No. 22-11133
(Consolidated Case Nos. 22-11143 (Lead), 22-11144, 22-11145)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

HARRIET TUBMAN FREEDOM FIGHTERS, CORP.,

Plaintiff-Appellee,

v.

LAUREL LEE, in her official capacity as Secretary of State of Florida, et al.,

Defendants-Appellants.

APPELLEES' RESPONSE TO APPELLANTS' MOTION FOR PARTIAL DISMISSAL AND PARTIAL VACATUR

Bradley E. Heard
Matletha Bennette
Jack Genberg
Nancy G. Abudu
SOUTHERN POVERTY LAW CENTER
150 E. Ponce De Leon Ave., Suite 340
Decatur, GA 30030
Main: (404) 521-6700
Fax: (404) 221-5857
bradley.heard@splcenter.org
matletha.bennette@splcenter.org
jack.genberg@splcenter.org
nancy.abudu@splcenter.org

(additional counsel listed on next page**)**

John A. Freedman
Elisabeth S. Theodore
Jeremy C. Karpatkin
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
Main: (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
Main: (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
Main: (212) 836-8000

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

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

Counsel for HTFF Plaintiffs-Appellees

Michelle Kanter Cohen
Cecilia Aguilera
FAIR ELECTIONS CENTER
1825 K St. NW, Suite 450
Washington, DC 20006
Main: (202) 331-0114
mkantercohen@fairelectionscenter.org
caguilera@fairelectionscenter.org

Frederick S. Wermuth
KING, BLACKWELL, ZEHNDER
& WERMUTH
P.A. P.O. Box 1631
Orlando, FL 32802-1631
Main: (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
Main: (202) 968-4490

Counsel for League of Women Voters Plaintiffs-Appellees

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

Counsel for Florida Rising Together
Plaintiffs-Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

CERTIFICATE OF INTERESTED PERSONS

1. Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, Appellee states that it has no parent corporations, nor has it issued shares or debt securities to the public. The organization is not a subsidiary or affiliate of any publicly owned corporation, and no publicly held corporation holds ten percent of its stock.
2. I hereby certify that the disclosure of interested parties submitted by Plaintiff-Appellees on May 9, 2022, is complete and correct except for the following additional interested person:
    a. Matletha Bennette of the Southern Poverty Law Center is counsel for Plaintiff-Appellee Harriet Tubman Freedom Fighters.

INTRODUCTION

Plaintiffs-Appellees in appeal Nos. 22-11133 (Harriet Tubman Freedom Fighters ("HTFF")), 22-11143 (League of Women Voters), and 22-11145 (Florida Rising Together) agree that the State of Florida's enactment of Senate Bill 524 ("SB 524") on April 26, 2022, coupled with this Court's stay of the district court's final judgment pending appeal, *see League of Women Voters of Fla., Inc. (LWVF) v. Fla. Sec'y of State*, ___ F.4th ___, 2022 WL 1435597, at *4 n.9 (11th Cir. May 6, 2022), renders Defendants-Appellants' appeal of the portions of the district court's final judgment relating to the Third Party Voter Registration Disclaimer ("Registration Disclaimer") Provision moot. Accordingly, the HTFF Plaintiff-Appellee does not oppose Defendants-Appellants' motion to dismiss the appeal in No. 22-11133. Likewise, the League Plaintiffs-Appellees and the Florida Rising Together Plaintiffs-Appellees do not oppose Defendants-Appellants' motion for partial dismissal of the portion of their appeals relating to the Registration Disclaimer Provision in Nos. 22-11143 and 22-11145.

This Court should not, however, vacate the portions of the district court's final judgment holding the Registration Disclaimer Provision unconstitutional and the injunctions the district court entered as to the Registration Disclaimer in case numbers: 4:21-cv-186, 4:21-cv-201, and 4:21-cv-242. As discussed below, Defendants-Appellants cannot meet their heavy burden of establishing the

"extraordinary circumstances" that would entitle them to the extraordinary equitable remedy of vacatur, *cf. U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26-27 (1994), and the public interest would not be served by allowing vacatur under these circumstances.

For nearly a year after the enactment of the Registration Disclaimer Provision, the State of Florida vigorously defended it via the State Defendants-Appellants—through motions to dismiss, extensive discovery, summary judgment, and a two-and-a-half-week trial. Then, on March 2, 2022, after the submission of post-trial briefing, the Florida Legislature amended an existing bill to repeal the Registration Disclaimer Provision, and on March 9, passed that amended bill as SB 524. *See* Fla. Senate Amendment 203418 (Mar. 2, 2022), https://www.flsenate.gov/Session/Bill/2022/524/Amendment/203418/PDF. Then, inexplicably, the Legislature delayed sending the bill to the Governor for signature for almost *seven weeks*.[1] Only after the District Court's March 31 order holding the Registration Disclaimer Provision unconstitutional and permanently enjoining its

[1] Unlike its ordinary practice, including with Senate Bill 90 itself, the Legislature did not promptly transmit the bill to the Governor for signature. *Compare* CS/CS/CS/SB 90: Elections, Fl. Senate, https://www.flsenate.gov/Session/Bill/2021/90 (passed on April 29 and presented to the Governor four days later) *with* CS/CS/SB 524: Election Administration, Fl. Senate, https://www.flsenate.gov/Session/Bill/2022/524/ (passed on March 9 but not presented to the Governor until April 25).

enforcement, and after Defendants-Appellants' commencement of an appeal to this Court, did the Legislature finally present the repeal to the Governor for signing.

Before the bill was presented or the Governor signed the legislation, the district court *sua sponte* asked the parties to submit post-trial briefing on the effect of SB 524 on the challenge to SB 90. In their response, Plaintiffs-Appellees acknowledged that if SB 524 had been signed and taken effect prior to the district court's entry of final judgment, it would have mooted their challenge of the Registration Disclaimer Provision. *See* Pls.' Joint Br. in Resp. to Ct.'s Order Req. Br. on Fla. S.B. 524's Impact on the Challenged Provisions, No. 4:21-cv-186, ECF No. 661 at 7 (N.D. Fla. Mar. 23, 2022).

Out of respect for federalism concerns and in an effort to avoid addressing constitutional issues unnecessarily, the district court waited five weeks prior to entering its final order in this case, to allow sufficient time for the bill to be transmitted to the Governor for signature. *See* Final Order Following Bench Trial, No. 4:21-cv-186, ECF No. 665 at 190 (N.D. Fla. Mar. 31, 2022). Yet, the State made no effort to move forward with the legislative process to repeal the Registration Disclaimer Provision. After the district court entered its final order, the State still did not immediately repeal the provision. Instead, the State filed its notice of appeal.

Now, despite the State's decision to wait and see what the district court would do, rather than repealing the Registration Disclaimer Provision voluntarily,

Defendants-Appellants ask this Court to vacate the district court's adverse ruling. But it was the State's own voluntary *inaction* in not timely repealing or otherwise disclaiming the Registration Disclaimer Provision prior to entry of final judgment in the district court that led to the adverse judgment. The public interest weighs heavily against the extraordinary equitable remedy of vacatur of that judgment as to the Registration Disclaimer Provision under these circumstances. The Court should therefore deny Appellants' request for partial vacatur.

ARGUMENT

As the parties seeking vacatur, Defendants-Appellants bear the burden of showing an "entitlement to [this] extraordinary remedy." *See U.S. Bancorp*, 513 U.S. 18 at 26 (1994). This burden requires Appellants to present "extraordinary circumstances" to the court considering whether such extraordinary relief is justified. *Id.* at 29.

Relying on *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), Defendants-Appellants mistakenly argue that mootness of the appeal necessarily requires vacatur of the decision below. *See* Appellant's Mot. Partial Dismissal and Partial Vacatur at 3. But the Eleventh Circuit has recognized that vacatur is an equitable remedy. *SunAmerica Corp. v. Sun Life Assurance Co. of Canada*, 77 F.3d 1325, 1332 n.2 (11th Cir. 1996) (citing *U.S. Bancorp*); *see also Moore v. Thurston*, 928 F.3d. 753, 758 (8th Cir. 2019) (noting that "vacatur is an equitable remedy, not

an automatic right" (citing *U.S. Bancorp*, 513 U.S. at 23)). Indeed, the Supreme Court rejected the notion that automatic vacatur was the "established practice" whenever mootness prevents further appellate review of a lower court decision. *U.S. Bancorp*, 513 U.S. at 23–24.

In *U.S. Bancorp*, the Court established a general presumption against vacatur that could be overcome only by a finding that such equitable relief serves the public interest. *Id.* at 26–27. This makes sense, given that "[j]udicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur." *Id.* (quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha v. United States Philips Corp.*, 510 U.S. 27, 40 (1993) (Stevens, J., dissenting)).

In determining whether a court should vacate a judgment, the Court should consider equitable factors, including whether a party's own acts and not mere happenstance, have caused the action to be moot and whether vacatur serves the public interest. *Moore*, 928 F.3d at 758. Neither factor, however, is dispositive. Indeed, the absence of a party's specific intent to moot a case does not outweigh other equitable factors counseling against vacatur. *Staley v. Harris Cnty., Tex.*, 485 F.3d 305, 312 (5th Cir. 2007). Here, the equity of vacatur is undermined by the State delaying repeal until a judgment was ordered against it, prolonging the effect of the

unconstitutional Registration Disclaimer Provision and wasting judicial resources. Vacating the judgment would reward the State for actions that courts should seek to deter.

Because Defendants-Appellants do not come close to satisfying their burden to establish "extraordinary circumstances" or their entitlement to the extraordinary equitable remedy of vacatur, this Court should deny their motion for partial vacatur.[2]

I. The Defendants-Appellants' own actions have contributed to the conditions that mooted the case, thereby not warranting vacatur.

In deciding whether to vacate the lower court's decision, a court must examine the "nature and character of the conditions which have caused the case to become moot." *U.S. Bancorp*, 513 U.S. at 24. And here, the unusual and irregular timing and circumstances of Florida's repeal of the Registration Disclaimer Provision are telling. (*See supra* at 2-4.)

The cases Defendants-Appellants cite in seeking vacatur did not involve this sort of blatant gamesmanship by the legislature. *National Black Police Association v. District of Columbia*, 108 F.3d 346, 348 (D.C. Cir. 1997), was a challenge to a

[2] At a minimum, even if the Court would otherwise vacate the portion of the judgment below involving the Registration Disclaimer Provision, it should instead remand the case to the District Court to allow that court to assess whether Plaintiffs-Appellees "may still add a claim for damages in this lawsuit with respect to" the Registration Disclaimer Provision's past effect on their activities. *N.Y. State Rifle & Pistol Ass'n v. City of N.Y.*, 140 S. Ct. 1525, 1527 (2020).

voter-enacted campaign-finance initiative that the city council then repealed a few years later. In vacating the district court's decision invalidating the initiative, the D.C. Circuit emphasized that "[a]ll of the acts required to be performed by the District in order for a proposed bill to become law—namely passage by the D.C. Council *and signing by the Mayor*—had occurred before the district court held Initiative 41's limits to be unconstitutional." *Id.* at 352 (emphasis added). The court also observed that "the challenged contribution limits were originally enacted not by any action by the D.C. Council but rather by a voter initiative and legislative efforts to amend Initiative 41 began within one year of the Initiative's becoming effective." *Id.* at 350. And the D.C. Circuit explained that its decision "does not mean that vacatur should be granted in all cases of this kind," *id.* at 354, and that it "need not reach" and "express[ed] no view" on whether "the executive branch is in a position akin to a party who finds its case mooted on appeal by 'happenstance,'" as in *Munsingwear*. *Id.* at 353.

Similarly, in *Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 115 (4th Cir. 2000), the West Virginia legislature had repealed challenged Provisions while motions to reconsider the district court's judgment were pending—there was no

suggestion that the state had intentionally delayed its repeal of the challenged laws to see what the district court did, as happened here.[3]

Florida's repeal of the Registration Disclaimer Provision was no mere "happenstance." The State "acts in unity to pass legislation" and the "distinct public officials" all "play some role in the legislative process." *Hall v. Louisiana*, 884 F.3d 546, 554 (5th Cir. 2018) (Higgenbotham, J., concurring). In Florida, especially, the executive branch fuels many of the laws considered by the Legislature, announcing on multiple occasions their demands for legislative action before the annual Legislative Session even begins. This was certainly the case for SB 524. *See, e.g.*, Wendy Rhodes, *DeSantis says he wants to create a state office to investigate and prosecute election crimes*, USA Today, Nov. 3, 2021 ("Gov. Ron DeSantis said Wednesday that *he will propose new legislation* in 2022 to 'further strengthen' Florida's election integrity") (emphasis added).

Both SB 90, the legislation containing the Registration Disclaimer Provision, and SB 524, the legislation repealing the Registration Disclaimer Provision, originated with executive officials. And the means by which the Legislature repealed

[3] It is true that the Legislature is not a party to this case. But the distinction is artificial, because in many ways the Legislature is the real party in interest. The Legislature—not Defendants-Appellants—was the entity responsible for enacting the Registration Disclaimer Provision in the first place, and the State Defendants-Appellants merely defend that law in their official capacities.

and replaced the Registration Disclaimer Provision was precisely that suggested by Plaintiffs-Appellees in a brief filed a few days before. *League* Pl.'s Written Closing Statement and Post-Trial Br., No. 4:21-cv-186 at 63; ECF No. 649 at 75 (N.D. Fla. February 26, 2022) ("If Florida wanted to warn voters that Third-Party Voter Registration Organization may not turn in their forms on time and inform them of other ways to register, such as online…Florida could have added that information to the form itself…"). Under these circumstances, the legislative action in repealing the Registration Disclaimer Provision may be fairly attributed to the executive branch. *See Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 121 (4th Cir. 2000) (suggesting that a member of the executive branch may be considered at fault for mooting legislation).

II. Ordering vacatur would not serve the public interest.

The Supreme Court has made clear that federal courts must consider the public interest in deciding whether to afford the "extraordinary" remedy of vacatur. *U.S. Bancorp*, 513 U.S. at 26. Importantly, both the Supreme Court and this court have emphasized the policies animating *Munsingwear*, recognizing equity as the touchstone of vacatur. *See Atlanta Gas Light Co. v. FERC*, 140 F.3d 1392, 1403 (11th Cir. 1998) (quoting *U.S. Bancorp*, 513 U.S. at 25); *Westmoreland v. Nat'l Transp. Safety Bd.*, 833 F.2d 1461, 1463 (11th Cir. 1987).

As indicated *supra*, courts must consider the precedential value of the decisions of lower courts when deciding whether to grant such extraordinary equitable relief. *U.S. Bancorp*, 513 U.S. at 26-27 (quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha*, 510 U.S. at 40 (Stevens, J., dissenting)). And "there is no particular reason to assume that a decision, later mooted, is any less valid as precedent than any other opinion of a court. 'So long as the court believed that it was deciding a live controversy, its opinion was forged and tested in the same crucible as all opinions.'" *Mahoney v. Babbitt*, 113 F.3d 219, 222 (D.C. Cir. 1997) (quoting 13A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, FEDERAL PRACTICE AND PROCEDURE § 3533.10 (2d ed. 1984)).

The decision of the district court after a two-and-a-half-week bench trial, analyzing private organizations' right to be free from delivering government-drafted messages while engaged in core political speech, amounts to guidance that is "valuable to the legal community as a whole … and should stand unless a court concludes that the public interest would be served by a vacatur." *U.S. Bancorp*, 513 U.S at 26.

Here, for the reasons outlined below, the public interest unequivocally supports the rejection of such exceptional relief. Indeed, the loss of "legal force" in the district court's decision will bear a heavy public cost. Ari Cuenin, *Mooting the*

Night Away: Postinauguration Midnight-Rule Changes and Vacatur for Mootness, 60 DUKE L.J. 453, 465 (2010).

A. The public interest favors preservation of the district court ruling declaring the Registration Disclaimer Provision unconstitutional.

Given that the Registration Disclaimer Provision constituted a significant impairment of Plaintiffs-Appellees' and other third-party voter registration organizations' fundamental constitutional rights, the public interest favors preservation of the district court ruling declaring that law unconstitutional.

Defendants-Appellants curiously suggest that because litigants are presently citing to the district court's decision in a separate case before the Northern District of Georgia, the equities warrant vacatur here. Mot. 16–17. But that fact weighs in favor of denying vacatur in this matter. The purpose of vacatur is to prevent opinions from having a preclusive effect—not to prevent them from setting precedent. *See, e.g.*, *In re Smith v. State Farm Mut. Auto. Ins. Co.*, 964 F.2d 636, 638 (7th Cir. 1992); *Fund for Animals v. Mainella*, 335 F. Supp. 2d 19, 27 (D.D.C. 2004); *Keeler v. Cumberland*, 951 F. Supp. 83, 84 (D. Md. 1997). Indeed, "the establishment of precedent argues against vacatur, not in favor of it." *Mahoney*, 113 F.3d at 223.

The public interest also counsels against vacatur in this instance, given Florida's long history of passing unconstitutional voting restrictions, including those relating to third-party voter registration. *See* Final Order, No. 4:21-cv-186, ECF No. 665 at 274-279; *see also, e.g.*, *League of Women Voters of Fla. v. Browning*, 863 F.

Supp. 2d 1155 (N.D. Fla. 2012) (granting a preliminary injunction blocking the enforcement of new and burdensome regulations on voter registration organizations); *see also, League of Women Voters of Florida v. Cobb*, 447 F.Supp.2d 1314 (S.D. Fla. 2006) (granting a preliminary injunction blocking enforcement of fines that would chill voter registration organizations' First Amendment rights).

The public interest is also not served by countenancing the State's judicial gamesmanship here, which vacatur would most assuredly do. Florida should be held to account for its passage of an unconstitutional law, its insistence on defending it all the way through to the conclusion of trial, its refusal to disavow the law before the district court's entry of final judgment even after the legislative repeal of it in SB 524, and its unreasonable and unordinary delay in transmitting the enacted legislation to the Governor until after the district court's entry of final judgment. Courts have not hesitated in denying vacatur in light of these types of cat-and-mouse tactics exhibited here. *See, e.g., Staley v. Harris County Texas*, 485 F.3d 305, 313 (5th Cir. 2007) (denying vacatur after county's "last-minute" act in removing an unconstitutional monument from public view mooted the case).

At the very least, this Court should allow the district court to evaluate in the first instance whether vacatur is appropriate. *See Moore*, 928 F.3d at 758-59 (denying vacatur because "the public interest [was] best served by a substantial body of

judicial precedents limiting the burden that those requirements may place on candidates' and voters' First and Fourteenth Amendment rights")

B. Plaintiffs-Appellees remain the prevailing parties in the district court and are entitled to attorneys' fees.

The public interest also disfavors vacatur under these circumstances because that could potentially undermine Plaintiffs-Appellees' entitlement to prevailing party attorneys' fees relating to the Registration Disclaimer Provision claim under 42 U.S.C. § 1988(b). The district court properly retained its jurisdiction for determining entitlement to and amount of attorneys' fees. *LWVF*, Order at 288.

After lengthy legislative debate around SB 90, extensive discovery, a comprehensive trial, and the entry of a final judgment declaring SB 90's Registration Disclaimer Provision unconstitutional and permanently enjoining it, the State finally took action to repeal that provision. Even though that may render Defendants-Appellants' appeal moot, "[P]laintiffs are still prevailing parties' for the purposes of attorney's fees." *Thomas v. Bryant*, 614 F. 3d 1288, 1294 (11th Cir. 2010).

It is well-settled that a prevailing party plaintiff is entitled to a fee award if the plaintiff has succeeded on "any significant issue in litigation which achieves some of the benefit of the parties sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782 (1989). Plaintiffs-Appellees are third-party voter registration groups that faced both the financial impacts and loss of their certification because of the disclaimer

requirements in SB 90. But for this litigation, Plaintiffs-Appellees would have remained in fear as to the parameters of their voter outreach and education work with the constant threat of government sanctions for behavior that was neither clearly defined nor in line with basic First Amendment protections. The facts and circumstances of this case make clear that SB 524 was in direct response to Plaintiffs-Appellees' lawsuit and their victory in the district court. The district court's final judgment was a change in the "legal relationship" of the parties that is the touchstone of § 1988's prevailing party inquiry. *Texas State Teachers*, at 792-793.

The district court "established conclusively" after a full trial on the merits that the Registration Disclaimer Provision was unconstitutional, *National Rifle Ass'n of America, Inc. v. City of Chicago, Ill.*, 646 F.3d 992, 994 (7th Cir. 2011). Though Plaintiffs-Appellees agree that the Registration Disclaimer Provision issue should be dismissed on appeal given the State's repeal of that unconstitutional law post-final judgment, the district court's decision on the matter still should stand and is the "necessary judicial *imprimatur*" to support the position that attorneys' fees are warranted. *Id.* (citing *Buckhannon Board and Care Home, Inc., et al. v. West Virginia Department of Health and Human Resources, et al.*, 532 U.S. 598 at 605 (2001)). That is true regardless of whether this Court vacates the District Court's judgment on the Registration Disclaimer Provision. *See Thomas v. Bryant*, 614 F.3d

1288, 1294 (11th Cir. 2010) ("Thomas may still be a 'prevailing party' entitled to attorneys' fees for the costs of the district court litigation notwithstanding his untimely death and the subsequent mootness of his lawsuit pending appeal."); *Jefferson County Board of Education v. Bryan*, 706 Fed. Appx. 510 (11th Cir. 2017) (similar); *Church of Scientology Flag Serv. v. City of Clearwater*, 2 F.3d 1509, 1512-1513 (11th Cir. 1993) (holding that the plaintiff as a prevailing party was entitled to attorneys' fees); *Meyers v. CBS Corporation*, 2015 WL 13504685, at 1 (5th Cir. 2015) (recognizing that dismissal of the case should not prejudice plaintiff's right to apply for attorney's fees).

III. At a minimum, the Court should remand to allow the District Court to assess whether Plaintiffs-Appellees may seek damages.

Finally, even where the Supreme Court has determined that a case has become moot on appeal and might be subject to vacatur, it has ordered the case remanded to the district court for an assessment of whether plaintiffs may still be entitled to damages, including nominal damages. *N.Y. State Rifle & Pistol Ass'n*, 140 S. Ct. at 1527. This Court should do the same here. Defendants-Appellants presented evidence below that the Registration Disclaimer Provision had already forced them to engage in speech to which they objected, in which they would not otherwise have engaged, and which interfered with their expressive, voter-registration activities. *See, e.g.*, ECF No. 665 at 191 (finding that "SB 90 has already forced" plaintiff Cecile Scoon "to deliver the disclaimer"). This evidence supports a claim for at least

nominal damages, and the Supreme Court has held that plaintiffs may be able to seek such damages even after a final judgment on their claims for injunctive relief, and even after a claim has otherwise become moot. *N.Y. State Rifle & Pistol Ass'n*, 140 S. Ct. at 1527; *see also Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) (holding that nominal damages claims are not mooted by repeal of the challenged policy). Even if the Court would otherwise vacate the Supreme Court's judgment regarding the Registration Disclaimer Provision, it should therefore instead remand to allow the District Court to assess in the first instance whether Plaintiffs-Appellees may still seek nominal damages.

* * *

In sum, Defendants-Appellants have "failed to show their entitlement to vacatur." *SD Voice v. Noem*, 987 F.3d 1186, 1191 (8th Cir. 2021). Their own actions caused the mootness in this case. Additionally, they offer no argument as to how vacatur serves the public interest; instead, they argue only how vacatur serves them. Therefore, vacatur should be denied. *See id.* (holding that the public interest alone defeats vacatur). At the very least, this Court should remand the case to the district court to assess whether Plaintiffs-Appellees may seek damages.

CONCLUSION

For the foregoing reasons, this Court should deny the DefeAppellants' motion for partial vacatur, or, at a minimum, remand for the purposes of preserving and claiming all applicable relief.

DATED: June 3, 2022

Respectfully Submitted,

/s/ Bradley E. Heard

Bradley E. Heard
Matletha Bennette
Jack Genberg
Nancy G. Abudu
SOUTHERN POVERTY LAW CENTER
150 E. Ponce De Leon Ave., Suite 340
Decatur, GA 30030
Main: (404) 521-6700
Fax: (404) 221-5857
bradley.heard@splcenter.org
matletha.bennette@splcenter.org
jack.genberg@splcenter.org
nancy.abudu@splcenter.org

Michelle Kanter Cohen
Cecilia Aguilera
FAIR ELECTIONS CENTER
1825 K St. NW, Suite 450
Washington, DC 20006
Main: (202) 331-0114
mkantercohen@fairelectionscenter.org
caguilera@fairelectionscenter.org

Counsel for HTFF Plaintiffs-Appellees

Frederick S. Wermuth
KING, BLACKWELL, ZEHNDER & WERMUTH

John A. Freedman
Elisabeth S. Theodore
Jeremy C. Karpatkin
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
Main: (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
Main: (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
Main: (212) 836-8000

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

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

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

Counsel for Florida Rising Together Plaintiffs-Appellees

P.A. P.O. Box 1631
Orlando, FL 32802-1631
Main: (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
Main: (202) 968-4490

Counsel for League of Women Voters Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(g), the undersigned counsel for Plaintiff-Appellee herby certifies:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) because the brief contains 3,716 words, excluding parts 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 Times New Roman font in a size equivalent to 14 points of larger.

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, a true and correct copy of the foregoing document was served upon counsel for Defendants-Appellants by filing it in this Court's CM/ECF system.

June 3, 2022

/s/ Bradley E. Heard
Bradley E. Heard

Attorney for Plaintiffs-Appellees