

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.

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

Defendants.

Case No. 2022-ca-000666

**PLAINTIFFS' RESPONSE TO THE FLORIDA SENATE'S MOTION  
FOR LEAVE TO AMEND AFFIRMATIVE DEFENSES**

The Florida Senate did not assert the U.S. Constitution's Equal Protection Clause as an affirmative defense in its answer to Plaintiffs' amended complaint. *See* Fla. Senate Answer to Am. Compl. at 26. Accordingly, at the August 24, 2023 hearing on outstanding legal issues, this Court questioned whether the Florida Senate "properly raised" the federal Equal Protection Clause as an affirmative defense in its trial briefing. *See* Aug. 24, 2023 Hearing Tr. at 74:20-21. Counsel for the Senate argued that the Equal Protection Clause issue is a "legal defense," not "an affirmative defense that must be pleaded or is otherwise waived." *Id.* at 147:5-16. The Senate then made an *ore tenus* motion to amend its answer to include the Equal Protection Clause defense. *Id.* at 148:23-24. Plaintiffs objected to the motion to preserve their opportunity to review and respond to the Senate's argument. *Id.* at 175:8-9.

In its written motion, the Senate abandons the distinction it made at the hearing. Based on the arguments in its written motion, Plaintiffs do not object to the Senate's motion for leave to amend its affirmative defenses.

Dated: August 28, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 28, 2023 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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