In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1562

INDIANA RIGHT TO LIFE VICTORY FUND, *et al.*,

Plaintiffs-Appellants,

v.

DIEGO MORALES, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. 1:21-cv-2796 — **Sarah Evans Barker**, *Judge*.

SUBMITTED JANUARY 25, 2023 — DECIDED FEBRUARY 2, 2023

Before EASTERBROOK, SCUDDER, and LEE, *Circuit Judges*.

PER CURIAM. Following oral argument, the Indiana Right to Life Victory Fund invoked Federal Rule of Evidence 201 and filed what it called "Appellants' Motion Requesting Judicial Notice." The Fund's motion explains that Diego Morales has succeeded Holli Sullivan as Indiana's Secretary of State and has replaced Sullivan as a party to this case. This process is commonplace in litigation involving public officials—so much so that there is a Federal Rule directly on point. See Fed.

R. App. P. 43(c)(2). Under the Federal Rules, the substitution happens automatically and does not require any motion by any party.

Still, the Fund filed this motion urging us to

> take judicial notice of the fact that there is no evidence in the record that Secretary of State Morales has taken any steps to disavow enforcement of the prohibition in Indiana's Election Code on corporate contributions to political action committees for purposes of independent expenditures, and that the record shows only two out of ten defendants have disavowed enforcement.

The motion is unnecessary, improper, and denied.

Nothing about Morales becoming Indiana's sixty-third Secretary of State calls our appellate or subject matter jurisdiction into question. Nor does it materially alter anything about the issues presented on appeal. So there is no need for judicial notice as to party substitution. Rule 43 does this work.

But the Fund goes further, requesting judicial notice as to Secretary Morales's position on enforcing specific campaign-finance laws. At bottom, the Fund's motion seeks one of two things, neither of which would be an appropriate use of judicial notice. One reading of the motion is that it tries to define the likelihood that Secretary Morales and other Indiana officials will enforce certain provisions of the Election Code. But that is an argument, and judicial notice is only permitted for adjudicative facts "not subject to reasonable dispute." Fed. R. Evid. 201(b). This limitation is even more important before the courts of appeals, which do not sit as finders of fact.

Or perhaps the Fund is trying to highlight what it sees as a gap in the evidentiary record—that Secretary Morales has yet to make a statement regarding state regulation of independent-expenditure PACs. Setting aside that this, too, is a form of argument, it is a waste of time to seek judicial notice to memorialize the contours of the record. If the absence of evidence in the record were an adjudicative fact subject to judicial notice, courts of appeals would be swamped with motions like this one. See *In re Lisse*, 905 F.3d 495, 497 (7th Cir. 2018) (Easterbrook, J., in chambers) ("When evidence is 'not subject to reasonable dispute,' there's no need to multiply the paperwork by filing motions."). The record speaks for itself.

The Fund's motion is DENIED.