IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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

v.

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

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

FLORIDA NAACP, LEAGUE OF WOMEN VOTERS, AND FLORIDA RISING TOGETHER APPELLEES' COMBINED OPPOSITION TO DEFENDANTS-APPELLANTS' TIME-SENSITIVE MOTION FOR AN EXTENSION OF TIME AND CROSS-MOTION TO EXPEDITE APPEAL

RETRIEVED FROM DEMOCRACYDOCKET.COM

Benjamin L. Cavataro
Michael A. Fletcher II
Dillon H. Grimm
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001
Telephone: 202-662-6000

John A. Freedman
Elisabeth S. Theodore
Jeremy C. Karpatkin
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
Telephone: 202- 942-5000
Fax: 202-942-5999
elisabeth.theodore@arnoldporter.com

(additional counsel listed on next page)

P. Benjamin Duke
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018
212-841-1270

Ellen Y. Choi
COVINGTON & BURLING LLP
415 Mission Street
San Francisco, CA 94105
Telephone: 415-591-7025

Morenike Fajana
Romane Paul
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
Telephone: 212-965-2200

Amia Trigg
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
700 14th Street NW, Ste. 600
Washington, DC 20005
Telephone: 202-682-1300

Counsel for Florida NAACP Plaintiffs-Appellees

Jeffrey A. Miller
ARNOLD & PORTER KAYE SCHOLER LLP
3000 El Camino Road
Five Palo Alto Square, Suite 500
Palo Alto, CA 94306-3807
Telephone: 650-319-4500

Aaron Stiefel
Daniel R. Bernstein
Andrew R. Hirschel
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: 212-836-8000

Miranda Galindo
LATINOJUSTICE, PRLDEF
523 W Colonial Dr.
Orlando, FL 32804
Telephone: 321-418-6354

Brenda Wright
Kira Romero-Craft
DEMOS
80 Broad St, 4th Flr
New York, NY 10004
Telephone: 212-633-1405

Sabrina Khan
ADVANCEMENT PROJECT
1220 L Street, N.W., Suite 850
Washington, DC 20005
Telephone: 202-728-9557

Counsel for Florida Rising Together Plaintiffs-Appellees

RETRIEVED FROM DEMOCRACYDOCKET.COM

Frederick S. Wermuth
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
P.O. Box 1631
Orlando, FL 32802-1631
Telephone: (407) 422-2472

Marc E. Elias
Elisabeth C. Frost
Aria C. Branch
David R. Fox
Lalitha D. Madduri
Christina A. Ford
Francesca Gibson
ELIAS LAW GROUP LLP
10 G St NE, Suite 600
Washington, DC 20002
Telephone: (202) 968-4490

Counsel for League of Women Voters Plaintiffs-Appellees

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1(a)(3), Plaintiffs-Appellees, the Florida State Conference of Branches and Youth Units of the NAACP, Disability Rights Florida, Common Cause, League of Women Voters of Florida, Inc., League of Women Voters of Florida Education Fund, Inc., Black Voters Matter Fund, Inc., Florida Alliance for Retired Americans, Inc., Cecile Scoon, Dr. Robert Brigham, Alan Madison, Susan Rogers, Florida Rising Together, UNIDOSUS, Equal Ground Education Fund, Hispanic Federation and Poder Latinx, through undersigned counsel, hereby submit this Certificate of Interested Persons and Corporate Disclosure Statement.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Appellees state that they have no parent corporations, nor have they issued shares or debt securities to the public. The organizations are not subsidiaries or affiliates of any publicly owned corporation, and no publicly held corporation holds ten percent of their stock.

I hereby certify that the disclosure of interested parties submitted by Defendants-Appellants is complete and correct except for the following corrected or additional interested persons or entities:

Interested Persons

1. Grimm, Dillon, *Attorney for NAACP Plaintiffs-Appellees*

The following additional Plaintiffs-Appellees' counsel and parties listed on Defendants-Appellants' disclosure of interested parties can be dropped:

1. Pernick, Michael (no longer at NAACP Legal Defense & Education Fund, Inc.)
2. Janine Lopez (no longer at Arnold & Porter)

/s/ Elisabeth S. Theodore
Elisabeth S. Theodore

RETRIEVED FROM DEMOCRACYDOCKET.COM

INTRODUCTION

Within days of the enactment of SB 90 in May 2021, Plaintiffs commenced suit challenging select provisions of SB 90 that restrict access to the ballot and other voting mechanisms used by Black and Latino voters in the wake of the 2020 election. After breakneck proceedings, including a 14-day trial, the district court issued a detailed opinion on March 31, 2022. Based on the extensive trial record, the district court concluded that the enforcement of several challenged provisions of SB 90 would violate the Constitution and the Voting Rights Act in numerous, independent ways, and enjoined enforcement of those provisions. Appellants noticed their appeals on April 7, 2022. After Appellants sought a stay of the injunction, citing "fast approaching" elections and concerns over "voter confusion and electoral confidence," this Court granted a stay pending appeal.

Appellants now seek a 60-day extension to file their opening brief. That extension should be denied. Having obtained the extraordinary remedy of a stay, Appellants are not entitled to an extension that will further delay the final adjudication of Plaintiffs' constitutional rights in this Court. The Supreme Court has recognized that the loss of constitutional rights "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And the Supreme Court has encouraged the early adjudication and resolution of the validity of election laws. *See generally Purcell v. Gonzalez*, 549

RETRIEVED FROM DEMOCRACYDOCKET.COM

U.S. 1 (2006) (per curiam). The answer here is not to slow down resolution of the appeal; it is to expedite it. Indeed, the delay sought by Appellants could threaten this Court's ability to decide this matter in time for the March 2023 Florida municipal elections. Accordingly, Plaintiffs are cross-moving to expedite oral argument in this case and ask the Court to maintain the briefing schedule and set oral argument for the earliest available date after briefing is closed.

ARGUMENT

I. The Court Should Deny the Request for an Extension of Time

In their motion, Appellants claim that a 60-day extension would not "appreciably change[] anything for" Plaintiffs, and that Plaintiffs' interests are outweighed by "the countervailing concerns for Appellants." Defs.-Appellants' Mot. for an Extension of Time ("Mot.") at 2-3. Based on an extensive trial record, the district court found, that the challenged provisions of SB 90 violated their rights under the First and Fourteenth Amendments and the Voting Rights Act.[1] These

RETRIEVED FROM DEMOCRACYDOCKET.COM

[1] *See, e.g.*, Final Order Following Bench Trial at 180, *League of Women Voters of Fla., Inc. v. Lee*, No. 4:21CV186-MW/MAF, 2022 WL 969538 (N.D. Fla. Mar. 31, 2022) ("Final Order") (Dkt. No. 665); *see e.g.*, *id.* at 155 ("[V]eteran canvassers, including green card holders who wish to become citizens in the future, have now told Hispanic Federation that they do not want to continue their "line warming" activities for fear of getting involved with law enforcement at the polls."); *id.* at 101 ("Not only do Black voters disproportionately use drop boxes, but they also use them in precisely the ways SB 90 prohibits."); *id.* at 104, 112–13 ("[T]he solicitation definition will have a disparate impact on minority voters because minority voters are disproportionately likely to wait in line to vote, and because the provision

Footnote continued on next page

injuries are irreparable, and warrant injunctive relief. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976); *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1128 (11th Cir. 2022) ("We have expressly held that 'an ongoing violation of the First Amendment constitutes an irreparable injury.'") (citation omitted).

Elections will be held in some of Florida's largest counties (including Palm Beach, Hillsborough, and Pinellas) in March 2023. A 60-day delay meaningfully increases the risk that this Court's decision will be delayed to a point affecting its ability to grant relief in advance of those March 2023 elections. Appellants' proposed extension would mean that briefing in this case would not be complete until late September. Oral argument would be scheduled still later.

Even if this Court does rule for the Plaintiffs in advance of the March 2023 elections, Appellants' delay may allow them to argue that the *Purcell* principle prevents the Court from lifting the stay. Appellants argued in their stay motion that granting relief "three months" in advance of the primary elections violated the *Purcell* principle. Def.-Appellants' Mot. to Stay ("Stay Mot.") at 17. They may well be hoping to make the same argument regarding the March 2023 elections, if this Court's ruling for Plaintiffs comes in the fall or winter of 2022.

RETRIEVED FROM DEMOCRACYDOCKET.COM

---

discourages third parties from helping those waiting to vote."); *id.* at 115 ("Every single challenged provision has a disparate impact on Black voters in some way."); *id.* at 187 (similar).

Appellants assert in their motion that they "do not understand" why Plaintiffs would oppose their requested extension request in light of the March 2023 elections and *Purcell*. Mot. at 2. But the reason is straightforward: two months can make a meaningful difference in the application of the *Purcell* doctrine. *See* Stay Mot. at 6 (arguing that the district court erred in its application of *Purcell* because it believed the nearest elections were "five months" away when in fact "statewide primaries begin in only three months"). "How close to an election is too close . . . depend[s] . . . on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects." *Merrill v. Milligan*, 142 S. Ct. 879, 881 n.1 (2022) (Kavanaugh, J., concurring); *see also* Order Granting Defs.-Appellants' Mot. to Stay ("Stay Order") at 7 n.6 (quoting same).

RETRIEVED FROM DEMOCRACYDOCKET.COM

Appellants' motion for an extension practically ignores the impact delay will have on the administration of the 2023 elections. As this Court recognized, "When the district court here issued its injunction, voting in the next statewide election was set to begin in less than four months (and local elections were ongoing)." Stay Order at 7. A delay of 60 days would put this Court in the same position with respect to the 2023 elections. Expediting this proceeding would allow this matter to be resolved well in advance of these elections.

Appellants offer no good reason for delaying resolution of this case and risking depriving Plaintiffs of their constitutional rights for another year. They filed

their notice of appeal on April 7 and the briefing order was entered on April 14; Defendants then waited over a month before asking to delay the schedule.

There is no reason why Appellants cannot file their merits brief by May 31. The fact that Appellants have competing briefing obligations in other cases does not justify a stay here. Appellants (the Secretary of State, the Republican National Committee, and the National Republican Senatorial Committee) are represented by multiple sophisticated private law firms, all of which regularly litigate multiple cases at a time. Sixteen lawyers are listed on Appellants' extension motion, and more than a dozen lawyers have filed appearances in this appeal. The litigation teams for a major state office and a national political party, all of whom are intimately familiar with election law, do not lack the resources to comply with this Court's briefing schedule on this case of major public importance involving constitutional rights.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Nor does the transition to a new Secretary of State—which occurred on May 13—justify a delay. It is unclear how allowing the Secretary of State's counsel to focus only on the other two election cases Appellants cite "would allow the [SOS] transition to run efficiently." Mot. at 12. Indeed, the Florida Department of State is not responsible for enforcing certain of the challenged provisions, and the Secretary

successfully argued in the district court that claims against her should be dismissed on that basis. N.D. Fla. No. 4:21-cv-186, ECF 274 at 24-25.[2]

It also bears emphasis that when the Republican National Committee and the National Republican Senatorial Committee intervened below they specifically represented to the district court that their intervention "will not delay this litigation or prejudice anyone at all." N.D. Fla. No. 4:21-cv-186 ECF 26 at 14. These parties' request for delay through their motion directly contradicts their prior representation.

Having sought and procured a stay of the district court's judgment, Appellants should not now be permitted to further delay adjudication of the merits of Plaintiffs' claims on the merits based on their desire to prioritize the briefing of other cases, especially in light of their commitment that their participation in this case would cause no delay.

RETRIEVED FROM DEMOCRACYDOCKET.COM

II. The Court Should Expedite Oral Argument and Decision in this Appeal

Pursuant to 28 U.S.C. § 1657(a), Federal Rule of Appellate Procedure 27 and Eleventh Circuit Internal Operating Procedure 3 for FRAP 27, Plaintiffs-Appellees respectfully move to expedite this appeal based on the good cause stated below. Under the briefing schedule this Court set on April 14, 2022 (as modified on April

[2] After that dismissal, the Secretary of State subsequently filed a motion to intervene to defend these provisions, N.D. Fla. No. 4:21-cv-186 (ECF 337-1), and that motion was granted. ECF 359.

18), briefing will conclude in July 2022. Plaintiffs request that the Court set oral argument for the first available date after briefing is complete.

As explained, there is good cause justifying expedited consideration. Local primary and general elections are scheduled in many Florida municipalities in 2023, with some larger counties holding those elections as early as March 2023. The challenged provisions will have a detrimental impact on Plaintiffs' ability to participate in the upcoming elections, and the district court has held that the challenged provisions violate multiple provisions of the U.S. Constitution and the Voting Rights Act. Scheduling oral argument for August or September 2022 would allow this Court to decide the appeal in advance of the March 2023 elections. This schedule would ensure that, if Plaintiffs are successful in the appeal, their constitutional rights will be vindicated in time for those elections.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The public interest strongly favors prompt resolution. This Court has repeatedly expedited review of elections-related cases like this one that involve important constitutional issues.[3] There is no basis for Defendants' suggestion (Mot. at 2) that expedition is irrelevant because this Court will take a year to decide this

[3] Most recently in 2019, this Court granted a motion to expedite briefing and oral argument in a case challenging the constitutionality of Senate Bill 7066, which affected Amendment 4, a state constitutional amendment that restored voting rights to certain ex-felons. *See* Order Expediting Briefing, *Jones v. Gov. of Florida.*, No. 19-14551 (Dec. 11, 2019); Order Expediting Oral Argument, *Jones v. Gov. of Florida.*, No. 19-14551 (Dec. 13, 2019). This Court has also expedited review in other election cases. *See e.g.*, *Hand v. Scott*, 888 F.3d 1206, 1215 (11th Cir. 2018) (noting the Court accelerated the briefing schedule and oral argument for the appeal of a challenge to a Florida felon re-enfranchisement scheme).

case: this Court has decided cases involving these types of time-sensitive issues far more quickly than that. *See e.g.*, *Jones v. Gov. of Florida.*, No. 19-14551 (decision issued one month after argument); *Brown v. Sec'y of Fla.*, 668 F.3d 1271, 1274 (11th Cir. 2012) (issuing opinion in January 2012, four months after appellants filed appeal). Expedited review in this case is equally proper.

CONCLUSION

The Court should deny Appellants' motion for an extension of time and grant Plaintiffs' motion to expedite oral argument.

RETRIEVED FROM DEMOCRACYDOCKET.COM

May 25, 2022

Respectfully submitted,

Benjamin L. Cavataro
Michael A. Fletcher II
Dillon H. Grimm
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001
Telephone: 202-662-6000

P. Benjamin Duke
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018
212-841-1270

Ellen Y. Choi
COVINGTON & BURLING LLP
415 Mission Street
San Francisco, CA 94105
Telephone: 415-591-7025

Morenike Fajana

/s/ Elisabeth S. Theodore
John A. Freedman
Elisabeth S. Theodore
Jeremy C. Karpatkin
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
Telephone: 202- 942-5000
Fax: 202- 942-5999
elisabeth.theodore@arnoldporter.com

Jeffrey A. Miller
ARNOLD & PORTER
KAYE SCHOLER LLP
3000 El Camino Road
Five Palo Alto Square, Suite 500
Palo Alto, CA 94306-3807
Telephone: 650-319-4500

Aaron Stiefel

Romane Paul
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
Telephone: 212-965-2200

Amia Trigg
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
700 14th Street NW, Ste. 600
Washington, DC 20005
Telephone: 202-682-1300

Nellie L. King
LAW OFFICES OF NELLIE L. KING, P.A.
319 Clematis Street, Suite 107
West Palm Beach, FL 33401
Telephone: 561-833-1084

Counsel for Florida NAACP Plaintiffs-Appellees

Daniel R. Bernstein
Andrew R. Hirschel
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: 212-836-8000

Miranda Galindo
LATINOJUSTICE, PRLDEF
523 W Colonial Dr.
Orlando, FL 32804
Telephone: 321-418-6354

Brenda Wright
Kira Romero-Craft
DEMOS
80 Broad St, 4th Flr
New York, NY 10004
Telephone: 212-633-1405

Sabrina Khan
ADVANCEMENT PROJECT
1220 L Street, N.W., Suite 850
Washington, DC 20005
Telephone: 202-728-9557

Counsel For Florida Rising Together Plaintiffs-Appellees

Frederick S. Wermuth
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
P.O. Box 1631
Orlando, FL 32802-1631
Telephone: (407) 422-2472

Marc E. Elias
Elisabeth C. Frost
Aria C. Branch
David R. Fox
Lalitha D. Madduri
Christina A. Ford
Francesca Gibson
ELIAS LAW GROUP LLP
10 G St NE, Suite 600
Washington, DC 20002

RETRIEVED FROM DEMOCRACYDOCKET.COM

Telephone: (202) 968-4490

Counsel for League of Women Voters Plaintiffs-Appellees

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on May 25, 2022 and will therefore be served electronically upon all counsel.

/s/ Elisabeth S. Theodore
Elisabeth S. Theodore

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel for Appellant hereby certifies:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) because the brief contains 1,877 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and (6) because the brief has been prepared using Microsoft Office Word and is set in Times New Roman font in a size equivalent to 14 points or larger.

RETRIEVED FROM DEMOCRACYDOCKET.COM

/s/ Elisabeth S. Theodore
Elisabeth S. Theodore