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

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

Appellants,

Case No. 1D22-1470
LT Case No.: 2022 CA 0666

v.

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

Appellees.
_________________________________/

RESPONSE IN OPPOSITION TO SUGGESTION FOR CERTIFICATION FILED ON MAY 13, 2022, AND MOTION TO EXPEDITE REVIEW OF SAME FILED ON MAY 23, 2022

I. Introduction

Plaintiffs' supposed need for an urgent resolution falls flat. The Secretary has made clear since the inception of this case that it is already too late to provide any relief for the 2022 election cycle—the status quo is set—as the Supervisors in Columbia and Duval County explained. *See* App. to Fla. Sec'y of State's Emergency Mot. to Reinstate the Automatic Stay ("App.") at 219-27. Plaintiffs disagree and have consistently pointed in their papers and affidavits to May 27, 2022 as the date by which they need a resolution. *See, e.g.*, App.

at 197-98, 235-36, 404, 460, 465, 469, 472-73.[1] So they seek a resolution of this *entire* appeal before this Court and the Florida Supreme Court within the next few days—before the initial briefs are filed on the already truncated schedule mandated by the rules of appellate procedure. *See* Fla. R. App. P. 9.130(e) (requiring initial brief to be filed "within 15 days" of the notice of appeal of a nonfinal order). But certification is only appropriate under very limited circumstances. This case does not fall within those narrow circumstances. Accordingly, this Court should decline to exercise its discretion to certify the Circuit Court's non-final interlocutory order to the Florida Supreme Court.

II. Relevant Legal Standards

The Florida Constitution provides that the "supreme court . . . [m]ay review any order or judgment of a trial court certified by the district court of appeal" where the issue "pending" is of "great public importance" or will "have a great effect on the proper administration of justice throughout the state," *and* "require[s] immediate resolution

[1] Plaintiffs inadvertently suggest they have until the "the next few weeks" to obtain the relief they seek. Mot. to Expedite at ¶ 2 (May 23, 2022).

by the supreme court." Art. V, § 3(b)(5), Fla. Const. The Florida Supreme Court has reiterated that this kind of certification, also known as pass-through jurisdiction, is expressly "confine[d]" to "those matters that 'require immediate resolution by the supreme court.'" *Carawan v. State*, 515 So. 2d 161, 162 n.1 (Fla. 1987).

The "responsibility to initially address the questions presented in a given case" resides with the district court. *Id.* And just as the Florida Supreme Court's authority to accept certification is discretionary under article V, section 3(b)(5), *see Harris v. Coal. to Reduce Class Size*, 824 So. 2d 245, 246 (Fla. 1st DCA 2002), so too is a district court's authority to decide whether to certify in the first place. Florida Rule of Appellate Procedure 9.125 says so. *See* Fla. R. App. P. 9.125(a), (f) (a district court of appeal "*may* make such certification on its own motion or on suggestion by a party" but "*shall not be required* to rule on the suggestion" (emphasis added)); *see also Fla. Dep't of Agric. & Consumer Servs. v. Haire*, 832 So. 2d 778, 781 (Fla. 4th 2002) (noting the district court's "discretion" to certify under Florida Rule of Appellate Procedure 9.125).

III. No Need for Pass-Through Jurisdiction

Here, as the stay panel's order makes clear, the district court is perfectly capable of resolving the appeal of an improvidently granted temporary injunction. *See Byrd v. Black Voters Matter Capacity Building Institute, Inc.,* No. 1D22-1470 (Fla. 1st DCA May 20, 2022). The temporary, interlocutory nature of the trial court's order on an issue concerning seven congressional districts—without a fully developed trial record—further underscores the need for this Court to weigh the issues before any review by the Florida Supreme Court. *See* art. V, § 4(b)(1), Fla. Const. ("District courts of appeal . . . may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court."); Fla. R. App. P. 9.130(a)(3)(B) ("Appeals to the district courts of appeal of nonfinal orders are limited to those that . . . grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions.").

Finally, it is true that the Florida Supreme Court accepted pass-through jurisdiction from this Court during the last redistricting cycle to review both a "narrow [discovery] issue" involving the production of subpoenaed documents and the final judgment of a circuit court following a "twelve-day bench trial." *See Non-Parties v.*

League of Women Voters of Fla., 150 So. 3d 221 (Fla. 1st DCA 2014) (en banc), *aff'd sub nom. Bainter v. League of Women Voters of Fla.*, 150 So. 3d 1115, 1118 (Fla. 2014) ("*Apportionment VI*"); *League of Women Voters of Fla. v. Detzner*, 178 So. 3d 6 (Fla. 1st DCA 2014), *aff'd in part denied and rev'd in part*, 172 So. 3d 363, 376 (Fla. 2015) ("*Apportionment VII*"). But the Florida Supreme Court has "virtually never . . . accept[ed] jurisdiction over a non-final order in a case that is still being actively litigated in the trial court and for which there has been no intermediate appellate decision." *Fla. Dep't of Agric. & Consumer Servs. v. Haire,* 824 So. 2d 167, 168 (Fla. 2002) (Pariente, J., concurring). This is because such an approach would be "inconsistent" with the view that "all issues, including those regarding statutory construction and constitutionality, should—*where at all possible*—first be finally litigated in the trial court and then initially reviewed by the appellate court." *Id.* (Pariente, J., concurring) (emphasis added); *see State v. Adkins*, 71 So. 3d 184, 185 (Fla. 2d DCA 2011) ("We are fully aware that the supreme court

prefers to resolve cases after one or more of the district courts have first provided legal analysis in a published opinion.").[2]

IV. Conclusion

For the foregoing reasons, the Secretary respectfully requests this Court to decline to certify the Circuit Court's non-final interlocutory order to the Florida Supreme Court.

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[2] Notably, at 1:41 P.M. this afternoon, Plaintiffs have filed an emergency petition for a constitutional writ in the Florida Supreme Court. The Secretary will argue before the Florida Supreme Court that the all-writs petition is improper.

Dated: May 23, 2022

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Rule 9.045, Fla. R. App. P.

The undersigned certifies that this computer-generated response complies with the font requirements mandated under Rule 9.045, Fla. R. App. P and contains 1005 words.

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