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

Case. No. 1D2026-1539
L.T. Case No. 2026-CA-914

Equal Ground Education Fund, Inc., et al.,

Appellants,

v.

Cord Byrd, in his official capacity as Florida Secretary of State, the Florida House of Representatives, and the Florida Senate,

Appellees.

APPELLANTS' REPLY IN SUPPORT OF PASS-THROUGH CERTIFICATION

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Appellees' opposition to pass-through certification merely underscores why this appeal presents issues "of great public importance" that "have a great effect on the proper administration of justice throughout the state" and that therefore "require immediate resolution by the supreme court." Fla. R. App. P. 9.125(a). As Appellees' response makes plain, the trial court declined to pause an admittedly unlawful congressional plan—one that the map drawer admitted was drawn "not having to comply with the Fair Districts Amendment," Initial Br. at 9, without even attempting to "adjudicat[e] the factual disputes," Resp. at 3. And the trial court did so even though the evidence of partisan intent in this case is extraordinary. *See* Initial Br. at 5-26, 32-47. Nor did the trial court even address several of Plaintiffs' claims that do not depend on partisan intent, and which the Florida Supreme Court has previously resolved on expedited timelines. *See id.* at 47-54. That was legal error by the trial court, and a grave one given the stakes and question at issue. Through swift action, however, the appellate courts can resolve this appeal in time to ensure the 2026 elections occur under a lawful congressional plan—the same plan both this Court and the Florida Supreme Court blessed just last year. *See id.* at 61, 67-69.

This Court should reject Appellees' claim that it is too late for Appellants to obtain relief during this election cycle, both because it is factually inaccurate, *see id.* at 67-69, and because crediting that argument would improperly reward Appellees for their intentional efforts to delay judicial review of the 2026 Plan. Such a result would be contrary to the principles of equity. *See Major League Baseball v. Morsani*, 790 So. 2d 1071, 1077 (Fla. 2001) (explaining that equity "bars the wrongdoer from . . . profiting from his or her own misconduct" where there is "a legal shortcoming in a party's case that is directly attributable to the opposing party's misconduct"); *Yost v. Rieve Enters., Inc.*, 461 So. 2d 178, 184 (Fla. 1st DCA 1984) ("It is a fundamental principle of equity that no one shall be permitted to profit from his own fraud or wrongdoing, and that one who seeks the aid of equity must do so with clean hands.").

Appellees have sought to delay proceedings at every turn, in a clear effort to ensure that the 2026 congressional elections occur under the unconstitutional 2026 Plan. The Secretary first successfully delayed the case by moving to disqualify Appellants' first judge below under the dubious argument that the judge might be *too*

favorable to the Secretary's *own* lawyer.[1] Appellants were then reassigned to a new judge, who offered the Parties five potential dates for a hearing. Defendants insisted the only date they could accommodate was the Court's latest offered date—May 15. And then before this Court, Appellees attempted to take ten full days to even respond to Appellants' suggestion of pass-through certification, while knowing full well such a delay would ensure this Court would not make a decision on pass-through certification until the qualification period had already begun.

In contrast, Appellants have moved as quickly as possible. They filed this action in Leon County Circuit Court *the same day* the Governor signed the 2026 Plan into law, and filed their motion for temporary injunction with supporting expert reports two days later. After the Circuit Court issued its order on May 26, they filed this appeal the very next day on May 27, and filed a suggestion of pass-through certification and a full initial brief on May 28 as soon as an

[1] Jacob Ogles, *Cord Byrd Convinces Judge Hearing Redistricting Challenge to Disqualify Himself From the Case* (May 7, 2026), https://perma.cc/3V2H-F7CW.

appellate docket was available. Appellants could not have moved faster.

Even if this Court were inclined to find that it is too late to order a reversion to the 2022 Plan, this Court should not give the final word on that decision, which should come from the Florida Supreme Court. Appellees brush away in a footnote the Florida Supreme Court's "remind[er]" from just last year of the appropriateness of certification in time-sensitive election cases with statewide impact, by noting it was delivered in a merits opinion rather than a preliminary posture. Resp. at 5 n.3. Appellees primarily do so by insisting it is too late for the courts to offer relief for this election cycle, *see id.*, but as Appellants have shown, that suggestion is factually inaccurate, *see* Initial Br. at 67-69, and the trial court did not make any such factual findings to that effect, *see id.* at 68 n.3.

If anything, the urgency in timing requires certification here. This Court has previously certified an election-related temporary injunction order where "the time constraints created by the state election laws require[d] that the supreme court immediately resolve those issues, rather than permitting the normal appellate process to run its course." *Harris v. Coal. to Reduce Class Size*, 824 So. 2d 245,

247 (Fla. 1st DCA 2002) (granting certification approximately two months prior to relevant election). In *Harris*, this Court explicitly distinguished *Florida Department of Agriculture and Consumer Services v. Haire*, 824 So. 2d 167 (Fla. 2002), which Appellees cite to urge this court to deny certification, *see* Resp. at 4. There, this Court explained that, without certification, "precious little time would remain for review in the supreme court" and "[a]s it is apparent that the issues raised must ultimately be resolved by that body, it seems to us that it should have as much time as reasonably possible so that it might proceed in a relatively orderly manner." *Harris*, 824 So. 2d at 248. The same reasoning applies here. Of course, if the Florida Supreme Court disagrees that certification is appropriate, it can decline jurisdiction and remand to this Court. *See* Fla. R. App. P. 9.125(g).

Appellants respectfully request that this Court certify the Circuit Court's order on Appellants' motion for temporary injunction for immediate resolution by the Supreme Court forthwith.

Dated: June 1, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 1, 2026, 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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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this reply was prepared in Bookman Old Style, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure.

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