

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

CORD BYRD, in his 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

RECEIVED, 05/18/2022 10:13:21 AM, Clerk, First District Court of Appeal

**APPELLEES' EMERGENCY SUGGESTION FOR CERTIFICATION**

Appellees respectfully suggest that the trial court's Order Granting Emergency Motion Vacating Stay Pending Appeal ("Stay-Vacatur Order") should be certified for immediate review by the Florida Supreme Court and state:

1. Rule 9.125(a), Florida Rules of Appellate Procedure, authorizes this Court to certify that an order requires immediate resolution by the Florida Supreme Court because the issues are of great public importance. This is the procedure required to invoke the Supreme Court's constitutional authority to review such decisions pursuant to Article V, Section 3(b)(5) of the Florida Constitution.

2. On May 13, 2022, Appellees previously filed their pending suggestion ("First Suggestion") for certification of the trial court's Order Granting Motion for Temporary Injunction ("Injunction Order"). As explained in the First Suggestion, the trial court properly recognized that "this case is one of fundamental public

importance” and “time is of the essence.” Injunction Order at 1. Indeed, the immediately effective injunctive relief Appellees received is necessary in advance of the 2022 elections to prevent the irreparable constitutional injury that would result from running the election under Florida’s 2022 congressional plan (the “Enacted Plan”), which would clearly violate Article III, Section 20 of the Florida Constitution by diminishing – in fact, destroying – the ability of Black voters in North Florida to elect candidates of their choice. *See* Injunction Order at 10, 15-16.

3. Just as with the Secretary’s appeal of the Injunction Order, the instant Motion to Reinstate the Stay 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. Last redistricting cycle, the 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. Just a few months ago, the Supreme Court again acknowledged the public importance of the issues at stake in this case when Governor DeSantis asked the Court for an advisory opinion as to CD-5’s constitutionality. 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.<sup>1</sup> *See Advisory Op. to Gov.*, 333 So. 3d 1106, 1108 (Fla. 2022).

---

<sup>1</sup> This case now has the factual record that the 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.

5. This Court too has held that redistricting-related cases 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 roughly two years remained 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. A final Supreme Court determination is far more urgent here given the upcoming primary and general elections, and the need for Florida’s Supervisors to finalize their election plans. Less than 24 hours after Appellant filed this appeal, Plaintiffs filed their motion to vacate the automatic stay on May 13, 2022; and, although the trial court offered to hear the motion that same day, it deferred consideration until May 16, 2022, at Appellant’s request. Since entry of the Stay-Vacatur Order on May 16, 2022, two more days passed before Appellant filed his instant motion to reinstate the stay, which seeks a stay that threatens to moot the injunctive relief without which Plaintiffs will suffer irreparable harm to established

constitutional rights. *See* Stay-Vacatur Order at 3 (finding that “[m]aintaining the stay and failing to quickly determine the case on the merits, will force Plaintiffs and many North Florida voters to cast their votes according to an unconstitutional congressional district map.”); *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. At this point, no matter how quick, this Court’s review of the Stay-Vacatur Order in this Court would severely constrain, if not prevent, the Supreme Court from issuing a final ruling on injunctive relief securing fundamental constitutional rights in time for the 2022 elections. 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. More so now, the Stay-Vacatur Order requires immediate certification to the Supreme Court to resolve the merits of relief in time for the 2022 elections.

WHEREFORE, Appellees respectfully request, on an emergency basis, that the Court certify the trial court’s Stay-Vacatur Order for immediate resolution by the Florida Supreme Court and that Appellant be ordered to respond, if at all, to this filing by the end of the day on May 19, 2022.

### 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 18, 2022

Respectfully submitted,

/s/ Frederick S. Wermuth

Frederick S. Wermuth

Florida Bar No. 0184111

Thomas A. Zehnder

Florida Bar No. 0063274

**KING, BLACKWELL, ZEHNDER  
& WERMUTH, P.A.**

P.O. Box 1631

Orlando, Florida 32802

Telephone: (407) 422-2472

Facsimile: (407) 648-0161

fweremuth@kbzwlaw.com

tzehnder@kbzwlaw.com

Christina A. Ford

Florida Bar No. 1011634

Joseph N. Posimato+

**ELIAS LAW GROUP LLP**

10 G Street NE, Suite 600

Washington, D.C. 20002

Phone: (202) 968-4490

Facsimile: (202) 968-4498

cford@elias.law

jposimato@elias.law

*Counsel for Plaintiffs*

*+Admitted Pro hac vice*

John M. Devaney+

**PERKINS COIE LLP**

700 Thirteenth Street N.W., Suite 600

Washington, D.C. 20005

Telephone: (202) 654-6200

Facsimile: (202) 654-6211

jdevaney@perkinscoie.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 18, 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

Frederick S. Wermuth  
Florida Bar No. 0184111

*Counsel for Plaintiffs*

**SERVICE LIST**

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

Mohammed O. Jazil  
Michael Beato  
Holtzman Vogel Baran Torchinsky  
& Josefiak, PLLC  
119 S. Monroe Street, Suite 500  
Tallahassee, FL 32301  
mjazil@holtzmanvogel.com  
mbeato@holtzmanvogel.com

*Counsel for Florida Secretary of State*

Andy Bardos, Esq.  
GrayRobinson, P.A.  
301 S. Bronough Street, Suite 600  
Tallahassee, FL 32302  
andy.bardos@gray-robinson.com

Henry C. Whitaker  
Daniel W. Bell  
Jeffrey Paul DeSousa  
David M. Costello  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399  
henry.whitaker@myfloridalegal.com  
daniel.bell@myfloridalegal.com  
jeffrey.desousa@myfloridalegal.com  
david.costello@myfloridalegal.com  
jenna.hodges@myfloridalegal.com

*Counsel for Florida Attorney General*

Daniel E. Nordby  
Shutts & Bowen LLP  
215 S. Monroe Street  
Suite 804  
Tallahassee, FL 32301

*Counsel Chris Sprowls and Thomas J.  
Leek*

ndordby@shutts.com

*Counsel for Florida Senate, Ray  
Rodrigues, and Wilton Simpson*

RETRIEVED FROM DEMOCRACYDOCKET.COM