: -- be --

MR. DANJUMA: I'll be addressing most of the issues with regard to this status conference, but my colleague, Mr. Bendor, will also jump in for a few matters related to service.

THE COURT: Okay. Thank you. Thank you, sir,.

Mr. Kolodin.

MR. KOLODIN: Good morning, Your Honor. Alexander Kolodin appearing today on behalf of Defendants Melody Jennings and Clean Election USA, filling in for Veronica Lucero, who's furiously briefing Mr. Arellano's emergency appeal to the Ninth Circuit on the related matter.

THE COURT: Okay. Very good. And you entered an appearance in the related matter. I saw that this morning.

MR. KOLODIN: Your Honor, we should now have

appearances on file for me in addition to Veronica in both matters.

THE COURT: Okay.

MR. KOLODIN: If that's not the case, then we can fix that.

THE COURT: No. I -- I meant to -- it wasn't really a question. It was a statement. I recall see --

MR. KOLODIN: Okay.

THE COURT: -- seeing that you had entered your appearance this morning.

MR. KOLODIN: Fantastic.

THE COURT: Okay. Good. All right. So we have some individuals in the back. Ms. Richter has informed me that -- that you're all associated with either Lions of Liberty, LLC, or Yavapai County Preparedness Team; is that right.

(Chorus of yeses.)

THE COURT: All right. If one person from each of those organizations wishes to come forward and -- and sit at -- at counsel table, that would be helpful for me.

If you don't mind, when you get situated, please just introduce yourself and tell me which organization you represent.

MR. CILANO: Sorry. Lucas Cilano, one of the board members of Lions of Liberty.

MR. ARROYO: Jim Arroyo, president Yavapai County

Preparedness Team, and board member of the Lions of Liberty.

THE COURT: All right. Thank you, gentlemen.

So then we also have Nicholas Cilano. Are you here, sir?

Okay.

Toby Fox?

James Johnson?

All right. Bruce Mounsey? Brian Mounsey?

MR. BRIAN MOUNSEY: Present.

THE COURT: Okay. And, ma'am, are you a defendant, or are you just an observer?

MS. ARROYO: I am Jim wife's. I work with Yavapai County Preparedness Team.

THE COURT: Okay. Thank you.

MS. ARROYO: My name is Janet.

THE COURT: Okay. Thank you, ma'am. Just making sure.

I saw something over the weekend that -- that Lions of Liberty, and -- and potentially the Yavapai County Preparedness Team, has made a public statement that you're disassociating yourselves from Clean Elections USA or -- or perhaps that you're standing down from these activities.

Did I see that correctly?

MR. CILANO: Yes, Your Honor. We did that on Wednesday this last week.

THE COURT: All right. And, Mr. Cilano, is -- is your organization engaged in any ballot drop box monitoring whatsoever at this point?

MR. CILANO: No, we are not.

THE COURT: Do you have any intention to do so.

MR. CILANO: To restart that?

THE COURT: Yes.

MR. CILANO: No, not at all.

THE COURT: Mr. Arroyo, can you tell me what the status of your organization is.

MR. ARROYO: Our organization was not involved directly. We merely put out information based on the Lions of Liberty running operation drop box. But we put it out to all of our members as well that there was a stand-down order and we were no longer involved in watching the drop boxes.

THE COURT: All right. So can you both commit to me on the record here and -- and I'm going to warn you that if -- if you do commit to me and -- and you end up changing, you -- you can be subject to further legal action by the Court.

So let's start with you, Mr. Cilano. Do you commit that -- that you and -- and your organization will take no part in any ballot drop box monitoring for this election.

MR. CILANO: Yes, Your Honor, we will not.

THE COURT: Mr. Arroyo?

MR. ARROYO: Yes, sir. We've stood down.

THE COURT: Okay. So, Mr. Danjuma, does that satisfy your clients?

MR. DANJUMA: Yes, Your Honor, it does.

THE COURT: May I dismiss these individuals from the lawsuit?

And feel free to confer.

MR. DANJUMA: Just one moment.

THE COURT: And let's turn off the microphones, just in case.

(Discussion held off the record.)

THE COURT: Okay. Turn on the microphones.

All right, sir.

MR. DANJUMA: Thank you, Your Honor. Yes, we accept that representation from -- from the defendants from the Yavapai, and we're amenable to them being dismissed at this time.

THE COURT: Okay. Mr. Kolodin, do you have any concern with me dismissing these individuals and those two organizations.

MR. KOLODIN: No, Your Honor.

THE COURT: All right. Thank you.

So it is ordered that the following dismiss -- defendants are dismissed from this action: Jim Arroyo, Lucas Cilano, Nicholas Cilano, Toby Fox, James Johnson, Lions of Liberty, LLC, Bruce Mounsey, Brian Mounsey, Yavapai County

Preparedness Team.

You are all dismissed from this case. You're welcome to stay if you would like; however, you're -- you're free to go.

MR. ARROYO: Thank you, Your Honor.

MR. CILANO: Thank you, Your Honor.

THE COURT: There -- there is a mention of unknown parties, so John Does 1 through 10. Typically in our court we don't -- we don't have the -- a Doe designation. It's something that's done in state court and you -- perhaps other jurisdictions.

But, Mr. Danjuma, I'd like to just dismiss the dough parties understanding, though, that if you find somebody who needs to be part of this case, I'm -- I'm going to consider a motion to amend under the liberal standards established by the Circuit.

MR. DANJUMA: I understand, Your Honor. And just to verify, can we -- can you confirm these dismissals are without prejudice if more information comes to us related to --

THE COURT: Okay. But the dismissal is without prejudice.

MR. DANJUMA: Okay. Yes, we are agreeing to that.

THE COURT: So are you okay of dismissing the Does just to clean up the caption?

MR. DANJUMA: Yes, Your Honor.

THE COURT: All right. I'm dismissing the Doe defendants.

All right. Now, the -- this -- this is highly related to the Arizona Alliance case, Mr. Arellano's case.

Mr. Kolodin, you represent the defendants, Clean Elections USA and Ms. Jennings in both cases, do you not?

MR. KOLODIN: We do now, Your Honor.

THE COURT: Okay. Because there's such a substantial overlap in the two cases involving facts, legal theories, I'd like to consolidate the cases. I -- any objection? And feel free to confer if you'd like. Mr. Bendor.

MR. BENDOR: Yes, Your Honor. I think in the abstract we don't have any concerns. I think we do want to be able to present additional evidence in our case because we believe.

THE COURT: You will. I -- I'm going to take up your motion as an independent motion.

MR. DANJUMA: Yeah, our only concern is if we'd be affected by the appeal that's under -- that's in -- that's currently pending before the Ninth Circuit. But I -- I don't believe we would be as long as we have an opportunity to do an independent hearing.

THE COURT: Right. You -- and you're going to get that opportunity. One of the reasons why I think consolidating is appropriate is -- is because of that appeal. And I think I -- I suppose I could get into it now, which is the -- one of

the next items on my list of things to talk with you all about is -- is -- is I do think that if the Ninth Circuit -- well, when the Ninth Circuit issues its ruling either way, I think it's going to impact this case. Now -- now, I think that the way this case, the League of Women Voters case has been pleaded and the evidence that you've provided me and also your proposed order are -- are different from the -- from the case that I decided -- or that I issued the order on last week. So -- so I do think that there's -- there's a distinction, although there -- there might be general legal principles that apply to both.

MR. DANJUMA: Your Honor --

THE COURT: Go ahead.

MR. DANJUMA: Your Honor, that's correct. We do think we have different -- different parties, different evidence, different argument, and a different injunction that we've requested. And consolidation, I don't -- I don't think we have an objection to that in principle, and as long as the Court agrees that we do have an opportunity to present that evidence to the Court. We think that it's relevant. We -- we intend to put forth witnesses that address some of the issues that the Court deemed potentially missing in the prior order.

THE COURT: And -- and I recognize, and I'll state on the record that -- that you will have a -- a -- a -- a fair and clean shot at your preliminary injunction independent of

Arizona Alliance.

Mr. Arellano, do you have any concerns with consolidating?

MR. ARELLANO: We don't, Your Honor. So on behalf of Arizona Alliance for Retired Americans, we would let you know we have no objection to consolidation.

THE COURT: Okay. Thank you, sir.

Mr. Kolodin?

MR. KOLODIN: No objection to consolidation, Your Honor.

THE COURT: It is ordered consolidating the two cases, Arizona Alliance, that is 22-CV-1823 with the League of Women Voters case, 22-CV-8196.

As -- as I just now mentioned, I -- I do think that there's a distinction, and I do want to recognize everybody, I -- these cases move very quickly. Facts -- it takes a long time just to research a case before you -- before you file it, and I understand, I've -- I've sat in your chair, you know, on both sides in the past, so I fully understand. So -- so I do -- I do think that -- that there's a bit of a different factual record here in this case. And, again, that -- that is not a criticism. Mr. Arellano, I hope you -- you understand what I'm saying without.

MR. ARELLANO: Of course, Your Honor.

THE COURT: Okay. Good. Because I intend no -- I

intend nothing other than to observe that.

So -- so tell me, Mr. Danjuma, how your case is different. And you mentioned the previous case. I assume that you are familiar with the Arizona Alliance case. You're familiar with the factual record. And if you -- if you were a close study of the order that I issued on Friday, I -- I -- I said on this record, on this record with this proposed preliminary injunction.

So tell me, how is your case different?

MR. DANJUMA: Absolutely, Your Honor. And you're exactly correct, that -- and with respect to our colleagues in the prior case, the AARI -- RA case, our case presents different evidence, and evidence of -- of -- that the Court noted was important for in -- in your opinion that you issued on Friday. We've read that carefully and with care. You noted that you didn't have evidence in the record the defendants were upper back circulating personal information about voters online or that voters had been subjected to true threats.

We have obtained declarations and would like to provide testimony from voters who -- who were threatened and did have personal information circulated about them online. And in addition, we've asked for a different injunction with -- in -- in some respects more narrow conditions and other requested components of the injunction that is also a basis for a difference between the two cases.

So we believe that this evidence -- that just as you noted, the -- the order that you issued was on the specific record that was presented. We understand very swiftly early last week, we've been able to speak to many voters about relevant issues before the Court, and we'd like to put that testimony in evidence in front of this Court as it considers a new temporary -- our temporary restraining order.

THE COURT: Okay. Thank you, sir.

Let me -- let me ask you a few other questions.

Now, last week, I questioned Mr. Fox about the -- the fact that there was -- I think there was just two individuals who were observed with a sidearm and with sometimes it's called tactical gear, sometimes it's body armor. I -- I don't know which is -- is the correct way to describe it. But -- but I questioned Mr. Fox about this. And this is at pages 100 and 101 of the transcripts. Do you all have the transcript.

MR. DANJUMA: We just received it this morning from our co-counsel. So we have -- we have been able to review it, yes.

THE COURT: Okay. So from Mr.

MR. BENDOR: You received it --

MR. DANJUMA: No, from Mr. Arellano's co-counsel.

THE COURT: All right. Mr. Kolodin, do you and Ms. Lucero have the transcript from last week?

MR. KOLODIN: Yes, Your Honor.

THE COURT: So, for example, on pages 100 and 101 on the transcript, I had a conversation with Mr. Fox where Mr. Fox did argue that -- that the -- that having the sidearm could be considered as part of the threat or intimidation, but he acknowledged that the proposed order didn't ask me to issue -- issue a prohibition on the use of the side -- or the -- or having -- or observer having a sidearm.

So -- so you've -- you've asked for that --

MR. DANJUMA: Yes.

THE COURT: -- to some degree. Can you talk about that a little bit.

MR. DANJUMA: Yes, Your Honor. And we just -- just without getting too deeply into the merits, we have requested a different injunction and it differs in variety of respects. One in the most important ways it requests that the defendant remove and refrain from making false statements about voting -- voter eligibility. That's consistent with a variety of case precedent in the voter intimidation context, and we have asked for relief related to these defendants as to firearms and tactical gear that's -- that's worn by members as their -- who are observing -- who are participating in this operation.

And there are bases for these that we think are -- are well supported under Supreme Court precedent. And we're happy to go into that now if you prefer or at argue the for -- for the -- on the temporary restraining order.

THE COURT: I think I would like to get to that at this hearing in a little bit, but -- but I think at this point, I just want to provide some sort of an overview as to how this case might be different than the one.

MR. DANJUMA: I see. Yes. There -- so the -- if -- there are numerous facts that make -- that distinguish this case. It's distinguished -- it's distinguishable based on the factual record that we've provided to the Court on voters who were affected by defendant's actions. It's different in terms of the argument that we've raised. The the Court raised a number of specific questions about First Amendment doctrine in this area and the ability for a Court to provide relief consistent with the First Amendment. We have provided a supplemental brief, which I believe you just granted us leave to file, that addresses some of those Court's concerns and shows that injunctions in this -- in this area can be issued consistent with the First Amendment. We believe that's responsive to this Court's questions.

In addition, the -- the Department of Justice has just issued a Statement of Interest in our case to provide additional support for that notion. And, as I've noted, our injunction is both narrower in some respects and respect -- and requests different forms of relief than the injunction in the AARA -- RA case.

THE COURT: Okay. And I did -- I will note that I did

read the Department of Justice's statement this morning. I read it carefully. And I haven't had time to read your side's supplemental brief yet, but I will.

MR. DANJUMA: And -- and just as a note, we have provided additional evidence via declaration in that supplemental brief as well that responds to some of the questions that the Court had in the hearing last week.

THE COURT: Okay. Thank you, sir.

Mr. Kolodin, would you like to address these -- these differences? I should say the overview of the differences.

MR. KOLODIN: Well, yes, Your Honor. I suppose I would point out, first of all, the very important way in which these cases are the same. Although defendant -- or although plaintiff's make a show of -- of trying to point at activity that they want to enjoin, the first section of their complaint, the first section of their brief, is entirely concerned with -- with the allegation that our clients are conspiracy theorists and espouse harmful conspiracy theories, and it does seem that the protectual purposes of both cases is simply to get our clients to stop saying things like that.

I would add to that, an important difference with this new proposed order, that makes it even more unconstitutional than the one that, Your Honor, has already deny the TRO for, and that is that it attempts to impose a prior restraint on speech. It ah tents to tell our clients that they can't say

something before that they've said it, which is obviously completely not allowed under the First Amendment.

In addition, it's -- it's quite the same in terms of scope. Mr. Arellano's proposed injunction would prohibit -- would have prohibited our clients from assembling near drop boxes. This proposed order would prohibit our clients from continuing what plaintiffs term operation drop box.

Essentially it's the same thing. You can't assemble by the drop boxes. So I view the cases as similar in this regard.

And we just got picked up for the retention over the weekend, but in my swing through at least the -- the -- the motion for TRO in the complaint, it still appears there's nothing directly linking our clients to any of the individuals carrying firearms or at least the -- the very same allegations in that regard and the very same evidence or nonevidence in that regard.

THE COURT: I do recall -- I do recall in the evidence there's a -- a social media post that Ms. Jennings made in response to the two individuals with sidearms saying something to the effect of those are -- those are her people or something to the effect of that -- do you -- do you recall that?

Does that --

MR. KOLODIN: Yes, Your Honor. And I -- I seem to, and you can correct me if I'm wrong, if I'm wrong, Daniel, but I seem to also recall that in Mr. Arellano's complaint --

THE COURT: Okay. But, again, I -- I don't recall the original -- or the first complaint, the Arizona Alliance complaint, asking for me to prohibit the use of firearms within a certain radius of the drop box. That's why -- that's why I think that --

MR. KOLODIN: That --

THE COURT: -- it's more important to talk about it now.

MR. KOLODIN: That portion I do not believe was present in Mr. Arellano's --

THE COURT: It was not.

MR. KOLODIN: -- complaint. Yeah.

THE COURT: Go ahead.

MR. DANJUMA: If I may, Your Honor?

In addition, some -- and, you know, we can go through sort of point by point the -- the differences between the two proposed orders, but our proposed order does not request that all defendants disperse from the streets around drop boxes. That is not the relief that we've requested in our case.

One thing I'll say about the scope of the proposed order in general is I don't need to tell this Court but the Court does have broad equitable authority to craft an appropriate injunction. We've crafted a proposed order that we do feel is wholly constitutional in every part and point, but we are prepared to discuss alternative ways of framing this,

because each component does depend upon certain different facts that are found as the Court knows based on the record of evidence that's presented before it.

So I want to -- I want to emphasize that we recognize that there is some give in the joints about the scope of the order that all parties have requested.

THE COURT: So -- so I would say if -- if the defendants are making statements that falsely conveys an individual violates the law when they deposit ballots in a drop box, and I think I pulled that -- somewhat as with a fair ah phrase from your proposed order, it seems to me I can enjoin that if the fact -- if it's supported by the record, I could enjoin that under the Wohl case, W-O-H-L, and because -- because it's -- it's a statement -- an inaccurate statement about the voting process that -- that could intimidated or coerce somebody or -- you know, ultimately prevent them from casting a ballot.

And I think the case law is fairly clear that if, for example, a spouse is at home and hands a -- an early bat you will to the spouse and says, please take this ballot with yours to drop it off today, and, you know, the -- the ballot delivering spouse is -- is coerced or intimidated by thinking that he or she might be violating the law, that might be a violation of -- of the Voting Rights Act, because it's a misstatement of Arizona's law.

MR. DANJUMA: Your Honor, that's exactly correct. And the evidence that we have prepared in our -- in our T -- in our temporary restraining order indicates that that's exactly what happened with individuals here. And we do have additional evidence in the supplemental briefing of false statements made by -- by Ms. Jennings that do have that effect, that --

THE COURT: Okay.

MR. DANJUMA: -- that misstate the law in Arizona with regard to the ability to drop off a ballot -- ballots behalf of family members and household members.

THE COURT: And Mr. Kolodin, do you have anything you'd like to say to that point.

MR. KOLODIN: Well, Your Honor, I -- since we just got picked up this week epidemiology, I have not had a chance to dig in to defendant's authorities. Automobile we'd like to a chance to present briefing on the issue.

THE COURT: Yes, but I do want you to understand something. This -- this case needs to move rapidly. So I understand you just got hired for this case over the weekend, but -- but that means you're going to have to work extra hard today.

Do you understand that?

MR. KOLODIN: Yes, Your Honor.

THE COURT: Okay. All right. You know, one -- one issue -- one area that I've been struggling with is if --

there's a difference in the cases, to me, this case versus the authorities cited, which is if there's somebody recording, for example, in the parking lot or in the voting center or, for example, on the steps on the thresholds of the -- the voting center, that, to me, is -- is different than if there's recording happening on the sidewalk.

Do you see it's -- it's -- there's -- there's a difference there. And -- so is it a distinction with or without a difference?

MR. DANJUMA: Your Honor, and -- and I think this is -- this is a conversation that merits additional discussion in connection with the facts that we are presenting you. There -- there is to some extent a -- a distinction, and you're absolutely right, that sidewalks are traditionally sort of protected areas that allow folks to assemble. But we want to be very clear that the Supreme Court has held that the state has a compelling interest that overcomes content based restrictions, the highest basis of strict scrutiny in ensuring that voters have privacy as they vote and they're not you know to intimidation.

So even though you're right that I believe photography that's taken on a sidewalk is somewhat different than inside of a -- a government facility, for instance, that's dedicated to voting, that the interests that the state has in ensuring privacy and combatting voter intimidation apply in both cases,

and the Supreme Court has held that they are sufficient to overcome strict scrutiny.

MR. KOLODIN: If I may, Your Honor?

THE COURT: You may.

MR. KOLODIN: Well, Your Honor, we don't disagree with that, and the State has spoken on photography and the limitations surrounding the polling places for photography and the State has said not within 75 feet.

And, certainly, if the -- if the contention is that our clients have to comply with the law that -- that they cannot take pictures within 75 feet of established polling places, where that 75-foot limit applies, then you'll get no quarrel from me. But in other places where the legislature has not so acted to prohibit, then we would maintain that our clients have a right to film and photograph, especially in areas that are on the street or in public buildings. These are -- these are not places where individuals have a reasonable expectation of privacy. I mean, in fact, there's a lot of -- a lot of case law in the Fifth Amendment context about plain view searches, police officer looking through your window, versus actually looking up your car and going through it. When you're on a public street. And so there wouldn't be any thought of having the expectation of privacy.

And then, finally, as our -- as our county recorder likes to point out there's not much of a difference between a

drop box and mailbox. Both -- both essentially fulfill the same purpose. So if this can be prohibited by drop boxes, then where does it end? Can it be prohibited by mail boxes in front of everybody's residence? It doesn't seem to me that this is a very good place to draw a solid First Amendment distinction.

THE COURT: Okay. I think that what Mr. Danjuma was -- was comparing the State to the Congress by enacting the Voting Rights Act, not -- not the State of Arizona setting the 75-foot limit. And so -- so that would be -- I think it would be Section 11(b) that I would need to analyze under -- under the strict scrutiny framework.

Is that right?

MR. DANJUMA: That's correct, Your Honor.

THE COURT: Okay.

MR. KOLODIN: For -- perhaps, Your Honor. But if -- if Congress denied to narrowly tailor something to compelling governmental interests in a place where it's legislation butts up against the First Amendment, we might expect Congress to be just a bit more specific. And Congress certainly knows how to be specific. The air's legislature certainly new how to be specific. And at that point it would be an open question between State and federal authority whether it was to Congress or whether it was the purview of the Arizona State legislature to make these kinds of laws. Congress has not been so specific, and I would just caution the Court against reading

into a vague statute, a very specific intent when Arizona law already has a specific statute that governs this conduct.

THE COURT: Okay. Did you want to say something.

MR. DANJUMA: If I may respond? I think there are factual -- there -- there's factual evidence that we're submitting as part of the record that is relevant to this discussion. And, also, legal analysis. One is that we do have testimony we have provided to the Court that observers associated with Ms. Jennings definitely have invaded beyond the -- any 75-foot limit beyond -- around a drop box, but I'd also like to say that that -- that -- that buffer, which is a component of Arizona law and is one that's relevant in terms of its admin -- administerability is not in itself, in and of itself a magic barrier. The issue that Congress was concerned about and that the Supreme Court has upheld is the concern about voter intimidation and voter privacy while voting.

THE COURT: Okay.

MR. DANJUMA: And that is the issue -- that is the concern that we believe defendants and their agents are invading.

One thing I will also say is that, you know, we are -- are able to adjust components of -- of the -- of the requested relief that we sought to -- to tailor it in a way that we think makes sense for all parties, but the -- the note about the injunction that we're seeking, well, let me back up for just

one moment.

We know that -- that, Your Honor, was concerned about a potential chilling effect of the proposed order in the AARA case on other protected activity, but I want to emphasize that the order we're seeking is targeted at the defendants and the individuals in privity with them. It's proper for the Court to be concerned about a potential effect on other individuals outside of that group, but the relief we're seeking is against the Clean Elections USA, Melody Jennings and the people in privity with her.

THE COURT: Okay. Mr. Arellano, I'm aware that the Court of Appeals has asked for a response brief today, and a reply tomorrow. Do you -- do you have any further information on whether oral argument will be provided and when you might expect a decision from the Court of appeals.

MR. ARELLANO: Not at this point, Your Honor, only the briefing schedule that you just mentioned so I'm hoping we'll have a decision shortly after any replies filed tomorrow.

THE COURT: Okay. Mr. Kolodin, your client willing to make any concessions on the record right now that -- that might negate the need -- you could -- you could stand up, that might negate the need to move forward if deemed acceptable by the plaintiffs?

MR. KOLODIN: Your Honor, I've actually reached out to Mr. Arellano before we even had entered our appearance in that

case, and told him, you know, hey, we can -- we can argue all day about the -- the confluence of Second Amendment rights versus -- versus the legislation that we're dealing with this in case, but, you know, frankly, but if if -- if it was the John Brown gun club doing this in areas that were -- that were heavily conservative we probably wouldn't be so happy about it either and we're happy to work with you to the extent we have control over anybody, which is a big F, because unincorporated Melody can't force anybody to do anything. She can put out statements or whatever. We're willing to work with you to the extent it is within her power to make sure that there's not visibly armed people by these drop boxes, because I -- you know, that's darns -- that's just fair play.

And so I don't know if -- if that representation completely eliminates that issue or whatnot, but know that that is something that Mr. Arellano and I have previously discussed.

THE COURT: Well, let me ask you this: Would you be willing to commit on behalf of your client that -- that she and Clean Elections USA will not make any statements on -- any public statements in any forum that falsely conveys an individual violates Arizona's ballot harvesting law simply when they deposit ballots in a drop box and -- I mean, we can work on the language, but -- but it seems to me that, for example, if a mom or a father is -- is taking ballots for the spouse, themselves and voting age kids and maybe an elderly parent and

they're -- they're not violating Section 16-1005. I mean, I think you -- you would agree with that.

MR. KOLODIN: I would, Your Honor.

THE COURT: All right. So -- so if your client is making statements, just blanket statements that whenever somebody is bringing multiple ballots and that violates the law, that they're a mule, that seems to me that that's a statement susceptible to an injunction.

Do you agree?

MR. KOLODIN: So, Your Honor, my -- my concern with the prior restraint, and, again, as I stated to Your Honor, I do have to take a look at the authority that plaintiffs have -- have mentioned. My -- my concern with the prior restraint is that it's -- it becomes this gray area of where whether you're complying or not complying if you say some variation on the statement.

THE COURT: But doesn't -- doesn't the -- the case law foreclose the prior restraint problem at least in the narrow circumstance where it's not protected speech? So, for example, in the Wohl case, the defendants were accused of -- of lying to voters in a robo call, and I -- I think I'm remembering correctly that the Court enjoined that conduct.

So -- so how -- so do you see how -- how the -- how the Wohl case would apply in -- in that example that I just gave?

MR. KOLODIN: Your Honor, I would -- I would want to have at least some time to review it, but assuming that I reviewed it and it -- and it struck me the same way that it struck Your Honor, my inquiry to the Court would be if we were to then agree to some sort of narrow injunction that you cannot make a blanket statement that anytime somebody's delivering multiple ballots they're violating Arizona law, would that then obviate the need for the -- faux the balance of the case to proceed at the TRO stage?

THE COURT: Are you asking me that?

MR. KOLODIN: Yes, Your Honor.

THE COURT: Well, I -- I mean, I think -- I'm kind of -- I think I'm going to get to that. I feel like I'm -- I'm building to -- to a point where I could -- I could answer that question.

How about this: What if your client commits -- well, she's in Oklahoma; right?

MR. KOLODIN: I believe so are, Your Honor.

THE COURT: Okay. So she's not going to be here, so I think -- I think she -- she would -- she's not -- we don't really have risk of her open carrying here in Arizona. But would -- would she commit to the form of relief requested by the defendants concerning open carry? And I'm reading from -- I'm just going to pick section 3D of the proposed order, open carry firearms and/or wear body armor within 250 feet of drop

boxes.

So that -- that would be, you know, your clients would commit to not doing that, and commit to not encouraging and training or sanctioning -- sanctioning anybody associated with -- with her and Clean Elections from -- from that conduct.

MR. KOLODIN: I suppose the language with the problem with that particular language in the order is that there's -- there's drop boxes everywhere, and you wouldn't even necessarily know if you were by one in town. So it's very possible to have an unknowing violation of this order when you're not engaging in drop box observation activities.

I could see working to tailor that language with plaintiffs and perhaps agreeing to something related to not open carrying firearms when doing drop box monitoring. I think she would be agreeable to that.

THE COURT: Okay.

MR. KOLODIN: But that specific language I think would pose a problem, as would the in privity 2 requirement, since, again, it is not my understanding that Ms. Jennings has any control over anyone but herself and her statements.

THE COURT: Okay. How about harassing or verbally engaging individuals as they're in the process of voting? And I'm defining that term broadly. I think it was -- I think the Department of Justice might have put -- put this in their statement that the broad definition of voting to include

somebody driving up to a drop box to deposit their ballot.

Would -- would she agree to that?

MR. KOLODIN: Well, I would want to be careful here, because there -- there -- and, again, I just -- just got this case, but from my brief skimming review, there doesn't seem to actually be any indication that it's Ms. Jennings and Clean Elections USA are doing that. And so I -- I don't think she would want to agree to an order if the implication was that she was doing it. Because I don't think that there's anything that points to that happening.

But to the extent that -- that Your Honor's question is, is she comfortable with a policy of not approaching voters who are dropping ballots in a box or -- or -- so that -- so that they can confront them or talk to them, I think she's very amenable. In fact, my belief is that that's already Clean Election USA policy.

THE COURT: Okay. And I -- I would want to -- to say, Mr. Danjuma, I do have a little bit of a hang-up on just a general term harass or general term verbally engage, because I -- and this is a comment I made to Mr. Fox last week, and we had a discussion over this, is -- is I think we need to get past of -- a vagueness issue. We need -- a reasonable person needs to know what their limits are. And so I -- I would ask that you think about that with -- with your colleagues and with Mr. Arellano and Mr. Fox.

MR. DANJUMA: Yes. We appreciate that -- that guidance, Your Honor. But we will say that there's evidence certainly in the record to the contrary that we think under any definition of harassment would constitute, you know, saying to people, as people who Ms. Jennings publically said were our people and were working in -- in connection with her that we're hunting mules to people that they suspect I think under any definition is harassment. But I do take the Court's point that there may be a way to cabin that language to make it clear to all -- all parties.

THE COURT: Okay. Thank you.

Let's talk about probably the most challenging element, which is photographing and -- and video recording. So -- so something that I observed in the evidence last week was there was -- I think there was only one example of somebody having their license plate being put on social media. And that was a temporary license plate also. It was one of the paper ones that you print out from registering a vehicle for the first time.

But there really wasn't any evidence other than that. Well, maybe beyond that. Maybe beyond a -- one or two or three or -- it didn't seem to me that there was a lot of evidence of any doxxing or -- or even going to social media. Well, I guess there was the fellow who drove in backwards, right. There was -- you know, maybe one more, but it doesn't seem to me to

be a real widespread issue. You know, maybe all it takes is one. Maybe that's the test.

Do you want to say anything about that, Mr. Danjuma?

MR. DANJUMA: Yes, Your Honor. You mentioned in your order that there was an absence of evidence of -- of sort of a true threat, for instance --

THE COURT: Right.

MR. DANJUMA: -- of around doxxing. And we think the testimony of complainant 240 is extremely relevant to that question. Do we have -- and it's relevant in the context of what Ms. Jennings has said repeatedly, that she is in the process of doxxing -- that mules need to know that their pictures are going to be taken, that if they do that, they will slink into the shadows and go away. We very much doubt the sincerity of what Ms. Jennings is saying, but what we have here is evidence of a broad goal, a broad project, and a specific application with complainant 240, and we think that that is more than enough to justify an injunction in this case.

And what I would say about the -- the threat of doxxing is that we have an instance where complainant 240 after this hearing, Ms. Jennings on -- on -- in a -- in a recorded interview said she blew up his face even in this recorded video that had been taken across the street ask was searching for him, searching for information about him. He backed up so that there would be no way that the observers would see his license

plate, but they were circulating images of his face in order to find, identify, and dox him. And I think that is a very salient point when we're evaluating whether or not Ms. Jennings is sincere about her statements that the way of enforcing her form of drop box monitoring is to find mules and -- and -- and dox them.

Even if she is sincere about that belief, that she's only targeting individuals who are voting illegally, which we -- we very much do not concede that. We believe that's not sincere, but even if she is sincere, the collateral damage created by that effort to ordinary, lawful, innocent voters is extreme, and that is exactly the type of intimidation that 11B is intended to address.

THE COURT: Okay. What was -- the -- the individual 240, is that all the same person, the person who drove in backwards --

MR. DANJUMA: Yes.

THE COURT: -- the person who had his license plate displayed on the Internet?

MR. DANJUMA: Yes. Well, he did not have his license plate displayed on the Internet because he was able to hide it.

THE COURT: Okay.

MR. DANJUMA: But she -- Ms. Jennings and her supporters said to try to find him by identifying the make and model of his car and his face from the video.

THE COURT: Okay. Would you like to responsibility to that, Mr. Kolodin?

MR. KOLODIN: Your Honor, I fear that this is an issue on which there can be no compromise, unfortunately. The rest I -- as Your Honor has heard we may be able to work out one, but not on this.

This is core First Amendment protected activity, to film in public areas, and to comment on what you film is the core of the core of the First Amendment. And there is -- there is no reasonable expectation of privacy on a public street. The act of voting itself is not even private, of obviously who you vote for is private, but the fact of voting is not private. There is -- there's public record that pretty much anybody can pole about who voted, which elections they voted in, and all of that. And furthermore, that would potentially have knock on ramifications to the rest of the state. I know that there's at least one county around the state that has -- that has placed cameras on drop boxes to film people depositing exactly for the purposes that defendant -- that plaintiffs are saying are unlawful, namely to monitor and make sure that there are no mules or -- or ballot harvesters dropping off ballots that they're not supposed to and to prosecute those who are not supposed to be doing it.

THE COURT: And the Department of Justice's response to that is that -- that private individuals don't necessarily

have the right to pick up where the government may leave off. So if -- if the government decides not to monitor drop boxes or maybe, for example, Maricopa County has some limited drop box monitoring in place, that it's not really the -- the place of individuals to step in.

Did you have a chance to read the Department of Justice's --

MR. KOLODIN: No, Your Honor. We were never served with it, as far as I recall.

THE COURT: Well, it might be in the docket --

MR. KOLODIN: Yeah, we --

THE COURT: -- so you could take a look at it.

MR. KOLODIN: I had my paralegal pull the docket right before this hearing examining I'll take a look. But my knee jerk reaction would be private citizens actually have a greater right to do this because a private citizen unlike the government is protected by the First Amendment.

THE COURT: Okay. Okay.

Yes, sir?

MR. DANJUMA: I'd just respond on a few points to what opposing counsel said with respect.

So there -- I'd first say, Your Honor, that there are many -- so in the absolute abstract, we out -- we of course agree that photographing and video -- and video taping is protected by the First Amendment and can be protected, but it's

very important to understand that that is not true in every circumstance. It is not true when individuals have been found to be part of an unlawful conspiracy which we allege here with an unlawful purpose. It is not true when the -- the course of conduct of that videotape is part of something that is meant to communicate a true threat. And perhaps most importantly, even if this form of communication is protected as pure content based speech, what my -- what my colleague was saying, the core of the First Amendment, the Supreme Court has already recognized that that type of speech may be regulable when the State's compelling interest is voter intimidation and privacy of voters while voting. So under any of the -- of the of the approaches that opposing counsel suggest, we still believe we merit an injunction in this case.

THE COURT: Okay.

MR. KOLODIN: If I may, briefly?

THE COURT: Briefly.

MR. KOLODIN: Yeah. I -- I believe I'm familiar with with the case that you're -- you're speaking about, the SCOTUS case. And if it is -- if it is the same case, SCOTUS specifically notes in that case that it is the State's prerogative to impose that kind of limitation and it must be narrowly tailored, obviously, which it's -- which it defined in that case, I believe, as 100 feet from the -- from the actual polling place, not from drop boxes, not from mailboxes, but the

actual polls themselves.

So -- and the -- and the purpose of this, right, as the Supreme Court said in that case, is to prevent people from knowing how somebody votes. So there's a meaningful difference. The *Burson v. Friedman*.

If -- if there's filming in the polls or too close to the polls, right, you can -- you can perhaps get a photograph of somebody's ballot, and you could actually see their selections. When a voter delivers their ballot in a drop box, the ballot is sealed. It's in a security envelope. You can't actually see how they're going to vote. And furthermore, they've already made their selections. And so there's no -- no chance of changing -- getting them to change it or inking like that. So there's -- there's meaningful differences between this situation and the one in *Bar* and *Burson*.

THE COURT: Okay. I'm comfortable moving forward with -- with the evidentiary hearing on this -- on this new -- or on the League of Women Voters even before we get a decision from the Ninth Circuit on the Arizona Alliance case. I just -- I just throw out for discussion purposes, is -- is just what if the Ninth Circuit formulates a rule that -- that then perhaps requires us to revisit a -- an evidentiary hearing? Is that something that -- that you've thought about?

MR. DANJUMA: Yes, we -- we have thought about the -- you know, the prospect of some intervening guideline that comes

from the Ninth Circuit. Given the urgency, the time urgency in this case, we think it's important to get an evidentiary hearing as -- as quickly as possible. And we think that the evidence that we can provide you with would be relevant even if some sort of guidance comes from the Ninth Circuit in the interim. So it is both possible for the Court to hear that evidence, to evaluate it, you know, with the authorities that we've provided, that the Department of Justice has provided. And then we are certainly available to provide additional briefing if the Ninth Circuit provides a -- a -- issues some sort of intervening order. And also to bring back relevant witnesses if they have something that addresses a specific component.

THE COURT: Okay. Okay. Mr. Kolodin, do you see it differently?

MR. KOLODIN: Yes, Your Honor. I -- I think the -- Your Honor, I think what gets overlooked in a case like this often is the chilling effect that having to expend these significant resources on -- on a fairly duplicative hearing has on ordinary people. As you can tell, the plaintiffs in both cases are backed by large organizations. They have numerous lawyers. They have a significant budget. Melody Jennings is a private activist. And to require her to expend the resources on having another hearing after there's already been a hearing on the TRO on the same subject matter, when -- I believe

plaintiffs in this case acknowledge that Clean Elections USA have been doing this as far back as the primary. There's no reason for them to have waited this long to run into court and seek this TRO now if they were doing it back in the primary and this -- and this activity was obnoxious, they had fair notice. This case could have been brought months ago instead of forcing this expedited schedule. Because, of course, what they hope to do is -- is exhaust her with their overwhelming resources, force the case to move very fast, and thereby get her First Amendment rights stripped prior to the election, without her having had a fair and equal opportunity to defend by hitting her over and over and over with expedited things in the Ninth Circuit and this Court in two cases.

And it would be -- it would be our view, Your Honor, that there's -- and I know Your Honor's already expressed that you -- that you wish to have an evidentiary hearing. I understand that. But it would just be our view, Your Honor, that -- that that is not a reasonable requirement for ordinary people who have to defend their First Amendment rights against large organizations that are well equipped such as these.

THE COURT: Okay. And I'd like to set an evidentiary hearing hearing tomorrow.

How much time do plaintiffs need?

MR. DANJUMA: For the full evidentiary hearing?

THE COURT: How many witnesses?

MR. DANJUMA: So we intend to put forth seven and possibly eight witnesses tomorrow. We believe many of them would be relatively fast. But, if possible, we think an evidentiary hearing at 1:00 may be best if it's -- if it's possible for the Court in order to accommodate some witnesses' immediate --

THE COURT: Can we -- can we get all that done?

MR. DANJUMA: I -- I believe we can. I believe there's enough time for both argument and -- but we can also do it earlier if that's --

THE COURT: Okay.

MR. DANJUMA: -- if it's available on the Court's schedule.

THE COURT: Mr. Kolodin, would you like to bring witnesses on behalf of your client?

MR. KOLODIN: It -- it may be that we sit down and -- and decide to do that, Your Honor, if -- if it would be amenable to the Court. We may decide to do that virtually again, if it would be amenable to the Court. But we would ask that the hearing be on the second and not the first. Veronica's going to be up till midnight working on the briefing in the ninth. This is what I mean by the full court last minute press. We have 2nd other filing deadlines today in expedited election matters and we just got retained. It would seem the interest to fairness would at least dictate having

until the 2nd to prepare for an evidentiary hearing.

MR. DANJUMA: Your Honor, just in response, I want to make it absolutely clear that the interests of my -- of our clients, the League of Women Voters of Arizona, is absolutely in preventing intimidation and ensuring that voters in this state can participate safely and security. That's an interest. That certainly the State, the Sheriff's Department, election officials are all very concerned about as all well. That is the reason for urgency here. It has nothing to do with exhausting the defendant's resources.

That's why we're requesting a hearing today and why we think one's appropriate.

THE COURT: Okay. Well, I -- I agree that the situation is rather urgent. And -- and I would like to have the evidentiary hearing tomorrow. What I -- what I would like you to do, Mr. Kolodin, is -- is engage with Mr. Arellano, Mr. Fox, Mr. Danjuma, and -- and these other individuals, and I'd like you to come up with some agreements. If -- if your client is willing to make -- to agree to certain aspects. And -- and I understand your client's position, that she cannot control -- she -- she can't control folks who just decide to go and -- and maybe copy cat or maybe they have their other ideas. I think that that's a -- a strong and well-taken point.

So -- but -- but what I think about it is -- is encouraging people to potentially open carry in a way that's

menacing towards voters, perhaps filming on this -- on the premises of the early voting center, and the -- the ballot drop box as opposed to maybe out on the -- on the street. And I understand that this is going to be a point of contention, statements that falsely convey the law, what the law is and what it isn't. I think that's something that -- that all should talk about.

And -- and potentially harassing or verbally engaging with voters. I could -- I -- I could imagine, like I said, that the mother or the father bringing a bundle of ballots to drop off at MCTEC, and somebody from the -- the sidewalk shouting, mule or you violating -- you're violating the law, or there goes a mule. I -- that might be harassing and intimidating. I -- you know, it might be; it may not be. And I understand the whole truth threat analysis. It's something that I -- I implemented last week. I don't know if the Ninth Circuit's going to agree with me or not on that.

So your -- your client is running a risk that I get reversed maybe on Wednesday or Thursday. That's something that she could take into account.

Is -- is that helpful, Mr. Kolodin?

MR. KOLODIN: Very, Your Honor.

THE COURT: Okay. Mr. Danjuma, is that helpful to you?

MR. DANJUMA: Yes. And we are certainly willing to --

to talk to opposing counsel.

One note is that we had requested over the weekend an opportunity to speak with -- to take a deposition of Ms. Jennings. We understand obviously the -- the raw pitted de-of this hearing, places some restrictions on that. But I would note that the -- you know, the Court didn't have some evidence related to purpose and intent in its prior motion, and we think that it would be a good opportunity now or after the hearing to have an opportunity -- to be able to -- to talk to Ms. Jennings under oath.

THE COURT: Well, we'll note -- it wasn't requested of me that I order her to be present --

MR. DANJUMA: That's correct.

THE COURT: -- at the last, so are you suggesting --

MR. DANJUMA: What we've asked for is a deposition. And we -- you know, obviously the timing of that is difficult to -- difficult in connection to this. But at present, we understand that opposing counsel has opposed that request.

We think it makes sense for the -- for the hearing to go forward. We can continue to negotiate with opposing counsel about a time for that, if possible.

THE COURT: Okay. That sounds fine.

MR. DANJUMA: One other important note that I wanted to raise, Your Honor, about the hearing -- the hearing tomorrow. And thank you for your attention to it on this

expedited basis. I can say as a member -- as a -- as a officer of the court that I've spoken with voters, and the fear that they have is palpable in light of the -- both demonstrated record of doxxing and the threats related to that.

So we filed a motion to -- to submit the declaration of complainant 240 under seal. And I would -- I believe that the testimony of that complainant is important for the Court to hear, but -- and it is very important for the public to be able to have access to hearing in general. But we believe that examination of that witness should take place in a closed hearing with only the attorneys and the Court present.

THE COURT: Do you have any objection to that, Mr. Kolodin?

MR. KOLODIN: As long as we are provided the identity of the witness beforehand and we'll have the opportunity to examine her, then that would be find.

MR. DANJUMA: And -- and that -- that raises another concern that I would have at this point. And, again, this is the -- based on the -- the -- the speed of the proceeding, is we don't have a protective order in place. We could provide defense counsel with the identity of the complainant, but it would need to be pursuant to an order for this Court --

THE COURT: Are you thinking --

MR. DANJUMA: -- to protect the identity.

THE COURT: Are you thinking an attorneys' eyes only

basis?

MR. DANJUMA: Exactly.

THE COURT: Can I just order that?

MR. DANJUMA: If -- if the Court is willing to do that, that is -- we would accept that.

THE COURT: Okay. I'm willing to do that.

Yes, sir?

MR. KOLODIN: All right. I would bring up one -- one issue with that, is -- is that does deprive us of the opportunity to ask our client if she knows this person and if maybe there's a history of interpersonal conflict or anything like that that we might need to put on the defense. And I will also remind this Court that -- that certainly when it has been Republicans bringing this suits, the District of Arizona has been incredibly reticent to even allow for witnesses to present declarations or testify under seal and has typically prohibited it, though we also in those prior cases demonstrated some significant risk of threats. And because I've been in that position, I -- I don't mind agreeing to it, but I do mind agreeing to it if it prevents me from gathering the evidence that I need to defend my client.

THE COURT: Well, why don't you two work on that, and I could technique it up -- I could take it up tomorrow --

MR. DANJUMA: Okay.

THE COURT: -- when we begin our hearing.

MR. DANJUMA: One, we do -- one additional request, Your Honor, is that we -- we have been in touch with other -- with another voter who is very, very concerned about the effect of disclosure of his identity on his business and exposure to doxxing. And he is a -- he is just in brief where he was voting at a drop box that was covered by the State with some sort of netting and an individual was part of the monitoring process had cut a hole in the netting to take photos of him. We think that -- that testimony is relevant and would be valuable for the Court to have. We haven't submitted it, though, because the -- that declarant wasn't comfortable doing that unless the -- the -- that submission would be under seal.

So I -- I don't know if it's possible for the Court to -- to permit that in advance or not. I just wanted to --

THE COURT: Does this individual wish to come and provide live testimony or --

MR. DANJUMA: My understanding is -- is that the individual is not comfortable doing that at this point. It would be a declaration only.

THE COURT: Okay. Well, I mean, that -- I think Mr. -- I don't know if Mr. Kolodin, if you're raising hearsay issues about declarations? Is that what you were referring to.

MR. KOLODIN: Yes, Your Honor.

THE COURT: Right. I think that person would have to come here.

MR. DANJUMA: Well, so, Your Honor, you're correct that it's hearsay in the posture of a temporary restraining order typically, the rules overheard say are are loosened. But if we do believe we have a lot of evidence already, and I mostly am raising the issue simply to note we're struggling with how to deal with both the fact that folks are intimidated and wanting to get evidence of that into the -- into the Court without contributing to that intimidation. So that is the reason why I raise it.

If at this juncture it's not possible to prepare that that, I think we can accept that and not include that declaration, but that is -- that is the reason why I raise the issue.

THE COURT: Okay. Well, I would just ask you two to confer about this before I issue a ruling.

MR. DANJUMA: Okay. Understood.

THE COURT: Is 10:00 o'clock too early tomorrow morning? Would you like to have a little bit more time? I -- I'll ask you both.

MR. KOLODIN: Yes, please.

THE COURT: Okay.

MR. DANJUMA: You would like more time or --

MR. KOLODIN: Yes.

THE COURT: Well, you -- you had suggested 1:00 o'clock.

MR. DANJUMA: The reason --

THE COURT: I'm just concerned that we're not going to have enough time.

MR. DANJUMA: Yes. The reason why was partly to accommodate witnesses' work schedule, but you're correct that the hearing will be lengthy.

Would opposing counsel agree to 11:00 as a -- or --

THE COURT: Maybe noon?

MR. KOLODIN: Noon would be perfect.

MR. DANJUMA: Okay.

THE COURT: Can you eat your lunch before you get here?

MR. DANJUMA: We'll try.

THE COURT: Get a smoothie or something and --

MR. DANJUMA: This is what energy bars, I guess, are made for. So we'll have -- we'll have them on hand.

THE COURT: Is that okay with you, Mr. Kolodin? Noon?

MR. KOLODIN: Yes, Your Honor.

THE COURT: Let me check with my staff.

(The Court and the courtroom deputy confer.)

THE COURT: Okay. We -- the true boss has signed off on that, so we'll set our evidentiary hearing tomorrow at noon. And -- and Ms. Taylor is nodding her head in agreement as well over here at the keyboard. And we'll set it for noon. We will be -- we're going to have breaks also, folks, so you -- you can

count on that.

And -- and we'll -- I'll just block off the afternoon for this. And what I would like you to do is -- is I would like you to -- from the time I adjourn this hearing until -- until noon tomorrow, I want you to confer amongst each other, and this requires you to bring Mr. Fox and his colleagues in, and I'd like you to come tomorrow at noon. The first thing I'm going to ask you is what have you agreed to? And -- and I'd like you to tell me what you've agreed to.

And potentially maybe we could just -- you can agree in a way that ends this both here and at the Ninth Circuit. Or maybe we can narrow the issues down to some -- to some critical issues that -- that we can focus on here and -- and at the Ninth Circuit. So I -- I feel like that would be beneficial to everybody.

Do you agree, Mr. Danjuma?

MR. DANJUMA: Yes, we're very open to discussion with opposing counsel.

THE COURT: Okay. And, Mr. Kolodin, do you agree?

MR. KOLODIN: Yes, Your Honor.

THE COURT: All right. I want everybody to understand that compromise sometimes means that you don't get everything that you want. So -- and that applies to everybody. I hope you all understand that.

Do you, Mr. Danjuma?

MR. DANJUMA: Yes, Your Honor, I do.

THE COURT: Okay. The DOJ is certainly invited to be here, if -- if -- if they -- if somebody, even -- even from the local United States Attorney's Office wishes to make an appearance. I saw Mr. Restaino's name was on their notice. Can be somebody on the plaintiff's side let them know that -- that if they wish to appear, they are -- they are certainly welcome to do so?

Mr. Danjuma, can you see to that.

MR. DANJUMA: Yes, we will. We will.

THE COURT: Okay. Mr. Arellano, would you and your team inform the Ninth Circuit Court of Appeals and the Arizona Alliance case that I've consolidated these matters -- these two cases and let them know that I'm holding a hearing on -- on the Arizona league of voters, League of Women Voters motion for temporary restraining order and preliminary injunction tomorrow at noon.

MR. ARELLANO: We'll get that on file right away, Your Honor.

THE COURT: Okay. Thank you.

Will you -- will you file a notice with me here in -- in your case, a notice of compliance, let me see what you've shown -- what you filed with the Ninth Circuit?

MR. ARELLANO: Of course, Your Honor.

THE COURT: And you'll get that done today?

MR. ARELLANO: We will.

THE COURT: Okay.

Is there anything I missed?

Mr. Danjuma, is there anything that I've forgotten to address that you --

MR. DANJUMA: No, Your Honor. I believe we -- thank you very much. We've covered everything on our -- on our agenda.

THE COURT: Okay. Mr. Kolodin, anything you would like me to address?

MR. KOLODIN: No, Your Honor.

THE COURT: Okay.

MR. KOLODIN: Oh. Oh, sorry --

THE COURT: Yes.

MR. KOLODIN: -- one thing. If we do decide to present testimony tomorrow, will the Court permit it to be virtual?

THE COURT: We -- we can -- we can accommodate telephonic, but I'm going to need you to let me know ahead of time.

Were you going to say something, Ms. --

MR. KOLODIN: We'll let the Court know by the end of the day.

THE COURT: Ms. Richter, were you going to say something?

Do you want --

(The Court and the courtroom deputy confer.)

THE COURT: All right. Ms. Richter says we can accommodate the telephonic appearance without a problem. Just let me know ahead of time.

Yes, sir.

MR. DANJUMA: And we just note that we'd like to be notified as well if that's -- if --

THE COURT: It'll be a notice filed --

MR. DANJUMA: I see.

THE COURT: -- on the docket.

MR. DANJUMA: Got it.

THE COURT: Ms. Richter wishes me to let everybody know that -- that for the hearing last week the parties didn't carefully follow our exhibit marking guidelines, so please -- please pay attention to that. It's on the website. It's under Liburdi Chambers.

No? She's saying no.

Would you like to just -- just inform the parties, Ms. Richter, please.

THE COURTROOM DEPUTY: The exhibit marking instructions are available on the Court's website under District Judge Forms and Rules.

THE COURT: But isn't it also you go to the specific District Judge, or is it for every judge?

THE COURTROOM DEPUTY: For you there are not specific instructions.

THE COURT: Okay. So for me I haven't put instructions on there. So I guess it's the district's generic instructions; right?

THE COURTROOM DEPUTY: Yes.

THE COURT: Okay. She's saying yes.

MR. DANJUMA: And just a quick question. If we're interested in using any video, can we speak with a -- the -- the courtroom deputy about accommodation?

THE COURT: You may -- after I adjourn, you may speak to Ms. Richter about that.

MR. DANJUMA: Excellent. Thank you.

THE COURT: Okay. Anything else?

MR. DANJUMA: No.

THE COURT: Mr. Kolodin, anything else?

MR. KOLODIN: We would like the Court to essentially lock the record on the plaintiff's side and limit plaintiffs to using exhibits that they've already included in the filing so we have -- so we can prepare.

MR. DANJUMA: Your Honor -- well, my hesitation around that is -- so I totally understand opposing counsel's concern about -- about notice, but one of the issues we -- we raised was the declaration we were just discussing about the one that would be under seal. And typically in a temporary restraining

order at least I, as -- as a party, have seen declarations from the other side come in the -- the morning of. That is the relevant consideration. So I'm -- I'm hesitant to do that if there's relevant information.

THE COURT: So if you -- if you get evidence, any new evidence, I need you to give Mr. Kolodin --

MR. DANJUMA: Yes.

THE COURT: -- actual notice of it.

MR. DANJUMA: Yes.

THE COURT: And both Mr. Kolodin and Ms. Lucero.

MR. DANJUMA: Yes. Absolutely.

THE COURT: All right. So the run of show tomorrow is the first thing I'm going to ask you is what have you agreed to, the second thing I'm going to ask you is if you've resolved the issues regarding these witnesses, and -- and sealing, and then the third will be we'll just get into the evidentiary hearing. And then hopefully there will be a time at the end of the day for our -- for argument and questions.

And I will -- I want you to understand, when I ask questions, it's not because I'm -- I'm attempting to be argumentative. It's I -- I really want to make sure I understand, and I'm -- I'm asking you all to give me guidance on it. And that's the purpose of my questioning.

Anything else?

MR. DANJUMA: No, Your Honor.

MR. KOLODIN: No, Your Honor.

MR. DANJUMA: No, Your Honor.

THE COURT: Do you know he's running a political campaign for himself as well?

MR. DANJUMA: In his spare time.

MR. KOLODIN: I'm fortunately unopposed in the general, so I got plenty of time for this.

THE COURT: Okay. Well, that's right. If you ever see that movie Dave from a long time ago, maybe you could get a body double, Mr. Kolodin, out there to campaign for yourself --

MR. KOLODIN: Good idea, Your Honor.

THE COURT: -- out in your district.

Full disclosure, my dad's voting for him. He's in the district. Okay? I hope -- I hope that's not a problem for anybody.

MR. DANJUMA: Request for recusal, Your Honor.

THE COURT: That is a joke, is it not?

MR. DANJUMA: That is a joke.

THE COURT: All right. Thank you. Thank you, everybody.

Court is adjourned.

MR. DANJUMA: Thank you.

MR. KOLODIN: Thank you, Your Honor.

(Proceedings conclude at 12:18 p.m.)