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October 25, 2022

Mr. David J. Smith, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Re: *Treva Thompson, et al. v. Secretary of State, et. al.*, No. 21-10034

Dear Mr. Smith:

Plaintiffs bring an *ex post facto* challenge, the resolution of which may be influenced by this Court's decision in *McGuire v. Marshall*, ___ F.4th ___, 2022 WL 4707196 (11th Cir. Oct. 3, 2022) (*per curiam*).

The State Defendants argued that felon disenfranchisement is not intended to be punishment (but to regulate the franchise) and is not punishment in effect. Appellee's Br. at 37-41. The *McGuire* Court repeatedly emphasized the deference due to the Legislature's intent. *See, e.g.*, 2022 WL 4707196, at *11, *12, *15. Relatedly, when applying the *Mendoza-Martinez* factors to examine effects, the Court recognized that "rational relationship to a nonpunitive purpose" is "a most—if not *the* most—significant factor[.]" *id.* at *21.

Excessiveness also proved critical. *See, e.g., id.*, at *20, *25, *27, *28, *30-31. The Court rejected the contention that a plaintiff can meet his heavy burden by demonstrating that other States' laws impose lesser restrictions. *Id.* at *23. And it reiterated that States may make "reasonable categorical judgments" about the consequences of criminal convictions. *Id.*

By contrast, "little weight" is given to "whether the regulation comes into play only on a finding of scienter and whether the behavior to which it applies is already a crime." *Id.* at *12 n.22.

This analysis supports a holding that disenfranchisement is not punishment, which resolves Plaintiffs' *ex post facto* claim.

Respectfully submitted,

s/ Edmund G. LaCour Jr.

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1. I certify that this document complies with the type-volume limitations set forth in Fed. R. App. P. 28(j) and 11th Cir. R. 28, I.O.P. 6. The body of the letter contains 222 words.

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/s/ Edmund G. LaCour Jr. _____

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CERTIFICATE OF INTERESTED PERSONS

In accordance with 11th Cir. R. 26.1-1(a)(3) and 26.1-2(b), undersigned counsel certifies that the persons and entities listed in the Certificate of Interested Persons and Corporate Disclosure Statement contained in the Brief of Appellants as modified by the Certificate of Interested Persons contained in the Brief of the State Appellees are all persons or entities known to undersigned counsel to have an interest in the outcome of this appeal.

/s/ Edmund G. LaCour Jr.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed on October 25, 2022, using the CM/ECF Document Filing System, which will send notification of such filing to all noticed parties.

/s/ Edmund G. LaCour Jr.

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