No. 18-14758

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DEMOCRATIC EXECUTIVE COMMITTEE OF FLORIDA, *et al.*,

Plaintiffs-Appellees,

v.

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, *et al.*,

Defendants-Appellants.

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

DEFENDANT-APPELLANT NATIONAL REPUBLICAN SENATORIAL COMMITTEE'S RESPONSE TO JURISDICTIONAL QUESTION AND CONDITIONAL MOTION TO VACATE PRIOR ORDERS

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CORPORATE DISCLOSURE STATEMENT AND CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, Defendant-Appellant National Republican Senatorial Committee certifies that it is not publicly traded and has no parent corporation and that no publicly held corporation owns more than 10% of its stock.

The following persons and entities have an interest in the outcome of this appeal:

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INTRODUCTION

This case is about whether Florida may require voters who choose to cast their ballots by mail to submit a signature that matches the signature the state has on file. In November 2018, days after the midterm elections and in the midst of an ongoing recount, the district court held that Florida's signature-match requirements violate the Constitution—despite the fact that Florida law expressly provides a procedural safeguard for situations where a voter's signature does not match: a cure period, in which a voter can fix a mismatch by providing proof of her identity by 5 p.m. the evening before Election Day.

In the district court's view, Florida's cure period was constitutionally inadequate because some voters received belated notification of a signature mismatch. The district court entered a preliminary injunction requiring Florida officials to give voters until November 17—eleven days after the 2018 elections—to cure their mismatched signatures. ECF 46 at 33. Defendants-Appellants the National Republican Senatorial Committee ("NRSC"), the Secretary of State of Florida, and the Attorney General of Florida appealed and moved for an emergency stay, which a motions panel of this Court denied on November 15. The preliminary injunction expired on its own terms on November 17. Three months later, the motions panel issued a lengthy opinion explaining the stay denial, and one week after that the Court asked the parties whether this appeal is moot.

Although the district court's preliminary injunction has expired, this Court still has jurisdiction because this appeal raises issues that are likely to recur yet evade review. *See Sierra Club v. Martin*, 110 F.3d 1551, 1554 (11th Cir. 1997). Indeed, recurrence is a certainty: Florida's signature-match requirement will be applied in the 2020 election, as well as in special and local elections that occur between now and then, and there is little doubt that a voter, candidate, or political party will seek to litigate its constitutionality, just as the Florida Democratic Party has done in the last two statewide elections. In fact, the same government officials and political organizations that are parties in this appeal are exceedingly likely to find themselves litigating these same issues in the next election. Moreover, as this case illustrates, the issue is likely to evade review because election law challenges are often brought on the eve of an election—or even *after* an election, as happened here—leaving very little time to litigate the question through to a final judgment and appellate review, much less in an orderly fashion for the parties and the courts.

In the event the Court concludes it lacks jurisdiction, NRSC respectfully moves to vacate all prior orders in the case, including the Court's prior order denying the stay and the motions panel's opinion explaining that decision. If this appeal is moot, then NRSC and the other defendants will have been prevented from fully litigating the question whether Florida's signature-match laws are constitutional. Accordingly, they should not be forced to suffer the adverse precedential effects of

the district court's order and this Court's published opinion denying a stay. *See United States v. Munsingwear*, 340 U.S. 36, 40 (1950).

Absent mootness, the parties will be able to fully brief and argue this appeal to a merits panel and, if necessary, seek review from the en banc court and the Supreme Court. That is how the important constitutional questions at issue in this case should be decided, not in an emergency posture. Thus, the Court should either decide this appeal on its merits or vacate the prior orders in this case and clear the road for full and meaningful review in a future case.

FACTUAL AND PROCEDURAL BACKGROUND

I. Florida's Signature-Match Laws

Florida allows voting by mail as a convenient alternative to in-person voting. To ensure that voters are able to exercise that right without undermining the state's interests in orderly and secure elections, Florida requires that vote-by-mail voters provide a signature with their ballots, and that the signature match the one on file with the Secretary of State for that registered voter. Fla. Stat. §§ 101.048(2)(b)(1), 101.68(2)(c). Over time, Florida has reduced the burden of vote-by-mail identification, including by eliminating requirements that absentee ballots be notarized and contain witness signatures, *see* 1996-57 Laws of Fla. 47; 2004-232 Laws of Fla. 1, and now imposes only this minimal requirement.

Signature matching helps verify voters' identities and safeguards the integrity of elections. The signature accompanying the ballot is initially reviewed by the local supervisor of elections or the county canvassing board, and compared to "the signature of the elector in the registration books or the precinct register." Fla. Stat. § 101.68(2)(c)(1).

In 2016, the Florida Democratic Party (also a plaintiff in this case) sued in federal court, arguing that the Constitution required notice and an opportunity to cure mismatched-signature ballots. *See Fla. Democratic Party v. Detzner*, No. 4:16-cv-607-MW/CAS, 2016 WL 6090943, at *1 (N.D. Fla. Oct. 16, 2016). The district court agreed and ordered the state to institute a cure period for mismatched-signature ballots that paralleled the existing statutory cure period for ballots that are returned with no signatures—a cure period that expires at 5 p.m. the day before the election. *Id.* at *9–10. The Legislature codified the *Detzner* ruling soon thereafter. *See* 2017-45 Laws of Fla. 1.

Now, when a local supervisor rejects a ballot because of a mismatched signature, the supervisor must "immediately notify" the voter. Fla. Stat. § 101.68(4)(a). The voter may then cure the mismatch by 5 p.m. the evening before Election Day. *Id.* The voter can cure the mismatch by submitting a signed "cure affidavit," accompanied by a "Tier 1 identification" (including a Florida driver's license or a United States passport) or a "Tier 2 identification" (such as a current

utility bill or bank statement). Fla. Stat. § 101.68(4)(b)-(c). Only if the voter furnishes a Tier 2 identification does she need to provide a new signature that matches the signature on file. Fla. Stat. § 101.68(2)(c)(1)(b).[1]

II. Procedural History

The signature-mismatch law that Plaintiffs now challenge has been on the books since 2017, and was in place during the 2018 primaries. Yet Plaintiffs never suggested that it was unconstitutional until two days *after* Election Day in November 2018, once they had seen the results unfavorable to them.

On November 8, 2018, Plaintiffs filed this lawsuit in the United States District Court for the Northern District of Florida. They alleged that the signature-match requirements and Florida's application of those requirements were unconstitutional, and sought a preliminary injunction requiring state officials to count all ballots with mismatched signatures.

The district court convened a hearing on November 14, and entered a preliminary injunction at 1 a.m. the next morning. The court "ordered [the

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[1] Provisional ballots are subject to similar signature-match requirements. *See* Fla. Stat. § 101.048. Just as with vote-by-mail ballots, the signature-match requirement for provisional ballots serves as an alternative form of identification. Indeed, it is often the sole method of identification, because provisional ballots generally are not subject to a photo ID requirement. *Compare* Fla. Stat. § 101.043(1) (requiring photo ID for in-person voters), *with id*. § 101.043(2) (requiring voters without such identification to cast provisional ballots). In fact, one of the principal reasons people cast provisional ballots is lack of proper identification.

Secretary] to issue a directive to the supervisors of elections . . . advising them [that] Florida's statutory scheme as it relates to curing mismatched-signature ballots has been applied unconstitutionally." ECF 46 at 33. The court also ordered the Secretary to advise the supervisors that they were required to reopen the cure period for all voters "who have been belatedly notified they have submitted a mismatched-signature ballot" until "November 17, 2018, at 5:00 p.m." *Id*.

Later that day, NRSC filed an emergency motion to stay the preliminary injunction pending appeal. A motions panel of this Court denied a stay by a 2-1 vote. Order Denying Emergency Motion for a Stay Pending Appeal, No. 18-14758 (11th Cir. Nov. 15, 2018). The preliminary injunction expired by its own terms on November 17. ECF 46 at 33.

Almost three months later, the motions panel issued a lengthy published opinion. Order, No. 18-14758 (Feb. 15, 2019). The majority held that NRSC was unlikely to succeed on the merits because Florida's signature-match laws impose "at least a serious burden on the right to vote," *id.* at 16, and that "the serious burden on voters outweighs Florida's identified interests" in "preventing fraud," "facilitating timely and orderly election processing," and "public faith in elections," *id.* at 26. Judge Tjoflat dissented, arguing that the district court's order rewrote Florida law "and thereby violated the doctrine of federalism, which precludes federal courts from taking action that would breach a state's separation of powers." *Id.* at 71.

Shortly after the motions panel issued its opinion, the Court directed the parties to file briefs on the question whether this appeal is moot. Jurisdictional Question, No. 18-14758 (Feb. 22, 2019). Litigation remains ongoing in the district court, and trial is currently scheduled for January 2020—just two months before the 2020 presidential preference primary election. *See* ECF 111 at 1.

ARGUMENT

I. This Court Has Jurisdiction Because The Constitutional Issue Will Likely Recur And Evade Review.

Even though the November 2018 election is over and the preliminary injunction has expired, there is no jurisdictional obstacle preventing this Court from reaching the merits. That is because this Court still has jurisdiction under the mootness exception for cases that are likely to recur yet evade review, and the issues presented here are certain to arise again in the 2020 election cycle.[2]

The exception for cases that recur but evade review applies where: "(1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining

[2] In its motion for a stay, NRSC explained that "absent a stay, ballots that are legally invalid under Florida law almost certainly will be combined with valid ballots in the same pool, forever tainting this year's election and making this case effectively moot." Emergency Motion at 10, No. 18-14758 (Nov. 15, 2018). That statement remains true—it is too late for this Court to prevent legally invalid ballots from being counted in the 2018 election. But that does not mean this Court lacks jurisdiction to decide whether Florida may apply its signature-match laws *going forward*.

party will be subjected to the same action again." *Hall v. Sec'y, State of Alabama*, 902 F.3d 1294, 1297 (11th Cir. 2018) (quotation marks and alterations omitted). This exception applies even where a preliminary injunction has "already expired" by the time of appeal. *Sierra Club v. Martin*, 110 F.3d 1551, 1554 (11th Cir. 1997).

"Election cases often fall within this exception." *Porter v. Jones*, 319 F.3d 483, 490 (9th Cir. 2003); *see also Citizens for Police Accountability Political Comm. v. Browning*, 572 F.3d 1213, 1216 n.5 (11th Cir. 2009). Indeed, the Supreme Court has underscored the public benefit in construing election laws prior to an election. "The construction of [an election] statute, an understanding of its operation, and possible constitutional limits on its application, will have the effect of simplifying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held." *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974).

In this case, it was impossible to litigate Plaintiffs' constitutional challenges to a final judgment before the last ballots were counted. Plaintiffs did not file their lawsuit until two days after the election, at a time when certification of the election results was days away. The lightning-fast timing of this litigation underscores how "the inherently brief duration of an election is almost invariably too short to enable full litigation on the merits." *Porter*, 319 F.3d at 490.

The ongoing litigation in the district court does not change the analysis. In *Sierra Club v. Martin*, as here, a preliminary injunction had expired, and litigation remained ongoing in the district court. 110 F.3d at 1553 & n.5. But this Court still exercised jurisdiction over the interlocutory appeal because "the four-month term of the preliminary injunction was too short to allow for appellate review" and the duration of any future injunction would "also be too short to be fully litigated prior to its expiration." *Id.* at 1554. Here too, the term of the preliminary injunction was too short to allow for appellate review, and assuming the district court after the January 2020 trial enters another injunction governing the March 2020 presidential preference primary, the duration of that injunction would also be too short to be fully litigated. By dismissing this appeal as moot, this Court will be inviting a *third* round of emergency litigation over Florida's signature-match requirement. In 2016, the district court granted a request for an emergency injunction striking down Florida's signature-match laws. *See Detzner*, 2016 WL 6090943, at *9–10. And in 2018, the same district court again granted a request for an emergency injunction striking down Florida's signature-match laws. ECF 46 at 32–33. Yet this Court *still* has not had the opportunity to address the issue on the merits after full briefing and argument. A recurring constitutional issue of this importance should be decided in an orderly way by a merits panel, rather than on the basis of emergency stay litigation.

Nor can there be any doubt that these issues will recur. In every election, at least *some* vote-by-mail or provisional ballots will have signatures that do not match those on file. And because of unavoidable problems with mail delivery, human error by voters or poll workers, and voter procrastination, it is equally certain that in every election there will be at least a few voters who do not receive notice that their ballots were rejected in time to take advantage of the statutory cure process. Absent a ruling from this Court on the merits, future challenges to Florida's signature-match requirements—coming in the form of last-minute or after-the-fact requests for emergency relief—are inevitable.

Indeed, the countdown to the next election has already begun. Florida's presidential preference primary is scheduled for March 2020, and vote-by-mail ballots will be mailed in early February of that year. Even in the unlikely event that the district court issues a final judgment by then, this Court will have little or no time to review that decision before voters begin returning ballots and election officials begin comparing signatures. Moreover, Florida will likely hold special elections between now and then. In 2017 and 2018, the state held ten special elections.[3] Given the time frame needed to complete this appeal, the possibility of further proceedings in the district court, and the need to allow the Florida Legislature an opportunity to

[3] *See* Florida Department of State, Division of Elections, *Special Elections Archive*, https://dos.myflorida.com/elections/for-voters/special-elections/special-elections-archive/.

respond to a judicial ruling pursuant to its authority under Article I, Section 4 of the Constitution, resolution of this issue sooner rather than later, and in an orderly fashion, is crucial.

Not only will the same issue recur in the next election, it will almost certainly involve the same parties. One of the Plaintiffs is the Democratic Executive Committee of Florida, whose candidates and voters participate in every Florida election. And of course the Florida Secretary of State will continue to administer the state's election laws. The NRSC's candidates will also be affected by the signature-match requirements in future races.

In short, this Court has jurisdiction because Plaintiffs' challenge to Florida election law is capable of repetition and likely to evade review. The Court should decide this appeal on its merits, rather than await another last-minute rush on preliminary relief. For the benefit of the parties and Florida voters, these important issues should be litigated in an orderly fashion, and this appeal allows that to happen.[4]

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[4] If the Court disagrees and dismisses this appeal as moot, NRSC respectfully requests that the Court designate its order of dismissal for publication to enable NRSC and the other appellants to seek reconsideration of that order before the full Court. *See* 11th Cir. R. 35-4(b).

II. If The Court Concludes That It Lacks Jurisdiction, Then It Should Vacate The District Court's And Motions Panel's Orders.

In the event the Court concludes that the mootness exception does not apply and dismisses this appeal, the Court should vacate the district court's order and the motions panel's order and opinion. "[W]here a case becomes moot after the district court enters a judgment but before the appellate court has issued a decision, the appellate court must dismiss the appeal, vacate the district court's judgment, and remand with instructions to dismiss [the case] as moot." *Dow Jones & Co. v. Kaye*, 256 F.3d 1251, 1258 (11th Cir. 2001) (internal quotation marks omitted). This general rule is based on the equitable principle that "[a] party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994) (discussing *United States v. Munsingwear*, 340 U.S. 36 (1950)). Vacatur "clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance." *Munsingwear*, 340 U.S. at 40.

In interlocutory appeals like this one, vacatur of a lower court's opinion is sometimes unnecessary because the parties can continue to litigate to a final judgment and bring a second appeal. *See Brooks v. Georgia State Bd. of Elections*, 59 F.3d 1114, 1122 (11th Cir. 1995). But on several occasions this Court has vacated interlocutory orders when appeals became moot so that parties would not suffer

adverse consequences from unreviewable orders. *See United States v. Sec'y, Florida Dep't of Corrections*, 778 F.3d 1223, 1229–30 (11th Cir. 2015); *Beta Upsilon Chi Upsilon Chapter at the Univ. of Florida v. Machen*, 586 F.3d 908, 918 (11th Cir. 2009); *Dow Jones*, 256 F.3d at 1258–59; *Ethredge v. Hail*, 996 F.2d 1173, 1177 (11th Cir. 1993); *see also* Charles A. Wright & Arthur R. Miller, 13C Federal Practice & Procedure Civ. § 3533.10.3 n.12 (3d ed.) (collecting cases). For example, in *Ethredge* this Court vacated a district court's denial of a preliminary injunction to "prevent the district court's opinion from spawning precedential consequences." 996 F.2d at 1177.

Vacatur is also appropriate when an appeal becomes moot after an appellate panel has issued a published opinion, but before the appeal can be litigated to completion. *See United States v. Schaffer*, 240 F.3d 35, 38 (D.C. Cir. 2001) (en banc) (per curiam). "Even after an appellate court has issued its decision, if it has not yet issued its mandate and the case becomes moot, the court will vacate its decision and dismiss the appeal as moot." *In re Pattullo*, 271 F.3d 898, 900–01 (9th Cir. 2001); *see also*, *e.g.*, *Shokeh v. Thompson*, 375 F.3d 351, 351–52 (5th Cir. 2004) (per curiam); *Clarke v. United States*, 915 F.2d 699, 708 (D.C. Cir. 1990) (en banc); *United States v. Miller*, 685 F.2d 123, 124 (5th Cir. Unit B 1982) (per curiam); *United States v. Caraway*, 483 F.2d 215, 216 (5th Cir. 1973) (en banc) (per curiam). In *Caraway*, for example, a criminal case became moot after a Fifth Circuit panel

had issued its decision, but "prior to the issuance of the mandate" and "the sua sponte determination of the court to consider the appeal en banc." 483 F.2d at 216. Accordingly, the court vacated both "[t]he judgments of conviction giving rise to the appeal as well as the panel opinion of this court." *Id.* (citing *Munsingwear*, 340 U.S. at 39–40).[5]

Here, if the Court dismisses the appeal for lack of jurisdiction, then the Court should vacate the district court's order granting a preliminary injunction and the motions panel's order denying a stay (including the motions panel's published opinion). If the appeal is moot, it was through no fault of NRSC or the other appellants. Instead, mootness would be due to "the vagaries of circumstance"—namely, the district court's issuance of an injunction that expired just days after it was issued, which was a function of Plaintiffs' decision to wait until the eleventh hour (and beyond) to seek emergency relief. *See U.S. Bancorp*, 513 U.S. at 25. And both the motions panel's published opinion and the district court's order will have "precedential consequences" that directly affect NRSC and the other defendants in the ongoing litigation in the Northern District of Florida and future cases. *See Ethredge*, 996 F.2d at 1177.

[5] Fifth Circuit cases decided before October 1, 1981 are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

The precedential consequences of the motions panel's opinion are especially clear. That is because, unlike the district court's order, published opinions of this Court are binding on district courts throughout the Eleventh Circuit and future Eleventh Circuit panels. *See CSX Transp., Inc. v. General Mills, Inc.*, 846 F.3d 1333, 1338 (11th Cir. 2017). In the ordinary course, a motions panel's decision would be subject to further review by a merits panel. *See* 11th Cir. R. 27-1(g) ("A ruling on a motion or other interlocutory matter, whether entered by a single judge or a panel, is not binding upon the panel to which the appeal is assigned on the merits, and the merits panel may alter, amend, or vacate it."). And even if a merits panel agrees with a motions panel, the merits panel's decision is itself subject to further review by the full court and the Supreme Court.

Thus, absent mootness, NRSC and the other defendants would be able to fully brief and argue the question whether Florida's signature-match laws are constitutional to three additional courts: a merits panel, the en banc court, and the Supreme Court. Further litigation of these important constitutional questions will be frustrated, however, if the appeal is dismissed as moot and the panel's order remains in place to potentially bind future courts in this Circuit. Vacatur of the motions panel's opinion is therefore necessary to "clear[] the path for future relitigation" of the question whether signature-match laws like Florida's are constitutional. *See Munsingwear*, 340 U.S. at 40.

Precedent supports that result. In an analogous case, the Tenth Circuit vacated a panel opinion affirming a preliminary injunction when an appeal became moot while the defendants sought rehearing en banc. *Rio Grande Silvery Minnow v. Keys*, 355 F.3d 1215, 1221 (10th Cir. 2004). Citing the "equitable principle [that] a party should not have to bear the consequences of an adverse ruling when frustrated by the vagaries of the circumstances," the court held that "the . . . equities favor[ed] the Government," dismissed the appeal, and vacated the panel's published opinion. *Id.* at 1221–22 (quotation marks omitted). The court noted that "litigation will proceed on the complaint in the district court" and that "Appellants may face further litigation, depending upon the ultimate determinations made by the district court." *Id.* at 1221. In contrast to the published panel opinion, the court did not vacate the district court's order "because the injunction was temporally limited and preliminary." *Id.* at 1222.

The D.C. Circuit reached a similar result in *Clarke*. 915 F.2d at 708–09. There, the court vacated a published panel opinion holding that a statute violated the First Amendment after the appeal became moot while the government's petition for rehearing en banc was pending. *Id.* at 700. Among other reasons, vacatur was necessary because "retention of the precedent create[d] a gratuitous conflict with a co-equal branch of government," and the panel's decision implicated important "constitutional questions" with "broad implications." *Id.* at 708.

Here, as in *Silvery Minnow* and *Clarke*, vacatur is necessary to prevent NRSC and the other defendants from suffering the adverse consequences of published precedent in an appeal that they were unable to litigate fully. And as in *Clarke*, the motions panel's opinion has serious consequences because it holds Florida's election laws unconstitutional, interfering with the Florida Legislature's prerogative to prescribe "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives." *See* U.S. Const. Art. I, § 4, cl.1. Thus, in addition to the ordinary equitable principles underlying the *Munsingwear* doctrine, principles of constitutional avoidance and federalism also counsel in favor of vacatur here.

Indeed, the argument for vacatur is even stronger here than it was in *Silvery Minnow* and *Clarke*, for at least three reasons. *First*, unlike discretionary en banc review, this Court's rules provide that NRSC and the other defendants may reargue the constitutionality of Florida's signature-match laws to a merits panel. *See* 11th Cir. R. 27-1(g). *Second*, the motions panel here was forced (through no fault of its own) to issue its order denying a stay just hours after the district court granted a preliminary injunction and NRSC and Plaintiffs filed emergency briefs. The panel did not have the benefit of full briefing or oral argument. And *third*, the panel issued its opinion nearly three months *after* the district court's injunction expired. Thus, if the expiration of the injunction deprived this Court of jurisdiction, the Court already lacked jurisdiction by the time the motions panel issued its published opinion.

That the district court's order was interlocutory is no reason for leaving the motions panel's and district court's orders in place. In *Ethredge*, this Court recognized that when an interlocutory appeal becomes moot the district court's order should be vacated where the order will continue to cause the losing party harm, including through "precedential consequences." 996 F.2d at 1177. Similarly, in *Dow Jones* the Court vacated an interlocutory order to ensure there were "no collateral or future consequences" of an "unreviewed federal order" granting a preliminary injunction. 256 F.3d at 1258 n.10.

Here, too, vacatur is necessary to ensure that defendants (and other litigants in the Eleventh Circuit) are not forced to live with the lingering consequences of the district court's and motions panel's unreviewed orders. And the motions panel's published opinion makes this case fundamentally different from an ordinary interlocutory appeal—the opinion binds the district court on remand and could prevent the parties from fully litigating the constitutionality of Florida's signature-match laws even if the case proceeds to a final judgment and a second appeal. Thus, vacatur is especially important here, at least with respect to the motions panel's order and opinion.

CONCLUSION

The constitutionality of Florida's vote-by-mail laws should not be decided on emergency briefing, without oral argument or the potential for en banc review, in an

order issued by a motions panel just hours after the district court's expedited grant of an emergency injunction during an ongoing recount. A merits panel of this Court should proceed to resolve the important issues here in an orderly fashion before the next election cycle.

For the reasons set forth above, the Court has jurisdiction and should resolve this appeal on its merits. In the event the Court concludes that it lacks jurisdiction, then it should vacate its prior order denying a stay and the district court's order granting Plaintiffs a preliminary injunction.

Dated: March 25, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 27 and 32 of the Federal Rules of Appellate Procedure and Eleventh Circuit Rule 27-1(a), I certify that this response and conditional motion contains no more than 5,200 words. Based on the word count of the word processing system used to prepare this document, the word count, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), is 4,517.

I also certify that this response and conditional motion 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 this document has been prepared in a proportionally spaced font that includes serifs using Microsoft Word in 14 point Times New Roman font.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2019, I electronically filed the foregoing Response to Jurisdictional Question and Conditional Motion to Vacate Prior Orders with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the Court's appellate CM/ECF system. I further certify that service was accomplished on all participants in the case via the Court's CM/ECF system.

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