

Case No. 23-12472

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**United States Court of Appeals  
for the Eleventh Circuit**

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CITY OF MIAMI,

*Defendant/Appellant,*

v.

GRACE, INC.; ENGAGE MIAMI, INC.;  
SOUTH DADE BRANCH OF THE NAACP;  
MIAMI-DADE BRACH OF THE NAACP;  
CLARICE COOPER; YANELIS VALDES;  
JARED JOHNSON; and ALEXANDER  
CONTRERAS,

*Plaintiffs/Appellees.*

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On Appeal from the United States District Court  
for the Southern District of Florida  
Case No. 1:22-cv-24066-KMM

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**APPELLANT'S RESPONSE TO  
MOTION TO STAY FURTHER APPELLATE PROCEEDINGS**

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**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Appellant, the City of Miami, furnishes this certificate of interested persons and corporate disclosure statement.

1. Abbott, Carolyn, Plaintiff/Appellee's expert
2. ACLU Foundation of Florida, Inc., Counsel for Plaintiffs/Appellees
3. Alford, John, Defendant/Appellant's expert
4. Bardos, Andy, Counsel for Defendant/Appellant
5. Carollo, Joe, Defendant/Appellant
6. City of Miami, Defendant/Appellant
7. Cody, Steven, Defendant/Appellant's expert
8. Contreras, Alexander, Plaintiff/Appellee
9. Cooper, Clarice, Plaintiff/Appellee
10. Covo, Sabina, Defendant/Appellant
11. De Grandy, Miguel, Defendant/Appellant's expert
12. Dechert LLP, Counsel for Plaintiffs/Appellees
13. Diaz de la Portilla, Alex, Defendant/Appellant
14. Donaldson, Carolyn, Corporate Representative for Plaintiff/Appellee
15. Engage Miami, Inc., Plaintiff/Appellee
16. Ford, Harold, Declarant for Plaintiff/Appellee
17. GrayRobinson, P.A., Counsel for Defendant/Appellant
18. Grace, Inc., Plaintiff/Appellee

19. Greco, John A, Counsel for Defendant/Appellant
20. Hannon, Todd, Corporate Representative for Defendant/Appellant
21. Johnson, Christopher N., Counsel for Defendant/Appellant
22. Johnson, Jared, Plaintiff/Appellee
23. Jones, Kevin R., Counsel for Defendant/Appellant
24. King, Christine, Defendant/Appellant
25. Kirsch, Jocelyn Kirsch, Counsel for Plaintiff/Appellee
26. Levesque, George T., Counsel for Defendant/Appellant
27. McCartan, Cory, Plaintiff/Appellee's expert
28. McNamara, Caroline A., Counsel for Plaintiff/Appellee
29. McNulty, Kerri L., Counsel for Defendant/Appellant
30. Méndez, Victoria, Counsel for Defendant/Appellant
31. Merken, Christopher J., Counsel for Plaintiff/Appellee
32. Miami-Dade Branch of the NAACP, Plaintiff/Appellee
33. Moore, K. Michael, United States District Judge, Southern District of Florida
34. Moy, Bryant J., Plaintiff/Appellee's expert
35. Pelham, Rebecca, Corporate Representative for Plaintiff/Appellee
36. Pierre, Daniella, Corporate Representative for Plaintiff/Appellee
37. Quintana, Marlene, Counsel for Defendant/Appellant
38. Reyes, Manolo, Defendant/Appellant

39. Robinson, Nathaniel, Corporate Representative for Plaintiff/Appellee
40. South Dade Branch of the NAACP, Plaintiff/Appellee
41. Spring, Larry, Corporate Representative for Defendant/Appellant
42. Steiner, Neil A., Counsel for Plaintiff/Appellee
43. Suarez, Francis, Defendant/Appellant
44. Tilley, Daniel T., Counsel for Plaintiff/Appellee
45. Unger, Jason L., Counsel for Defendant/Appellant
46. Valdes, Yanelis, Plaintiff/Appellee
47. Warren, Nicholas L.V., Counsel for Plaintiff/Appellee
48. Wysong, George, Counsel for Defendant/Appellant

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Pursuant to Federal Rule of Appellate Procedure 26.1, Appellant, the City of Miami certifies that it is not publicly traded and has no parent corporation and that no publicly held corporation owns more than 10% of its stock.

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**DEFENDANT-APPELLANT’S RESPONSE TO MOTION TO STAY**

The City of Miami, Defendant-Appellant (the “City”), files this response in opposition to Plaintiffs-Appellees Motion to Stay Further Appellate Proceedings, *see* ECF 41, seeking a stay of appellate proceedings until May 1, 2024, or until the trial court issues a final judgment, whichever comes first.

The City does not dispute the general trial and appellate schedule outlined in Plaintiffs’ motion: namely that Plaintiffs’ Answer Brief is currently due on December 13, 2023, that the City’s Reply Brief will be due January 3, and that trial is presently scheduled to begin January 29, 2024. ECF 41, ¶ 8-9. The City has no present intension of seeking an extension of time to file its Reply Brief, and whether this Court would benefit from oral argument remains to be seen. As Plaintiffs’ Motion appears to concede, it is conceivable that this matter could be briefed and ready for the Court’s consideration by January 4, 2023, almost a month before the trial begins.<sup>1</sup>

As presented more fully in its Initial Brief, *see* ECF 36, Plaintiffs’ claims raise open legal questions in this Circuit as to whether a City has racially gerrymandered five districts by drawing a Black Section 2 VRA-required district at 50.3%, three supermajority Hispanic districts, and a plurality district—all of which are

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<sup>1</sup> While Plaintiffs’ counsel properly conferred with the City’s counsel, they waited to file their Motion until after the City filed its Initial Brief and Appendix, which incidentally was also due during the final two weeks of discovery for the proceedings below.

comparable to Plaintiffs' preferred exemplar plan. In other words, in a municipality that is comprised of more than 70% Hispanic residents that must also have a minority-performing district that could perform for the Black candidate of choice, can the City have improper intent to racially gerrymander districts when there is no other way to draw the districts with a different racial makeup? It is possible that this Court may address these open legal questions that will be presented again to the trial court below.

The City has no reason to doubt that the trial court will proceed and rule in an appropriate timeframe, but it is certainly conceivable that this Court may issue a ruling before trial commences or before the trial court issues a final judgment, even without expediting the appellate proceedings. Depending on the basis for the opinion, such a ruling that addresses some of the open questions would be instructive to the parties or beneficial to the trial court.

### **CONCLUSION**

WHEREFORE, Defendant respectfully asks this Court deny the Plaintiffs request to stay these appellate proceedings.

Dated November 6, 2023.



Respectfully submitted,

/s/ George T. Levesque

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), undersigned counsel certifies, in reliance on the word count of the word-processing system used to prepare this document, that this document contains 443 words and therefore complies with the type-volume limitation set forth in Federal Rule of Appellate Rule 27(d)(2).

Undersigned counsel further certifies that this document was prepared in a proportionally spaced typeface using Microsoft Word for Microsoft Office 365 in 14-point Times New Roman font and therefore complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6).

*/s/ George T. Levesque* \_\_\_\_\_  
George T. Levesque (FBN 555541)  
GRAYROBINSON, P.A.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 6, 2023, the foregoing was filed with the Court's CM/ECF system generating service upon all counsel of record.

*/s/ George T. Levesque* \_\_\_\_\_  
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