

**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,

Case No. 2022-CA-000666

v.

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

Defendants.

**ORDER DENYING IN PART NON-PARTIES' MOTION FOR PROTECTIVE
ORDER AND ORDER TO SET FOR HEARING**

This case came before the Court on Non-Parties' (Present or Former Members of the Florida Legislature's) Motion for Protective Order. This Court has considered the motion and Defendant Secretary of State Cord Byrd's Response in Opposition to Certain Florida House Members' Motion for Protective Order and Motion to Hold Certain Florida House Members in Contempt of Court and to Exclude Their Trial Testimony. The operative issues raised by the motion are thoroughly and sufficiently briefed, and all arguments of Defendant Secretary of State Cord Byrd relevant to the motion are before this Court on the written response. Therefore, a hearing on the motion is unnecessary for the partial denial. An expedited hearing (or hearings) on the remaining matters shall be scheduled without delay¹.

Before the Court is an argument between the executive and legislative branches of government. This Court must tread lightly in that arena as "No

¹ The Court will note as to some non-parties there will be a delay pursuant to Chapter 11.111, Florida Statutes (2022). The hearing for those non-parties shall be expedited to occur just after the legislative continuance ends.

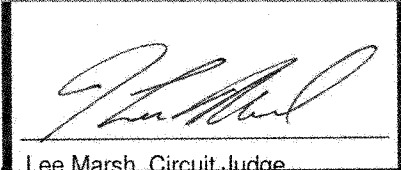
person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly” authorized by Florida’s Constitution. Fla. Const. art. II, §3. At issue is the executive branch’s desire to compel members and former members of the legislative branch to appear for deposition in this important case involving the constitutionality of the recent congressional redistricting. Several current members of the Legislature have invoked the protections of Chapter 11.111, Florida Statutes (2022) to continue proceedings in which they have been called to be a witness so that they may properly attend to their elected duties during the Session. These legislators have “the duty under the Constitution to carry on [their] part of the business of Government-and to carry it on effectively and efficiently.” Brooks v. Pan Am. Loan Co., 65 So. 2d 481, 483 (Fla. 1953), limited by A. B. C. Bus. Forms, Inc. v. Spaet, 201 So. 2d 890 (Fla. 1967). However, the *former* members of the Legislature have no such duty nor protection. While this Court respects the job the former members held, allowing the same protection given to current members would be a “an invasion of the judicial field and violative of constitutional prohibition.” A. B. C. Bus. Forms, Inc., 201 So. 2d at 892.

Neither the non-parties, nor any of the parties, have claimed an emergency that would render a continuance for the current members of the Legislature invalid under A. B. C. Bus. Forms, Inc. v. Spaet, 201 So. 2d 890 (Fla. 1967). Until this latest discovery dispute, it appears to the Court that the parties have been litigating expeditiously and the Court commends

them. However, due to the alleged disenfranchisement of voters, this discovery issue needs to be resolved quickly. Therefore, it is

ORDERED and ADJUDGED that Non-Parties' (Present or Former Members of the Florida Legislature's) Motion for Protective Order is **DENIED in part**. Specifically, the former legislator non-parties and the parties shall schedule an expedited hearing on the motions to resolve the matter of their depositions such that the depositions may occur **before the end of the Legislative Session**. The current legislator non-parties who have invoked the continuance shall schedule an expedited hearing just after the continuance ends so that their depositions may occur shortly thereafter. While the Court understands there may be some inefficiency to holding two hearings, the important issues in this case implore the timely discovery by the parties to facilitate a fair trial for all.²

DONE AND ORDERED in Tallahassee, Leon County, Florida, this Friday, March 10, 2023.

2022-CA-000666 03/10/2023 01:37:19

Lee Marsh, Circuit Judge
37-2022-CA-000666 03/10/2023 01:37:19 PM
J. LEE MARSH
CIRCUIT JUDGE

Copies furnished to:
All Counsel of Record

² The former legislator non-parties and the Secretary may agree to delay the hearing and hold only one hearing after the Session, but this Court understands that the Secretary desires the timely deposition of these witnesses. Any delay of the hearing will obviously be considered in the pending motion for contempt and to exclude the trial testimony of the witnesses.