

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

LAUREL M. LEE, in her official
capacity as Florida Secretary of State, et
al.,

Appellants,

v.

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

Appellees.

Case No.: 1D22-1470
L.T. No.: 2022-ca-000666

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APPELLEES' SUGGESTION FOR CERTIFICATION

Appellees Black Voters Matter Capacity Building Institute, Inc., Equal Ground Education Fund, Inc., League of Women Voters of Florida, Inc., League of Women Voters of Florida Education Fund, Inc., Florida Rising Together, Pastor Reginald Gundy, Sylvia Young, Phyllis Wiley, Andrea Hershorin, Anaydia Connolly, Brandon P. Nelson, Katie Yarrows, Cynthia Lippert, Kisha Linebaugh, Beatriz Alonso, Gonzalo Alfredo Pedroso, and Ileana Caban, respectfully suggest that the order under review by this Court should be certified for immediate review by the Florida Supreme Court and state:

1. Florida Rule of Appellate Procedure 9.125(a) authorizes this Court to certify that a judgment requires immediate resolution by the Supreme Court because

the issues are of great public importance. This is the procedure required to invoke the Florida Supreme Court's constitutional authority to review such decisions pursuant to Article V, Section 3(b)(5) of the Florida Constitution.

2. As the district court determined, "this case is one of fundamental public importance." Order at 1. The Secretary seeks to overturn the district court's order finding that Florida's 2022 congressional plan (the "Enacted Plan") violates Article III, Section 20 of the Florida Constitution by diminishing the ability of Black voters in North Florida to elect candidates of their choice and ordering the state to implement a remedial plan. In so ordering, the district court recognized that "time is of the essence" in a case like this one; for Florida voters to obtain relief in advance of the 2022 elections, Florida's election apparatus needs to begin implementing such a new plan within just few weeks.

3. The Secretary's appeal thus concerns the administration of the state's elections and the fundamental right to vote, issues the Florida Supreme Court has made clear are of exceeding public importance. Addressing precisely this issue last redistricting cycle, the Florida Supreme Court granted an extraordinary writ staying this Court's prior ruling on a challenge to a districting plan because of "the importance and statewide significance of" the issues at stake and noted that this Court could certify its decision in that appeal for Supreme Court review in part due to "the statewide importance of [the] litigation." *League of Women Voters of Fla. v.*

Data Targeting, Inc., 140 So. 3d 510, 511, 514 (Fla. 2014). Appreciation for the public interest at stake in districting litigation pervaded the Court’s decisions throughout the cycle. *See, e.g., League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 370 (Fla. 2015) (describing Fair Districts Amendment as “designed to restore the core principle of republican government”) (internal quotation marks omitted); *In re S. J. Res. of Legis. Apportionment 1176*, 83 So. 3d 597, 614 (Fla. 2012) (describing Court’s “important responsibility to ensure that the joint resolution of apportionment comports with both the United States and Florida Constitutions”); *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 262 (Fla. 2015) (“This Court has an obligation to provide certainty to candidates and voters regarding the legality of the state’s congressional districts.”) (internal quotation marks omitted). As the Court explained, “the right to elect representatives—and the process by which we do so—is the very bedrock of our democracy.” *In re S. J. Res. of Legis. Apportionment*, 83 So. 3d at 599-600.

4. The Court’s respect for the right to vote has carried forward. Just a few months ago, the Florida Supreme Court acknowledged the public importance of the issues at stake in this case when presented with Governor DeSantis’s request for an advisory opinion, inviting that Court to find CD-5 unconstitutional. The Court recognized “the importance of the issues presented by the Governor,” but declined his invitation, noting the (then) lack of a factual record necessary to the Court’s

considered adjudication of such weighty issues.¹ *See Advisory Op. to Gov.*, 333 So. 3d 1106, 1108 (Fla. 2022).

5. This Court too has determined that cases concerning the state's districting are of such great public importance and urgency that certification was warranted not only of an appeal addressing the merits of a challenge to the constitutionality of a districting plan, *League of Women Voters v. Detzner*, 178 So. 3d 6, 6-8 (Fla. 1st DCA 2014), but also one concerning a third-party discovery dispute concerning privilege and trade secret rights arising out of that claim, *Non-Parties v. League of Women Voters of Fla.*, 2014 WL 2770013, at *1 (Fla. 1st DCA June 19, 2014) (en banc). And this Court granted pass-through certification when those plaintiffs still had roughly two years to obtain relief before the next election. *League of Women Voters*, 178 So. 3d at 7 (granting pass through to ensure sufficient time for the Supreme Court to grant relief despite "plaintiffs['] acknowledge[ment] that the 2016 election is approximately two years away").

6. This appeal comes with yet more urgency. As the district court found, while there is still time to implement a remedial plan in time for the 2022 congressional elections, that window will likely close within a few weeks, *see* Order

¹ This case now has the factual record that the Florida Supreme Court desired, including specifically the required "functional analysis" needed to determine whether there has been diminishment in minority voters' ability to elect their candidates of choice. *See Advisory Op. to Gov.*, 333 So. 3d at 1108; *see also* Order at 7-10.

at 16-19, leaving Plaintiffs to suffer irreparable harm without chance for relief, *see id.* at 15; *see also League of Women Voters*, 178 So. 3d at 8 (“The decision to certify [an] appeal must not be made in isolation but rather in light of all of the facts and circumstances of the case.”).

7. This appeal, therefore, cannot wait for briefing, argument, and judgment in this Court, even under an expedited schedule. No matter how quickly this Court moves, the time the parties would spend briefing the issues at stake and the Court would spend weighing their competing arguments, would severely subtract from the time available for the Supreme Court to receive the same briefing and complete the same analysis in order to provide final word on the constitutionality of the Enacted Plan. As this Court explained in certifying related questions last cycle, “[t]o allow the appellate process to take its full course through the completion of review by this court followed by possible en banc review, could potentially put the supreme court in the position of having to delay the remedy.” *Id.* at 8. Similarly, this appeal requires immediate certification to the Supreme Court if Plaintiffs are to be granted relief in time for the 2022 elections.

WHEREFORE, the Plaintiffs respectfully request the Court certify the trial court’s order for immediate resolution by the Florida Supreme Court.

Rule 9.125(e)(3) Certificate

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 both of great public importance and will have a great effect on the administration of justice throughout the state.

Dated: May 13, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 13, 2022 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.

/s/ Frederick S. Wermuth

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