

UNITED STATES COURT OF APPEALS

NOV 19 2015

FOR THE NINTH CIRCUIT

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

KELI'I AKINA; et al.,

Plaintiffs - Appellants,

v.

STATE OF HAWAII; et al.,

Defendants - Appellees.

No. 15-17134

D.C. No. 1:15-cv-00322-JMS-
BMK

District of Hawaii,
Honolulu

ORDER

Before: W. FLETCHER, N.R. SMITH, and OWENS, Circuit Judges.

This is a preliminary injunction appeal. Appellants have filed an urgent motion to enjoin, pending disposition of this appeal, appellee N'ai Aupuni from counting votes in an election that concludes on November 30, 2015.¹

¹ The November 5, 2015 submission by non-party American Civil Rights Union and the November 9, 2015 submission by non-party the United States are construed as requests for leave to file briefs in support of or in opposition to the urgent motion. So construed, the requests are granted. The respective briefs have been considered for purposes of disposition of the urgent motion only.

The court has received the November 9, 2015 "Notice of Absent Necessary and Indispensable Party" (the "Notice") filed by attorney Lanny Alan Sinkin on behalf of a non-party purporting to be the Kingdom of Hawai'i. To the extent the Notice seeks relief from this court, it is referred to the panel assigned to decide the merits of this appeal for whatever consideration the panel deems appropriate.

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To justify an immediate injunction pending appeal, appellants must establish (1) a likelihood of the success on the merits of the appeal; (2) that they are likely to be irreparably harmed if the vote counting is not enjoined pending disposition of the appeal; (3) that the balance of the equities tips in their favor; and (4) that it is in the public interest to issue an injunction pending disposition of the appeal. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). We conclude that, at this stage, appellants have not made the required showing. Accordingly, the urgent motion is denied.

The previously established briefing schedule remains in effect for this appeal. To the extent that any non-party seeks to file an amicus brief with respect to the merits of the preliminary injunction appeal, it shall comply with Federal Rule of Appellate Procedure 29.