No. 23-60463

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DISABILITY RIGHTS MISSISSIPPI; LEAGUE OF WOMEN VOTERS OF MISSISSIPPI; WILLIAM EARL WHITLEY; MAMIE CUNNINGHAM; YVONNE GUNN,
Plaintiffs-Appellees,

v.

LYNN FITCH, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI; MICHAEL D. WATSON, JR., IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF MISSISSIPPI,
Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Mississippi
No. 3:23-cv-350

DEFENDANTS-APPELLANTS' REPLY SUPPORTING THEIR SUGGESTION OF MOOTNESS AND MOTION TO VACATE THE ORDER BELOW AND REMAND WITH INSTRUCTIONS TO DISMISS THE CASE AS MOOT

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ARGUMENT

As defendants have explained, this case is moot and this Court should vacate the district court's order enjoining the enforcement of Mississippi Senate Bill 2358, remand to that court with instructions to dismiss the case as moot, and dismiss this appeal. Mot. 6-16 (Dkt. 93). Plaintiffs largely agree. They agree that this appeal is now moot due to the enactment of Senate Bill 2425, that this Court should vacate the district court's order, and that this Court should dismiss this appeal. Resp. 7 (Dkt. 97). This reply addresses plaintiffs' limited areas of disagreement—none of which affects defendants' showing on how to properly dispose of this appeal.

First, although plaintiffs agree that vacating the district court's order is proper, they argue that vacatur should extend only to the two appellant-defendants, Attorney General Lynn Fitch and Secretary of State Michael Watson. Resp. 1 n.1. Plaintiffs argue that the two other named defendants—the Chickasaw County and Hinds County District Attorneys—"have not expressed a position on the interpretation or impact of" S.B. 2425 (the law that amended S.B. 2358), so "the case should be remanded to the district court for appropriate disposition of the preliminary injunction and the case against those [d]efendants." *Ibid.*

Plaintiffs are wrong. This case is moot in its entirety (as to all defendants) and, consistent with the standard practice when a case becomes moot on appeal, this Court should vacate the district court's order outright. Mot. 10-16. As plaintiffs agree (indeed, as they argue at some length), this case is moot because of a *change in the law*: the ballot-harvesting law that plaintiffs challenged and that allegedly caused them injury (S.B. 2358) no longer exists. Resp. 1; *see* Resp. 3-4, 6-7. S.B. 2425 eliminates the prospect that any named plaintiff could face prosecution—by anyone—for conduct described in the complaint. This case is accordingly moot because of *the legal effect* of S.B. 2425—not because of any defendant's *position* on S.B. 2425's effect. An individual prosecutor's personal "position on the interpretation or impact" of S.B. 2425 (Resp. 1 n.1) is irrelevant to the legal question whether S.B. 2425 moots this case.

Plaintiffs cite no authority for the view that mootness might be defeated (or outright vacatur might be improper) because of speculation that some prosecutor might enforce a law that no longer exists. If plaintiffs' view were right, then a court could never rule that a case is moot (and vacate a prior order) due to a legislative change without first soliciting the views of every agency, official, or other individual who could enforce that law. There is no sound basis for that view. And where, as here, "a case becomes moot on appeal, the general rule is ... to vacate the judgment of the lower court and remand with instructions to dismiss."

Mot. 10 (quoting *Goldin v. Bartholow*, 166 F.3d 710, 718 (5th Cir. 1999)). Plaintiffs offer no reason to depart from that general rule. Defendants have explained why the governing considerations require vacatur. Mot. 10-16. Plaintiffs have not contested any of those points.

Second, plaintiffs seem to disagree that this Court should follow the "general rule" that cases that become moot on appeal should be "remand[ed] with instructions to dismiss the case." Mot. 10 (quoting *Goldin*, 166 F.3d at 718). Instead, because plaintiffs intend to seek attorney's fees, they "request a remand to the district court for further proceedings." Resp. 5; *see* Resp. 5-7. That is unnecessary and, indeed, plaintiffs' argument on this score is much ado about nothing. Following the general rule will not prevent plaintiffs from seeking attorney's fees. Rather, after the district court enters a judgment at this Court's direction to dismiss the case as moot, plaintiffs will have the opportunity to seek attorney's fees. *See* Fed. R. Civ. P. 54(d)(2) (attorney's fees are sought by motion *after* the entry of judgment); *cf. Amawi v. Paxton*, 956 F.3d 816, 822 (5th Cir. 2020) (cited in Resp. 5 n.4) ("vacat[ing] [a] preliminary injunction and remand[ing] th[e] case to the district court to enter an appropriate judgment dismissing the complaints," which "le[ft] only attorney's fees to be decided on remand") (capitalization omitted). Nothing in defendants' motion to vacate suggests that plaintiffs could not follow this normal process here. Any request for attorney's fees is (as

plaintiffs agree) "not presently before th[is] Court" (Resp. 5) and should be addressed on a proper motion to the district court after entry of a judgment dismissing the case as moot.

REQUEST FOR RELIEF

This Court should vacate the district court's order, remand to that court with instructions to dismiss the case as moot, and dismiss this appeal.

Respectfully submitted,

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s/ Justin L. Matheny

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July 18, 2024

CERTIFICATE OF SERVICE

I, Justin L. Matheny, hereby certify that the foregoing reply has been filed with the Clerk of Court using the Court's electronic filing system, which sent notification of such filing to all counsel of record.

Dated: July 18, 2024

s/ Justin L. Matheny
Justin L. Matheny
Counsel for Defendants-Appellants

CERTIFICATE OF COMPLIANCE

This reply complies with the word limitations of Fed. R. App. P. 27(d)(2)(A) because, excluding the exempted parts of the document, it contains 773 words. This reply complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface, including serifs, using Microsoft Word 2016, in Century Schoolbook 14-point font.

Dated: July 18, 2024

s/ Justin L. Matheny
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