

**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,*

v.

Case No. 2022 CA 000666

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

*Defendants.*

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**THE SECRETARY'S RESPONSE IN  
OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE**

The Secretary opposes Plaintiffs' motion to strike his first and second affirmative defenses. *See Attachment A* (the Secretary's answer and affirmative defenses). Simply put, Plaintiffs bring the wrong type of motion to strike at the wrong time. Their motion should therefore be denied.

***Legal Standard***

Florida Rule of Civil Procedure 1.140 authorizes two types of motions to strike. The first type can be brought under Rule 1.140(b). It allows a party to strike an insufficient legal defense. *See* 1972 Amend., Comm. Notes, Fla. R. Civ. P. 1.140 (“The proper method of attack for failure to state a legal defense remains a motion to strike” “in subdivision (b).”). This type of motion to strike must be brought within 20 days after service of the at-issue pleading. Fla. R. Civ. P. 1.140(b); *see also* 1 Fla. Civ. P. § 7-

8(b) (2023) (the first type “may be used within 20 days after service to test the legal sufficiency of a defense”).

The second type is authorized under Rule 1.140(f). It allows a party to strike a “redundant, immaterial, impertinent, or scandalous matter from any pleading.” Fla. R. Civ. P. 1.140(f). This type of motion to strike may be brought “at any time.” *Id.*

### *Argument*

Plaintiffs bring their motion to strike under Rule 1.140(f). *See* Mot. to Strike at 1 (“Plaintiffs therefore move under Florida Rule of Civil Procedure 1.140(f)”). But really, it’s an untimely motion to strike under Rule 1.140(b). The reasons are obvious.

Despite Rule 1.140(f)’s clear standard, Plaintiffs never argue that the Secretary’s two affirmative defenses are “redundant,” “immaterial,” “impertinent,” or “scandalous.” In fact, those terms are relegated to only one line in Plaintiffs’ entire motion, in the first line of the legal-standard section, where they directly quote Rule 1.140(f). *See* Mot. to Strike at 4. Nowhere else are those terms mentioned. Plaintiffs also fail to cite a single case that explains what any of those terms mean or how they apply.

In truth, Plaintiffs’ motion is really a motion to strike under Rule 1.140(b). After all, the motion solely challenges the legal sufficiency of the Secretary’s two affirmative defenses: Plaintiffs contend that the affirmative defenses are legally insufficient under the public-official-standing doctrine. Mot. to Strike at 4 (the “doctrine” “bars” the Secretary from raising two affirmative defenses).

Unfortunately for Plaintiffs, a motion to strike under Rule 1.140(b) must be brought 20 days after service of the at-issue pleading. Fla. R. Civ. P. 1.140(b). Plaintiffs didn't file their motion within that window; they filed it 46 days after the Secretary served his answer and affirmative defenses to their amended complaint. *Compare* Sec'y Ans. & Aff. Defs. (filed Feb. 27, 2023), *with* Mot. to Strike (filed Apr. 14, 2023).

Nor can Plaintiffs find refuge in their cited case law. Out of the nearly twenty cited cases in their motion, only *one* involves a motion to strike under the public official standing doctrine. And *Crossings at Fleming Island Community Development District v. Echeverri*, 991 So. 2d 793, 794 (Fla. 2008), never states that Rule 1.140(f) motion, as opposed to Rule 1.140(b) motion, is appropriate in this context. It's unlikely that the *Crossings* motion was brought under Rule 1.140(f). The terms "redundant," "immaterial," "impertinent," and "scandalous" aren't mentioned in the case. And just like Plaintiffs' motion, the *Crossings* motion challenges the legal sufficiency of an affirmative defense under the public-official-standing doctrine. That rings more of Rule 1.140(b) than Rule 1.140(f).

\* \* \*

While the Secretary doesn't discuss the merits of Plaintiffs' motion, the Florida House and the Florida Senate's response does. The Secretary thus incorporates and adopts by reference the merits arguments in their response.

\* \* \*

In sum, Plaintiffs' motion to strike should be denied.

DATED: May 5, 2023

Respectfully submitted,

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**Certificate of Service**

I certify that a true and correct copy of the foregoing was served on all parties of record through the Florida Courts E-Filing Portal, on May 5, 2023.

/s/ Mohammad O. Jazil  
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# Attachment A

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Florida Secretary of State, et al.,

*Defendants.*

\_\_\_\_\_ /

**SECRETARY OF STATE'S ANSWER**

Defendant Secretary of State Cord Byrd answers Plaintiffs' amended complaint for injunctive and declaratory relief. Unless specifically admitted, the Secretary denies each and every allegation in the complaint. The Secretary responds to the allegations in each numbered paragraphs of the complaint as follows:

**Nature of the Action**

1. Admitted that Floridians voted for and approved the Fair Districts Amendment. Admitted that the U.S. Supreme Court referenced the partisanship-related provision, but not the minority-voting-protection provision, of the Fair Districts Amendment in *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019). The Secretary is without knowledge of whether other "states across the country have followed Florida's lead by adopting similar constitutional amendments"; therefore, denied. All remaining allegations in this paragraph are denied.

2. The referenced case and quotations from the case speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

3. Admitted that the Florida Legislature indicated its desire to comply with the Fair Districts Amendments. Admitted that the Governor vetoed the Florida Legislature's initial redistricting bill, convened a special session of the Florida Legislature, and approved the redistricting bill passed by the Florida Legislature in the special session. All remaining allegations in this paragraph are denied. The Secretary specifically denies the allegation that the Governor "unilaterally declared the Fair Districts Amendment unconstitutional"; the Governor maintains that application of the amendment's non-diminishment provision in North Florida violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

4. Denied.

5. Admitted that the enacted congressional district plan changed the district boundaries in North Florida. The statement from Representative Leek speaks for itself. All remaining allegations in this paragraph are denied.

6. Admitted to the extent that the Governor would not approve a congressional district plan that contained an unconstitutional, racially gerrymandered district in North Florida; that the Governor has raised concerns that the Fair Districts Amendment's non-diminishment provision, when applied in North Florida, would violate the U.S. Constitution; that the Governor sought an advisory opinion from the Florida Supreme Court; and that Robert Popper spoke to a legislative committee. Admitted that the Florida Legislature initially passed a plan in which Congressional District 5 maintained a similar configuration to Congressional District 5 in the 2015 Map. All remaining allegations in this paragraph are denied.

7. The truth of the allegations in Professor Wang's quotation is denied. All remaining allegations in this paragraph are denied.



8. Admitted that Democrats make up 28.5% of Florida's congressional delegation. Without knowledge as to the Governor's comments, therefore denied. All remaining allegations in this paragraph are denied.

9. The case and quotation from the case speak for themselves. The Secretary specifically denies the allegations contained in this paragraph.

**Jurisdiction, Parties, and Venue**

- 10. Admitted.
- 11. Without knowledge, therefore denied.
- 12. Without knowledge, therefore denied.
- 13. Without knowledge, therefore denied.
- 14. Without knowledge, therefore denied.
- 15. Without knowledge, therefore denied.
- 16. Without knowledge, therefore denied.
- 17. Without knowledge, therefore denied.
- 18. Without knowledge, therefore denied.
- 19. Without knowledge, therefore denied.
- 20. Without knowledge, therefore denied.
- 21. Without knowledge, therefore denied.
- 22. Without knowledge, therefore denied.
- 23. Without knowledge, therefore denied.
- 24. Without knowledge, therefore denied.
- 25. Without knowledge, therefore denied.
- 26. Without knowledge, therefore denied.

27. Without knowledge, therefore denied.

28. Without knowledge, therefore denied.

29. Without knowledge, therefore denied.

30. Admitted that Cord Byrd is the Secretary of State, the chief election officer of the State, and is charged with election administration. The referenced statute speaks for itself.

31. Admitted. It is noted that the Florida Senate is also responsible for drawing reapportionment plans for the U.S. House of Representatives from the State of Florida that comply with the U.S. Constitution.

32. Admitted. It is noted that the Florida House of Representatives is also responsible for drawing reapportionment plans for the U.S. House of Representatives from the State of Florida that comply with the U.S. Constitution.

### **Legal Background**

#### **I.**

33. Admitted that Florida voters enacted the Fair Districts Amendment to the Florida Constitution and that the Fair Districts Amendment establishes standards for congressional reapportionment. The constitutional provisions and website in footnote one speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

34. The cases and quotations from the cases speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

35. The constitutional provisions and quotations from those provisions speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

36. The constitutional provisions and quotations from those provisions speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

37. The cases and constitutional provisions, as well as the quotations from the case and provisions, speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

38. The case and quotation from the case speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

A.

39. The case and quotation from the case speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

40. The constitutional provision speaks for itself. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

41. The cases and quotations from the cases speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

42. The case and quotations from the case speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

43. The case and the quotations from the case speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

44. The cases and quotations speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

45. The cases and the quotations from the cases speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

46. The case and the quotations from the case speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

**B.**

47. Admitted.

48. The case and the quotation from the case speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

49. The constitutional provision and case, as well as the quotations from the provision and case, speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

50. The case and quotations from the case speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

**Factual Background**

**II.**

51. The case and quotations from the case speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

52. The cases, as well as the quotations and references to the cases, speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

53. The cases speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

54. The case, as well as quotations from the case, speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

55. The case, as well as quotations and map from the case, speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

56. The cases, as well as quotations and map from the cases, speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

57. The case, as well as quotations from the case, speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

58. The case, as well as quotations from the case, speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

59. The case speaks for itself. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

60. The case speaks for itself. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

61. The case, as well as quotations from the case, speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

### **III.**

62. Admitted.

63. Admitted that some members of both chambers asserted that Congressional District 5 was a protected district under the Florida Constitution's non-diminishment provision and explained that the district should be kept intact. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

64. Admitted that the Senate, on the recommendation of the Senate Reapportionment Committee, passed a congressional redistricting plan that retained the east-west configuration of Congressional District 5. The internet sources in footnotes two, three, and four speak for

themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

65. The quoted statement speaks for itself. Admitted that the Florida House was finalizing a congressional map. The Secretary denies that the Governor “upended the redistricting process.” All remaining allegations in this paragraph are denied.

66. The case speaks for itself. The allegations in this paragraph are admitted.

67. The map referenced in the paragraph, as well as the internet source, speak for themselves. Admitted to the extent that the Florida Legislature passed a redistricting bill with two congressional district maps. Admitted that one map made Congressional District 5 “more compact and eliminated the so-called ‘sprawling’ nature of the district.” All remaining allegations in this paragraph are denied.

68. Denied.

69. Admitted to the extent that the secondary congressional district map would take effect if the primary map was invalidated and that the secondary map’s Congressional District 5 maintained a similar configuration as Congressional District 5 in the 2015 version of the map. All remaining allegations in this paragraph are denied.

70. Denied that the Florida Legislature attempted to “appease” the Governor. Otherwise, the allegations in this paragraph are admitted.

71. Admitted.

72. Admitted.

73. Admitted.

74. Admitted that the Governor’s office retained Adam Foltz to assist. All other allegations are denied.

75. Admitted that the Legislature passed a congressional district map, and that some of the chambers' Black representatives protested. All other allegations are denied.

**IV.**

76. Admitted.

77. Without sufficient knowledge, therefore denied.

78. Denied that Congressional District 5 in the 2015 Map consisted of the historic Black population in North Florida.

79. Admitted.

80. Without sufficient knowledge, therefore denied.

81. Denied.

82. Admitted to the extent that under the Enacted Map, the area that was Congressional District 5 in the 2015 Map is now in four new congressional districts. All remaining allegations in this paragraph are denied.

83. Denied.

84. Without knowledge, therefore denied.

**V.**

85. Denied.

86. The quoted statements speak for themselves. All remaining allegations in the paragraph are denied.

87. The quoted statements speak for themselves. Admitted to the extent that the Governor opposed congressional district plans that included an unconstitutional, racially gerrymandered district in North Florida. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

88. The case and quotation from the case speak for themselves. All remaining allegations in the paragraph are denied.

89. Denied.

90. The quotation and references in the paragraph speak for themselves. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

**VI.**

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Admitted to the extent that in the 2022 elections, 20 Republican and 8 Democrats were voted to Congress. All remaining allegations in this paragraph are denied.

101. The truth of the allegations in Professor Wang quotation is denied. All remaining allegations in this paragraph are denied.

102. The truth of the allegations in the quotation is denied. All remaining allegations in this paragraph are denied.

103. Denied.

104. Denied.



105. Denied.

**A.**

106. Admitted that Democrat Al Lawson was elected in the 2015 version of Congressional District 5. All remaining allegations in this paragraph are denied.

107. Denied.

108. Denied.

109. Denied.

110. Admitted to the extent that in North Florida, Republicans were elected to Congress. All remaining allegations in this paragraph are denied.

111. Admitted to the extent that in North Florida, Republicans were elected to Congress. All remaining allegations in this paragraph are denied.

**B.**

112. Admitted to the extent that these districts had Democratic representatives. All remaining allegations in this paragraph are denied.

113. Denied.

114. Admitted.

115. Denied.

116. Admitted to the extent that the district under the Enacted Map has been reconfigured. All remaining allegations in this paragraph are denied.

117. Denied.

118. Admitted to the extent that in the 2022 elections, a Republican was elected to CD-7. All remaining allegations in this paragraph are denied.

119.

**C.**

120. Denied.

121. Admitted to the extent that these districts had Democratic representatives. All remaining allegations in this paragraph are denied.

122. Admitted.

123. Admitted.

124. Denied.

125. Denied.

126. Admitted to the extent that due to the census, the districts needed to be redrawn. All remaining allegations in this paragraph are denied.

127. Denied.

128. Admitted to the extent that in the 2022 elections, a Republican was elected to CD-13. All remaining allegations in this paragraph are denied.

129. Admitted that Representative Luna, a Republican, represents CD-13. The Secretary denies Plaintiffs' representations of Representative Luna's statements; Plaintiffs take her comments out of context and only provide a portion of her overall comments. All remaining allegations in this paragraph are denied.

**D.**

130. The third sentence is admitted. Otherwise denied.

131. Denied.

**Claims for Relief**

**Count I**

132. The Secretary incorporates his responses to paragraphs 1 through 130.

133. Article III, section 20(a) of the Florida Constitution speaks for itself. Any and all other characterizations, averments, allegations, and legal conclusions are denied.

134. Denied.

Wherefore,

- a. Denied.
- b. Denied.
- c. Denied.
- d. Denied.
- e. Denied.

**Count II**

135. The Secretary incorporates his responses to paragraphs 1 through 130.

136. Denied.

137. Denied.

Wherefore,

- a. Denied.
- b. Denied.
- c. Denied.
- d. Denied.
- e. Denied.

**Count III**

138. The Secretary incorporates his responses to paragraphs 1 through 130.

139. Denied.

Wherefore,

- a. Denied.
- b. Denied.
- c. Denied.
- d. Denied.
- e. Denied.

### **Affirmative Defenses**

1. The Fair Districts Amendment’s non-diminishment provision, as applied to North Florida, violates the Fourteenth Amendment to the U.S. Constitution. When applying the provision in North Florida to draw an east-west, minority-performing congressional district, or any other minority-performing district, race inherently predominates. Drawing congressional districts in this manner is not narrowly tailored to achieve a compelling state interest.
2. The Fair Districts Amendment’s minority-voting-protection provision, on its face, violates the Fourteenth Amendment to the U.S. Constitution. To apply the minority-voting-protection provision, one must make race a “Tier 1” priority, while subordinating traditional districting criteria to “Tier 2.” Because of the State Constitution’s minority-voting-protection provision, race predominates in redistricting considerations. The State Constitution’s minority-voting-protection provision, on its face, is not narrowly tailored to achieve a compelling state interest.
3. One or more of the Plaintiffs lack standing to pursue this case. One or more of the Plaintiffs cannot “identify an actual or imminent injury that is concrete, distinct, and palpable”; cannot “establish a causal connection linking the injury to the conduct being challenged”; and cannot “show a substantial likelihood that the relief sought will remedy the alleged

injury.” *Cnty. Power Network Corp. v. JEA*, 327 So. 3d 412, 415 (Fla. 1st DCA 2021) (cleaned up).

4. The Fair Districts Amendments do not present any judicially manageable standards, which makes claims grounded in the Fair Districts Amendments nonjusticiable. *See Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 143 (Fla. 2019); *see also Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019).

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DATED: February 27, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served on all parties of record through the Florida Courts E-Filing Portal, on February 27, 2023.

/s/ Mohammad O. Jazil  
Mohammad O. Jazil