

1D23-2252; L.T. 2022-CA-666

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

CORD BYRD, in his official capacity as Florida Secretary of State;
the FLORIDA SENATE; and the FLORIDA HOUSE OF
REPRESENTATIVES,

Appellants,

v.

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., ET AL.,

Appellees.

**JOINT TIME-SENSITIVE SUGGESTION
FOR PASS-THROUGH CERTIFICATION**

Appellants and Appellees jointly suggest that the trial court's Final Order After Hearing and Final Judgment should be certified for immediate resolution by the Florida Supreme Court. Fla. R. App. P. 9.125(c); Art. V, § 3(b)(5), Fla. Const.

I. This appeal presents issues of great public importance.

The trial court's judgment on appeal addresses congressional redistricting issues of great public importance. The trial court declared Florida's current congressional redistricting plan (the "Enacted Plan") to be unconstitutional under the non-diminishment

provision of article III, section 20(a) of the Florida Constitution. The trial court rejected Appellants' arguments that the non-diminishment provision cannot be applied in North Florida consistent with the Equal Protection Clause of the United States Constitution. And the trial court enjoined Florida's Secretary of State from implementing or conducting any elections for the U.S. House of Representatives using the Enacted Plan.

This Court has repeatedly found that redistricting cases involve issues of great public importance. *See League of Women Voters of Fla. v. Detzner*, 178 So. 3d 6, 7 (Fla. 1st DCA 2014) (certifying trial court judgment for direct review and concluding that there could not be "any reasonable argument about the importance of the case"); *Non-Parties v. League of Women Voters of Fla.*, 150 So. 3d 221, 222 (Fla. 1st DCA 2014) (en banc) (certifying trial court orders in redistricting case for direct review). The Florida Supreme Court has also acknowledged the importance of the issues addressed in redistricting litigation. *See League of Women Voters of Fla. v. Data Targeting, Inc.*, 140 So. 3d 510, 511 (Fla. 2014) (granting petition for constitutional writ in light of "the importance and statewide significance" of the underlying redistricting case); *In re Senate Jt. Resol. of Leg.*

Apportionment 1176, 83 So. 3d 597, 614 (Fla. 2012) (“*Apportionment I*”) (recognizing the Court’s “important responsibility to ensure that the joint resolution of apportionment comports with both the United States and Florida Constitutions”).

This case, which renders a merits determination and invalidates an existing congressional plan, is surely as important as the cases this Court certified in the last redistricting cycle. Just last year, the Florida Supreme Court acknowledged “the importance of the issues presented by the Governor” in a request for an advisory opinion regarding the application of the Florida Constitution’s non-diminishment provision to former Congressional District 5. *Adv. Op. to Gov. re Whether Article III, Section 20(a) of Fla. Const. Requires Retention of a Dist. in N. Florida.*, 333 So. 3d 1106, 1108 (Fla. 2022). The Supreme Court declined to grant an advisory opinion at that time, noting that judicial resolution of the “complex federal and state constitutional issues implicated by the Governor’s request” would be aided by a record developed in the circuit court. *Id.* at 1108. This

appeal arises after the entry of a final judgment by the circuit court on a factual record.¹

II. This appeal requires immediate resolution by the Florida Supreme Court.

This appeal requires immediate resolution by the Florida Supreme Court to provide certainty to voters, potential candidates, and elections officials regarding the configuration and validity of Florida’s congressional districts sufficiently in advance of the 2024 elections.

Given the inherently time-sensitive issues presented in elections cases, redistricting and other election-related cases are routinely certified for immediate resolution by the Florida Supreme Court. *See, e.g., Detzner*, 178 So. 3d at 7–8 (certifying trial court judgment in redistricting case in October 2014 to ensure sufficient time for Florida Supreme Court review before the 2016 election cycle); *Detzner v. League of Women Voters of Fla., Inc.*, Case No. 1D18-3529

¹ Although a prior panel of this Court denied certification of the trial court’s earlier order granting a temporary injunction, this appeal of the trial court’s final judgment on the merits plainly does not involve “a wholly procedural matter . . . which the supreme court has repeatedly and clearly addressed.” Order, *Byrd v. Black Voters Matter Capacity Bldg. Inst.*, No. 1D22-1470 (Fla. 1st DCA May 24, 2022).

(Fla. 1st DCA Aug. 22, 2018) (certifying trial court judgment addressing ballot title and summary of proposed revision to Florida constitution); *Dep't of State v. Fla. Greyhound Ass'n*, Case No. 1D18-3260 (Fla. 1st DCA Aug. 6, 2018) (certifying trial court judgment addressing ballot title and summary of proposed revision to Florida constitution); *Am. Civil Liberties Union of Fla. v. Hood*, 881 So. 2d 664, 666 (Fla. 1st DCA 2004) (certifying trial court judgment declining to remove proposed constitutional amendment from the ballot); *Harris v. Coal. to Reduce Class Size*, 824 So. 2d 245, 248 (Fla. 1st DCA 2002) (certifying trial court order enjoining Secretary of State from placing analysis and fiscal impact statement for ballot initiatives on general election ballot); *cf.* Fla. R. Gen. Prac. & Jud. Admin. 2.215(g) (identifying “challenges involving elections” as “priority cases” that should be expedited “to the extent reasonably possible”).

To aid in timely resolution of the issues, the parties will propose an expedited briefing schedule to resolve appellate proceedings before the Florida Legislature convenes on January 9, 2024, for its next regular session. This expedited schedule would afford the Legislature an opportunity to enact a remedial plan, if necessary, before congressional districts must be finalized ahead of the 2024 elections.

It would also accommodate the potential need for additional remedial proceedings by the trial court on remand. And this expedited schedule would provide sufficient time for Florida’s elections officials at the state and local level—many of which are non-parties to this proceeding—to implement any changes to Florida’s Enacted Plan that might be required following the appellate and potential remedial processes.

The Florida Department of State will begin accepting qualifying documents for candidates seeking to run for the United States House of Representatives on April 8, 2024. § 99.061(8), Fla. Stat. Subsequent statutory deadlines for the printing and mailing of primary election ballots will arrive in quick succession thereafter. Given the time that will be required for the potential post-appeal proceedings described above, “[t]here is insufficient time for this court to provide a first-tier review prior to the issues being heard by the Supreme Court of Florida.” *Hood*, 881 So. 2d at 666. A prompt order certifying this appeal for immediate resolution by the Florida Supreme Court would give that Court “as much time as reasonably possible so that it might proceed in a relatively orderly manner.” *Harris*, 824 So. 2d at 248.

CERTIFICATE OF COUNSEL

The undersigned attorneys express a belief, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the Supreme Court and is of great public importance.

CONCLUSION

This Court should certify the trial court's Final Order after Hearing and Final Judgment to be of great public importance and to require immediate resolution by the Florida Supreme Court.

Respectfully submitted,

/s/ Andy Bardos

ANDY BARDOS
Fla. Bar No. 822671
GRAYROBINSON, P.A.
301 S. Bronough St.,
Suite 600
Tallahassee, FL 32301
(850) 577-9090
andy.bardos@gray-robinson.com
vanessa.reichel@gray-robinson.com

*Counsel for the Florida House of
Representatives*

BRADLEY R. McVAY
Fla. Bar No. 79034
JOSEPH S. VAN DE BOGART
Fla. Bar No. 84764
ASHLEY DAVIS

/s/ Daniel Nordby

DANIEL E. NORDBY
Fla. Bar No. 14588
GEORGE N. MEROS, JR.
Fla. Bar No. 263321
TARA R. PRICE
Fla. Bar No. 98073
SHUTTS & BOWEN LLP
215 S. Monroe St.,
Suite 804
Tallahassee, FL 32301
(850) 241-1717
DNordby@shutts.com
GMeros@shutts.com
TPrice@shutts.com
CHill@shutts.com

CARLOS REY
Fla. Bar No. 11648
KYLE GRAY
Fla. Bar No. 1039497
FLORIDA SENATE
404 South Monroe Street
Tallahassee, Florida
32399
(850) 487-5855
Rey.Carlos@flsenate.gov
Gray.Kyle@flsenate.gov

*Counsel for the Florida
Senate*

/s/ Abha Khanna

ABHA KHANNA*
ELIAS LAW GROUP LLP
1700 Seventh Ave.,
Suite 2100

Fla. Bar No. 48032
FLORIDA DEPARTMENT OF STATE
R.A. Gray Building
500 S. Bronough St.
Tallahassee, FL 32399
(850) 245-6536
Brad.Mcvay@dos.myflorida.com
Joseph.VandeBogart@dos.myflorida.com
Ashley.davis@dos.myflorida.com

/s/ Mohammad O. Jazil

MOHAMMAD O. JAZIL
Fla. Bar No. 72556
GARY V. PERKO
Fla. Bar No. 855898
MICHAEL BEATO
Fla. Bar No. 1017715
**HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC**
119 S. Monroe St.,
Suite 500
Tallahassee, FL 32301
(850) 270-5938
mjazil@holtzmanvogel.com
gperko@holtzmanvogel.com
mbeato@holtzmanvogel.com

Taylor A.R. Meehan*
Cameron T. Norris*
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
(703) 243-9423
taylor@consvoymccarthy.com
cam@consvoymccarthy.com

*admitted pro hac vice

Seattle, WA 98101
(206) 656-0177
akhanna@elias.law

CHRISTINA A. FORD
Florida Bar No. 1011634
JOSEPH N. POSIMATO*
JYOTI JASRASARIA*
JULIE ZUCKERBROD*
ELIAS LAW GROUP LLP
250 Massachusetts Ave.
NW, Suite 400
Washington, D.C. 20001
(202) 968-4490
cford@elias.law
jposimato@elias.law
jjasrasaria@elias.law
jzuckerbrod@elias.law

*admitted pro hac vice

FREDERICK S. WERMUTH
Florida Bar No. 0184111
THOMAS A. ZEHNDER
Florida Bar No. 0063274
QUINN B. RITTER
Florida Bar No. 1018135
**KING, BLACKWELL,
ZEHNDER & WERMUTH,
P.A.**
P.O. Box 1631
Orlando, FL 32802
(407) 422-2472
fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com
qritter@kbzwlaw.com

Counsel for Plaintiffs

HENRY C. WHITAKER (FBN 1031175)
DANIEL W. BELL (FBN 1008587)
JEFFREY PAUL DESOUSA (FBN 110951)
DAVID M. COSTELLO (FBN 1004952)

Office of the Attorney General

The Capitol, PL-01

Tallahassee, FL 32399

(850) 414-3300

henry.whitaker@myfloridalegal.com

Counsel for Florida Secretary of State

CERTIFICATE OF COMPLIANCE WITH RULE 9.045(e)

Pursuant to Florida Rule of Appellate Procedure 9.045(e), the undersigned certifies that this Suggestion of Certification complies with the word limit in Rule 9.125(e) and contains 1,120 words. In addition, the undersigned certifies that the applicable font requirements of Rule 9.045(b) have been met.

/s/ Daniel Nordby
Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 8, 2023, a copy of the foregoing was filed via electronic means through the Florida Courts E-Filing portal and was served via electronic mail on the parties listed below:

Frederick S. Wermuth
Thomas A. Zehnder
King, Blackwell, Zehnder
& Wermuth, P.A.
P.O. Box 1631
Orlando, Florida 32802
fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com

Abha Khanna
Jonathan P. Hawley
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
akhanna@elias.law
jhawley@elias.law

Attorneys for Plaintiffs-Appellees

*Attorneys for Plaintiffs-
Appellees*

Christina A. Ford
Joseph N. Posimato
Graham W. White
Harleen K. Gambhir
Elias Law Group LLP
10 G Street N.E., Suite
600
Washington, D.C. 20002
cford@elias.law
jposimato@elias.law
gwhite@elias.law
hgambhir@elias.law

*Attorneys for Plaintiffs-
Appellees*

Bradley R. McVay
Ashley Davis
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399
brad.mcvay@dos.myflorida.com
ashley.davis@dos.myflorida.com
stephanie.buse@dos.myflorida.com

*Attorneys for Defendant, Secretary of
State*

Mohammad O. Jazil
Gary V. Perko
Michael Beato
Holtzman Vogel Baran Torchinsky &
Josefiak LLC
119 South Monroe Street, Suite 500
Tallahassee, Florida 32301
mjazil@holtzmanvogel.com
gperko@holtzmanvogel.com
mbeato@holtzmanvogel.com
zbennington@holtzmanvogel.com

*Attorneys for Defendant, Secretary of
State*

/s/ Daniel Nordby
Attorney