

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE No. SC23-1671
L.T. CASE NOS. 1D23-2252; 2022-CA-666

BLACK VOTERS MATTER CAPACITY BUILDING
INSTITUTE, INC., *ET AL.*,
Petitioners,

v.

CORD BYRD, IN HIS OFFICIAL CAPACITY AS
FLORIDA SECRETARY OF STATE, *ET AL.*,
Respondents.

Discretionary Proceeding to Review
Decision of the First District Court of Appeal

**MOTION OF CONSTITUTIONAL ACCOUNTABILITY CENTER
FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF
IN SUPPORT OF PETITIONERS**

Pursuant to Florida Rule of Appellate Procedure 9.370, the Constitutional Accountability Center (“CAC”) respectfully moves this Honorable Court for leave to file the attached brief as *Amicus Curiae* in support of Petitioners. In support of this motion, proposed *amicus* states the following:

1. *Amicus* is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the U.S. Constitution’s text and history. CAC works to improve

understanding of the U.S. Constitution and to preserve the rights and freedoms that our nation's charter guarantees.

2. The issue to be addressed in this case is whether the Florida Legislature's congressional districting map enacted in 2022 violates the Florida Constitution's non-diminishment provision, *see* Fla. Const. art. III, § 20(a), which is modelled after Section 5 of the federal Voting Rights Act ("VRA"), 52 U.S.C. § 10304(b).

3. *Amicus* has a strong interest in the questions this case raises about the Fourteenth Amendment and state constitutional protections for voters of color that were modelled on those contained in the federal Voting Rights Act and thus has an interest in this case.

4. The participation of *amicus* will assist this Court in the disposition of this case by addressing two arguments. First, our brief will explain why the conclusion of the First District Court of Appeals ("First DCA") that the non-diminishment provision only protects geographically compact communities of color is at odds with this Court's precedents and the text and history of the non-diminishment provision. Our brief will explain that the non-diminishment provision codifies Section 5's non-retrogression

principle statewide, which requires that diminishment be assessed by comparing the existing, benchmark plan and the new plan. Further, our brief will show that the First DCA was wrong to rely on U.S. Supreme Court cases construing Section 2 of the VRA—which prohibits vote dilution—to interpret the non-diminishment provision because Sections 2 and 5 provide different protections to voters of color and are governed by different standards.

5. Second, our brief will address Respondents’ argument below that compliance with the non-diminishment provision in North Florida necessitates a racial gerrymander under the Fourteenth Amendment of the U.S. Constitution. Our brief will show that race consciousness in redistricting, and in particular the consideration of race required to comply with the non-diminishment provision, does not raise any equal protection concerns under U.S. Supreme Court precedent, as recently confirmed in *Allen v. Milligan*, 599 U.S. 2 (2023).

6. The participation of *amicus* will not cause any delay or disruption in these proceedings.

7. Undersigned counsel certifies that they have consulted with both Petitioners and Respondents about this motion.

Petitioners and Respondents consent to the filing of the *amicus* brief.

WHEREFORE, CAC respectfully requests that this Honorable Court grant this motion for leave to file the attached brief as *amicus curiae* in support of Petitioners.

Dated: March 11, 2024

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 11, 2024, a true and correct copy of the foregoing will be furnished via the Florida Court's E-Filing Portal to:

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