

**IN THE DISTRICT COURT OF APPEAL  
FOR THE FIRST DISTRICT, STATE OF FLORIDA**

CASE No. 1D23-2252  
L.T. CASE No. 2022-CA-666

---

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.*

---

On Appeal from a Final Order of  
the Second Judicial Circuit

---

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

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 Appellees. 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 and supplement 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 raised by Appellants. First, our brief will address the Secretary's assertion that the non-diminishment provision requires Plaintiffs to satisfy the test for vote dilution under *Thornburg v. Gingles*, 478 U.S. 30 (1986), even though that test applies to Section 2 of the VRA, 52 U.S.C. § 10301, and thus the non-dilution provision of the Florida

Constitution. Our brief will demonstrate that the Secretary's attempt to conflate the non-diminishment and non-dilution provisions of the Florida Constitution is contrary to Florida Supreme Court precedent and the history of the Fair District Amendments.

5. Second, our brief will address Appellants' argument 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*, 143 S. Ct. 1487 (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 the Appellants and Appellees about this motion.

Appellees and Appellant Secretary of State consent to the filing of a

timely *amicus curiae* brief. Appellants Florida Senate and House take no position on the filing of a timely *amicus curiae* 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 Appellees.

Dated: October 23, 2023

/s/ Linda K. Clark  
Linda K. Clark  
Florida Bar No. 43554  
Morrison & Foerster LLP  
600 Brickell Avenue, Suite  
1560  
Miami, FL 33131  
(786) 472-6464  
lindaclark@mof.com

Elizabeth B. Wydra\*  
Brienne J. Gorod\*  
David H. Gans\*  
Anna K. Jessurun\*†  
Constitutional Accountability  
Center  
1200 18th Street NW, Suite  
501  
Washington, D.C. 20036  
(202) 296-6889  
*\* motion for pro hac vice  
admission pending*  
*† Not admitted in D.C.;  
supervised by principals of the  
firm*

*Counsel for Amicus Curiae*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 23, 2023, a true and correct copy of the foregoing will be furnished via the Florida Court's eFiling Portal to:

Daniel E. Nordby  
Shutts & Bowen LLP  
215 S. Monroe Street  
Suite 804  
Tallahassee, FL 32301  
ndordby@shutts.com

Kyle E. Gray  
Deputy General Counsel of the Florida  
Senate  
302 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399  
gray.kyle@flsenate.gov

*Counsel for the Florida Senate*

Andy Bardos, Esq.  
GrayRobinson, P.A.  
301 S. Bronough Street  
Suite 600  
Tallahassee, FL 32302  
andy.bardos@gray-robinson.com

*Counsel for the Florida House of  
Representatives*

Henry C. Whitaker  
Daniel William Bell  
Jeffrey Paul DeSousa  
David M. Costello

Abha Khanna\*  
Elias Law Group LLP  
1700 Seventh Ave.,  
Suite 2100  
Seattle, WA 98101  
(206) 656-0177  
akhanna@elias.law

Christina A. Ford  
Florida Bar No. 1011634  
Jyoti Jasrasaria\*  
Elias Law Group LLP  
250 Massachusetts Ave.  
NW, Suite 400  
Washington, D.C. 20001  
(202) 968-4490  
cford@elias.law  
jjasrasaria@elias.law

\*admitted pro hac vice

Frederick S. Wermuth  
Florida Bar No. 0184111  
Thomas A. Zehnder  
Florida Bar No. 0063274  
Quinn B. Ritter  
Florida Bar No. 1018135  
65  
King, Blackwell,  
Zehnder & Wermuth,  
P.A.

Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, FL 32399  
(850) 414-3300  
henry.whitaker@myfloridalegal.com

P.O. Box 1631  
(407) 422-2472  
fwormuth@kbzwlaw.com  
tzehnder@kbzwlaw.com  
qritter@kbzwlaw.com

Bradley R. McVay  
Ashley Davis  
David Chappell  
Christopher DeLorenz  
Joseph S. Van de Bogart  
Florida Department of State  
R.A. Gray Building  
500 South Bronough Street  
Tallahassee, FL 32399  
brad.mcvay@dos.myflorida.com  
ashley.davis@dos.myflorida.com  
david.chappell@dos.myflorida.com  
christopher.delorenz@eog.myflorida.com  
joseph.vandebogart@dos.myflorida.com

*Counsel for Appellees*

Mohammed O. Jazil  
Michael Beato  
Chad E. Revis  
Holtzman Vogel Baran Torchinsky  
& Josefiak, PLLC  
119 S. Monroe Street, Suite 500  
Tallahassee, FL 32301  
mjazil@holtzmanvogel.com  
mbeato@holtzmanvogel.com  
crevis@holtzmanvogel.com

*Counsel for Florida Secretary of State*

/s/ Linda K. Clark  
Linda K. Clark