

Nos. 22-11133-GG, 22-11143-GG, 22-11144-GG, 22-11145-GG (consolidated)

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**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., et al.,  
*Plaintiffs-Appellees,*

v.

FLORIDA SECRETARY OF STATE, et al.,  
*Defendants-Appellants.*

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Appeal from the U.S. District Court for the Northern District of Florida,  
Nos. 4:21-cv-242, 4:21-cv-186, 4:21-cv-187, 4:21-cv-201 (Walker, C.J.)

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**MOTION FOR PARTIAL DISMISSAL  
AND PARTIAL VACATUR**

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Mohammad O. Jazil  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK PLLC  
119 South Monroe Street, Suite 500  
Tallahassee, FL 32301  
(850) 274-1690

*Lead Counsel for Secretary Lee*

Andy Bardos  
GRAYROBINSON, P.A.  
301 South Bronough Street,  
Suite 600  
Tallahassee, FL 32301  
(850) 577-9090

*Lead Counsel for Supervisors Hays and Doyle*

Tyler R. Green  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Boulevard,  
Suite 700  
Arlington, VA 22209  
(703) 243-9423

*Lead Counsel for RNC & NRSC*

Henry C. Whitaker  
FLORIDA ATTORNEY  
GENERAL OFFICE  
PL-01 The Capitol  
Tallahassee, FL 3300  
(850) 414-3300

*Lead Counsel for Attorney General Moody*

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**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Per Rule 26.1 and Circuit Rule 26.1, Appellants certify that the following have an interest in the outcome of this appeal:

1. Adkins, Janet, *Defendant*
2. Abudu, Nancy, *Attorney for Plaintiffs-Appellees*
3. Advancement Project National Office, *Attorneys for Plaintiffs-Appellees*
4. Aguilera, Cecilia, *Attorney for Plaintiffs-Appellees*
5. Alachua County Attorney's Office, *Attorneys for Defendant*
6. Andersen, Mark, *Defendant*
7. Anderson, Christopher, *Defendant*
8. Anderson, Shirley, *Defendant*
9. Anstaett, David, *Attorney for Plaintiffs-Appellees*
10. Arnold & Porter, LLP, *Attorneys for Plaintiffs-Appellees*
11. Arnold, Melissa, *Defendant*
12. Arrington, Mary, *Defendant*
13. Baird, Maureen, *Defendant*
14. Baker McKenzie, LLP, *Attorney for Plaintiffs-Appellees*
15. Bardos, Andy, *Attorney for Defendants*
16. Barton, Kim, *Defendant*
17. Beasley, Bobby, *Defendant*
18. Beato, Michael, *Attorney for Defendant-Appellant*
19. Begakis, Steven, *Attorney for Intervenor-Defendants-Appellants*
20. Bell, Daniel, *Chief Deputy Solicitor General of Florida*
21. Benda, Kyle, *Attorney for Defendant*
22. Bennett, Michael, *Defendant*
23. Bentley and Bruning PA, *Attorney for Defendant*
24. Bentley, Morgan, *Attorney for Defendant*
25. Bernstein, Daniel, *Attorney for Plaintiffs-Appellees*

26. Bishop, Marty, *Defendant*
27. Black Voters Matter Fund LLC, *Plaintiff-Appellee*
28. Bledsoe, William, *Attorney for Defendant*
29. Branch, Aria, *Attorney for Plaintiffs-Appellees*
30. Brewton Plante PA, *Attorneys for Defendants*
31. Brigham, Robert, *Plaintiff-Appellee*
32. Brodeen, Karen, *Attorney for Defendants-Appellants*
33. Broward County Attorney's Office, *Attorney for Defendant*
34. Brown, Summer, *Attorney for Defendant*
35. Brown, Tomi, *Defendant*
36. Budhu, Ryan, *Attorney for Plaintiffs-Appellees*
37. Byrd, Cord, *Defendant-Appellant*
38. Cannon, Starlet, *Defendant*
39. Case, Andrew, *Attorney for Plaintiffs-Appellees*
40. Cavataro, Benjamin, *Attorney for Plaintiffs-Appellees*
41. Chambless, Chris, *Defendant*
42. Chappell, William, *Attorney for Defendant-Appellant*
43. Chason, Sharon, *Defendant*
44. Choi, Ellen, *Attorney for Plaintiffs-Appellees*
45. Chorba, William, *Attorney for Defendant-Appellant*
46. City of Jacksonville, Office of General Counsel, *Attorneys for Defendant*
47. Clark Partington, *Attorneys for Defendant*
48. Common Cause, *Plaintiff-Appellee*
49. Consovoy McCarthy PLLC, *Attorneys for Intervenor-Defendants-Appellants*
50. Conyers, Grant, *Defendant*
51. Corley, Brian, *Defendant*
52. County of Volusia, *Attorneys for Defendant*
53. Covington & Burling LLP, *Attorneys for Plaintiffs-Appellees*
54. Cowles, Bill, *Defendant*
55. Cuffe, Edward, *Attorney for Defendant*

56. Cycon, John, *Attorney for Defendant-Appellant*
57. Daines, Kenneth, *Attorney for Defendant-Appellant*
58. Dandeneau, Debra, *Attorney for Plaintiffs-Appellees*
59. Darrow Everett LLP, *Attorneys for Plaintiffs-Appellees*
60. Davis, Ashley, *Attorney for Defendant-Appellant*
61. Davis, Vicki, *Defendant*
62. De Paul, Romane, *Attorney for Plaintiffs-Appellees*
63. Demos, *Attorneys for Plaintiffs-Appellees*
64. Devaney, William, *Attorney for Plaintiffs-Appellees*
65. Disability Rights Florida, *Plaintiff-Appellee*
66. Doyle, Tommy, *Defendant-Appellant*
67. Driggers, Heath, *Defendant*
68. Duke, P. Benjamin, *Attorney for Plaintiffs-Appellees*
69. Dukkupati, Uttara, *Attorney for Plaintiffs-Appellees*
70. Dunaway, Carol, *Defendant*
71. Earley, Mark, *Defendant*
72. Edwards, Brendalyn, *Attorney for Defendant*
73. Edwards, Jennifer, *Defendant*
74. Edwards, Lori, *Defendant*
75. Elias Law Group, *Attorneys for Plaintiffs-Appellees*
76. Elias, Marc, *Attorney for Plaintiffs-Appellees*
77. Ellis, Elizabeth, *Attorney for Defendant*
78. Equal Ground Education Fund, *Plaintiff-Appellee*
79. Erdelyi, Susan, *Attorney for Defendants*
80. Escambia County Attorney's Office, *Attorneys for Defendant*
81. Fair Elections Center, *Attorneys for Plaintiffs-Appellees*
82. Fajana, Francisca, *Attorney for Plaintiffs-Appellees*
83. Fajana, Morenike, *Attorney for Plaintiffs-Appellees*
84. Farnam, Alteris, *Defendant*
85. Faruqui, Bilal, *Attorney for Defendants-Appellants*

86. Feiser, Craig, *Attorney for Defendant*
87. Ferenc, Samuel, *Attorney for Plaintiffs-Appellees*
88. Fletcher, Michael, *Attorney for Plaintiffs-Appellees*
89. Florida Alliance for Retired Americans Inc., *Plaintiff-Appellee*
90. Florida Department of State, *Attorneys for Defendant-Appellant*
91. Florida Office of the Attorney General, *Attorneys for Defendants-Appellants*
92. Florida Rising Together, *Plaintiff-Appellee*
93. Florida State Conference of the NAACP, *Plaintiff-Appellee*
94. Ford, Christina, *Attorney for Plaintiffs-Appellees*
95. Fouhey, Elizabeth, *Attorney for Plaintiffs-Appellees*
96. Fox, David, *Attorney for Plaintiffs-Appellees*
97. Fram, Robert, *Attorney for Plaintiffs-Appellees*
98. Freedman, John, *Attorney for Plaintiffs-Appellees*
99. Frost, Elisabeth, *Attorney for Plaintiffs-Appellees*
100. Galbraith, Miles, *Attorney for Plaintiffs-Appellees*
101. Galindo, Emily, *Attorney for Plaintiffs-Appellees*
102. Gardner Bist Bowden et al, *Attorneys for Defendants*
103. Genberg, Jack, *Attorney for Plaintiffs-Appellees*
104. Giannini, Mary, *Attorney for Defendant*
105. Gibson, Benjamin, *Attorney for Intervenor-Defendants-Appellants*
106. Gibson, Francesca, *Attorney for Plaintiffs-Appellees*
107. Gordon, Phillip, *Attorney for Defendant-Appellant*
108. Gray Robinson PA, *Attorneys for Defendant*
109. Green, Tyler, *Attorney for Intervenor-Defendants-Appellants*
110. Griffin, Joyce, *Defendant*
111. Grimm, Dillon, *Attorney for Plaintiffs-Appellees*
112. Hanlon, John, *Defendant*
113. Harriett Tubman Freedom Fighters Corp., *Plaintiff-Appellee*
114. Hart, Travis, *Defendant*
115. Hays, Alan, *Defendant-Appellant*

116. Healy, Karen, *Highlands County Supervisor of Elections*
117. Heard, Bradley, *Attorney for Plaintiffs-Appellees*
118. Henderson Franklin Starnes etc., *Attorneys for Defendants*
119. Hernando County Attorney's Office, *Attorneys for Defendant*
120. Herron, Mark, *Attorney for Defendant*
121. Hillsborough County Office of the County Attorney, *Attorneys for Defendant*
122. Hirschel, Andrew, *Attorney for Plaintiffs-Appellees*
123. Hispanic Federation, *Plaintiff-Appellee*
124. Hogan, Mike, *Defendant*
125. Holt, Dallin, *Attorney for Defendant-Appellant*
126. Holtzman Vogel Baran, et al., *Attorneys for Defendants-Appellants*
127. Hoots, Brenda, *Defendant*
128. Houlihan, Ashley, *Attorney for Defendant*
129. Hutto, Laura, *Defendant*
130. Janousek, John, *Attorney for Defendants*
131. Jarone, Joseph, *Attorney for Defendant*
132. Jazil, Mohammad, *Attorney for Defendant-Appellant*
133. Johnson, Diana, *Attorney for Defendant*
134. Johnson, Kia, *Attorney for Defendant*
135. Jones, Tammy, *Defendant*
136. Jouben, Jon, *Attorney for Defendant*
137. Joyner, Nia, *Attorney for Plaintiffs-Appellees*
138. Kahn, Jared, *Attorney for Defendant*
139. Kanter Cohen, Michelle, *Attorney for Plaintiffs-Appellees*
140. Karpatkin, Jeremy, *Attorney for Plaintiffs-Appellees*
141. Keen, William, *Defendant*
142. Khan, Sabrina, *Attorney for Plaintiffs-Appellees*
143. Khazem, Jad, *Attorney for Plaintiffs-Appellees*
144. King Blackwell Zehnder, etc PA, *Attorneys for Plaintiffs-Appellees*
145. King, Nellie, *Attorney for Plaintiffs-Appellees*

146. Kinsey, Jennifer, *Defendant*
147. Kirk, Stephen, *Plaintiff-Appellee*
148. Klitsberg, Nathaniel, *Attorney for Defendant*
149. Knight, Shirley, *Defendant*
150. Labasky, Ronald, *Attorney for Defendants*
151. Latimer, Craig, *Defendant*
152. Latino Justice PRLDEF, *Attorneys for Plaintiffs-Appellees*
153. Lavia, John, *Attorney for Defendants*
154. Law Offices of Nellie King PA, *Attorneys for Plaintiffs-Appellees*
155. League of Women Voters of Florida Education Fund Inc., *Plaintiff-Appellee*
156. League of Women Voters of Florida, *Plaintiff-Appellee*
157. Lenhart, Kaiti, *Defendant*
158. Lewis, Lisa, *Defendant*
159. Link, Wendy, *Defendant*
160. Lopez, Janine, *Attorney for Plaintiffs-Appellees*
161. Lux, Paul, *Defendant*
162. Madduri, Lalitha, *Attorney for Plaintiffs-Appellees*
163. Madison, Alan, *Plaintiff-Appellee*
164. Marcus, Julie, *Defendant*
165. Mari, Frank, *Attorney for Defendants*
166. Marks Gray PA, *Attorneys for Defendant*
167. McNeil, Justin, *Jefferson County Supervisor of Elections*
168. McVay, Bradley, *Attorney for Defendant-Appellant*
169. Meadows, Therisa, *Defendant*
170. Meros, George, *Attorney for Intervenor-Defendants-Appellants*
171. Messer Caparello & Self PA, *Attorneys for Defendant*
172. Miami-Dade County Attorney's Office, *Attorneys for Defendant*
173. Miller, Jeffrey, *Attorney for Plaintiff-Appellees*
174. Milton, Chris, *Defendant*
175. Mood, Kirsten, *Attorney for Defendant*

176. Moody, Ashley, *Defendant-Appellant*
177. Moore, James, *Attorney for Defendants*
178. Morgan, Joseph, *Defendant*
179. Morris, John, *Attorney for Plaintiffs-Appellees*
180. NAACP Legal Defense & Education Fund, Inc., *Attorneys for Plaintiffs-Appellees*
181. Nabors Giblin, & Nickerson PA, *Attorneys for Defendant*
182. Nasser, Cyrus, *Attorney for Plaintiffs-Appellees*
183. National Center for Law and Economic Justice, *Attorneys for Plaintiffs-Appellees*
184. National Republican Senatorial Committee, *Intervenor-Defendant-Appellant*
185. Negley, Mark, *Defendant*
186. Nordby, Daniel, *Attorney for Intervenor-Defendants-Appellants*
187. Norris, Cameron, *Attorney for Intervenor-Defendants-Appellants*
188. Nunnally, Amber, *Attorney for Intervenor-Defendants-Appellants*
189. Oakes, Vicky, *Defendant*
190. O’Brien, Colleen, *Attorney for Defendant-Appellant*
191. O’Bryant, Patrick, *Attorney for Defendant*
192. O’Callaghan, Brendan, *Attorney for Plaintiffs-Appellees*
193. Ogg, Penny, *Defendant*
194. Olivo, Geraldo, *Attorney for Defendants*
195. Osborne, Deborah, *Defendant*
196. Ott, London, *Attorney for Defendant*
197. Overturf, Charles, *Defendant*
198. Palm Beach County Supervisor of Elections, *Attorneys for Defendant*
199. Paralyzed Veterans of America Central Florida Chapter, *Plaintiff-Appellee*
200. Paralyzed Veterans of America Florida Chapter, *Plaintiff-Appellee*
201. Perkins Coie LLP, *Attorneys for Plaintiffs-Appellees*
202. Perko, Gary, *Attorney for Defendant-Appellant*
203. Pinellas County Attorney’s Office, *Attorneys for Defendant*
204. Poder Latinx, *Plaintiff-Appellee*
205. Poliak, Shira, *Attorney for Plaintiffs-Appellees*



206. Price, Tara, *Attorney for Intervenor-Defendant-Appellants*
207. Republican National Committee, *Intervenor-Defendant-Appellant*
208. Riley, Heathers, *Defendant*
209. Rogers, Susan, *Plaintiff-Appellee*
210. Romero-Craft, Kira, *Attorney for Plaintiffs-Appellees*
211. Roper PA, *Attorneys for Defendants*
212. Rosenthal, Oren, *Attorney for Defendant*
213. Rudd, Carol, *Defendant*
214. Salzillo, Benjamin, *Attorney for Defendant*
215. Sanchez, Connie, *Defendant*
216. Scoon, Cecile, *Plaintiff-Appellee*
217. Scott, Dale, *Attorney for Defendant*
218. Scott, Joe, *Defendant*,
219. Scott, Lori, *Defendant*
220. Scott, Sharion, *Attorney for Plaintiffs-Appellees*
221. Segarra, Esperanza, *Attorney for Plaintiffs-Appellees*
222. Seyfang, Amanda, *Defendant*
223. Shannin Law Firm PA, *Attorneys for Defendants*
224. Shannin, Nicholas, *Attorney for Defendant*
225. Shapiro, Daniel, *Attorney for Intervenor-Defendants-Appellants*
226. Shapiro, Peter, *Attorney for Plaintiffs-Appellees*
227. Shaud, Matthew, *Attorney for Defendant*
228. Shearman, Robert, *Attorney for Defendants*
229. Sherman, Jonathan, *Attorney for Plaintiffs-Appellees*
230. Shutts & Bowen LLP, *Attorneys for Intervenor-Defendants-Appellants*
231. Siegel, Rachel, *Attorney for Defendant-Appellant*
232. Sivalingam, Danielle, *Attorney for Plaintiffs-Appellees*
233. Smith, Diane, *Defendant*
234. Southerland, Dana, *Defendant*
235. Southern Poverty Law Center, *Attorneys for Plaintiffs-Appellees*

236. Stafford, David, *Defendant*
237. Stafford, William, *Attorney for Defendants-Appellants*
238. Stamoulis, Paula, *Defendant*
239. Stewart, Gregory, *Attorney for Defendant*
240. Stiefel, Aaron, *Attorney for Plaintiffs-Appellees*
241. Swain, Robert, *Attorney for Defendant*
242. Swan, Leslie, *Defendant*
243. Tarpley, Carlton, *Attorney for Plaintiffs-Appellees*
244. Theodore, Elisabeth, *Attorney for Plaintiffs-Appellees*
245. Todd, Stephen, *Attorney for Defendant*
246. Trigg, Amia, *Attorney for Plaintiffs-Appellees*
247. Tuetken, Adam, *Attorney for Amicus*
248. Turner, Ron, *Defendant*
249. UnidosUS, *Plaintiff-Appellee*
250. Valdes, Michael, *Attorney for Defendant*
251. Vicari, Kelly, *Attorney for Defendant*
252. Vigil, Angela, *Attorney for Plaintiffs-Appellees*
253. Villane, Tappie, *Defendant*
254. Volusia County Attorney, *Attorneys for Defendant*
255. Walker, Gertrude, *Defendant*
256. Walker, Mark, *District Court Judge*
257. Washington, D.C., Office of the Attorney General, *Attorneys for Amicus*
258. Wermuth, Frederick, *Attorney for Plaintiffs-Appellees*
259. Whitaker, Henry C., *Solicitor General of Florida*
260. White, Christina, *Defendant*
261. Wilcox, Wesley, *Defendant*
262. Wright, Brenda, *Attorney for Plaintiffs-Appellees*
263. Zacherl, Frank, *Attorney for Intervenor-Defendants-Appellants*
264. Zender, Thomas, *Attorney for Plaintiffs-Appellees*

The Republican National Committee and National Republican Senatorial Committee have no parent corporation, and no corporation owns 10% or more of their stock. No publicly traded company or corporation has an interest in the outcome of this case or appeal. Per Circuit Rule 26.1-2(c), Appellants certify that the CIP contained in this motion is complete.

Dated: May 24, 2022

/s/ Mohammad O. Jazil  
Counsel for Secretary Lee

/s/ Tyler R. Green  
Counsel for RNC and NRSC

/s/ Andy Bardos  
Counsel for Supervisors Hays & Doyle

/s/ Henry C. Whitaker  
Counsel for Attorney General Moody

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## INTRODUCTION

In these four consolidated cases, all plaintiffs challenged SB90's registration disclaimer (and the plaintiffs in No. 22-11133 challenged *only* that provision). Before the district court enjoined that provision, the Florida Legislature passed SB524 to repeal it. But the bill did not go into effect immediately because, before the Governor signed it, the district court put Florida in preclearance. When this Court stayed the district court's decision, it allowed SB524 to "go into effect," thus repealing the registration-disclaimer provision and "mooting any challenge" to it. *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State (LWVF)*, -- F.4th ----, 2022 WL 1435597, at \*4 n.9 (11th Cir. May 6, 2022).

Because SB524 has now "moot[ed] any challenge to the Registration-Disclaimer Provision," *id.*, there is no longer an active case or controversy as to that issue. *See Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th Cir. 2001). This Court should therefore save time and resources by removing the issue from each appeal and dismissing No. 22-11133 as moot. And for all the appeals, it should vacate the district court's judgments on the registration disclaimer. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950); *De La Teja v. United States*, 321 F.3d 1357, 1364 (11th Cir. 2003). Plaintiffs do not oppose dismissing No. 22-11133, but they do oppose vacatur under *Munsingwear*. Yet vacatur is entirely "ordinary" when a challenged law is repealed on appeal. *E.g., Flanigan's Enterprises, Inc. of Ga. v. City of Sandy Springs*, 868 F.3d 1248, 1271 n.24 (11th Cir. 2017) (en banc). Plaintiffs cannot overcome the many cases ordering vacatur in precisely these circumstances. This Court should do what it always does when a

challenged law is repealed on appeal: declare the challenges moot, vacate the relevant portions of the judgments below, and order the district court to dismiss these claims.

## ARGUMENT

### I. The parties' dispute over the registration disclaimer is now moot.

This Court already found that Plaintiffs' challenge to the registration disclaimer is now moot. When this Court stayed the district court's decision, it recognized that SB524 would "go into effect." *LWVF*, 2022 WL 1435597, at \*4 n.9. This Court also observed that, because SB524 totally repeals the challenged disclaimer, its enactment "moot[s] any challenge to the Registration-Disclaimer Provision." *Id.* Indeed, "[t]his Court and the Supreme Court have repeatedly held that the repeal or amendment of an allegedly unconstitutional statute moots legal challenges to the legitimacy of the repealed legislation." *Tanner Advert. Grp., LLC v. Fayette Cnty.*, 451 F.3d 777, 789 (11th Cir. 2006) (en banc). "The only relief sought in [Plaintiff's] complaint was a declaratory judgment that the now repealed Fla. Stat. ... is unconstitutional ... and an injunction against its application .... This relief is, of course, inappropriate now that the statute has been repealed." *Diffenderfer v. Cent. Baptist Church of Miami, Inc.*, 404 U.S. 412, 414-15 (1972).

Plaintiffs agree. They do not dispute that the appeal in No. 22-11133 must be dismissed as moot. And below, they conceded that, "when SB 524 takes effect, Plaintiffs' challenges to the Registration Disclaimer Provision will become moot." Doc. 661 at 7 in No. 4:21-cv-186 (N.D. Fla. Mar. 23, 2022). Plaintiffs invoked no exception to

mootness (like voluntary cessation or capable of repetition evading review), and none applies. SB524 has now taken effect, and Plaintiffs' challenges to it are moot.

**II. This mootness requires dismissing No. 22-11133 and vacating the district court's injunction against the registration disclaimer.**

Because the parties' dispute over the registration disclaimer is moot, this Court should dismiss one of these four consolidated appeals. In No. 22-11133, the *Harriet Tubman* plaintiffs challenged "only the Registration-Disclaimer Provision." *LWVF*, 2022 WL 1435597, at \*1 n.3. Because the sole claim in that appeal is now moot, the entire appeal should be dismissed as moot. *See Tanner*, 451 F.3d at 791. Plaintiffs do not disagree.

This Court should also vacate the district court's judgment concerning the registration-disclaimer provision in all four appeals. "When a case has become moot, we ordinarily dismiss the appeal, vacate the district court's judgment, and remand with instructions to dismiss the case." *Flanigan's*, 868 F.3d at 1271 n.24. Both this Court and the Supreme Court have ordered *Munsingwear* vacatur in precisely these circumstances—where a law is challenged, enjoined, and then repealed while the appeal is pending. *See, e.g., N.Y. State Rifle & Pistol Ass'n, Inc. v. City of N.Y.*, 140 S. Ct. 1525, 1526-27 (2020); *Flanigan's*, 868 F.3d at 1271 & n.24; *Bowen v. Kizer*, 485 U.S. 386, 387 (1988); *U.S. Dep't of Treasury v. Galioto*, 477 U.S. 556, 559-60 (1986); *Church of Scientology Flag Serv. Org., Inc. v. City of Clearwater*, 777 F.2d 598, 605 & n.19 (11th Cir. 1985); *Diffenderfer*, 404 U.S. at 414-15. In *Munsingwear* itself, "[t]he suit for injunctive relief ... became moot on appeal

because the regulations sought to be enforced ... were annulled.” *U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 25 n.3 (1994) (citing *Fleming v. Munsingwear, Inc.*, 162 F.2d 125, 127 (8th Cir. 1947)).

Plaintiffs might assume that the exception to vacatur recognized in *Bancorp* applies here; but as the above cases illustrate, Plaintiffs would be incorrect. *Bancorp* applies when a case becomes moot through a “voluntary action” by the losing party like “settlement.” *Id.* at 24-25. But Appellants did not take voluntary action to moot this case; the Florida legislature did. Vacatur is appropriate because “the mootness was ... caused by the state legislature’s amendment ... and not by the actions of any of the defendants before this court, all of whom are state executive officials.” *Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 121 (4th Cir. 2000). The “executive branch” is thus like “a party who finds its case mooted on appeal by ‘happenstance,’ rather than events within its control.” *Nat’l Black Police Ass’n v. D.C.*, 108 F.3d 346, 351, 353 (D.C. Cir. 1997) (quoting *Munsingwear*, 340 U.S. at 39). The Republican intervenors, especially, are not the legislature or the State; “any doubt about the [state] appellants’ entitlement to vacatur is removed by intervenor[s]’ entitlement thereto.” *Humane Soc’y of U.S. v. Kemphorne*, 527 F.3d 181, 187 (D.C. Cir. 2008). In short, because “the acts of the legislature are not the acts of executive branch agencies, states, or private parties,” the *Bancorp* exception does not apply here. *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1131-33 (10th Cir. 2010).

Even if the *Bancorp* exception applied, the equities would still warrant vacatur. *See Hartford Cas. Ins. Co. v. Crum & Forster Specialty Ins. Co.*, 828 F.3d 1331, 1336 (11th Cir. 2016) (declining to apply *Bancorp*, even in a case involving a settlement, because the equities warranted vacatur). There is “no evidence indicating that the legislation was enacted in order to overturn an unfavorable precedent.” *Nat’l Black Police Ass’n*, 108 F.3d at 351. The Florida legislature passed SB524 *before* the district court ruled. And this Court must presume that the Florida legislature repealed the registration disclaimer not to “manipulat[e]” the judicial process, but out of legitimate legislative considerations like promoting uniformity in the voter-registration process. *See id.*; *Khodara Env’t, Inc. ex rel. Eagle Env’t L.P. v. Beckman*, 237 F.3d 186, 195 (3d Cir. 2001). The “presumption of integrity that attaches to legislative action” and the “difficulties that separation of powers creates for attributing one branch’s actions to another” require as much. *Nat’l Black Police Ass’n*, 108 F.3d at 354.

Vacatur also would “serve the public interest by furthering the traditional purpose of the [*Munsingwear*] doctrine: clearing the path for future relitigation of the issues.” *Sands v. NLRB*, 825 F.3d 778, 786 (D.C. Cir. 2016). Vacating the district court’s decision promotes the “well-established principle that courts should avoid unnecessarily deciding constitutional questions.” *Nat’l Black Police Ass’n*, 108 F.3d at 353. And it “diminishes the chances that the [district court’s decision] can be used for [its] persuasive value against any of the parties in subsequent proceedings.” *Rio Grande Silvery Minnow*, 601 F.3d at 1133. Litigants are currently citing the district court’s decision against the



Republican intervenors in similar litigation in Georgia, for example. *See* Doc. 103 at 15-16, *VoteAmerica v. Raffensperger*, No. 1:21-cv-1390 (N.D. Ga. Apr. 26, 2022).

In sum, “the general rule in favor of vacatur still applies” when “mootness results on appeal because of legislative action.” *Nat’l Black Police Ass’n*, 108 F.3d at 354. This Court should vacate the district court’s judgment on the registration disclaimer and order the district court to dismiss Plaintiffs’ challenges to that provision. *Flanigan’s*, 868 F.3d at 1271 n.24.

### CONCLUSION

This Court should dismiss the appeal in No. 22-11133, vacate the district court’s judgments on the registration disclaimer in each of the consolidated cases, and order the district court to dismiss Plaintiffs’ claims against the registration disclaimer.

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Respectfully submitted,

/s/ Mohammad O. Jazil

Mohammad O. Jazil  
Gary V. Perko  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK PLLC  
119 South Monroe Street, Suite 500  
Tallahassee, FL 32301  
(850) 274-1690 / (540) 341-8809 (fax)  
mjazil@holtzmanvogel.com  
gperko@holtzmanvogel.com

Phillip M. Gordon  
HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK PLLC  
15405 John Marshall Hwy  
Haymarket, VA 20169  
(540) 341-8808 / (540) 341-8809 (fax)  
pgordon@holtzmanvogel.com

Bradley R. McVay  
*General Counsel*  
Ashley E. Davis  
*Deputy General Counsel*  
Colleen E. O'Brien  
*Assistant General Counsel*  
William Chappel  
*Assistant General Counsel*  
FLORIDA DEPARTMENT OF STATE  
R.A. Gray Building Suite 100  
500 South Bronough Street  
Tallahassee, Florida 32399-0250  
(850) 245-6536 / (850) 245-6127 (fax)  
brad.mcvay@dos.myflorida.com  
ashley.davis@dos.myflorida.com  
colleen.obrien@dos.myflorida.com  
David.chappell@dos.myflorida.com

*Counsel for Secretary Lee*

/s/ Tyler R. Green

Tyler R. Green  
Cameron T. Norris  
Daniel Shapiro  
CONSOVOY MCCARTHY PLLC  
1600 Wilson Boulevard, Suite 700  
Arlington, VA 22209  
(703) 243-9423  
tyler@consovoymccarthy.com  
cam@consovoymccarthy.com  
daniel@consovoymccarthy.com

Benjamin J. Gibson  
Daniel E. Nordby  
George N. Meros Jr.  
Frank A. Zacherl  
Amber Stoner Nunnally  
Tara R. Price  
SHUTTS & BOWEN LLP  
215 South Monroe Street, Suite 804  
Tallahassee, Florida 32301  
(850) 241-1717  
bgibson@shutts.com  
dnordby@shutts.com  
gmeros@shutts.com  
fzacherl@shutts.com  
anunnally@shutts.com  
tprice@shutts.com

*Counsel for Republican National Committee  
& National Republican Senatorial Committee*

/s/ Andy Bardos

Andy Bardos  
GRAYROBINSON, P.A.  
301 South Bronough Street, Suite 600  
Tallahassee, FL 32301  
(850) 577-9090  
(850) 577-3311 (fax)  
andy.bardos@gray-robinson.com

*Counsel for Supervisors Hays and Doyle*

/s/ Henry C. Whitaker

Henry C. Whitaker  
*Solicitor General*  
Daniel W. Bell  
*Chief Deputy Solicitor General*  
Bilal Ahmed Faruqui  
*Senior Assistant Attorney General*  
Karen Ann Brodeen  
*Special Counsel*  
William Edward Chorba  
*Senior Assistant Attorney General*  
William Henry Stafford, III  
*Senior Assistant Attorney General*  
FLORIDA ATTORNEY GENERAL OFFICE  
PL-01 The Capitol  
Tallahassee, FL 32399  
(850) 414-3300  
henry.whitaker@myfloridalegal.com  
daniel.bell@myfloridalegal.com  
bilal.faruqui@myfloridalegal.com  
karen.brodeen@myfloridalegal.com  
william.chorba@myfloridalegal.com  
william.stafford@myfloridalegal.com

*Counsel for Attorney General Moody*

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**CERTIFICATE OF COMPLIANCE**

This motion contains 1,457 words, excluding the parts that can be excluded. This motion complies with Rule 32(a)(5)-(6) because it's prepared in a proportionally spaced face using Microsoft Word 2016 in 14-point Garamond font.

Dated: May 24, 2022

/s/ Mohammad O. Jazil

**CERTIFICATE OF SERVICE**

I e-filed this reply on ECF, which will email everyone requiring notice.

Dated: May 24, 2022

/s/ Mohammad O. Jazil

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