No. 20-12003

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Kelvin Leon Jones, et al.,

Plaintiffs-Appellees,

v.

Ron DeSantis, in his official capacity as Governor of the State of Florida, et al.,

Defendants-Appellants.

On appeal from the United States District Court for the Northern District of Florida, Case No. 4:19-cv-300-RH/MJF

PLAINTIFFS-APPELLEES' RESPONSE TO DEFENDANTS-APPELLANTS' MOTION TO EXPEDITE APPEAL

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, the NAACP Legal Defense and Educational Fund, Inc., the American Civil Liberties Union Foundation, Inc., the American Civil Liberties Union Foundation of Florida, Inc., the Brennan Center for Justice at NYU School of Law, Paul Weiss Rifkind Wharton & Garrison LLP, the League of Women Voters of Florida, the Florida State Conference of Branches and Youth Units of the NAACP, and the Orange County Branch of the NAACP state that they have no parent corporations, nor have they issued shares or debt securities to the public. The organizations are not subsidiaries or affiliates of any publicly owned corporation, and no publicly held corporation holds ten percent of their stock. I hereby certify that the disclosure of interested parties submitted by Defendants-Appellants Governor of Florida and Secretary of State of Florida is complete and correct except for the following corrected or additional interested persons or entities:

1. Brnovich, Mark, Attorney General of Arizona, *Counsel for Amicus Curiae*
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Dated: June 5, 2020

/s/ Sean Morales-Doyle
Counsel for Gruver Plaintiffs

PLAINTIFFS' RESPONSE TO MOTION TO EXPEDITE APPEAL

Plaintiffs-Appellees ("Plaintiffs")[1] do not oppose the Defendants-Appellants' ("State Defendants") Motion to Expedite Appeal. While Plaintiffs disagree with the State Defendants' presentation of the issues at stake, they agree that the public interest will be served by a prompt resolution of their appeal in this case. However, Plaintiffs object to State Defendants' proposal that Plaintiffs be given less time to answer State Defendants' brief than State Defendants' have proposed for their opening brief. Plaintiffs respectfully request that they be given 28 days to respond to the State Defendants' brief. In order to maintain the same timetable for resolution proposed by the State Defendants, Plaintiffs suggest that the State Defendants can file their reply within one week of Appellees' brief. In other words, Plaintiffs request the following briefing schedule:

Appellants' Brief deadline: June 19, 2020

Appellees' Brief deadline: July 17, 2020

Reply Brief deadline: July 24, 2020

[1] There are three groups of Plaintiffs-Appellees in the consolidated action: the *Gruver*, *McCoy*, and *Raysor* Plaintiffs. The claims of the *Jones/Mendez* plaintiffs were dismissed below, and they have not yet filed a cross-appeal.

While Plaintiffs agree that the appeal should be expedited, Plaintiffs offer this response in order to provide more accurate context for the Court as it weighs the interest in prompt resolution against other considerations.

State Defendants mischaracterize the scope and effect of the district court's ruling. The ruling provided much-needed clarity for hundreds of thousands of voters about their voting eligibility. And contrary to the State Defendants' assertions, the ruling does not require a "substantial overhaul of Florida's electoral process." Appellants' Mot. at 9. Nor does it "place challenging administrative burdens on the State." *Id.* Instead, the ruling provided clarity and improved efficiency for voters and elections officials after the State repeatedly failed to offer any plan to implement the electoral provisions at issue in this case. Two points demonstrate this.

First, the district court made clear last October that it was unconstitutional to deny the right to vote to people genuinely unable to afford their legal financial obligations ("LFOs"). *Jones v. DeSantis*, 410 F.Supp.3d 1284, 1308 (N.D. Fla. 2019). This Court upheld that decision in February 2020, *Jones v. Governor of Fla.*, 950 F.3d 795, 832–33 (11th Cir. 2020) ("*Jones*"), and denied State Defendants' petitions for a panel rehearing and rehearing en banc, Order Denying Pets. for Rehr'g and Rehr'g En Banc, *Jones v. DeSantis*, 19-14551 (11th Cir. Mar 31, 2020) (per curiam). The district court has now found that the "overwhelming majority" of people with felony convictions are genuinely unable to afford their outstanding

LFOs, Op. at 116–17, as this Court suggested was "plausible," *Jones*, 950 F.3d at 815–16. So, while the district court's final judgment expands its preliminary injunction ruling, it does little to change the state of the law that should have been guiding State Defendants' decisions about eligibility for most people with convictions for more than six months.

Second, as the district court articulated, its remedy "will allow much easier and more timely administration" than the system the State had in place. Op. at 115. During the eleven months since SB7066 became effective, and more than six months since the district court granted a preliminary injunction, State Defendants utterly failed to create or implement a workable process for administering SB7066. As the district court explained, "[t]he State has shown a staggering inability to administer the pay-to-vote system." Op. at 44. In short, the State does not know which LFOs SB7066 requires people to pay to vote or how to determine how much is owed. *Id.* at 47–63.

Because the State cannot determine outstanding LFOs required by SB7066, it has not completed review for compliance with the pay-to-vote requirement for at least 85,000 flagged registrants. *Id.* at 64–65. And under the State Defendants' most recent proposal for administering the requirement, introduced just 10 days before trial, the State will not complete review of those registrations until at least 2026. *Id.* at 65–66. In fact, given that new registrations are coming in every day—especially

during a presidential election year—the State likely will not complete review of registered voters compliance with the pay to vote requirement until well into the 2030s. *Id.*; *see also* ECF 388, Trial Day 1 Tr. at 104:16–18 (noting there were over one million new registrations in Florida in 2016).

To paraphrase the district court, if the State does not know who is eligible, voters don't know either. Op. at 47. So, "[b]ecause of the State's failure to administer the pay-to-vote system reasonably, many affected citizens, including some who owe amounts at issue and some who do not but cannot prove it, would be able to vote or even to register only by risking criminal prosecution." *Id.* at 66–67.

To remedy the constitutional and statutory violations, the district court has now provided decisive, straightforward rules to guide voters and elections officials in determining voter eligibility. Moreover, the district court "t[ook] the State up on its suggestion" to use the advisory opinion process to guide those who are still not sure of their eligibility. *Id.* at 42–43, 113–14. When a voter does request an advisory opinion, the rules and process allow the State to make a quick determination, thereby saving the State resources and time as compared to its previous system. *Id.* at 44.

It is not true, as State Defendants claim, that the advisory opinion process "requir[es] the State to affirmatively demonstrate that a felon is *ineligible* within a mere 21 days of a felon requesting an advisory eligibility opinion." Appellants' Mot. 18. The State has as much time as it needs to provide an advisory opinion. *Id.* at 43.

But if it does not provide one within 21 days, the person requesting the opinion is presumed eligible to register and vote unless or until the State provides clarity about any LFO they must pay. *See id.* at 120–21. And with the clarity the district court has provided regarding eligibility, the State may actually be able to offer an opinion within 21 days. By contrast, prior to the court's order, the State was planning to undertake a review it did not know how to conduct and that was so burdensome it would likely extend into the 2030s. In the meantime, tens of thousands of voters would remain registered but face the fear of prosecution if they voted, and hundreds of thousands of potential voters had no way to determine their eligibility to register.

In short, prior to the district court's ruling, the risk of voter confusion was high, and the State faced insurmountable administrative burdens. The remedy finally provides both voters and elections officials certainty about voters' eligibility. So long as the order remains in effect, the risk of voter confusion is low, and the administrative burden on the State has been mitigated substantially.[2] The concern about voter confusion that animated the Supreme Court in *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006), will arise only with a stay or reversal of the district court's ruling.

[2] For this reason, among others, Plaintiffs will oppose Defendants' motion to stay in the district court and any forthcoming motion to stay in this Court.

Dated: June 5, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 1,199 words as counted by the word-processing system used to prepare it.

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Dated: June 5, 2020

/s/ Sean Morales-Doyle
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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2020, I served a true and correct copy of the foregoing document via electronic notice by the CM/ECF system on all counsel or parties of record.

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