No. 22-5207

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MEMPHIS A. PHILIP RANDOLPH INSTITUTE, et al.,
Plaintiffs-Appellees,

v.

TRE HARGETT, in his official capacity as Secretary of State for the State of Tennessee, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

BRIEF OF PLAINTIFFS-APPELLEES MEMPHIS A. PHILIP RANDOLPH INSTITUTE, ET AL.

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CORPORATE DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1 and Sixth Circuit Rule 26.1, counsel for Plaintiffs-Appellees Memphis and West Tennessee AFL-CIO Central Labor Council, Tennessee State Conference of the NAACP, Equity Alliance, Memphis A. Philip Randolph Institute, Free Hearts, and Sekou Franklin (hereinafter, "Plaintiffs") certify that no party to this appeal is a subsidiary or affiliate of a publicly owned corporation, and no publicly owned corporation that is not a party to this appeal has a financial interest in the outcome.

By: /s/ *Molly E. Danahy*
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STATEMENT REGARDING ORAL ARGUMENT

Because the dispositive issue of prevailing-party status has already been authoritatively decided by this Court, and Defendants waived the arguments presented in their opening brief, Plaintiffs believe that "the decisional process would not be significantly aided by oral argument." Fed. R. App. P. 34(a)(2)(C). If the Panel determines that oral argument would aid them in resolution of this matter, however, the Plaintiffs will present their case orally.

STATEMENT OF ISSUES

Did Defendants waive their defense that Plaintiffs' preliminary injunction order was "undone" on appeal by (1) failing to raise that defense before the magistrate court and (2) failing to object to the magistrate court's ruling that Plaintiffs were prevailing parties on those grounds below? Did Defendants abandon the sole defense they raised below by failing to preserve it in their opening brief? Did the magistrate court and the district court correctly determine that Plaintiffs were prevailing parties because they obtained a preliminary injunction that awarded them all the relief they sought for the 2020 election and was only rendered moot by the passage of time?

STATEMENT OF THE CASE

On May 1, 2020, Plaintiffs filed suit in the Middle District of Tennessee to challenge parts of Tennessee's statutory scheme restricting access to absentee voting. Compl. RE 1, PageID# 17600-17632. On June 12, 2020, Plaintiffs amended their complaint to add a claim specifically challenging Tennessee's statutory requirement that voters who register by mail or online vote in person during the first election after they register (hereinafter the "First-Time Voter Claim"), and promptly filed a motion to enjoin enforcement of the same. Am. Compl., RE 39, PageID# 123-159, Mot. for Prelim. Inj., RE 43, PageID# 1656-1703. Plaintiffs, who are membership organizations, identified Tennessee NAACP Member Corey Sweet as a first-time voter who registered to vote online, wished to vote by mail during the fall of 2020 because of COVID-19, and would be denied the right to vote by mail under the challenged law. Suppl. Sweet Decl., RE 54-4, PageID# 2299-2302. On September 9, 2020, this Court granted Plaintiffs' motion for a preliminary injunction with respect to their First-Time Voter Claim, finding that the restriction violated the Constitution. Prelim. Inj. Order, RE 80, PageID# 2636. Defendants appealed the preliminary injunction to this Court, Notice of Appeal, RE 108, PageID# 2791-93, and sought a stay pending resolution of the appeal. *See Memphis A. Philip Randolph Institute v. Hargett*, 977 F.3d 566, 567 (6th Cir. 2020) ("*MAPRI I*"). This Court

denied Defendants' motion for a stay, and the preliminary injunction remained in effect for the November 2020 election. *Id.* at 569.

On June 22, 2021, after hearing Defendants' appeal, this Court vacated the preliminary injunction on the grounds that Plaintiffs' First-Time Voter claim was moot. *Memphis A. Philip Randolph Institute v. Hargett*, 2 F.4th 548 (6th Cir. 2021) ("*MAPRI II*"). After finding that Mr. Sweet's claim was moot, this Court went on to hold that "there is not a reasonable expectation that Sweet, other members of the plaintiff organizations, or the public will face the same burden as voters did in the fall of 2020." *MAPRI II*, 2 F.4th at 560. Specifically, this Court found that because Plaintiffs' claims were "inextricably tied to the COVID-19 pandemic, a once-in-a-century crisis . . . [t]he unique factual situation of this case makes it one of the rare election cases where the challenged action is not capable of repetition." *Id.* at 560–61. This Court thus found that, on appeal, Plaintiffs had "failed to justify the continuing need for the preliminary injunction because" they did not "demonstrate that there is a substantial likelihood that their claim remains justiciable" after the conclusion of the November 2020 election and the introduction of COVID-10 vaccines. *Id.* Plaintiffs then voluntarily dismissed their claims without prejudice, Order, RE 155, PageID# 3334-3338, and the district court entered judgment on July 9, 2021, Entry of Judgment, RE 156, PageID# 3339. This Court issued its mandate on July 14, 2021. Mandate, RE 157, PageID# 3340-41.

Plaintiffs timely moved for an award of attorneys' fees incurred in securing and defending the preliminary injunction for the November 2020 election. Mot. for Attorneys' Fees, RE 158, PageID# 3342-44. The district court referred the matter to the magistrate court for decision or recommendation. Referral Order, RE 162, PageID# 3438. In defense to the fee petition, Defendants did not dispute that Plaintiffs were entitled to and obtained a preliminary injunction for the November 2020 election, but rather contended that a preliminary injunction was insufficient to confer prevailing-party status on Plaintiffs. First, Defendants contended that Plaintiffs had failed to demonstrate that they were prevailing parties on the First-Time Voter Claim because a preliminary injunction does not constitute enduring or irrevocable relief. Opp. to Fee Pet., RE 163, PageID# 3446-48. Second, Defendants contended that Plaintiffs did not obtain everything they asked for because their claim became moot before entry of a permanent injunction. *Id.* RE 163, PageID# 3443-45. Third, Defendants contended that if Plaintiffs' petition were granted, the fee award should be reduced. *Id.* RE 163, PageID# 3348-53.

On January 10, 2022, the magistrate court issued a Report and Recommendation finding that Plaintiffs' petition should be granted in full. Report and Recommendation, RE 166, PageID# 3477-89. The magistrate court found that Plaintiffs are prevailing parties under this Court's precedents because this Court had found Plaintiffs' claim to be "inextricably tied to the November 2020 election;"

Plaintiffs obtained relief that endured through the November 2020 election; and that relief was permanent and enduring because the votes cast pursuant to the preliminary injunction could never be uncast. *Id.* RE 166, PageID# 3483-84. The magistrate court also recommended that Plaintiffs be granted the full fee award requested in their petition. *Id*. RE 166, PageID# 3484-89.

Defendants objected to the magistrate court's Report and Recommendation. Obj. to Report and Recommendation, RE 167, PageID# 3490-3500. With respect to Plaintiffs' prevailing-party status, again Defendants did not dispute that Plaintiffs were entitled to and obtained a preliminary injunction, but merely objected that a preliminary injunction was insufficient to confer prevailing-party status. First, Defendants objected that the magistrate court committed a factual error when it found that "Plaintiffs sought relief from the first-time voter rule provision primarily for the 2020 election that took place during the COVID-19 pandemic." *Id*., RE 167, PageID# 3494. Second, Defendants objected that the magistrate court committed a legal error by determining that the preliminary injunction afforded Plaintiffs "everything they asked for" and was permanent and enduring. *Id.*, RE 167, PageID# 3495-97. Third, Defendants objected to the magistrate court's recommendation that Plaintiffs be granted the full amount of fees requested in their petition. *Id*., RE 167, PageID# 3497-99.

The district court, after reviewing Defendants' objections and Plaintiffs' response thereto, adopted the magistrate court's Report and Recommendation in full, determining that Plaintiffs prevailed on their First-Time Voter Claim and that they were entitled to the full award of fees. Mem. Op. and Order, RE 169. PageID# 3512-23. Defendants appealed. Notice of Appeal, RE 170, PageID# 3524-26. On appeal, Defendants raise a new argument for the first time: that Plaintiffs were not prevailing parties because the preliminary injunction was "undone" on appeal. Br. at 8 at 12.

STANDARD OF REVIEW

"A district court's determination of prevailing-party status for awards under attorney-fee-shifting statutes—such as 42 U.S.C. § 1988—is a legal question" that this Court reviews "de novo." *Planned Parenthood SW Oh. Region v. DeWine*, 931 F.3d 530, 538 (6th Cir. 2019) (internal quotation marks omitted). But neither a district court nor an appellate court is required to review "a magistrate's factual or legal conclusions, under a *de novo* or other standard, when neither party objects to those findings." *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *see also id*. at 152–53. And in this Circuit, "only those specific objections to the magistrate's report made to the district court will be preserved for appellate review; making some objections but failing to raise others will not preserve all the objections a party may have." *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991); *Wright v. Holbrook*, 794 F.2d 1152, 1154-55 (6th Cir. 1986) (noting that the Sixth Circuit has held that "a party shall file objections [to a magistrate's report and recommendation] with the district court or else waive right to appeal") (alteration in original).

SUMMARY OF ARGUMENT

The magistrate court and district court correctly found that Plaintiffs prevailed with respect to their First-Time Voter Claim. By statute, courts are entitled to award reasonable attorneys' fees to prevailing plaintiffs in actions brought under 42 U.S.C. § 1983. *See* 42 U.S.C. § 1988(b). Plaintiffs prevailed here by obtaining a preliminary injunction that allowed first-time voters who registered to vote online or by mail to vote by mail during the November 2020 election, which occurred during the height of the COVID-19 pandemic. After the November 2020 election was over, this Court ruled that Plaintiffs' claim was moot because the capable of repetition yet evading review exception to mootness that ordinarily applies to election law cases did not apply to Plaintiffs' claim because it was inextricably tied to the global pandemic, a once-in-a-lifetime event. Both the magistrate court and the district court correctly determined that, under the law of the case, Plaintiffs' claim was inextricably tied to the November 2020 election; the preliminary injunction allowed first-time voters to vote absentee during that election even if they registered online or by mail; and those ballots, once cast, were irrevocable. Thus, both courts correctly determined that Plaintiffs had obtained a court-ordered, material, and enduring change in their relationship to Defendants, and that their claim was mooted only due to court-ordered success—the preliminary injunction—and the passage of time—the

conclusion of the November 2020 election to which Plaintiffs' claim was inextricably tied.

Defendants have not preserved any defense to Plaintiffs' fee award for appeal because they have raised arguments on appeal that they failed to include in their objections to the magistrate court's Report and Recommendation but abandoned the only defense they raised below. Below, Defendants argued only that the preliminary relief obtained by Plaintiffs was not "enduring" and that Plaintiffs failed to obtain everything they asked for because they obtained only a preliminary and not a permanent injunction. When the magistrate court rejected these arguments, Defendants raised the same objections to the magistrate court's Report and Recommendation to the district court. On appeal, Defendants have abandoned these arguments, as well as any argument as to the reasonableness of Plaintiffs' fee award. Instead, Defendants advance a new argument—that Plaintiffs are not entitled to a fee award because the preliminary injunction was "undone" on appeal. But Defendants waived this argument—itself an untimely collateral attack on the merits of the preliminary injunction ruling, brought only after the case was dismissed—by failing to raise it in objection to the magistrate court's Report and Recommendation. As such, Defendants have not preserved any defense to Plaintiffs' fee award on appeal.

Even if Defendants had properly preserved the defense they now raise, it is meritless. Defendants contend that this Court found that Plaintiffs had not shown a likelihood of success in demonstrating that the district court had jurisdiction to enter the preliminary injunction for the November 2020 election. But this Court made no such finding. Rather, this Court determined that Plaintiffs' claim became moot *after* the November 2020 election, when there was no longer any likelihood that their claimed right to vote absentee during a pandemic would recur. Thus, the Court held that there was no longer any need for the preliminary injunction to *continue* in effect after the election had concluded. Because there is no question that the district court had jurisdiction to enter the preliminary injunction, and because Defendants no longer contest that the preliminary injunction entitles Plaintiffs to an award of fees, the district court and magistrate court's ruling should be affirmed.

ARGUMENT

I. Plaintiffs Are the Prevailing Party on Their First-Time Voter Claim.

By statute, courts are authorized to award reasonable attorneys' fees to prevailing plaintiffs in actions brought under 42 U.S.C. § 1983. *See* 42 U.S.C. § 1988(b). A "'prevailing party' is one who has been awarded some relief by the court," specifically relief that creates "a court-ordered change in the legal relationship between the plaintiff and the defendant." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598, 603–04 (2001) (internal quotes and alterations omitted).

A plaintiff prevails when they obtain "at least some relief on the merits of [their] claim." *Farrar v. Hobby*, 506 U.S. 103, 111 (1992). Such relief may include "a judgment, an injunction, or a consent decree." *Associated Gen. Contractors of Tenn., Inc. v. Cnty of Shelby*, 5 F. App'x 374, 377 (6th Cir. 2001) (citing *Horner v. Ky. High Sch. Athletic Ass'n*, 206 F.3d 685, 697–98 (6th Cir. 2000)). When a plaintiff obtains a preliminary injunction, but the case does not proceed to final judgment on the merits, they are nonetheless the prevailing party so long as the injunction results in a "court-ordered, material, and enduring change in the legal relationship between the parties." *Miller v. Caudill*, 936 F.3d 442, 448 (6th Cir. 2019). This is so even where, as here, the preliminary injunction is ultimately vacated as moot. *See McQueary v. Conway*, 614 F.3d 591, 601 (6th Cir. 2010) (noting that plaintiffs may

prevail on a preliminary injunction when they "receive[] everything they ask[] for . . . and all that moots the case is court-ordered success and the passage of time"). A material change is one that "directly benefited plaintiffs by altering how [the defendant] treated them." *Miller*, 936 F.3d at 448. An enduring change is one that "provided plaintiffs with everything they asked for" and which is "irrevocable." *Id.*

Applying these standards, the magistrate court and the district court correctly determined that Plaintiffs prevailed on their First-Time Voter Claim and rejected Defendants' argument that Plaintiffs would only be entitled to fees if they obtained a permanent injunction. *See* Report and Recommendation, RE 166, PageID# 3484 ("The change secured by the preliminary injunction (the ability of first-time voters who registered by mail or online to vote absentee in the November 2020 general election) altered the relationship between the Parties for the purposes of that election and is irrevocable and enduring. Those votes can never be uncast. The fact that a permanent injunction was never granted and the preliminary injunction was later vacated has no effect on that reality."); *see also* Mem. Op. and Order, RE 169, PageID# 3517 ("The fact that Plaintiffs sought more than just the preliminary injunction they obtained is immaterial. The additional forms of relief sought by Plaintiffs (namely, a permanent injunction and declaratory relief) related to Plaintiffs' desire to vote by mail in the upcoming election—relief which, due to the preliminary injunction, Plaintiffs obtained.").

Specifically, applying the "contextual and case-specific inquiry" required by *McQueary*, both courts found that the preliminary injunction allowed first-time voters to cast ballots in the November 2020 election, to which Plaintiffs' claim was "inextricably tied," *MAPRI II.*, 2 F.4th at 560, and that the State "cannot nullify [those] votes." Report and Recommendation, RE 166, PageID# 3483-84; *see also* Mem. Op. and Order, RE 169, PageID# 3517. Because Defendants do not challenge that finding here, this Court should affirm.

II. Defendants' Waived Any Defense to Plaintiffs' Fee Award.

Defendants objected to the magistrate court's Report and Recommendation on the basis that the court made a "factual error" in determining that Plaintiffs "sought relief from the first-time-voter provision primarily for the 2020 election that took place during the COVID-19 pandemic." Obj., RE 167, PageID# 2494. Defendants further objected that this purported factual error led the court to erroneously conclude that Plaintiffs had "obtain[ed] all of the relief it requested," despite not obtaining permanent injunctive and declaratory relief before the claim was mooted. *Id*. PageID# 3497.

Defendants have abandoned these arguments. On appeal, Defendants no longer contest that the magistrate court and district court erred in finding that that Plaintiffs' claim was "inextricably tied to the November 2020 election." Report and Recommendation, RE 166, PageID# 3484; Mem. Op. and Order, RE 169, PageID#

3519. Nor can they, as this Court ruled so, and that ruling provides the law of the case. *See MAPRI II*, 2 F.4th at 560; *see also United States v. Moored*, 38 F.3d 1419, 1421 (6th Cir. 1994) ("The law of the case doctrine and the mandate rule generally preclude a lower court from reconsidering an issue expressly or impliedly decided by a superior court."); *Med. Ctr. at Elizabeth Place, LLC v. Atrium Health Sys.*, 922 F.3d 713, 733–34 (6th Cir. 2019). Nor do Defendants contest that, under the test set forth by this Court in *Miller* and *McQueary*, the preliminary injunction was a court-ordered, material, and irrevocable change to the relationship between the parties. As such, Defendants have abandoned this defense and cannot raise it going forward. *United States v. Johnson*, 440 F.3d 832, 845–46 (6th Cir. 2006) ("[A]n appellant abandons all issues not raised and argued in its initial brief on appeal.") (quoting *United States v. Still*, 102 F.3d 118, 122 n. 7 (5th Cir. 1996) (alteration in original)); *see also Bard v. Brown County*, 970 F.3d 738, 751 (6th Cir. 2020) (finding argument forfeited when not raised in appellants' opening brief).

Instead, Defendants now contend for the first time that Plaintiffs are not the prevailing party because the preliminary injunction was "undone on appeal." Br. at 11. Because Defendants did not object on this basis below, this defense is waived. This Court has "repeatedly held that 'a party must file timely objections with the district court to avoid waiving appellate review' and that '. . . only those specific objections to the magistrate's report made to the district court will be preserved for

appellate review; making some objections but failing to raise others will not preserve all the objections a party may have." *Willis*, 931 F.3d at 401.

Defendants did not object to the magistrate court's Report and Recommendation on the basis that the preliminary injunction was improperly entered or "undone" on appeal. Br. at 8. Defendants' objection to the magistrate court's Report and Recommendation was that Plaintiffs sought relief beyond the November 2020 election in the form of a permanent injunction but did not obtain that relief and thus could not be deemed prevailing parties. Obj., RE 167, PageID# 3497. Defendants do not even attempt to demonstrate that their new argument was properly preserved by rooting it in the sole objection raised below.[1] Defendants have "not explained why [they] failed to raise th[e] argument before the magistrate, but [their] decision to do so means that [they] ha[ve] waived it." *Duncan v. Minnesota Life Ins. Co.,* 845 F. App'x 392, 399–400 (6th Cir. 2021) (finding argument that federal regulations demanded *de novo* review of denial of benefits claim was waived where the only objection raised to the R&R was a general assertion that denial of benefits was not discretionary); *see also Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 597 (6th Cir. 2006) (noting appellant was "barred in this case from raising a number of objections for the first time at the appellate level"); *Moruzzi v. Comm'r of Soc.*

[1] *See* Br. at 11 (noting that the district court adopted the magistrate court's Report and Recommendation over Defendants' objections—the sole reference to Defendants' objections below).

Sec., 759 F. App'x 396, 399 (6th Cir. 2018) (finding failure to specifically object to the weight given to one expert opinion precluded review of same, where an objection was raised solely to the weight given to a different expert's opinion); *Wright v. Holbrook*, 794 F.2d 1152, 1154-55 (6th Cir. 1986) (finding that only the issue raised in party's objection to the magistrate court's report was "properly before this court").

Because Defendants have failed to preserve any relevant defense on appeal, the fee award should be affirmed.

III. Defendants' Defense to Fee Liability Fails on the Merits.

Even assuming Defendants have not waived their argument that the preliminary injunction was "undone" (they have), the argument misconstrues this Court's opinion on the preliminary injunction and fails on the merits. Defendants are correct that on appeal of the preliminary injunction, this Court found that Plaintiffs had not established a "substantial likelihood of success in demonstrating subject matter jurisdiction." Br. at 11 (citing *MAPRI II*, 2 F.4th at 561). But unlike in the cases relied on by Defendants, this Court did not find that Plaintiffs were "not entitled to a preliminary injunction" on the *merits* of their claim. *Id*. at 12 (*citing Sole v. Wyner*, 551 U.S. 74 (2007)). Nor did the Court find that Plaintiffs' claim was moot *prior to* the November 2020 election, such that the district court lacked jurisdiction to enter the preliminary injunction in the first instance, as Defendants

now apparently contend. *See* Br. at 12-20.[2] Rather, the Court found that Plaintiffs' claims were moot because they "were 'inextricably tied to the COVID-19 pandemic, a once-in-a-century crisis'" and that "[t]he unique factual situation of this case makes it one of the rare election cases where the challenged action is not capable of repetition." *MAPRI II*, 2 F.4th. at 560-61.[3] As such, the Court found that at the time the appeal was heard in 2021—*after* the November 2020 election was over and after the rollout of vaccines dramatically changed the nature of the pandemic—Plaintiffs had not shown "there is a substantial likelihood that their claim *remains* justiciable because they *no longer* have an ongoing legal interest in the outcome of this case" and thus had "failed to justify the *continuing* need for a preliminary injunction." *Id.* at 561 (emphases added); *see also id*. at 560 ("Fortunately, because of advancements in COVID-19 vaccinations and treatment since this case began, the COVID-19 pandemic is unlikely to pose a serious threat during the next election cycle.")

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[2] Importantly, Defendants do not assert (nor is there any basis to find) that the district court lacked jurisdiction to hear Plaintiffs' fee petition or enter the award of fees. Rather, Defendants improperly attempt to wage an untimely collateral attack on the district court's preliminary injunction order *to avoid liability for fees*. *But see Davis v. Abbott*, 781 F.3d 207, 215 (5th Cir. 2015) ("Once a district court no longer has jurisdiction to resolve the plaintiffs' claims on the merits, the defendant cannot continue to collaterally litigate against those claims through the fee litigation in an attempt to avoid liability for fees.").

[3] Indeed, Defendants argued on appeal that Plaintiffs' claim was not capable of repetition precisely *because* it was tied to "a once-in-a-century pandemic." Appellants' Merits Br. at 32, No. 20-6141 (6th Cir. Oct. 16, 2020) (internal quotation marks omitted). Defendants cannot have it both ways.

(emphasis added). Read plainly, these holdings demonstrate that the Court determined that the case became moot on appeal, because the election was over and the particular circumstances under which Plaintiffs sought relief were unlikely to recur, such that the claim was not capable of repetition yet evading review *in future elections*. *See id*. at 561 ("There is not a reasonable expectation that Sweet, other members of the plaintiff organizations, or the public will face the same burdens *as voters did in the fall of 2020*." (emphasis added)).[4]

Indeed, these findings are critical to the Court's holding that the case was moot. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67 (1996) ("When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound"). Even assuming that Mr. Sweet's claim was moot as of August 5, that does not mean Plaintiffs' claim was moot at that time. "[A] case will not be considered moot if the challenged activity is capable of repetition, yet evading review." *Lawrence v. Blackwell*, 430 F.3d 368,

[4] As such, the district court correctly concluded that it had jurisdiction to enter the preliminary injunction, and that this Court did not find otherwise on appeal. Mem. Op. and Order, RE 169, 3519 n.2. (noting that this Court affirmed the district court's finding that Plaintiffs established a likelihood of success in demonstrating standing; that Defendants did not oppose the preliminary injunction based on mootness but only raised that argument on appeal; and that "the general tenor" of this Court's opinion was "not so much that the preliminary injunction was improperly issued in the first place, but that the jurisdiction necessary to keep the injunction in place had thereafter disappeared via mootness").

371 (6th Cir. 2005). And election-related claims are the paradigmatic example of claims that are capable of repetition yet evading review. *See Am. Civil Liberties Union of Ohio, Inc. v. Taft*, 385 F.3d 641, 646–47 (6th Cir. 2004) (finding that cases "in the election field fall within the narrow exceptions to mootness because they are peculiarly capable of repetition, yet evading review"); *see also In re: 2016 Primary Election*, 836 F.3d 584, 588 (6th Cir. 2016) ("Challenges to election laws quintessential[ly] evade review because the remedy sought is rendered impossible by the occurrence of the relevant election."); *Libertarian Party of Michigan v. Johnson*, 714 F.3d 929, 932 (6th Cir. 2013) ("We have previously allowed election law challenges to move forward even if the challenging parties do not have cognizable legal interests, because 'the controversy almost invariably will recur with respect to some future potential candidate' and the standard for the second prong of the mootness exception is 'somewhat relaxed in election cases.'"). As such, in order to rule that Plaintiffs' claim was moot, this Court was required to first determine whether the claim fit into this exception. *See MAPRI II*, 2 F. 4th at 560 (applying capable of repetition test for mootness). It was only due to the "unique factual situation" of the November 2020 Election—which had by then already occurred—that the Court determined Plaintiffs' claim was moot. *Id.* The "unique factual situation" of the November 2020 Election was indisputably likely to recur *during*

that election; it was only *after* the November 2020 Election concluded that Plaintiffs' claim became moot.

Because Defendants' contention that the district court lacked jurisdiction to enter the preliminary injunction is precluded by this Court's prior holding, it fails on the merits. Plaintiffs successfully obtained a preliminary injunction that awarded them "all the relief they requested," and thus prevailed on their First-Time Voter Claim. The Court should affirm the district court and magistrate court's ruling.

CONCLUSION

The district court and magistrate court both properly determined that Plaintiffs prevailed on their First-Time Voter Claim. Defendants waived their defense that the preliminary injunction order was undone by (1) failing to raise that defense before the magistrate court and (2) failing to specifically object to the magistrate court's ruling that Plaintiffs were prevailing parties on that ground. Further, Defendants waived the sole objection they raised below by failing to preserve it in their opening brief. Finally, regardless of waiver, Defendants' new argument against Plaintiffs' prevailing-party status is meritless. For these reasons, the Court should affirm.

June 27, 2022

Respectfully submitted,

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This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7) because the brief contains 4,444 words, excluding the parts of the brief exempted by Rule 32(f). *See* Fed. R. App. P. 32(a)(7)(B).

This brief complies with the typeface requirements of Rule 32(a)(5)(A) and the type style requirements of Rule 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

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CERTIFICATE OF SERVICE

The undersigned herby certifies that the Brief of Plaintiffs-Appellees was electronically filed with the Sixth Circuit Court of Appeals on June 27, 2022. The Brief of Plaintiffs-Appellees was served by ECF on June 27, 2022, on counsel for Appellants. The addresses for counsel for Appellants are:

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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS
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