No. 23-10459

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ANDREW WARREN,
Plaintiff-Appellant,

v.

RON DESANTIS,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
No. 4:22-cv-302-RH-MAF

PLAINTIFF-APPELLANT'S MOTION TO EXPEDITE CONSIDERATION OF APPELLEE'S REHEARING PETITION

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CERTIFICATE OF INTERESTED PERSONS

Plaintiff-Appellant certifies that the following is a complete list of interested persons as required by Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1:

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No publicly traded company or corporation has an interest in the outcome of this case or appeal.

Dated: February 26, 2024

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MOTION TO EXPEDITE CONSIDERATION OF APPELLEE'S REHEARING PETITION

For the reasons set forth in this Motion, Plaintiff-Appellant, Andrew H. Warren, moves pursuant to Federal Rule of Appellate Procedure 27 to renew his motion to expedite consideration of Governor DeSantis's petition for rehearing *en banc* filed on January 25, 2024, *see* Dkt. 98, and to issue the mandate immediately once the petition is adjudicated.

ARGUMENT

This Court granted Mr. Warren's motion to expedite this appeal (from an expedited bench trial) on March 8, 2023. *See* Dkt. 24. The same day that this Court issued its initial opinion on January 10, 2024, Mr. Warren requested that the Court expedite the issuance of its mandate. *See* Dkt. 87 (*vacated, and substituted by* Dkt. 89-1 opinion issued on January 11, 2024). This Court ordered a response from Governor DeSantis within five days and then ordered Governor DeSantis to file a petition for a rehearing *en banc* on an expedited basis. *See* Dkt. 92; *see also* Dkt. 95. According to the docket, a single judge of this Court has ordered the withholding of the issuance of the mandate. *See* Dkt. 103-2.

Through this renewed motion, Mr. Warren respectfully brings to the attention of this Court certain facts that counsel strongly in favor of issuing the mandate as quickly as possible. In particular, Florida law requires that Mr. Warren file his candidacy paperwork for State Attorney by April 26, 2024. *See* Fla. Stat.

§ 99.061(8) (2023); *Qualifying Information*, FLA. DEP'T OF STATE: FLORIDA DIVISION OF ELECTIONS (Feb. 15, 2024), https://dos.fl.gov/elections/candidates-committees/qualifying/. As Mr. Warren explained in his first motion to expedite proceedings before this Court (Dkt. 24), resolution of this case impacts the electoral process and the choices of millions of Floridian voters. *See* Dkt. 3 at 18 ("Any unnecessary delay in resolving this case prolongs the uncertainty concerning, as well as the public's confidence in, the legal force accorded to the outcome of those elections."). Indeed, just two days before this Court issued its January 10 decision, Mr. Warren announced that he would not run for reelection because Governor "DeSantis 'could suspend [Mr. Warren] again for whatever reason he want[s]" unless and until the Governor's current illegal suspension is remedied. Kathryn Varn, *Andrew Warren, Tampa Prosecutor Ousted by Desantis, Will Not Run Again*, AXIOS TAMPA BAY (Jan. 8, 2024), https://www.axios.com/local/tampa-bay/2024/01/08/andrew-warren-reelection-ron-desantis-florida-prosecutor.

Mr. Warren may revisit his decision whether to run for State Attorney in light of the panel's ruling on January 11, 2024. Dkt. 89-1. His decision whether to seek reelection will ultimately impact the decisions of many other candidates considering whether to run for that office. And more broadly, the district court's decision on remand will provide critical guidance to other candidates running for public office across Florida about whether Governor DeSantis may nullify the results of an

election on the grounds the Governor has cited. Ultimately, the resolution of Mr. Warren's case will determine for such candidates whether the time and resources of running for elected office are worthwhile. *See, e.g.,* Steve Newborn, *Stetson Professor Calls Andrew Warren's Suspension a 'Rule of Politics' Instead of a Rule of Law*, WUSF (Aug. 15, 2022), https://www.wusf.org/politics-issues/2022-08-15/stetson-professor-andrew-warren-suspension-rule-of-politics-instead-rule-of-law ("[The suspension was] intended to create a chilling effect . . . . I think it's an exercise of power by the governor to send a message."); *see also* Dkt. 3 at 20 ("Unless and until this Court invalidates the suspension, elected officials who hold views unpopular with the Governor will inevitably refrain from, or at least pause before, speaking their minds [or running for office].").

The public interest in expeditious resolution of this petition for rehearing *en banc* is therefore pronounced and pressing. Mr. Warren respectfully requests that the Court direct that the mandate issue immediately once the *en banc* rehearing petition has been denied, even if one or more opinions regarding that determination may follow at a later date.

CONCLUSION

Mr. Warren has only until April 26, 2024 to file as a candidate for State Attorney—just two months from the date of this filing. The district court's decision on remand will determine whether his candidacy (and that of many other aspiring

officeholders) is worthwhile. Mr. Warren respectfully requests that the Court issue the mandate in order to permit the district court proceedings to commence.

Dated: February 26, 2024 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Rule 27(d)(2)(a) of the Federal Rules of Appellate Procedure because it contains approximately 706 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This document 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 this document has been prepared in a proportionally spaced typeface using 14-point Times New Roman font.

Date: February 26, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2024, the foregoing document was filed with the Clerk of the United States Court of Appeals for the Eleventh Circuit via the Court's electronic filing system and served on all counsel of record via CM/ECF.

Date: February 26, 2024

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