

**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,

v.

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

Appellees.

Case No.: 1D23-2252
L.T. Case No. 2022-ca-
000666

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF DR. J.
MORGAN KOUSSER**

Pursuant to Florida Rules of Appellate Procedure 9.370(a), Dr. J. Morgan Kousser, by and through undersigned counsel, respectfully asks for leave to file a brief as *amicus curiae* in support of Appellees' positions on the outstanding legal issues. In support, Dr. Kousser, by and through undersigned counsel, states the following:

1. On September 2, 2023, the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, found in a well-reasoned opinion that Appellees had demonstrated that Florida's Congressional maps, as enacted in 2022 (the "Enacted Map") violated

Article III, Section 20 (the “Fair District Amendments” or “FDA”) of the Florida Constitution’s prohibition against the diminishment of racial or language minorities’ ability to elect their candidates of choice. The Court further held that FDA’s non-diminishment provision, facially and as applied to North Florida, did not violate the Equal Protection Clause of the U.S. Constitution.

2. On appeal, Appellants ask this Court to reconsider, arguing, *inter alia*, that Article III, Section 20 violates the Equal Protection Clause. In particular, Appellants argue that FDA is “*not even arguably* tethered to specific, identified instances of past discrimination that demand remediation.” Br. for Florida Senate and House of Representatives, at 59; *see also* Br. for Secretary Byrd at 39-40 (arguing there is no recent history of racial discrimination in Florida necessitating non-diminishment provision).

3. As a historian and university professor with expertise in Florida’s history of discrimination against minority voters, Dr. Kousser has a considerable professional and personal interest in the correct resolution of this case, which now revolves around Plaintiffs’/Appellees’ claims that actions taken during the most recent round of congressional redistricting unlawfully diminished the

voting strength of Black voters in North Florida. Dr. Kousser has also testified as an expert witness in *Common Cause et al. v. Byrd et al.*, 4:22-cv-109-AW-MAF (N.D. Fla.), where he has addressed issues pertaining to the history of redistricting in Florida, the Fair Districts Amendments, and the history of Black opportunity districts in North Florida.

4. Allowing for the filing of this amicus brief will assist the Court in assessing Appellant's Equal Protection Challenges to Appellee's non-diminishment claim. In particular, the attached brief demonstrates the need and basis for the FDA and benchmark Congressional District 5, as it existed from 2015 through 2022. Appellants' challenge to the non-diminishment provision has made the historical context for voters' enactment of the FDA relevant to this litigation. Appellants' assertions regarding the historical basis for the FDA are belied by the historical record, explicated in detail in the accompanying brief, which shows that advocacy and debate around the Fair Districts Amendments were animated by and focused on Florida's long history of discrimination in redistricting and voting. That history, leading up to and following the enactment of the Fair Districts Amendments, and the particular demographics of

benchmark Congressional District 5 are relevant to this Court's resolution of the legal issues now before it.

5. Counsel for Dr. Kousser has contacted counsel for Appellants and Appellees regarding Dr. Kousser's request to file an amicus curiae brief in this matter. Counsel for Appellees responded with no objection. Counsel for each Appellant objected.

WHEREFORE, Dr. J. Morgan Kousser respectfully moves this Court for entry of an Order allowing for the filing of an amicus brief in this proceeding.

Dated: October 23, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 23, 2023, a true and correct copy of the foregoing was served on all parties of record through the Florida Courts E-Filing Portal below:

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