

IN THE SUPREME COURT OF FLORIDA

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

Petitioners,

v.

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

Respondents.

Case No.: SC22-685

L.T. No.: 1D22-1470

2022-ca-000666

**APPENDIX OF REPLY IN SUPPORT OF EMERGENCY PETITION
FOR CONSTITUTIONAL WRIT**

VOLUME VIII

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 27, 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.

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Black Voters Matter Capacity Building Institute, Inc.

vs.

Laurel M. Lee

Hearing Before:

Judge J. Layne Smith

May 03, 2022

PHIPPS REPORTING

Raising the Bar!

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

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

Plaintiffs,
vs.

Case No.: 2022-ca-000666

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

Defendants.

TRANSCRIPT OF PROCEEDINGS

Status Conference

PAGES 1 - 47

DATE TAKEN: Tuesday, May 3, 2022
TIME: 2:36 p.m. - 3:26 p.m.
PLACE: Via Zoom Platform
BEFORE: J. Layne Smith, Circuit Judge

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were stenographically reported by:

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20

21 CERTIFICATE OF REPORTER

47

22

23

24

25

1 Thereupon,

2 The following proceedings began at 2:36
3 p.m.:

4 MR. WERMUTH: My name is Fritz Wermuth and
5 I'm here on behalf of the plaintiffs. And I'm
6 accompanied by John Devaney who will be
7 speaking for the plaintiffs.

8 THE COURT: Very good.

9 MR. WERMUTH: I'm not aware of anyone else
10 from the plaintiffs who is missing. I know we
11 have Abha Khanna who is counsel for the
12 plaintiffs as well. And Jonathan Hawley and
13 Joe Posimato. And then my assistant, Angie
14 Price, is on as well.

15 THE COURT: All right. Very good.
16 Welcome, everyone, on that end.

17 Let me ask for the people here on behalf
18 of the defendants to make your appearance.

19 MR. JAZIL: Your Honor, Mohammad Jazil on
20 behalf of Secretary Lee.

21 THE COURT: Thank you, sir.

22 MR. FARUQUI: Good afternoon. Bilal
23 Faruqui on behalf of Attorney General Moody.

24 THE COURT: Thank you.

25 MR. BARDOS: Your Honor, good afternoon.

1 Andy Bardos with the Gray Robinson Law Firm on
2 behalf of Speaker Sprowls and Chairman Lee, the
3 two Florida House defendants.

4 THE COURT: Got it. All right. Go ahead.
5 Anyone else?

6 MR. NORDBY: Good afternoon, Judge. Dan
7 Nordby from Shutts & Bowen here on behalf of
8 the Florida Senate defendants.

9 THE COURT: Thank you, Mr. Nordby.

10 All right. Anyone else that we've missed
11 out of the group?

12 All right. So, we have a case that
13 requires an expedited timeframe. So, I take it
14 everybody is in -- it's extraordinary from the
15 standpoint of accepting service or stepping in
16 now without going through the service of
17 process and 40 days to answer, those types of
18 things.

19 I see where there's been a three-hour
20 request and some time set aside this next week
21 for a temporary injunction hearing. Is that
22 what we need to do as opposed to a trial of the
23 case? In other words, it may be that
24 everybody's on the same page and you say, yeah,
25 the temporary injunction would do what we need.

1 And I guess if I'm envisioning that, we would
2 have an evidentiary hearing, whatever decision
3 I made would then go to the DCA who would then
4 send to the Supreme Court or maybe it pauses at
5 the DCA, they render a decision and order on
6 it, and then it goes to the Supreme Court. But
7 my understanding is candidates need to know
8 what their district is, whether they're in or
9 not, depending on what their district would be.
10 And the Supervisors of Election need to know --
11 I think I've read May the 27th, but sometime
12 before the end of this month so that we don't
13 have a chaotic ballot down the line.

14 So, is it a matter of if it's a temporary
15 injunction, whichever way it goes, that's what
16 would happen for this next election cycle,
17 August of 2023, November of -- I don't mean
18 2023. 2022. November of 2022. And then if we
19 came back and had a trial, if there was a
20 difference, then that would affect subsequent
21 elections? Or do we actually need to have a
22 trial rather than a temporary injunction
23 hearing where everybody lays out whatever
24 evidence they would have and wrap it up, again,
25 by the end of next week probably so we could

1 get it to the next appellate court in time to
2 get us an answer that the candidates and the
3 Supervisors of Election could work with?

4 MR. DEVANEY: Your Honor, John Devaney for
5 the plaintiffs. May I respond?

6 THE COURT: Yes, sir.

7 MR. DEVANEY: Thank you. And thank you
8 for letting me appear pro hac vice, Your Honor.
9 I appreciate it.

10 THE COURT: Yes, sir.

11 MR. DEVANEY: Your Honor, the plaintiffs'
12 strong view is that we should proceed to a
13 preliminary injunction hearing next week
14 because we need expedited relief. And the
15 issues that were presented in our preliminary
16 injunction motion are really quite
17 straightforward.

18 As Your Honor may be aware, they focus on
19 northern Florida, and in particular,
20 Congressional District 5. And the facts should
21 be largely undisputed that that former district
22 has been dismantled and that black voters who
23 were in that district no longer have the
24 ability to elect preferred candidates of their
25 choice. About 370,000 black voters in that

1 district have been dispersed to surrounding
2 majority-white districts. And therefore there
3 shouldn't be much dispute that their ability to
4 elect has been diminished. And diminishment of
5 minority voter rights in that way is a clear
6 violation of the Florida Constitution.

7 So we think the issue we presented, Your
8 Honor, is really straightforward. We
9 deliberately limited it to that district and to
10 northern Florida so that the Court can
11 hopefully enter immediate relief on a very
12 straightforward record with very clear legal
13 arguments as to why the dismantling of
14 Congressional District 5 is in violation of the
15 Fair District Amendment to the Constitution.

16 THE COURT: Well, Mr. Devaney, I have read
17 the entire complaint. I've read, I won't tell
18 you every piece of paper that has been filed,
19 but I've read a lot of them. And I bogged down
20 a little bit of the statistics, I may need
21 somebody to get me a little bit more
22 explanation on. But it's more than just
23 Congressional District 5.

24 And so I'm back to this, it doesn't
25 surprise me if everybody said, you know,

1 there's not a whole lot at issue as far as
2 factual disputes, it's here's what happened and
3 does it meet the standard or not. But why is a
4 temporary injunction hearing superior to, let's
5 call it a trial, and if we need an extra hour
6 or three hours or three days, we get it done?
7 In other words, rip the Band-Aid off, here's
8 the answer, go to the appellate court and
9 whatever decision the appellate court winds up
10 rendering, then everybody knows what they've
11 got.

12 MR. DEVANEY: Your Honor, the response to
13 that is our complaint raises issues that go
14 significantly beyond what we've asked for in
15 our preliminary injunction motion. For
16 example, our complaint alleges that there is
17 intent on the part of the legislature and the
18 governor in dismantling CD 5 and the way other
19 districts in the map were drawn.

20 By contrast -- and that ripples well
21 beyond CD 5 within our complaint.

22 By contrast, in our PI motion, we're
23 simply saying that the effect of dismantling CD
24 5 is to diminish voting rights of black voters
25 in that district. So it's a much narrower

1 issue than what is set forth in our complaint.

2 And the issues in our complaint, including
3 the issues of intent, the issues related to
4 other districts, are going to require some
5 discovery. And realistically, that can't be
6 accomplished in the short timeframe we have
7 before us which is why we framed our PI motion
8 in a very narrow fashion focusing on a district
9 where the facts should largely be
10 uncontroverted.

11 THE COURT: All right. Well, how's it
12 going to work as far as a candidate deciding
13 whether they're going to run or not and not
14 knowing what their district is if it's not been
15 decided what the other 27 districts are?

16 MR. DEVANEY: Your Honor, the way -- the
17 remedy that we have offered and requested is
18 simply to swap out CD 5. And we have two other
19 maps that the legislature passed in one form or
20 another. The Senate map, and that map was
21 passed by both the House and the Senate, that
22 maintains the east/west configuration of
23 Congressional District 5. And the remedy we're
24 seeking here is simply to swap in that version
25 of CD 5, which will largely leave the rest of

1 the districts unchanged. And so there
2 shouldn't be much difficulty at all in
3 candidates determining what districts they'll
4 be running in because of the narrowness of the
5 remedy that we're seeking in PI motion.

6 Your Honor, the other point I would make
7 in connection with our complaint is we've also
8 alleged partisan gerrymandering in our
9 complaints. And that, too, is going to require
10 some discovery. It's not the subject of our PI
11 motion. And that's another reason why
12 proceeding immediately to a trial on the merits
13 would be not feasible in this situation.

14 THE COURT: All right. But from your
15 perspective, the plaintiffs' perspective, if
16 the court rules whether with you or against you
17 or somewhere in between on Congressional
18 District 5 that has been signed by the Governor
19 but different from what originally was passed
20 by the House and the Senate, that that would
21 put the State in a position that Supervisor of
22 Election and candidates to go forward with the
23 rest of the districts and whatever happens with
24 District 5?

25 MR. DEVANEY: That is correct, Your Honor.

1 And as Your Honor's probably aware, we put in
2 two affidavits from Supervisors of Election in
3 Broward and Leon County who have affirmed that
4 from their perspective, they would be able to
5 implement a map that changed the configuration
6 of CD 5 and largely left the other districts
7 unchanged in a manner which we're proposing.

8 THE COURT: All right. Other than hearing
9 from you, let me hear -- and I don't know if
10 there's going to be one lead spokesman on
11 behalf of the defendants. Or if I need to hear
12 from each of you, I'll be glad to, but what
13 says the defense?

14 MR. JAZIL: Your Honor, Mohammad Jazil on
15 behalf of the Secretary of State. I'll let my
16 friends, Mr. Nordby, Mr. Bardos, and
17 Mr. Faruqui speak for their respective clients.

18 But from the Department of State's
19 perspective, our perspective is this: It is
20 now too late to undo the map that has already
21 been enacted. The Florida Legislature passed
22 and the Governor signed a map, Supervisors of
23 Elections, candidates and others should be and
24 are relying on that map to prepare for the
25 elections that are upcoming. The elections

1 that are upcoming begin with the August
2 primary, the ballots for which need to be sent
3 out 45 days before the election.

4 Prior to those ballots being sent out,
5 there is an election (audio disruption) that
6 must be undertaken. My friend, Mr. Devaney,
7 pointed out that he has affidavits from two
8 supervisors, Leon County Supervisor Mark Earley
9 and Supervisor Scott in Broward County. I note
10 that Supervisor Scott in Broward County has
11 nothing to do with the relief that's being
12 sought because his purview is the southeast
13 Florida county that is not affected.

14 Second, I note that my friend Mr. Devaney
15 discussed swapping out Congressional District 5
16 as enacted by the legislature, 4 and 5, in
17 northeast Florida with (audio disruption)
18 that's already on the books as Congressional
19 District 5 or some version of what the
20 legislature passed and the Governor vetoed.
21 That alternative congressional district, Your
22 Honor, spans eight counties. So we need to
23 assess whether or not the Supervisors of
24 Elections in those eight counties have the
25 time, the (audio distortion) to implement that

1 new map prior to elections being administered.

2 Our perspective is it's too late to
3 provide the plaintiffs the remedy they seek.

4 In addition, Your Honor, we do disagree with
5 some of the factual underpinnings of the expert
6 reports that have been provided. To the extent
7 that there's data from the State's websites,
8 the State redistricting website, I doubt we
9 will dispute that. But the expert reports lay
10 out a theory of the case which we would like to
11 provide you with appropriate expert reports on
12 our side.

13 I do agree with Mr. Devaney, though, their
14 complaint raises issues that would require
15 certain legwork. The partisan intent claims,
16 for example, and a few other issues. So I'll
17 stop there, Your Honor, and see if my friends
18 for the defense have anything further to add.

19 MR. BARDOS: Nothing to add, Your Honor,
20 for the House defendants.

21 THE COURT: Mr. Nordby?

22 MR. NORDBY: Judge, I just mention and I
23 neglected to mentioned earlier that Jason Rojas
24 for the Florida Senate in-house counsel is also
25 here on the call.

1 Nothing to add specific to the timing.
2 The motion for injunctive relief doesn't appear
3 to seek any relief as against the Florida
4 Senate. Just as a procedural matter, I note
5 that the Senate was -- was just recently
6 served, has not filed an answer yet, so the
7 pleadings aren't closed. And I'm not sure that
8 the issue would be -- that the case would be at
9 issue for trial as opposed to consideration of
10 a preliminary injunction.

11 But as beyond that on the timing, I defer
12 to Mr. Jazil and Secretary of State.

13 THE COURT: Okay. Anyone else?

14 MR. FARUQUI: Your Honor, on behalf of the
15 Attorney General, the Attorney General doesn't
16 take any position regarding the scheduling
17 concerns.

18 THE COURT: Understood. All right.

19 Perhaps none of us asked to be in this
20 position and yet here we are.

21 This is not a regular case that we can
22 say, you got 120 days to get service of process
23 and then if you're the State, you get 40 days
24 to answer. And then we'll come up with a
25 discovery schedule and a uniform trial order

1 and all those other things because candidates
2 need to know what congressional district is
3 their district to make a decision on whether
4 they're running in it or if it's a lost cause,
5 to not run in it. And these things need to
6 have been determined so the Supervisor of
7 Election can avoid chaos and fix -- to put
8 together the ballots for the different
9 precincts that they've got in an orderly way.

10 So we don't have the luxury of time. But
11 it's also, to me, not an acceptable answer to
12 say, stinks to be the plaintiffs, and there's
13 just not time to give you any remedy at all
14 here because just the timing the way this
15 happened. You have a decennial population
16 count. We have a real allocation of
17 Congressional seats where Florida picks up an
18 additional Congressional seat, good for us,
19 that gives us more clout with the federal
20 government, one more electoral vote and all
21 those things. And it is what it is according
22 to the formula.

23 But we have constitutional -- State
24 constitutional language and federal law that
25 we've all got to abide by and work through on

1 this.

2 So we need to have, at a minimum, a
3 temporary injunction hearing. What would make
4 the most sense -- and I understand it's not
5 where the case is at issue and more than 20
6 days have gone past from the last, you know,
7 disturbance of the waters on the pleadings. We
8 don't have time to do that. But the
9 legislature had a special session, the Governor
10 very recently signed off on the law. So the
11 parts of government have done what they needed
12 to do to set the hook to have us here. The
13 plaintiffs, nobody can say they waited too late
14 to press their point because I don't know how
15 you -- any of us could have worked any faster
16 all in good faith to get where we're at.

17 So right now, my office had blocked off a
18 three-hour stretch of time to hold a temporary
19 injunction. I think you're calling it a PI,
20 preliminary injunction. But a temporary
21 injunction hearing, Wednesday the 11th from
22 9:00 to noon. Not trying to make y'all be
23 longer than you need to be, but I want to make
24 sure that I also give you any time that you
25 need to have.

1 So to the extent we need more time, I can
2 give you more time that day. To the extent
3 everybody could agree, wouldn't that be nice --
4 you know, couldn't we all just get along -- I
5 was going to say to the extent everybody could
6 agree, I can give you -- I will have the
7 ability to block off as much time as I need to
8 this next calendar week, even if that means a
9 senior judge or one of my colleagues has to
10 cover other things, that can be done because it
11 is important that we give this the seriousness
12 and attention it needs to to get it out of my
13 hands to the next court, the District Court of
14 Appeal and potentially to the Supreme Court or
15 up to the DCA to decide if it's a straight shot
16 from me to the Supreme Court or not.

17 If we have a temporary injunction hearing
18 on the 11th, is three hours enough? Does that
19 put the defense in a position where they can
20 get what witnesses, what exhibit put together
21 they need to put together to make their case?

22 MR. DEVANEY: Your Honor, from plaintiffs'
23 perspective, as I described earlier, our view
24 is that the issues we presented are really
25 straightforward and supported by the affidavits

1 and expert reports we've submitted as well as
2 obviously our legal argument. And we actually
3 think this is a matter that could be resolved
4 through oral argument without witnesses. Of
5 course, if Your Honor would like to hear from
6 our witnesses, we'll make them available.

7 But part of the benefit, if you will, the
8 narrowness of the relief we've requested is --
9 we think the facts are straightforward, they're
10 established by the affidavits we provided. And
11 it's not absolutely necessary for witnesses to
12 to be there unless Your Honor would like to
13 examine them.

14 THE COURT: Here's kind of the way that
15 works, collectively -- and here's the good
16 thing, we've got very good attorneys, very
17 seasoned attorneys, very professional attorneys
18 representing both sides. It's not anybody's
19 first rodeo. The attorneys can talk and agree
20 to either have witnesses with direct
21 examination, cross-examination, if I needed to
22 weigh in with a question to make sure I had --
23 I was getting it, I fully understand what's
24 being said, I would do that. Y'all could agree
25 that the plaintiffs are going to have

1 affidavits and there's going to be a stipulated
2 group of exhibits admitted, the defendant --
3 you could agree the defendants could have
4 counter affidavits or we could have testimony.
5 Does not matter to me which way it is, but if
6 the two of you can agree that, from a facts
7 standpoint, there is not a lot of issue so it's
8 not like, you know, whose credibility do you
9 believe about who ran the red light or who shot
10 Johnny or whatever the factual issue is, it's
11 just a matter of, here are certain facts that
12 are done, here's what happened that nobody
13 disputes, here may be a little bit of the spin
14 from both sides, not picking out one over the
15 other, and then you make your arguments, we can
16 do that.

17 I'm not going to tell you not to have a
18 live witness or somebody that gives direct
19 and -- examination who's subject to
20 cross-examination because that may be exactly
21 what we need. It will be up to everybody else
22 involved to decide whether y'all agree to
23 submit affidavits or you're going to have live
24 witnesses.

25 So if -- and I can see where that would

1 affect the length of time we need. So I've
2 already told you, I will make as much time
3 available as I need to not because that's not
4 necessarily easy for my schedule, and I don't
5 expect it to be easy for anybody else's
6 schedule either, but because it's important
7 that we take the time to do this, to do it
8 right so that when it does go to the appellate
9 court, both sides have had a full opportunity
10 to be heard, there's been a decision on the
11 merits regardless of what my decision is,
12 regardless, it will be appealed. And it goes
13 to the appellate court with the idea that they
14 know exactly what the evidence is, what I
15 ruled, why I ruled that, what case law I was
16 hanging my hat on, what language out of the
17 Constitution I was hanging my hat on, where
18 they'll have a de novo review and they can
19 decide -- and think about it this way, they've
20 got a lot more resources from the standpoint of
21 not only a multiple judge panel but the lawyers
22 that they had that worked for those judges. So
23 what that will do is that will put us in a
24 position to get everyone an answer that they
25 need so that we know what the district -- if

1 it's going to be limited to up or down. Fifth
2 District, as it has been before and was passed
3 out of the Senate and the House before Governor
4 DeSantis exercised his constitutional right to
5 veto before the special session and the new
6 configuration. So whichever that is.

7 And I did -- I was listening, and it also
8 made sense to me from what I had already read
9 as well as the maps I had looked at. If it's
10 old District 5 or the new District 5 -- if it's
11 old District 5, that is going to affect, I
12 think I heard eight other counties, could be.
13 But I know it's not a hundred percent the same
14 or we wouldn't be talking about it, right? So
15 there would be some in and out that people
16 would have to look at as far as how it affected
17 the district they were in and what precincts
18 were affected for different Supervisors of
19 Election. But that's why this needs to be done
20 in time so we can get it out of my hands as
21 soon as possible, next week if possible, to the
22 appellate courts so they can render the
23 decision quick enough for people to use.

24 If we get to the end of that process and
25 one of two things, if we are fortunate enough

1 where at the end and both sides said we rest
2 and I said, well you know what, I actually know
3 what my ruling is and here's what it is, I
4 would say that. Odds are, after hearing three
5 or four hours of testimony and argument, I'm
6 going to make sure I digest it and go back and
7 look at the case law on it as well as the
8 constitutional language to make sure that I'm
9 getting as right as I can. But I also
10 understand there's -- I need to -- the old
11 saying, good today is better than perfect
12 tomorrow may be. I mean, I don't want to get
13 it wrong but it's also important that I get an
14 answer out as quickly as possible so we can get
15 it in the hands of the next court.

16 So, it may well be that if we finish up at
17 noon, anywhere around that, if I can either
18 later that day or the next day, either later
19 that Wednesday afternoon or Thursday, I will
20 come back and say, all right, here's what I'm
21 going to rule and why, which means, depending
22 on who the prevailing party would be, I need
23 one side or the other to assist in drafting an
24 order for these reasons. Here's the evidence
25 for these reasons. In which case, we can get

1 something over to the appellate court as
2 quickly as possible.

3 I could do something that the other
4 judges, whether it's Judge Dempsey, Judge
5 Cooper, a number of judges I've seen them do in
6 the past where on these quick turnarounds, they
7 will say, I'm going to give you an oral ruling
8 and then I'm going to tell the -- whether it's
9 the plaintiffs or the defendants that's
10 happiest with that ruling -- or maybe neither
11 one of you are happy -- but either way,
12 somebody, you know, document it up or what do
13 we have to do to get it as quickly as possible
14 to the appellate court. Again, because they
15 have resources to look at it. And ultimately,
16 it is going to be the appellate court's review
17 and decision which holds. Whether they say I
18 agree with what Judge Smith did or I disagree
19 in part or -- disagree in part or Smith just
20 plain got it wrong, hope not, but whatever we
21 get, it's important that we get them in a
22 position where they can render their order in
23 time by the end of May so that the election can
24 happen, people can campaign, it can be
25 systemically put on the ballot with the right

1 precincts.

2 Have y'all talked about disclosure of
3 witnesses and exhibits? I know that the
4 plaintiffs -- the plaintiffs should have a
5 little bit of advantage in knowing what they're
6 doing because they're the one that called
7 everybody else to the party, right? So they
8 have been working and they have already filed a
9 number of things, like over a thousand pages,
10 so -- not that I'm counting it that way, but
11 just as far as what I've seen and what I'm
12 going to need to see from the other side, too.
13 I'll do the exact same thing. I try to read
14 what I can beforehand, not to form an opinion
15 as much as understand what I've got, what the
16 issues are likely to be, what I anticipate from
17 the other side, what I anticipate as far as
18 time requirements.

19 Have the sides discussed witnesses, what
20 those witnesses would say, and any additional
21 exhibits that the defense -- I'm sure the
22 defense would have exhibits that I'm not aware
23 about yet. Have y'all gotten there?

24 MR. DEVANEY: Your Honor, John Devaney
25 again for the plaintiffs, we have not had those

1 discussions among the parties. I will say that
2 this is a group of lawyers who have lived
3 together for about a decade, the prior
4 redistricting cycle, other voting matters. And
5 I'm pretty confident that we can work together
6 to come up with an arrangement with respect to
7 whether there's live testimony and also
8 exchange of exhibits and witnesses and the like
9 that is fair to everybody and it gives the
10 Court the necessary notice that it needs.

11 So, just from a history of all working
12 together, I'm confident we can do that.

13 And, Your Honor, one -- while I have the
14 floor, one issue we do need to think about is a
15 briefing schedule. We submitted our motion for
16 preliminary -- for temporary injunction. I
17 believe it was about eight days ago. I may
18 have that number wrong, but roughly a week ago.

19 THE COURT: Yep. Go ahead.

20 MR. DEVANEY: You know, we would ask -- we
21 anticipate a written response. We would ask
22 that that be filed promptly. They've had our
23 motion for roughly a week. And we would like
24 notice well in advance of Wednesday's hearing
25 of what their arguments are, what evidence they

1 intend to put forward in a response. We would
2 ask the Court to address that issue.

3 THE COURT: My guess is you could stand up
4 and tell me what they were going to say.
5 Coming up -- particularly since y'all have
6 worked together in other matters.

7 All right. So from the defense
8 standpoint, which is it -- in fairness to you
9 as well because this is not the only thing you
10 have to do but this is a very important thing.
11 So when is it that y'all would be in a position
12 to provide the plaintiffs with some, at least,
13 thumbnail sketch of here's what your argument's
14 going to be, here's what either testimony or
15 exhibits can expect in response?

16 MR. JAZIL: Your Honor, we were hoping to
17 file a written response in opposition on the
18 9th. And we accept including with that any
19 affidavits from lay witnesses as well as expert
20 reports.

21 MR. DEVANEY: Your Honor, you can imagine
22 my reaction to that. The 9th, I think, is the
23 day before the 10th, which is the date that the
24 hearing is scheduled --

25 THE COURT: Is it the 10th or the 11th?

1 MR. DEVANEY: Maybe I'm off a day.

2 THE COURT: I believe it's the 11th.

3 Again, not a long of time difference, but yeah.

4 MR. DEVANEY: Yeah. And that would be
5 quite prejudicial. They've been -- they've had
6 this motion for, as I said, roughly a week.
7 And they've also known this is coming.

8 Everyone knew this was going to be a map that
9 was going to be subject to legal challenge.
10 And I would request that we have meaningfully
11 more notice than that of their response brief
12 so that we can assess what evidence we need to
13 respond to it, what legal arguments we need to
14 craft in response to their response. And
15 filing this week in these circumstances seems
16 like the fair way to go.

17 I originally was going to suggest that
18 they file tomorrow by close of business, which
19 would be seven or eight days after they got our
20 brief. But certainly something this week
21 would --

22 THE COURT: Again -- all right. So if I'm
23 the plaintiff in the case, and I put
24 together -- and you have, you have worked very
25 diligently and you've put forward a pretty

1 streamlined product, so I applaud that. But
2 you didn't have a couple of days or eight days
3 to do it, you've had a lead up to now. So in
4 fairness to the defendants, particularly when
5 we're asking for an expedited -- you know,
6 everybody, five-alarm expedited basis,
7 everybody's just going -- in other words, this
8 is a little bit different than your regular
9 case. So it doesn't -- I would want more
10 notice than the Monday before the Wednesday
11 hearing. I think I've got those days of the
12 week right. And yet at the same time, I can
13 understand if I'm the defendant and just
14 absorbing this and figuring out what my
15 strategy is and lining up the people that would
16 be necessary to either get an affidavit or to
17 have available to testify live at trial or at
18 the hearing if that's the way it plays out.

19 It's not -- it doesn't shock my conscience
20 that they're saying, we'd really like through
21 the end of that weekend so that we can get
22 everything lined up right for filing on Monday.

23 So, I can't make everybody happy. And so
24 I do my best not to unnecessarily upset
25 anybody. But, Mr. Devaney, I think you may --

1 I don't know how you're going to be getting
2 anything better than that. Here's what I would
3 say, if the defense can do it sooner than that,
4 then out of professional courtesy, disclose
5 that and provide that to them sooner than that.
6 But if you can't, I can't say that I'm up in
7 arms that it would take to that because my
8 guess is you both know what your -- what you
9 would expect the other side to argue. And if
10 you had the ability -- you would have the
11 ability, every one of you, if you needed to
12 flip roles -- not that you would, but like if
13 you played for the Dallas Cowboys and got
14 traded to the Philadelphia Eagles, you know,
15 they could out you in your position and you'd
16 still play ball, right? So I don't think
17 either one of you is going to be surprised
18 necessarily by what the response is because as
19 you say, this has been out there in the offing
20 for a while.

21 That being said, no later than the 9th,
22 which I believe is the Monday. And if you can
23 do it sooner than that, please do. I need
24 y'all to talk beforehand as far as whether it's
25 going to be live witnesses or affidavits,

1 including any of the experts on that end.

2 If I need -- and it may be that -- I
3 believe I got a notebook -- what I had done is
4 I read online as much as I could, which is kind
5 of a crazy way to do it, just flipping through
6 the pages. But I believe the plaintiffs have
7 provided notebooks that have premarked versions
8 of the documents they have referenced and filed
9 with the clerk of court. That would be greatly
10 helpful if the defense would provide premarked
11 paper exhibits as well. If you file them with
12 the clerk, that's great, it's in the system,
13 that doesn't make it necessarily easy for me to
14 find something as opposed to just flipping to
15 Exhibit 10 where I can see it in paper and it's
16 tabbed as opposed to just having to guess where
17 Exhibit 10 starts in 900 pieces of paper
18 online.

19 The other thing about it is it makes it
20 much easier and streamlined for my office and
21 the clerk of court to provide marked exhibits
22 to the District Court of Appeal when whoever
23 doesn't like my decision appeals the decision
24 and then it goes over to appellate court. So
25 in other words, they've got a streamlined

1 record for that, too.

2 Anything else collectively everyone can
3 think of that we need to cover today? Anything
4 we need to incorporate in an order that needs
5 to be rendered before we have our temporary
6 injunction hearing on the 11th of May?

7 MR. DEVANEY: Your Honor, if I may. I had
8 a couple of questions or requests relating to
9 the schedule.

10 THE COURT: Yes, sir.

11 MR. DEVANEY: One is I recognize Your
12 Honor's ruling that they -- the defendants can
13 submit their response on Monday. I will say
14 Monday morning is quite a bit different than
15 late Monday. And if Your Honor's intent is to
16 give them the weekend, we would ask the
17 response be filed Monday morning so we have at
18 least that additional time to react to it.

19 I'll pause there and go to my other two
20 points.

21 THE COURT: All right. So defense, if the
22 Court were to say no later than noon on Monday,
23 that does give you the weekend. Anybody got
24 any big problem with that or is that livable?

25 MR. JAZIL: Your Honor, we'll make that

1 work.

2 THE COURT: Okay.

3 MR. FARUQUI: Your Honor?

4 THE COURT: Yes, sir.

5 MR. FARUQUI: Not a problem but a
6 question. Is that -- is the Court requiring
7 the defendants to respond or is that a deadline
8 to respond if we wish?

9 THE COURT: It's a deadline to respond if
10 you wish. If it turns out -- and I understand
11 on behalf of your client -- your client is part
12 of this because the constitutionality of the
13 statute is being questioned. So if your answer
14 is me, too, what the Senate said; me, too what
15 the House said; me, too, what the Secretary of
16 State said, that's either a very short filing
17 or I get that's what you're -- in other words,
18 you're more of an observer than a participant.
19 That's your role in this. If somebody wants to
20 be read, heard that way before the hearing
21 starts on the 11th, then they need to file
22 something by Monday at noon and make sure that
23 it is served on the plaintiffs.

24 All right. Mr. Devaney, back to you.

25 MR. DEVANEY: Your Honor, also having

1 lived with opposing counsel for the last decade
2 on and off, I strongly suspect that they've
3 already retained experts. And therefore we
4 would ask that if experts have been retained,
5 that they be identified before Monday so we --
6 which would give us at least a little bit of a
7 head start in preparing our reply to the
8 response if we choose to file one --

9 THE COURT: Normally on a trial order, the
10 Court would require the plaintiff first
11 identify who your witnesses are, including
12 experts, a short summary of what it is that
13 witness or an expert is going to testify about.
14 What area of expertise that area is an expert
15 is in. What exhibits are likely to be offered
16 into evidence or used, relied on at trial to
17 impeach witnesses, et cetera. And then a few
18 days after that, on my standard trial order for
19 a regular case, 15 days after that, the defense
20 needs to do the same thing.

21 We're on a very abbreviated, expedited
22 time schedule. And under the rule of
23 procedure, things are supposed to be expedited
24 as well. So to the extent everybody has not
25 exchanged a list of, here are the witnesses,

1 here are the exhibits, that needs to happen.
2 If we're going to have expert testimony,
3 particularly the guy to explain shapes and
4 compactness and statistics and whatever else
5 out of there -- and I'll remind everybody my
6 last statistics class, I think, was in college
7 in 1982, plus or minus, so it's not that I'm a
8 complete knucklehead when it comes to that but
9 it's been a while since I've had to think that
10 way.

11 So if you've got experts, then do we have
12 enough time for three hours on that end? But
13 what is a fair exchange between the parties
14 identifying witnesses? And also got to give
15 people an opportunity to make sure they line
16 the right person up. When would you want to
17 exchange witnesses and exhibits?

18 MR. DEVANEY: Our preference would be
19 tomorrow, Your Honor.

20 THE COURT: All right. What that tells me
21 is you already know what you intend to do. Not
22 sure if the defendants are there yet.

23 From the defense end, what is fair for you
24 and what would your intentions be?

25 MR. JAZIL: Your Honor, we do not have all

1 of witnesses lined up at the moment, so I would
2 reveal them no later than Friday. I don't plan
3 on hiding the ball. As soon as we have people
4 under contract, we will make the relevant
5 disclosures.

6 THE COURT: All right. And this is
7 Tuesday. We're already abbreviating everything
8 else, so that doesn't, you know, hit me as
9 overly late and delayed under the circumstances
10 either, Mr. Devaney. Is that -- certainly be
11 glad to hear from you on it, but if you say
12 here are the list of people and kind of a
13 summary of what we expect them to say and they
14 probably already have all of your exhibits
15 because it's probably everything that's already
16 been filed. What we'll do is we'll get the
17 defendants to do the same thing by Friday. So
18 that at least you have the weekend and, you
19 know, the first couple of days of next week to
20 line up whatever it is you might need to do in
21 response. Does that at least make sense?

22 MR. DEVANEY: We appreciate that, Your
23 Honor, that's great.

24 THE COURT: Okay.

25 MR. DEVANEY: My last point, and this is

1 intended to figure out if we can streamline, is
2 obviously we've alleged diminishment of black
3 voting rights through the dismantling of CD 5.
4 And it would be helpful for us to know whether
5 the defendants are going to contest whether
6 there is diminishment. We think it's crystal
7 clear and indisputable. If that's true, that's
8 going to help us prepare and streamline. And
9 so I just put it out there, whether defendants
10 are intending to contest diminishment.

11 THE COURT: They may not know the answer
12 to that question. If they do and want to
13 announce it, terrific. If they don't, they do
14 need to figure out what their answer is on that
15 fairly quick. So, again, I'm going to
16 recommend that everybody -- encourage everybody
17 to talk, tell -- I mean, disclose what it is
18 you intend to do, because both of you are in
19 the same position that you need to be able to
20 react and line up either -- whether it's
21 impeachment or a different witness to rebut or
22 whatever on that end.

23 So, defense, do you know your answer to
24 that question? I can anticipate what the
25 answer is, but it's not up to me to say.

1 MR. JAZIL: Your Honor, I'm not in a
2 position to share our answer to that just yet.

3 THE COURT: Understand. And it -- fair
4 game to you is to give you an opportunity to
5 sort through it and -- but what you will do is
6 disclose it when you know it.

7 MR. JAZIL: Yes, Your Honor. Thank you.

8 THE COURT: Okay. All right.

9 Mr. Devaney, anything else?

10 MR. DEVANEY: Nothing further, Your Honor.
11 Thank you.

12 THE COURT: Not just making it the
13 Mr. Devaney show. Is there anybody on behalf
14 of the defense that needs to be heard on either
15 questions that they have or anything else we
16 need to consider today?

17 MR. JAZIL: Your Honor, two points on the
18 procedure for the hearing.

19 THE COURT: Yes, sir.

20 MR. JAZIL: Number one, is it fair to
21 assume that the hearing itself will be in
22 person? And would Your Honor prefer --

23 THE COURT: Very good question on that.
24 Because it would be great if it could be in
25 person and that way if we're talking to a

1 witness or we have an exhibit, we're all
2 looking at the same thing at the same time. I
3 don't know if it's going to be practical to do
4 it that way. I don't know if there are any
5 attorneys or parties who wish to participate
6 but they're long distance. I don't know if
7 there's going to be somebody in California or
8 Washington, D.C. or wherever. Or if we have a
9 witness that's going to need to -- or be much
10 easier for them to appear from Miami if it's
11 going to be 15 or 20 minutes of testimony as
12 opposed to getting them here or not.

13 So, what is -- is there any consensus
14 among the attorneys and the parties about doing
15 it entirely on Zoom? I don't know if we can do
16 it entirely in person or potentially in person
17 or a combination?

18 MR. DEVANEY: Your Honor, we haven't
19 discussed that. Maybe that's another issue we
20 can take up among counsel and report back to
21 the Court.

22 THE COURT: Sure. I can tell you that
23 right now in Leon County, the only cases that
24 we're doing live are jury selections and jury
25 trials. Does not mean that we couldn't have a

1 courtroom and do this live, it just kind of
2 depends on the economics of if it makes sense
3 for everybody for what you'd get by doing that.
4 And if we're going to have to open it up anyhow
5 for Zoom for other people, you know, it may be
6 more practical to do it by Zoom. But y'all
7 have a conversation about that. And I can get
8 a courtroom, we can have that lined up. And
9 y'all tell me the way you prefer and see if we
10 have any consensus on it.

11 All right.

12 MR. JAZIL: Your Honor?

13 THE COURT: Yes, sir.

14 MR. JAZIL: I apologize, Your Honor.

15 THE COURT: Go ahead.

16 MR. JAZIL: Your Honor, if we were to
17 abide by some kind of hybrid approach where the
18 lawyers were in person but witnesses could
19 appear by Zoom, does the Court have the ability
20 to do something like that? And I'll talk to
21 Mr. Devaney about what works, but I just want
22 to get a better sense of the parameters that
23 we're working with.

24 THE COURT: It's funny you say it that way
25 because that is one of our limitations. It's

1 easier for me to do it all Zoom with the
2 attorneys and the witnesses and have somebody
3 on site who knows the person or can look at
4 their driver's license to swear them in. If we
5 get the driver's license up where I can see
6 this person or everybody can say, this person's
7 Charlie Jones, or whoever they are, I can swear
8 them in. But it makes it actually harder to
9 have some people in a room and then try to pull
10 up other people on the box. So it's almost
11 like you'd rather everybody be live and in
12 person or everybody be in Zoom is an easier way
13 to do it.

14 Again, go back and see if we have
15 consensus on that --

16 MR. JAZIL: Yes, Your Honor.

17 THE COURT: -- as to how you prefer to do
18 it.

19 If it is more legal argument than anything
20 else, then I don't necessarily need to be in
21 the same room, you know, being able to look in
22 the whites of their eyes, so to speak. I make
23 a decision on credibility all the time by Zoom
24 and it's what we do in civil cases.

25 One thing that I had asked my judicial

1 assistant to disclose to everybody is in
2 looking through the case, I know that one of
3 the plaintiffs in the party is the League of
4 Women Voters. And I wanted to make sure that
5 everybody knew that since 2015, I had been a
6 member. And really what that has entailed is I
7 go to local lunch meetings from time to time,
8 things like that. I don't -- in my view, it
9 isn't going to change my ability to hear, won't
10 cause me to rule for or against the plaintiff
11 or the defendant because of that, but fair game
12 for y'all to know that in case it bothers
13 somebody else.

14 The other thing is one of the people who
15 executed an affidavit, Mark Earley, the
16 Supervisor of Election of Leon County, is a
17 friend of mine and a close enough friend that
18 were he to have substantive evidence -- and I
19 looked at his affidavit and his affidavit was
20 simply, the Supervisor of Election needs to
21 know what they're doing by May the 27th to
22 avoid chaos. That's basically the summary of
23 his two-page affidavit. I didn't get the sense
24 that he was going to be testifying on the core
25 issues that were I to believe him, that that

1 would cause me to rule for the plaintiff or
2 rule for the defendant based on what he said.

3 I disclose that simply so that you know
4 he's a buddy of mine. And if he is a key
5 witness that, boy, you think your case rises or
6 falls on it, I'm not trying to not do the case,
7 but I thought it fair for you to know that he's
8 a good buddy. And him, as opposed to somebody
9 that's not a friend of mine, as much as I'd
10 like to say, you know, I'd take it with a grain
11 of salt, I'd be more likely to believe Mark
12 Earley on that point. I don't get the sense
13 that he is central to anybody's case on this,
14 so -- but you now know what I told you on that.

15 I worked with him when I was chairman
16 person for the Leon County Canvassing Board in
17 the 2018 election. I was a county judge at the
18 time and county judges are canvassing board
19 chairs. So it won't hurt my feelings if that
20 bothers somebody, but I'm not suggesting that
21 it should bother you, but fair game for
22 everybody to know. I've disclosed to both
23 sides.

24 All right. Anything else we need to cover
25 today?

1 Do we need to get an order that talks
2 about some of the things we agreed to? Have we
3 all got the gentlemen's shake and a ladies'
4 shake that we know what we've agreed to and
5 everybody's going to be on their behavior --
6 also knowing that I got a good enough memory to
7 know if somebody doesn't do what I just said.
8 So it will be at your peril if you didn't seem
9 like you weren't doing what everybody just
10 agreed to or what we -- I wound up suggesting
11 we needed to do for the case.

12 Do we need to take the time to reduce it
13 to writing or everybody good and y'all will let
14 me know on some of the other things we have
15 talked about, how y'all prefer to proceed?

16 MR. DEVANEY: Your Honor, for the
17 plaintiffs, I think we're fine with just an
18 understanding among us and working together
19 with counsel.

20 THE COURT: Okay. Anybody think any
21 differently or are we good?

22 MR. JAZIL: I agree with Mr. Devaney, Your
23 Honor.

24 THE COURT: All right. So, if nothing
25 else happens between now and then -- I'm sure

1 we'll have to have some discussion or some
2 disclosure to me about whether -- looking in
3 person, Zoom only, or trying to come up with
4 something through IT at the courthouse,
5 information technology at the courthouse, to do
6 a combined Zoom and in person.

7 I need to get numbered, premarked exhibits
8 from the defense. If there's anything in
9 addition from the plaintiffs, need that.

10 If y'all exchange a list of witnesses with
11 a summary of what you expect the witnesses to
12 say, their areas of expertise, that type of
13 thing, appreciate it if you'd share that with
14 me. I'll have read it beforehand. If you have
15 it to me in time to have read it beforehand, I
16 will pay the time in. Because that helps me to
17 understand what the issues are and feel like I
18 have heard everybody on it and am in a position
19 to make intelligent rulings, if I have to, on
20 an evidence objection. Same with deciding the
21 ultimate issue. All right. So, if you swap
22 that with each other, send it in to me as well
23 so that I've got an idea of what to expect as
24 far as the number of witnesses, who they are,
25 what at least the proponents think they're

1 going to say.

2 All right. So call Deanna, email Deanna,
3 my judicial assistant, to the extent we need to
4 do anything or anything else needs to be
5 resolved before or between our 9:00 a.m.
6 hearing on May the 11th, otherwise, that's what
7 we're targeting is the temporary injunction
8 hearing May the 11th.

9 All right. Thank you, everyone.

10 (Hearing adjourned at 3:26 p.m.)

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COURT CERTIFICATE

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STATE OF FLORIDA

COUNTY OF LEON

I, Tracy Brown, certify that I was
authorized to and did stenographically report
the foregoing Zoom proceedings, and that the
transcript is a true and complete record of my
stenographic notes.

Dated this 4th day of May, 2022.



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