

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

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

Plaintiffs,

v.

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

Defendants.

Case No. 2022-ca-000666

**PLAINTIFFS' REPLY AND CLAIMS OF AVOIDANCE TO DEFENDANT
SECRETARY OF STATE, DEFENDANT FLORIDA HOUSE, AND DEFENDANT
FLORIDA SENATE'S AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT**

Plaintiffs hereby reply and assert their claims of avoidance to Defendant Secretary of State, Defendant Florida House, and Defendant Florida Senate's Answer and Affirmative Defenses to Plaintiffs' Complaint. Plaintiffs deny each and every one of the Defendants' affirmative defenses. Plaintiffs further state as follows:

CLAIMS OF AVOIDANCE – SECRETARY OF STATE

1. Plaintiffs deny the Secretary of State's first affirmative defense that the "Fair Districts Amendment's non-diminishment provision, as applied to north Florida, violates the Fourteenth Amendment to the U.S. Constitution." Plaintiffs further claim avoidance to this affirmative defense by alleging that one may draw a minority-performing district in North Florida without race predominating, and that even if race does predominate in the drawing of such a district, drawing such a district would be narrowly tailored to achieve a compelling state interest and would not violate the Fourteenth Amendment.

2. Plaintiffs deny the Secretary of State's second affirmative defense that the "Fair Districts Amendment's minority-voting-protection provision, on its face, violates the Fourteenth Amendment to the U.S. Constitution." Plaintiffs further claim avoidance to this affirmative defense by alleging that one may draw a minority-performing district in Florida without race predominating, and that even if race does predominate in the drawing of such a district, drawing such a district would be narrowly tailored to achieve a compelling state interest and would not violate the Fourteenth Amendment.

3. Plaintiffs deny the Secretary of State's third affirmative defense that "[o]ne or more of the Plaintiffs lack standing to pursue this case." This affirmative defense fails to plead any ultimate facts or details supporting the defense alleged. Plaintiffs further claim avoidance to this affirmative defense by alleging that the individual voter plaintiffs, as alleged in Plaintiffs' Complaint, are registered Florida voters who intend to vote in future congressional elections and who live in districts alleged to violate the Fair Districts Amendments. Such voters are injured by Defendants' failure to draw constitutional districts, and those injuries would be remedied by this court's injunction against the congressional plan. Plaintiffs further claim avoidance to this affirmative defense by alleging that the organizational plaintiffs, as alleged in Plaintiffs' Complaint, are injured by the congressional plan, because all five organizational plaintiffs are required to divert resources (separate and apart from the filing of this lawsuit) as a result of Defendants' failure to draw constitutional districts, which harms the mission of each organization. In the case of League of Women Voters of Florida, Inc., League of Women Voters of Florida Education Fund, Inc., and Florida Rising Together, the congressional plan harms those organizations' members and constituents, who are Florida voters who intend to vote in future congressional elections and who live in districts alleged to violate the Fair Districts Amendments.

The organizations and these organizations' members are injured by Defendants' failure to draw constitutional districts, and those injuries would be remedied by this court's injunction against the congressional plan.

CLAIMS OF AVOIDANCE – FLORIDA HOUSE

4. Plaintiffs deny the Florida House's first affirmative defense that "Plaintiffs' complaint fails to state a cause of action." This affirmative defense fails to plead any ultimate facts or details supporting the defense alleged. Plaintiffs further claim avoidance to this affirmative defense by responding that, to the extent the Florida House is attempting to claim there is no cause of action to challenge a redistricting plan under the Fair Districts Amendments, that issue was necessarily rejected in *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015), in which the Florida House was a party. Accordingly, the Florida House's first affirmative defense does not state a legal defense and is precluded by the doctrine of res judicata and/or collateral estoppel.

5. Plaintiffs deny the Florida House's second affirmative defense that "Plaintiffs lack standing to assert the claims set forth in their complaint." This affirmative defense fails to plead any ultimate facts or details supporting the defense alleged. Plaintiffs further claim avoidance to this affirmative defense by alleging that the individual voter plaintiffs, as alleged in Plaintiffs' Complaint, are registered Florida voters who intend to vote in future congressional elections and who live in districts alleged to violate the Fair Districts Amendments. Such voters are injured by Defendants' failure to draw constitutional districts, and those injuries would be remedied by this court's injunction against the congressional plan. Plaintiffs further claim avoidance to this affirmative defense by alleging that the organizational plaintiffs, as alleged in Plaintiffs' Complaint, are injured by the congressional plan, because all five organizational plaintiffs are

required to divert resources (separate and apart from the filing of this lawsuit) as the result of Defendants' failure to draw constitutional districts, which harms the mission of each organization. In the case of League of Women Voters of Florida, Inc., League of Women Voters of Florida Education Fund, Inc., and Florida Rising Together, the congressional plan harms those organizations' members and constituents, who are Florida voters who intend to vote in future congressional elections and who live in districts alleged to violate the Fair Districts Amendments. The organizations and these organizations' members are injured by Defendants' failure to draw constitutional districts, and those injuries would be remedied by this court's injunction against the congressional plan.

6. Plaintiffs deny the Florida House's third affirmative defense that "Plaintiffs' claims are inconsistent with the Elections Clause of the United States Constitution, which bars the relief that Plaintiffs seek." Plaintiffs further claim avoidance to this affirmative defense by responding that the Florida House previously brought a claim that the Fair Districts Amendments violated the Elections Clause of the Constitution; that claim was expressly rejected on the merits in *Brown v. Sec'y of State*, 668 F.3d 1271 (11th Cir. 2012). Additionally, in *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 370 n.2 (Fla. 2015), in which the Florida House was also a party, the Florida Supreme Court expressly "reject[ed] the Legislature's federal constitutional challenge to the Fair Districts Amendment" under the Elections Clause. Accordingly, the Florida House's third affirmative defense does not state a legal defense and is precluded by the doctrine of res judicata and/or collateral estoppel.

CLAIMS OF AVOIDANCE – FLORIDA SENATE

7. Plaintiffs deny the Florida Senate's first affirmative defense that the five organizational Plaintiffs to this suit lack organizational and associational standing. Plaintiffs claim

avoidance to this affirmative defense by alleging that the organizational plaintiffs, as alleged in Plaintiffs' Complaint, are injured by the congressional plan, because all five organizational plaintiffs are required to divert resources (separate and apart from the filing of this lawsuit) as the result of Defendants' failure to draw constitutional districts, which harms the mission of each organization. In the case of League of Women Voters of Florida, Inc., League of Women Voters of Florida Education Fund, Inc., and Florida Rising Together, the congressional plan harms those organizations' members and constituents, who are Florida voters who intend to vote in future congressional elections and who live in districts alleged to violate the Fair Districts Amendments. The organizations and these organizations' members are injured by Defendants' failure to draw constitutional districts, and those injuries would be remedied by this court's injunction against the congressional plan.

8. Plaintiffs deny the Florida Senate's second affirmative defense that the individual voter plaintiffs lack standing to maintain this action "because they lack a cause of action to challenge the contours of a particular congressional district." Plaintiffs claim avoidance to this affirmative defense by responding that, in *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015), in which the Florida Senate was itself a party, the Florida Supreme Court, by invalidating certain congressional districts, necessarily concluded that one may challenge the contours of congressional districts. Accordingly, the Florida Senate's second affirmative defense does not state a legal defense and is precluded by the doctrine of res judicata and/or collateral estoppel.

9. Plaintiffs deny the Florida Senate's third affirmative defense that the relief they seek violates the separation of powers. This affirmative defense fails to plead any ultimate facts or details supporting the defense alleged. Plaintiffs further claim avoidance to this affirmative defense

by responding that, to the extent the Florida Senate is attempting to claim Florida’s judiciary cannot declare a redistricting plan invalid and order actions necessary to require a new redistricting plan consistent with the Florida Constitution, that issue was necessarily rejected in *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015), in which the Florida Senate was a party. Accordingly, the Florida Senate’s third affirmative defense does not state a legal defense and is precluded by the doctrine of res judicata and/or collateral estoppel.

10. Plaintiffs deny the Florida Senate’s fourth affirmative defense that Plaintiffs’ claims are barred by the Elections Clause. The Florida House, which is in privity to the Florida Senate, previously brought a claim that the Fair Districts Amendments violated the Elections Clause of the Constitution; that claim was expressly rejected on the merits in *Brown v. Sec’y of State*, 668 F.3d 1271 (11th Cir. 2012). Additionally, in *League of Women Voters of Fla. v. Detzner*, 172 So. 3d at 370 n.2, in which the Florida Senate was itself a party, the Florida Supreme Court expressly “reject[ed] the Legislature’s federal constitutional challenge to the Fair Districts Amendment” under the Elections Clause. Accordingly, the Florida Senate’s fourth affirmative defense does not state a legal defense and is precluded by the doctrine of res judicata and/or collateral estoppel.

11. Plaintiffs deny the Florida Senate’s fifth affirmative defense that Plaintiffs’ claims on Count IV and V (concerning the Tier II requirements to the Florida Constitution) “concern portions of the Florida Constitution that lack sufficient judicially discoverable and manageable standards by which the courts can adjudicate Plaintiffs’ claims.” Plaintiffs further claim avoidance to this affirmative defense by responding that in *In re S. J. Res. of Legis. Apportionment 1176*, 83 So. 3d 597 (Fla. 2012), to which the Florida Senate was a party, the Florida Supreme Court explained that “[a]fter the Legislature draws the apportionment plans, this Court is required by the

Florida Constitution to review those plans to ensure their compliance with the constitution.” *Id.* at 597. The Florida Supreme Court then defined the Tier I and Tier II criteria and set specific standards for evaluating each, including the compactness standard and the political and geographic boundaries standard. *Id.* at 630-636 (defining and setting standards for compactness and explicitly rejecting the Florida Senate’s argument that “compactness is . . . the paradigmatic example of an elusive concept with no precise meaning”); *id.* at 636-638 (defining and setting standards for political and geographic boundaries and explicitly rejecting the Florida Senate’s argument that “the choice of boundaries was a matter that should be left entirely to the discretion of the Legislature”). In that case, in which the Florida Senate was a party, the Florida Supreme Court also found multiple violations of the Tier II compactness and political and geography boundary standards. *See, e.g., id.* at 656, 664-69, 673-74. Accordingly, the Florida Senate’s fifth affirmative defense does not state a legal defense and is precluded by the doctrine of res judicata and/or collateral estoppel.

WHEREFORE, Plaintiffs respectfully request that this Court (1) reject each of the Defendants’ affirmative defenses, (2) enter final judgment in favor of the Plaintiffs granting all relief requested in their Complaint, and (3) award such other and further relief as is just and proper.

Dated: June 24, 2022

Respectfully submitted,

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**Pro hac vice application forthcoming*

***Admitted pro hac vice*