

Case Nos. 18-14758, 18-14765, 18-14766

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

Democratic Executive Committee, et al.,

Plaintiffs-Appellees,

v.

National Republican Senatorial Committee, et al.,

Defendant-Intervenor-Appellants.

On Appeal from the U.S. District Court for the
Northern District of Florida, Case No. 4:18-cv-00520-MW-MJF

**FLORIDA SECRETARY OF STATE AND FLORIDA ATTORNEY
GENERAL'S RESPONSE TO PLAINTIFFS-APPELLEES' MOTION FOR
LEAVE TO FILE RESPONSE OR RESPOND OUT OF TIME**

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

In accordance with the Federal Rules of Appellant Procedure 26.1 and the Local Rules of the Eleventh Circuit, Rule 26.1-1, the Florida Secretary of State and the Florida Attorney General state that the following is a list of all judges, attorneys, persons, association of persons, firms, partnerships, corporations, and other legal entities that have an interest in this case:

Agarwal, Amit, Counsel for Intervenor-Defendant Attorney General of the State of Florida

Andreassen, Ezekiel, Declarant

Bardos, Andy, Esq., Counsel for Intervenor-Defendant-Appellant

Bill Nelson for U.S. Senate, Plaintiff-Appellee

Blohm, Jennifer S., Esq., Counsel for Plaintiffs-Appellees

Callais, Amanda, Esq., Counsel for Plaintiffs-Appellees

Daniel, Stephanie Allison, Esq., Counsel for Intervenor-Defendant Attorney General of the State of Florida

Davis, Ashley E., Esq., Counsel for Defendant

Democratic Executive Committee of Florida, Appellee

Detzner, Kenneth, former Florida Secretary of State, Defendant

Dupree, Thomas H. Jr., Esq., Counsel for Intervenor-Defendant-Appellant
National Republican Senatorial Committee

Early, Mark, Leon County Supervisor of Elections

Elias, Marc E., Esq., Counsel for Plaintiffs-Appellees

Ferro, Daniela, Declarant

Frost, Elisabeth, Esq., Counsel for Plaintiffs-Appellees

Gibson, Dunn & Crutcher LLP, Counsel for Intervenor-Defendant-Appellant
National Republican Senatorial Committee

GrayRobinson, P.A., Counsel for Intervenor-Defendant-Appellant National

Hinkle, The Honorable Robert L., United States District Judge for the Northern
District of Florida

Holtzman Vogel Josefiak Torchinsky, PLLC, Counsel for Intervenor-Defendant-
Appellant National Republican Senatorial Committee

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Jazil, Mohammad O., Esq., Counsel for Defendant

Khanna, Abha, Esq., Counsel for Plaintiffs-Appellees

Lee, Laurel M., Florida Secretary of State, Defendant

Levesque, George T., Esq., Counsel for Intervenor-Defendant-Appellant National
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Means, Malcolm N., Counsel for Defendant

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Meyer, Ronald G., Esq., Counsel for Plaintiffs-Appellees

Mohammed, Linton A., PH.D.

Moody, Ashley, Esq., Attorney General of the State of Florida, Intervenor-Defendant

Murphy, The Honorable Patrick, Declarant

National Republican Senatorial Committee, Intervenor-Defendant-Appellant

Nelson, Bill, former United States Senator

Nkwonta, Uzoma N., Counsel for Plaintiffs-Appellees

Perkins Coie LLP, Counsel for Plaintiffs-Appellees

Perko, Gary V., Esq., Counsel for Defendant

Pratt, Jordan E., Esq., Counsel for Intervenor-Defendant Attorney General of the State of Florida

Republican Senatorial Committee

Schirack, Sarah, Esq., Counsel for Plaintiffs-Appellees

Torchinsky, Jason, Esq., Counsel for Intervenor-Defendant-Appellant National Republican Senatorial Committee

Walker, Helgi C., Esq., Counsel for Intervenor-Defendant-Appellant National Republican Senatorial Committee

Walker, The Honorable Mark E., Chief United States District Judge for the Northern District of Florida

Weiss, Eric J., Esq., Counsel for Plaintiffs-Appellees

Wenger, Edward M., Esq., Counsel for Intervenor-Defendant Attorney General of
the State of Florida

Williams, Fallon, Declarant

Winship, Blaine H., Counsel for Intervenor-Defendant Attorney General of the
State of Florida

/s/ Mohammad O. Jazil

**FLORIDA SECRETARY OF STATE AND FLORIDA ATTORNEY
GENERAL’S RESPONSE TO PLAINTIFFS-APPELLEES’ MOTION FOR
LEAVE TO FILE RESPONSE OR RESPOND OUT OF TIME**

The Plaintiffs-Appellees have failed to demonstrate good cause for their out-of-time jurisdictional brief and this Court should therefore deny their April 8, 2019 motion and strike their associated brief.¹

Federal Rule of Appellate Procedure 26 states that this Court may allow an out-of-time filing if there is “good cause.”² While the good cause standard is not the subject of concrete, immutable criteria, it requires consideration of the reason for the out-of-time filing and prejudice to the parties. *Lepone-Dempsey v. Carroll County Comm’rs*, 476 F.3d 1277, 1281 (11th Cir. 2007) (considering explanation for failure to timely execute service when determining if “good cause” exists to extend time); *Carlisle v. Nat’l Commer. Servs.*, 2015 U.S. Dist. LEXIS 88186, *23-24 (N.D. Ga. 2015) (considering prejudice and explanation for delay among other factors in determining “good cause” to set aside default); *Jordan v. Ivy*, 2006 U.S. Dist. LEXIS 103079, *5, (N.D. Miss. 2006) (noting factors in “good cause” determination for allowing out-of-time expert designation includes explanation for the delay and prejudice to the opposing party).

¹ Plaintiffs-Appellees’ April 8, 2019 “Motion for Leave to file Response to Defendants-Appellants’ Jurisdictional Briefs, or, in the Alternative, to Respond Out of Time to Jurisdictional Question” is hereinafter referred to as “Motion.”

² The Eleventh Circuit’s Local Rules do not include a definition of “good cause” in this context.

The Plaintiffs-Appellees’ reason for the late-filed brief is a mistaken belief that this Court’s unambiguous directive that “[t]he parties . . . simultaneously advise the court in writing . . . of their position” applied to every party but them. *See* Court’s Feb. 22, 2019 Correspondence, at 2; Motion, ¶¶ 1-2. Even if Plaintiffs-Appellees’ misapprehension was well-founded, which it is not, there is no explanation for their decision to wait until April 4 to inquire about their ability to file a response. Motion, ¶¶ 1-2. If the Plaintiffs-Appellees wanted to address the Court’s request but had some question about doing so, then they should have sought clarification immediately. Instead, *they waited 41 days*. The Plaintiffs-Appellees have not demonstrated good cause for failing to follow this Court’s clear, unambiguous directive or for their 41 day delay in seeking clarification.

The Plaintiffs-Appellees’ delay also gives them an advantage at the expense of the Defendant-Appellants and Intervenor-Appellants—it gives the Appellees, the last word at the expense of the Appellants. While the other Parties followed this Court’s direction to “simultaneously” file their briefs on March 25, the Plaintiffs-Appellees’ delay afforded two extra weeks and the ability to consider and directly address the arguments raised by others. The Plaintiffs-Appellees’ failure to follow clear directions should not now be rewarded. *See, e.g., In re Pool Prods. Distrib. Market Antitrust Litig.*, 2014 U.S. Dist. LEXIS 93282, *6-7, (E.D.

La. 2014) (striking late filed report including because it constituted an inappropriate attempt to seek “advantage” by having the “last word”).

In sum, the Eleventh Circuit’s Internal Operating Procedures state that “[t]he court expects the timely filing of all papers . . . without granting extensions of time.” 11th Cir. R. 26-1, I.O.P. 1. This Court’s February 22, 2019 correspondence to the Parties stated that “extensions of time to file [the requested jurisdictional briefs] are disfavored.” The Plaintiffs-Appellees have not provided good cause for an exception from these expectations or from compliance with the unambiguous deadline the Court set. Thus, this Court should deny Plaintiffs-Appellees’ Motion and strike their late-filed brief. Alternatively, to the extent this Court is inclined to allow Plaintiffs-Appellees’ late-filed response, the Florida Secretary of State and Florida Attorney General request the opportunity to file reply briefs.

* * *

Respectfully submitted on this 15th day of April, 2019 by:

/s/ Mohammad O. Jazil

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 15, 2019, the undersigned electronically filed the forgoing with the Clerk of the Court for the U.S. Court of Appeals for the Eleventh Circuit via the appellate CM/ECF system. The participants in this case are registered CM/ECF users and will receive electronic notification of this filing.

/s/ Mohammad O. Jazil
Attorney