

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

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFFS' RULE 1.510(d) MOTION**

STATE OF FLORIDA
COUNTY OF ORANGE

BEFORE ME, the undersigned authority, personally appeared Frederick S. Wermuth, who, after being duly sworn, deposes and says:

1. I represent the Plaintiffs in this action.
2. I submit this Affidavit in support of Plaintiffs' Rule 1.510(d) motion to defer or deny Defendant's motion for partial summary judgment.
3. As required by Rule 1.510(d), this Affidavit specifies the reasons that Plaintiffs "cannot present facts essential to justify its opposition" at this time. Fla. R. Civ. Proc. 1.510(d).
4. On April 22, 2022, the same day Florida's 2022 congressional plan (the "DeSantis Plan") was signed into law, Plaintiffs filed the complaint in this case. The complaint alleges that the DeSantis Plan violates several provisions of the Florida Constitution.
5. The Florida Constitution's redistricting criteria are split into two tiers. Tier One criteria prohibit intentional partisan gerrymandering and discrimination against racial and

language minorities and demands that districts be contiguous. *In re S. J. Res. of Legis. Apportionment 1176*, 83 So. 3d 597, 614-38 (Fla. 2012) (“*Apportionment I*”). Tier Two criteria require map drawers to create compact districts of nearly equal population that hew to political and geographical boundaries where feasible. *Id.*

6. Plaintiffs’ complaint alleges that the DeSantis Plan violates both Tier One and Tier Two criteria. Plaintiffs allege that the DeSantis Plan violates Tier One criteria by: (1) diminishing the ability for Black voters to elect their candidates of choice; (2) intentionally discriminating against minority voters by restricting their ability to equally participate in the state’s political processes; and (3) intentionally configuring districts to favor the Republican Party. And Plaintiffs allege that the Plan violates Tier Two criteria by failing to draw compact districts and respect political and geographical boundaries. Plaintiffs’ complaint does not raise Tier Two claims against specific districts; rather, Plaintiffs’ complaint alleges Tier Two claims (and Tier One claims) against the DeSantis Plan as a whole.

7. Days after filing their complaint, Plaintiffs filed a motion for a temporary injunction requesting that the Court enjoin implementation of the DeSantis Plan. Plaintiffs’ motion delayed discovery while it was adjudicated by this Court and by Florida’s intermediate appellate courts and Supreme Court.

8. Plaintiffs’ motion for a temporary injunction was not fully resolved until mid-June.

9. Accordingly, discovery has just begun. The parties first began exchanging discovery requests in mid-July, and responses to those requests are only just coming due.

10. Over the course of July and August, the parties repeatedly conferred on a case management schedule. The parties ultimately submitted a proposed joint case schedule to the Court on August 24, 2022. Under that schedule, Defendants agreed to calendar Plaintiffs’ expert

disclosures for January 27, 2023, Plaintiffs' rebuttal expert disclosures for March 31, 2023, and the close of discovery for April 28, 2023. One day after the parties submitted their joint proposed case schedule, Defendants filed their motion for partial summary judgment.

11. At this time, Plaintiffs have not been able to complete the discovery necessary to support their Tier Two claims. Resolution of Plaintiffs' Tier Two claims requires computationally intensive expert and fact discovery. Further, those claims cannot be considered apart from Plaintiffs' Tier One claims, which themselves require robust expert and fact discovery.

12. Because Plaintiffs' expert disclosures are not presently scheduled until January 27, 2023, and because Plaintiffs have not completed fact discovery, the vast majority of discovery remains to be completed. Specifically, Plaintiffs need additional time to seek evidence regarding, at a minimum, the following facts, all of which are relevant to and may inform the Court's judgment on the arguments that Defendants make in their partial motion for summary judgment:

- a. The methodology Defendants used to calculate the Plan's compactness.
- b. The propriety and reasons underlying the DeSantis Plan's 17 county splits (with 29 total county crossings), 71 municipal boundary splits, and 308 precinct/VTD splits.
- c. The data underlying the DeSantis Plan and proposed or draft plans. That data may include block assignment files, shapefiles, statistical reports on the state's population and demographic composition, and election results and voter registration data down to the precinct level.
- d. The Legislature's intent in drawing and passing the DeSantis Plan.

13. This evidence will also help inform Plaintiffs' expert analysis of:

- a. The DeSantis Plan's compactness, including analysis of the methodology Defendants used to calculate the Plan's compactness, an examination of Florida's geographical constraints on compactness, and consideration of how the compactness of one district affects the compactness of surrounding districts.
- b. The DeSantis Plan's respect for geographical and political boundaries, including whether the 17 county splits, 71 municipal boundary splits, and 308 precinct/VTD splits in the DeSantis Plan are justified.
- c. Alternative districting plans, either proposed by the Legislature or third parties or generated by Plaintiffs' experts.
- d. The DeSantis Plan's compliance with Tier One criteria and whether and how Tier One criteria constrain compliance with Tier Two criteria. This discovery includes completing functional analyses to determine whether the DeSantis Plan adequately preserves the ability for minorities to elect their candidates of choice.

14. To obtain this essential evidence, Plaintiffs intend to serve discovery requests—including requests for production, interrogatories, and requests for admission—and serve deposition notices. Plaintiffs also intend to develop and present expert testimony concerning the DeSantis Plan's compliance with constitutional redistricting criteria.

15. Plaintiffs have begun to serve such requests for discovery. To date, Defendants have not yet produced any documents requested by Plaintiffs. Nor have they meaningfully responded to many of Plaintiffs' interrogatories. Plaintiffs hope that meeting and conferring with Defendants will resolve some of these issues but anticipate this Court's involvement may be

necessary for Plaintiffs to obtain some of the discovery necessary for them to complete and produce expert reports in support of their Tier Two (and Tier One) claims.

16. To allow time for fact and expert discovery necessary for their claims, Plaintiffs file the accompanying Rule 1.510(d) motion requesting that the Court deny or defer consideration of Defendants' motion for partial summary judgment.

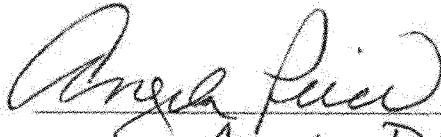
FURTHER AFFIANT SAYETH NOT.



FREDERICK S. WERMUTH

SWORN TO AND SUBSCRIBED before me this 9th day of September 2022, by Frederick S. Wermuth who is personally known to me.





Print Name: Angela Price
Notary Public, State of Florida
Commission No.: GG 954889
My Commission Expires: June 4, 2024