

**IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA**

Case Nos.: 1D20-2470, 1D20-2472

L.T. Case No. 2020-CA-001450

RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; and FLORIDA BOARD OF EDUCATION,

Defendant–Appellants,

v.

FLORIDA EDUCATION ASSOCIATION, STEFANIE BETH MILLER; LADARA ROYAL; MINDY FESTGE; VICTORIA DUBLINOHENJES; ANDRES HENJES; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC.; AND NAACP FLORIDA STATE CONFERENCE,

Plaintiff–Appellees.

L.T. Case No. 2020-CA-001467

RON DESANTIS, Governor of Florida, in his official capacity as Chief Executive Officer of the State of Florida; ANDY TUCK, in his official capacity as the chair of the State Board of Education; STATE BOARD OF EDUCATION; RICHARD CORCORAN, in his official capacity as Commissioner of the Florida Department of Education; FLORIDA DEPARTMENT OF EDUCATION; and JACOB OLIVA, in his official capacity as Chancellor, Division of Public Schools,

Defendant–Appellants,

v.

MONIQUE BELLEFLEUR, individually and on behalf of D.B. JR., M.B., and D.B.; KATHRYN HAMMOND; ASHLEY MONROE; and JAMES LIS,

Plaintiff–Appellees.

**DEFENDANT-APPELLANTS' RESPONSE TO
ORDER TO SHOW CAUSE**

Defendant-Appellants (the “State Defendants”)¹ agree that case numbers 1D20-2633 and 1D20-2634 should be consolidated with case numbers 1D20-2470 and 1D20-2472 because they arise from the same underlying cases, involve the same parties, and raise the same threshold legal issues: whether Plaintiff-Appellees have standing to obtain the relief they seek, whether these cases raise non-justiciable political questions, and whether they are barred by Florida’s Constitutional Separation of Powers. Failure to consolidate these actions will only result in a waste of resources and the possibility of inconsistent rulings. In support, State Defendants further state as follows:

1. All four cases pending before this Court arise from two lawsuits, L.T. Case No. 2020-CA-001450 and L.T. Case No. 2020-CA-001467 (the “Underlying Cases”) which were consolidated in the lower court. Case numbers 1D20-2470 and 1D20-2472 are appeals from the lower court’s order granting a preliminary injunction in the Underlying Cases (collectively, the “Injunction Appeals”).² Case numbers 1D20-2633 and 1D20-2634 are petitions for certiorari review of the lower

¹ The State Defendants are Governor Ron DeSantis, the State Board of Education (along with state-board chair Andy Tuck), Commissioner of Education Richard Corcoran, the Florida Department of Education (the “DOE”), and Jacob Oliva (Chancellor of the DOE’s Division of Public Schools).

² This Court consolidated the Injunction Appeals on August 28, 2020.

court's denial of the State Defendants' motions to dismiss the Underlying Cases (collectively, the "Petitions").³

2. Consolidation of cases is undertaken on a case-by-case basis and can take different forms, including consolidation for "all purposes," meaning a single record and single set of briefs; consolidation for purposes of the record, which relies on a single record, but separate briefs; consolidation for briefing only; and a fourth form, referred to as cases that "travel together, which simply means that the cases are assigned to the same panel of judges at the same time. This is employed when the cases are factually or legally related in some fashion but they remain separate for records and briefing, and is utilized to maximize this court's judicial resources and ensure consistent outcomes." *J.M.B. v. State*, 776 So. 2d 353, 354 (Fla. 1st DCA 2001) ("Cases may also be consolidated for oral argument, issuance of an opinion, or both.").

3. These cases should "travel together" and be assigned to the same panel of judges because they arise from the same Underlying Cases; are based on substantially the same record (aside from evidence submitted at the preliminary

³ The State Defendants' motions to dismiss are largely identical. Plaintiffs-Appellees in Case No. 2020-CA-001450 filed a response to the motion, but Plaintiff-Appellees in Case No. 2020-CA-001467 did not submit a written response. The State Defendants filed a single reply in support of the motions to dismiss and the lower court held a hearing, at which Plaintiff-Appellees made virtually identical arguments. The lower court entered a single order denying the motions to dismiss in both cases for identical reasons.

injunction hearing, which is not at issue in the Petitions); and raise the same threshold legal issues.

4. In both the motions to dismiss and the response to the motions for preliminary injunction in the Underlying Cases, the State Defendants raised three threshold legal issues that bar any of the relief sought in these cases: (1) whether the Plaintiff-Appellees have standing to challenge the DOE's Emergency Order 2020-EO-06 (the "Emergency Order"); (2) whether questions about the "safety" or "security" of Florida's Public Schools in this pandemic are non-justiciable political questions; and (3) whether Plaintiff-Appellees' claims are barred by Florida's Constitutional Separation of Powers.

5. These same three legal determinations are at the heart of both the Injunction Appeals and the Petitions. Plaintiff-Appellees must demonstrate a substantial likelihood of success on the merits to obtain a preliminary injunction, which inherently involves an analysis of the arguments raised in the State Defendants' motions to dismiss at issue in the Petitions. If the Court rules in favor of the State Defendants on the Petitions, for example, and finds that Plaintiff-Appellees lack standing to challenge the Emergency Order, then as a matter of law the preliminary injunction must be quashed because Plaintiff-Appellees cannot demonstrate a likelihood of success on the merits. The same is true for each of the other threshold issues raised by the State Defendants.

6. Given these substantial overlapping issues, allowing these cases to “travel together” would conserve the resources of the Court and the parties, and result in a quicker resolution of this case.⁴

Respectfully submitted,

s/ David M. Wells

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⁴ A case was filed against the School Board of Palm Beach County on September 18, 2020, seeking to block the opening of schools for in-person instruction in reliance on the injunction order issued in the Underlying Cases. *Levine et al v. School District of Palm Beach County*, Case No. 50-2020-CA-010111 (Fla. 15th Cir. Ct.). This related case heightens the needs for this Court to address the gatekeeper issues raised in the Petitions.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being served on September 21, 2020, by email through the Florida Courts E-Filing Portal addressed to the following counsel of record:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Response was prepared in Times New Roman, 14-point font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

s/ David M. Wells

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