

No. 23-12313

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

HISPANIC FEDERATION, PODER LATINX, VERÓNICA HERRERA-
LUCHA, NORKA MARTÍNEZ, and A. DOE,

Plaintiffs-Appellees,

v.

CORD BYRD, in his official capacity as Florida Secretary of State, and ASHLEY
MOODY, in her official capacity as Florida Attorney General,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Florida
No. 4:23-cv-00218-MW-MAF (Hon. Mark Walker)

**PLAINTIFFS-APPELLEES' MOTION TO DISMISS
INTERLOCUTORY APPEAL AS MOOT AND FOR LACK OF
JURISDICTION**

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

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Plaintiffs-Appellees submit the following statement of their corporate interests:

1. Plaintiff Hispanic Federation has no parent corporation or any other publicly held corporation owning 10% or more of its stock.

2. Plaintiff Poder Latinx is a fiscally sponsored project of Tides Advocacy, a California nonprofit benefit corporation. Tides Advocacy has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

3. All other Plaintiffs are individual persons.

Plaintiffs-Appellees further certify that the following persons have an interest in the outcome of this case:

1. Alicea, Delmarie, *Counsel for Plaintiffs*
2. Beato, Michael, *Counsel for Defendant*
3. Bell, Daniel W., *Counsel for Defendant*
4. Byrd, Cord, *Defendant*
5. Campbell-Harris, Dayton, *Counsel for Plaintiffs*
6. Cepeda Derieux, Adriel I., *Counsel for Plaintiffs*
7. Chappell, David W., *Counsel for Defendant*
8. Cruz, Roberto, *Counsel for Plaintiffs*
9. Darlington, Andrew, *Declarant for Defendants*

10. Davis, Ashley, *Counsel for Defendant*
11. Doe, A., *Plaintiff*
12. Druks, Roni, *Counsel for Plaintiffs*
13. Ebenstein, Julie A., *Counsel for Plaintiffs*
14. Ellis, Rayne, *Counsel for Plaintiffs*
15. Freedman, John A., *Counsel for Plaintiffs*
16. Galindo, Miranda, *Counsel for Plaintiffs*
17. Herrera-Lucha, Verónica, *Plaintiff*
18. Hispanic Federation, *Plaintiff*
19. Jazil, Mohammad O., *Counsel for Defendant*
20. Karpatkin, Jeremy, *Counsel for Plaintiffs*
21. Keenan, Megan C., *Counsel for Plaintiffs*
22. Konor, Estee M., *Counsel for Plaintiffs*
23. Lin Lakin, Sophia, *Counsel for Plaintiffs*
24. Martínez, Norka, *Plaintiff*
25. McNamara, Caroline A., *Counsel for Plaintiffs*
26. McVay, Bradley, *Counsel for Defendant*
27. Moody, Ashley, *Defendant*
28. Morse, Stephanie, *Counsel for Defendant*
29. Nguyen, Phi, *Counsel for Plaintiff*

30. Ochoa, Victoria, *Counsel for Plaintiffs*
31. Poder Latinx, *Plaintiff*
32. Pratt, Joshua E., *Counsel for Defendant*
33. Preminger, Evan, *Counsel for Plaintiffs*
34. Ruiz, Cesar Z., *Counsel for Plaintiffs*
35. Schenck, Robert S., *Counsel for Defendant*
36. Sjostrom, Noah, *Counsel for Defendant*
37. Tilley, Daniel B., *Counsel for Plaintiffs*
38. Van de Bogart, Joseph S., *Counsel for Defendant*
39. Vargas De-Leon, Fulvia, *Counsel for Plaintiffs*
40. Walker, Mark E., *U.S. District Court Judge*
41. Warren, Nicholas L.V., *Counsel for Plaintiffs*
42. Whitaker, Henry C., *Counsel for Defendant*

**APPELLEES' MOTION TO DISMISS INTERLOCUTORY APPEAL
AS MOOT AND FOR LACK OF JURISDICTION**

Plaintiffs-Appellees hereby respectfully request that the Court dismiss Defendant-Appellants interlocutory appeal as moot. Fed. R. App. P. 42(b)(2). This appeal arises from the district court's entry of a preliminary injunction. *See Fla. State Conf. of Branches & Youth Units of the NAACP v. Byrd*, 680 F. Supp. 3d 1291 (N.D. Fla. 2023). After a trial, the district court has since entered a permanent injunction and judgment. *Hisp. Fed. v. Byrd*, --- F. Supp. 3d ---, 2024 WL 2206328 (N.D. Fla. May 15, 2024). Defendants have appealed that judgment, which is now separately pending before this Court. *See Hisp. Fed. v. Fla. Sec'y of State*, No. 24-11892. The present appeal is therefore moot and the panel lacks jurisdiction to hear it. *See, e.g., Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 314 (1999); *Birmingham Fire Fighters Ass'n 117 v. City of Birmingham*, 603 F.3d 1248, 1255 (11th Cir. 2010).

Defendants-Appellants oppose this motion.

REASONS FOR GRANTING THE MOTION

A. Procedural Background

1. In May 2023, Plaintiffs below—voter-registration organizations whose staff and volunteer base consist primarily of lawful permanent residents and other noncitizens authorized to work in the United States and three individual noncitizens who register voters in Florida—sued to enjoin Fla. Stat. § 97.0575(1)(f). That

provision, part of a broader statute titled SB 7050 that became law on May 24, 2024, prohibits any noncitizen from “collecting or handling voter registration applications” on behalf of a voter-registration organization. It fines those organizations \$50,000 per noncitizen who “collect[s] or handle[s]” voter registration applications on the organizations’ behalf. Shortly after filing suit, Plaintiffs also sought emergency relief by means of a preliminary injunction.

2. The district court consolidated Plaintiffs’ challenge with two other actions challenging Section 97.0575(f)(1) (the “Citizenship Requirement”) and other parts of SB 7050. *See* Minute Entry, *Hisp. Fed. v. Byrd*, No. 23-cv-00218, ECF No. 56 (N.D. Fla. June 15, 2023) (consolidating cases for purposes of preliminary injunction hearing).¹ Both of those actions also sought preliminary injunctive relief against the Citizenship Requirement.

3. On July 3, 2023, the district court preliminarily enjoined enforcement of the Citizenship Requirement in the present underlying action and another suit led by the Florida State Conference of Branches and Youth Units of the NAACP. *See Fla. State Conf. of Branches & Youth Units of the NAACP*, 680 F. Supp. 3d at 1299 n.3. The district court found that Plaintiffs established a substantial likelihood of success on their claim that the law violated Plaintiffs’ guarantee to equal protection

¹ *See also Fla. State Conf. of Branches & Youth Units of the NAACP*, 680 F. Supp. 3d at 1299 n.1, n.3 (describing consolidated actions).

under law, because the statute, on its face, “discriminates on the basis of alienage” and Defendants could not show it could survive strict scrutiny. *Id.* at 1310–11.

4. Defendants appealed the district court’s preliminary injunction and successfully moved to consolidate the two underlying actions before this Court for purposes of that appeal. *See* Mot. to Consolidate Appeals 23-12308 & 23-12313, *Fla. State Conf. of Branches & Youth Units v. Fla. Sec’y of State*, No. 23-12308, ECF No. 30. The consolidated parties briefed the matter and appeared before the Court for oral argument on January 25, 2024.

5. On March 1, 2024, the district court granted Plaintiffs’ motion for summary judgment against the Florida Secretary of State. *Hisp. Fed. v. Byrd*, --- F. Supp. 3d ---, 2024 WL 906004 (N.D. Fla. Mar. 1, 2024). In so doing, the district court rejected many of the same arguments that Defendants argued before this Court on appeal from the July 2023 preliminary injunction. *See id.* at *3–*4 (rejecting *Salerno*-based argument and the view that political-function exception applies to challenged law). The district court concluded that the case law compelled it to apply strict scrutiny to the challenged citizenship requirement and that the summary judgment “record demonstrates, without any genuine dispute” that the law failed that test. *Id.* The district court, however, did not grant summary judgment in Plaintiffs’ favor against the Florida Attorney General because it concluded that triable issues

remained as to their standing against that defendant. *Id.* Nor did it enter partial judgment at that time.

6. Between April 1, 2024, and April 9, 2024, the district court held a seven-day bench trial on the three consolidated actions.² As to SB 7050's Citizenship Requirement, the district court heard testimony from representatives of Plaintiffs Hispanic Federation and Poder Latinx and other organizations as to the substantial harm the Citizenship Requirement would have on their organizations. Trial Br., *Hisp. Fed. v. Byrd*, No. 23-cv-00218, ECF No. 188 at 36–50. Individual Plaintiffs Verónica Herrera-Lucha, Elizabeth Pico, and Norka Martínez and other individuals similarly testified to the Citizenship Requirement's abridgment of their constitutionally protected rights. *Id.* at 29–35. Experts in the consolidated cases further testified as to the effects that the Citizenship Requirement would have on Plaintiffs' protected activity and conduct. *E.g., id.* at 84.

7. On May 15, 2024, the district court entered a permanent injunction that affords Plaintiffs-Appellees the same relief as the preliminary injunction on appeal. Compare *Fla. State Conf. of Branches & Youth Units of the NAACP*, 680 F. Supp. 3d at 1323 (order granting preliminary injunction), with *Hisp. Fed.*, No. 23-cv-00218, ECF No. 199 (final judgment).

² In addition to the Citizenship Requirement, the trial concerned claims brought by other plaintiffs concerning certain other provisions of SB 7050.

8. On May 15, 2024, Plaintiffs-Appellees informed this panel of the district court's entry of final judgment and indicated that they understood this presumptively mooted Defendants-Appellants' appeal. Supp. Authority, *Hisp. Fed. v. Byrd*, No. 23-12313, ECF No. 72. On May 16, 2024, the Secretary of State notified the panel that because the present appeal was consolidated with a second appeal (*NAACP v. Byrd*, No. 23-12308) where judgment in the action below had not issued, he intended to "file notices of appeal" and then "move to consolidate the cases" once the district court issued final orders in "all SB7050 cases." Resp. to Supp. Authority, *Hisp. Fed. v. Byrd*, No. 23-12313, ECF No. 73.

9. The Secretary's response did not argue, however, that the present appeal was not moot. It only explained that the proposed approach was consistent with precedent because the preliminary injunction order "is merged with" the "order of permanent injunction." *Id.* (quoting *SEC v. First Fin. Grp. of Tex.*, 645 F.2d 429, 433 (5th Cir. 1981)).

10. On June 11, 2024, Defendants filed a notice of appeal of the district court's final judgment. Notice, *Hisp. Fed. v. Fla. Sec'y of State*, No. 24-11892, ECF No. 1. That appeal has been docketed under No. 24-11892. On June 20, the Clerk of Court entered set a briefing schedule. No. 24-11892, ECF No. 22. Appellants' brief in the separately docketed appeal is currently due on July 22. *Id.*

B. Legal Argument: The present interlocutory appeal is moot and the Court lacks jurisdiction to consider it.

11. “[A]n appeal from the grant of a preliminary injunction becomes moot when the trial court enters a permanent injunction, because the former merges into the latter.” *Grupo Mexicano de Desarrollo S.A.*, 527 U.S. at 314. This is so because “[t]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). As a result, a preliminary injunction “dissolve[s] when the Court enter[s] [] final judgment.” *Acrylicon USA, LLC v. Silikal GmbH*, 985 F.3d 1350, 1360–61 n.25 (11th Cir. 2021). And this Court’s cases leave no doubt that “the subsequent entry of a permanent injunction strips th[e] Court of jurisdiction to review a preliminary injunction because the preliminary injunction merges into the permanent injunction.” *Birmingham Fire Fighters Ass’n 117 v. City of Birmingham*, 603 F.3d 1248, 1254 (11th Cir. 2010).³

³ See also *In re: Chiquita Brands Int’l, Inc.*, 965 F.3d 1238, 1245 (11th Cir. 2020) (“A permanent injunction order moots interlocutory review of a corresponding preliminary injunction order because the preliminary injunction order inherently ‘merges’ with the permanent injunction order.”); *Assoc. Builders & Contractors Fla. E. Coast Chapter v. Miami-Dade Cnty.*, 594 F.3d 1321, 1323–24 (11th Cir. 2010) (per curiam) (“Once an order of permanent injunction is entered, any preliminary injunction merges with it, and appeal may be had only from the order of permanent injunction.”); *Burton v. State of Ga.*, 953 F.2d 1266, 1272 n.9 (11th Cir. 1992) (“Once a final judgment is rendered, the appeal is properly taken from the final judgment, not the preliminary injunction.”); *Cone Corp. v. Hillsborough Cnty.*, 908 F.2d 908, 912 n.5 (11th Cir. 1990) (“The County’s challenge to the issuance of the

12. This Court has explained why a permanent injunction deprives it of jurisdiction to hear an appeal taken from similar preliminary relief: interlocutory appeals like this one are an exception to the final judgment rule. *See, e.g.*, 28 U.S.C. § 1291; *Birmingham Fire Fighters Ass’n 117*, 603 F.3d at 1254. But “[i]ntervening events can affect [the] court’s jurisdiction over an interlocutory appeal.” *Id.* Final judgment that “contain[s] the very same injunctive relief” as a preliminary injunction is such a “crucial” intervening “change in circumstances[.]” *Id.*

13. Such intervening events have clearly happened here. Defendants invoked this Court’s jurisdiction to hear their appeal under 28 U.S.C. § 1292(a), which details narrow exceptions to the final judgment rule. *See* Appellants’ Merits Br. 2. But the district court’s entry of a permanent injunction supplants the preliminary injunction on review because it “raise[s] the same questions” as the latter and “speaks to the merits of whether the requested injunctive relief is appropriate.”⁴ *In re: Chiquita Brands Int’l, Inc.*, 965 F.3d at 1245. That “change in circumstances [] prevents this Court from hearing an appeal from th[e] initial [] Order.” *Birmingham Fire Fighters Ass’n 117*, 603 F.3d at 1254–55. The appeal can now

preliminary injunction is moot . . . because a permanent injunction has issued.”).

⁴ Defendants-Appellants acknowledge the point. *See* Resp. to Supp. Authority, No. 23-12313, ECF No. 73 at 2 (noting “analysis for the Citizenship Requirement remains unchanged” after the district court’s permanent injunction).

only “properly taken from the final judgment order, not the preliminary injunction.” *Burton*, 953 F.2d at 1272 n.9. Importantly, Defendants-Appellants have proceeded to appeal the final judgment. *See Hisp. Fed.*, No. 24-11892. The present appeal is therefore moot, and the Court lacks jurisdiction over case No. 23-12313, which can only be absorbed into an appeal taken from the permanent injunction.

14. Lastly, insofar as Defendants-Appellants seek to “preserve judicial resources and streamline the appellate resolution of the cases,” those aims would now best be accomplished by requesting that the Court hold the newly docketed No. 24-11892 in abeyance until the district court “issues orders in all SB7050 cases.” Resp. to Supp. Authority, No. 23-12313, ECF No. 73 at 2. Those cases could then proceed together as consolidated appeals from final judgment of all pending SB 7050-related disputes before the federal courts.

CONCLUSION

For the foregoing reasons, Plaintiffs-Appellees respectfully request this Court dismiss this appeal for lack of jurisdiction.

Dated: June 24, 2024

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CERTIFICATE OF COMPLIANCE

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Dated: June 24, 2024

Respectfully submitted,

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