

No. 18-14758

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

DEMOCRATIC EXECUTIVE COMMITTEE OF FLORIDA
and BILL NELSON FOR U.S. SENATE,

Plaintiffs-Appellees,

v.

NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

Intervenor-Defendant-Appellant.

On Appeal From The United States District Court
For The Northern District of Florida, Tallahassee Division
No. 4:18-cv-00520-RH-MJF

**APPELLANT’S RESPONSE TO THE COURT’S ORDER REQUESTING
BRIEFING ON WHETHER APPELLANT HAS ARTICLE III STANDING**

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

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, Intervenor-Defendant-Appellant hereby certifies that the Certificate of Interested Persons and Corporate Disclosure Statement contained in its Emergency Motion to Stay Pending Appeal is complete.

/s/ Thomas H. Dupree Jr.
Thomas H. Dupree Jr.

INTRODUCTION

Intervenor-Defendant-Appellant the National Republican Senatorial Committee herein addresses the question on which the Court directed briefing in its November 15, 2018 order:

Whether the National Republican Senatorial Committee, an Intervenor Defendant in the district court, has Article III standing to appeal from the district court's November 15, 2018, Order Granting Preliminary Injunction, which required Defendant Kenneth Detzner to issue a directive to the state supervisors of elections. *See Diamond v. Charles*, 476 U.S. 54, 68 (1986) (holding that an intervening party that pursues an appeal independently of the original parties must make an independent showing of Article III standing); *Hawes v. Gleicher*, 745 F.3d 1337, 1342 (11th Cir. 2014) (stating that the rule that a party generally cannot rest his claim to relief on the legal rights or interests of third parties applies to litigants on appeal); *Dillard v. Chilton Cty. Comm'n*, 495 F.3d 1324, 1336-37 (11th Cir. 2007) ("The mere existence of a permanent injunction or consent decree thus is insufficient to provide an ongoing case or controversy upon which an intervenor may ride piggyback."); *Wolff v. Cash 4 Titles*, 351 F.3d 1348, 1353-54 (11th Cir. 2003) (stating that only a litigant who is aggrieved by a judgment may appeal).

ARGUMENT

Defendant-Intervenor National Republican Senatorial Committee Has Standing To Pursue Appeal

Intervenor-Defendant-Appellant the National Republican Senatorial Committee ("NRSC") has standing to pursue this appeal.

Defendant-Appellee Secretary of State Ken Detzner has now filed a notice of appeal of the district court's order, as has the Florida Attorney General. "[T]he

presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement.” *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006). This obviates any issue under *Diamond v. Charles*, 476 U.S. 54 (1986) and the related line of cases in this Circuit cited in this Court’s order. In those cases, an intervenor (or non-party) was seeking to appeal a decision by itself. That is not the case here. As such, a live controversy exists between the Plaintiff and the Defendant, and this Circuit’s requirements for intervenor standing are satisfied. *See, e.g., Dillard v. Chilton Cty. Comm’n*, 495 F.3d 1324, 1330 (11th Cir. 2007)(“[i]ntervening parties . . . may “piggyback’ upon the standing of original parties to satisfy the standing requirement”). *Id.* “Intervenors must show independent standing to continue a suit if the original parties on whose behalf intervention was sought settle or otherwise do not remain adverse parties in the litigation.” *Id.* Here, both the Secretary of State and the Attorney General have filed notices of appeal. Thus, because they remain active parties, the NRSC is not required to demonstrate independent standing.

Moreover, the NRSC is directly affected by the order on appeal. First, the NRSC has provided active support and assistance to the senatorial campaign of Governor Rick Scott. The district court’s order restarts a campaign that ended eight days ago, necessitating that all parties interested in the outcome of the race inform voters and candidates. By having to suddenly expend resources to educate

voters about a post-election change to canvassing laws, NRSC will have to necessarily divert resources away from engaging in political activity elsewhere. Thus, the district court's order directly injures the NRSC. *See Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014) (stating that "our precedent provides that organizations can establish standing to challenge election laws by showing that they will have to divert personnel and time to educating potential voters on compliance with the laws").

Second, the district court order directly harms NRSC by "casting a cloud upon what [Governor Scott] claims to be the legitimacy of his election." *Bush v. Gore*, 531 U.S. 1046, 1047 (2000) (Scalia, J., concurring in grant of stay). The election was conducted in compliance with Florida's longstanding, duly enacted election laws. To throw this election into turmoil, as the district court order does, wrongs NRSC. Relatedly, as part of a major national party, NRSC has an acute interest in the public's confidence in the integrity and security of the electoral system. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) ("Confidence in the integrity of the electoral processes is essential to the functioning of our participatory democracy.").

CONCLUSION

The NRSC has standing to pursue the appeal.

Respectfully submitted,

Dated: November 15, 2018

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**CERTIFICATE OF COMPLIANCE
WITH TYPEFACE REQUIREMENTS AND
TYPE STYLE REQUIREMENTS**

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

Dated: November 15, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2018, an electronic copy of the foregoing Appellant's Response to the Court's Order Requesting Briefing on Whether Appellant Has Article III Standing was filed with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit using the Court's CM/ECF system and service will be accomplished on all parties by the CM/ECF system and through electronic mail upon the following:

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