

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

FLORIDA SECRETARY OF STATE,  
*et al.*,

Appellants,

Case No. 1D23-2252  
LT Case No. 2022 CA 000666

v.

BLACK VOTERS MATTER  
CAPACITY BUILDING INSTITUTE,  
INC., *et al.*,

Appellees.

\_\_\_\_\_ /

**JOINT STIPULATION REGARDING BRIEFING SCHEDULE**

The parties have reached a stipulation regarding expedited briefing in this case.

1. The Court has voted to hear this appeal en banc in the first instance. It has also requested that the parties propose an expedited briefing schedule.

2. The parties agree that time is of the essence. The trial court struck down the State's current congressional districting map, and state and local election officials must have clarity on which map will govern the 2024 elections well in advance of Election Day. For that reason, the parties stipulated below that they would "propose an

expedited schedule to allow for the resolution of all appellate proceedings in time for the Florida Legislature to take up any remedial plan, if necessary, during the 2024 regular legislative session.” Ex. 1 at 3 n.3. That session begins on January 9, 2024.

3. Timely resolution of this appeal is also critical given that the parties have stipulated to remedial proceedings in the event that the trial court’s order stands as of April 1, 2024. If the trial court’s “decision has not been reversed on appeal” by then, and if the Legislature has “fail[ed] to enact a remedial map” or passes a map that Plaintiffs claim does not remedy the alleged “diminishment in the Enacted Map, the Parties will jointly ask th[e] [trial court] to vacate the automatic stay to conduct remedial proceedings.” *Id.* at 4. And if the trial court adopts a remedial map, that map will govern the 2024 elections absent “a contrary decision by an appellate court on or before” April 30, 2024. *Id.*

4. To help facilitate this Court’s expeditious review so that the Legislature can, if necessary, pass a remedial districting map during the 2024 regular session, the parties propose the following schedule:

- Initial Brief: **Due October 4, 2023**
- Amicus Briefs Supporting Appellants: **Due October 9, 2023**
- Answer Brief: **Due October 18, 2023**
- Amicus Briefs Supporting Appellees: **Due October 23, 2023**
- Reply Brief: **Due October 27, 2023**

5. The parties respectfully request that the Court order the clerk of court to expedite transmittal of the record, to avoid any delay.

6. To help expedite the decisional process, the parties also respectfully request that the Court dispense with oral argument and resolve this case on the briefs.

7. Finally, given this case's time-sensitive nature, the parties respectfully request that this Court issue its decision by **November 22, 2023**. A ruling by November 22 will also provide time for either party to seek Florida Supreme Court review and for the Florida Supreme Court to render a decision in time for the Legislature to take up any remedial plan, if necessary, during the 2024 regular legislative session, and before the Legislature's scheduled adjournment on March 8, 2024.

Dated: September 20, 2023

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# Exhibit 1



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

BLACK VOTERS MATTER CAPACITY  
BUILDING INSTITUTE, INC., et al.

Case No. 2022-ca-000666

Plaintiffs,

v.

CORD BYRD, in his official capacity as  
Florida Secretary of State, et al.,

Defendants.

**JOINT STIPULATION TO NARROW ISSUES FOR RESOLUTION**

The Parties submit this joint stipulation to narrow the issues before this Court and ensure a timely resolution of the dispute concerning Florida's congressional map.

**I. Claims**

- A. Plaintiffs limit Count I in their Amended Complaint to North Florida.
- B. Plaintiffs agree to dismiss with prejudice Counts II and III of the Amended Complaint.

**II. Affirmative Defenses**

- A. Defendant, the Florida Secretary of State, agrees to withdraw his third and fourth affirmative defenses.
- B. Defendant, the Florida House of Representatives, agrees to withdraw its first, second, third, and fourth affirmative defenses.
- C. Defendant, the Florida Senate, agrees to withdraw its first, second, third, and fourth affirmative defenses.

**III. Stipulated Facts Relating to Diminishment**

- A. The parties stipulate to the facts relevant to Plaintiffs' diminishment claim as set forth in **Exhibit 1** to this stipulation.
- B. Defendants stipulate that Plaintiffs have standing to challenge the alleged diminishment in North Florida.

- C. The parties agree that based on **Exhibit 1**, no material factual issues remain in dispute regarding Plaintiffs’ diminishment claim and that the Court may rule on that claim as a matter of law.
- D. The map attached to this stipulation as **Exhibit 2** contains a Black-performing district in North Florida (CD 5).<sup>1</sup>

#### **IV. Remaining Legal Issues for Trial Court’s Resolution**

- A. The Parties agree the only remaining legal disputes are the following that will be resolved at a final hearing with the resulting order having “the force and effect of a final judgment” as contemplated in section 86.011 of the Florida Statutes.
  - 1. Whether Plaintiffs must satisfy the preconditions in *Thornburg v. Gingles*, 478 U.S. 30 (1986), for the non-diminishment provision to apply.
  - 2. Whether the non-diminishment provision’s application to North Florida violates the Equal Protection Clause to the U.S. Constitution.
  - 3. Whether the non-diminishment provision facially violates the Equal Protection Clause to the U.S. Constitution.
  - 4. Whether the public official standing doctrine bars the Secretary’s affirmative defenses based on the Equal Protection Clause to the U.S. Constitution.<sup>2</sup>
- B. Defendants concede that if the non-diminishment standard applies to North Florida (Question #1), then there is no Black-performing district in North Florida under the Enacted Map. The parties agree that the former congressional district 5 used for the 2016, 2018, and 2020 congressional elections was a Black-performing district.
- C. Defendants maintain their argument that the Equal Protection Clause would nonetheless prohibit the creation of a Black-performing district in North Florida (Question #2), as set forth in the Governor’s request for an advisory opinion, the Governor’s and Florida Legislature’s briefs concerning the request for an advisory opinion, the Governor’s veto message, and the Secretary and Attorney General’s response to Plaintiffs’ emergency petition for constitutional writ before the Florida Supreme Court earlier in this litigation.

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<sup>1</sup> A “Black-performing district” is defined as a district in which Black voters have an “ability to elect representatives of their choice.” Fla. Const. art. III, § 20(a).

<sup>2</sup> This issue has been fully briefed in response to Plaintiffs’ motion for judgment on the pleadings. The Court previously held that the public official standing doctrine does not bar the House’s and Senate’s affirmative defenses, and Plaintiffs’ motion for judgment on the pleadings does not seek reconsideration of that ruling but preserves it for appeal. The Parties agree that the Court may consider the Parties’ existing summary judgment briefing on the legal issues in resolving the outstanding issues.

- D. The parties agree that if Plaintiffs ultimately prevail on Questions 1-3, then an appropriate remedy to the diminishment in North Florida would join the Black community in Duval County with the Black community in Leon and Gadsden Counties to create a North Florida district that satisfies *Apportionment I* and the non-diminishment standard, so long as that remedy is consistent with the courts' rulings.

**V. Trial Court Schedule**

- A. The Parties propose to submit simultaneous, tailored briefing on the outstanding legal issues by Wednesday, August 16.
- B. The Parties propose to respond to each other's briefs by Monday, August 21.
- C. The Parties propose the Court hear oral argument on Thursday, August 24.

**VI. Appellate Proceedings**

- A. The Parties agree that any written order from this Court declaring the Enacted Map to be valid or invalid or enjoining the administration of elections in any district contained in the Enacted Map can be immediately appealed and that any notice of appeal will be filed within two calendar days of this Court issuing its written order.
- B. The Parties agree to jointly seek pass-through jurisdiction to the Florida Supreme Court within two days after an appeal is docketed with the First District.
- C. The Parties agree to file a joint motion to expedite briefing, oral argument, and resolution of the appeal by the earliest of the following dates: (1) two days after the Florida Supreme Court accepts pass-through jurisdiction or (2) two days after the First District denies certification.
- D. Assuming the Parties' joint suggestion for certification is granted, the Parties will propose a schedule that will permit resolution by the Florida Supreme Court by December 31, 2023, to allow the Florida Legislature to take up any remedial map, if necessary, during the 2024 legislative session beginning on January 9, 2024 for enactment no later than April 1, 2024.<sup>3</sup>

**VII. Remedy**

- A. If Plaintiffs prevail on Count I before this Court and, as of April 1, 2024, the Court's decision has not been reversed on appeal, the Parties agree to the following:

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<sup>3</sup> In the event the First District denies certification, the Parties agree to work in good faith to propose an expedited schedule to allow for resolution of all appellate proceedings in time for the Florida Legislature to take up any remedial plan, if necessary, during the 2024 regular legislative session.

- If the Legislature fails to enact a remedial map by April 1, 2024, or if the Legislature enacts<sup>4</sup> a remedial map by April 1, 2024 but Plaintiffs inform Defendants by April 3, 2024 of their position that the remedial map does not remedy the diminishment in the Enacted Map, the Parties will jointly ask this Court to vacate the automatic stay to conduct remedial proceedings. In agreeing to this paragraph, Defendants do not waive their right to assert in the remedial proceeding that the remedial map enacted by the Legislature remedied the diminishment in the Enacted Map.
  - If the Plaintiffs contend that the remedial map enacted by the Legislature does not remedy the diminishment in the Enacted Map, then Plaintiffs may challenge the enacted remedial map before this Court on an expedited basis. Defendants will not oppose an expeditious review.
  - The Parties agree that any proposed remedial map submitted to the Court shall be tailored to address the diminishment violation in North Florida and shall only modify other districts in the Enacted Map to the extent necessary to remedy Plaintiffs' diminishment claim.
  - If the Legislature fails to enact a remedial map by April 1, 2024 that will take effect for the 2024 congressional elections, or if the Court agrees with Plaintiffs that the Legislature's enacted remedial map does not remedy the diminishment in the Enacted Map, neither Plaintiffs nor Defendants will oppose the Court's adoption of or seek a stay of **Exhibit 2** (assuming **Exhibit 2** is consistent with the ruling of an appeals court).
  - The remedial map ordered by the Court will take effect on April 30, 2024 absent a contrary decision by an appellate court on or before that date.
- B. If Plaintiffs do not prevail before this Court but succeed on appeal on or before April 1, 2024, the same remedial provisions as set forth in Section VII (A) apply.
- C. The Parties agree that if a remedial map is in place by April 30, 2024, and a decision in favor Plaintiffs on Count I has not been reversed by April 30, 2024, the remedial map shall serve as the map for the 2024 congressional election unless otherwise ordered by a court of competent jurisdiction.
- D. Defendant Secretary of State agrees to assist any affected Supervisor of Elections with implementing a remedial map such that the map can and would be implemented for the 2024 congressional elections.

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<sup>4</sup> For purposes of this stipulation, “enact” includes all steps necessary for a bill to become a law under Article III of the Florida Constitution.

Dated: August 11, 2023

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I HEREBY CERTIFY that on August 11, 2023, I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

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