Filing # 18988175 Electronically Filed 10/03/2014 02:16:04 PM

RECEIVED, 10/3/2014 14:20:14, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

THE LEAGUE OF WOMEN VOTERS OF FLORIDA, et al.,
Appellants,
v.

KEN DETZNER, et al.,
Appellees.

Case No.: SC14-1905
L.T. Nos.: 1D14-3953
2012-CA-00412
2012-CA-00490

APPELLANTS' BRIEF IN SUPPORT OF ACCEPTING CERTIFICATION

Appellants The League of Women Voters of Florida, Common Cause, Brenda Ann Holt, J. Steele Olmstead, Robert Allen Schaeffer, and Roland Sanchez-Medina, Jr. (collectively, the "Coalition Plaintiffs") and Appellants Rene Romo, Benjamin Weaver, William Everett Warinner, Jessica Barrett, June Keener, Richard Quinn Boylan, and Bonita Again (collectively, the "Romo Plaintiffs," and together with the Coalition Plaintiffs, the "Plaintiffs" or "Appellants") submit this brief to explain why this Court should accept review on certification from the district court. The parties as well as the district court majority and dissent all agree that the judgment below is of great public importance. The only dispute is whether this tremendously important issue is one that "requires immediate resolution by the supreme court." Art. V, § 3(b)(5), Fla. Const. Although it may appear persuasive on its face, the dissenting opinion is based on three faulty premises. Once those are corrected, the need for immediate resolution by this Court should become clear.

I. THE TRIAL COURT'S MERITS RULINGS ARE BEING CHALLENGED IN THIS APPEAL.

The main factual premise of the dissent is that "[t]his case involves only the question of the validity of the legislatively-redrawn districts that would apply in the 2016 election cycle" and the "trial court's ruling that the original legislative plan was constitutionally defective is not an issue in this appeal, the defendants having accepted the judgment." (Makar, J., dissenting from certification (the "Dissent") at 10.) The dissent was mistaken in two regards.

First, as the Plaintiffs made clear in their suggestion, they are appealing the trial court's original merits ruling regarding the constitutionality of the original plan; specifically, they are appealing the finding that only two districts were directly unconstitutional because the trial court's findings combined with the other evidence in the case establish that several other districts were also directly unconstitutional. (Appellants' Suggestion for Certification at 2.)

Second, the Legislature has apparently changed its mind from its earlier position that it would accept the merits judgment as the dissent states. Shortly after the Plaintiffs filed their suggestion of certification, the Legislature filed a notice of cross-appeal and made clear that it is appealing the merits "judgment that declares the congressional redistricting plan embodied in Chapter 2012-2, Laws of Florida [i.e., the original districting plan] unconstitutional as drawn." (Legislature's Notice of Cross-Appeal at 2.)

The Plaintiffs do agree with the dissent's conclusion that this Court's resolution of the pending discovery appeal "has no apparent effect on the issues in this case." (Dissent at 11.) But this is not, as the dissent suggests, because the "evidence that the parties are fighting over in *Non-Parties* goes to the merits of the constitutional question." (*Id.*) Rather, it is because the Legislature took no position on the privilege issue involved in that piece of the litigation and, in any event, the Legislature lacks standing to raise the privilege of non-parties as grounds for opposing the admission of the subject evidence. Moreover, the non-parties lack standing to raise the privilege as an evidentiary objection because it was not offered against them – they are not parties. *See* § 90.508, Fla. Stat. (2014) ("Evidence of a statement or other disclosure of privileged matter is inadmissible **against the holder of the privilege** if the statement or disclosure was compelled erroneously by the court …." (emphasis added)).

Nonetheless, it remains true that an expeditious decision in that case is necessary and, as the district court majority concluded, it makes sense for the same Court that is ruling on the interlocutory appeal to also have jurisdiction over the final appeal. (Certification Opinion at 5.) Indeed, failure to pass this case through raises a sticky jurisdictional question as to whether a district court can dispose of an appeal from a final order while the supreme court is still reviewing a prior interlocutory order in the same underlying case.

II. THIS APPEAL REQUIRES DISPOSITION WELL BEFORE THE 2016 ELECTION, NOT SIMPLY ON THE EVE OF THE ELECTION.

Even if the dissent was correct and the only issue on appeal was the proper remedy for the constitutional violations found by the trial court, the other premise – namely, that the resolution of this appeal "is not necessitated for over a year" as there is as much as "twenty-four months of judicial time ahead" – is incorrect. (Dissent at 10, 12.) Unless this Court were to declare a complete victory for one side or the other, a decision cannot wait two years, and even if the Court were to give one side everything it sought, a decision still cannot wait until the eve of the 2016 election.

First, the dissent overlooks the very real chance that substantial proceedings will be needed on remand between the time of the disposition of this appeal and the 2016 elections. True, if the judgment below is affirmed in all respects, no proceedings on remand will be required and the 2016 election will proceed on the new districts the Legislature passed in special session after the trial court found the original districts unconstitutional. And if the judgment below is reversed as to the remedy **and** the Court adopts the Plaintiffs' proposed remedy by accepting the redrawn districts proposed by the Plaintiffs, there should be little need for proceedings on remand. But courts do not always declare a complete victory for either side and the ultimate resolution of this appeal may well be a remand for the trial court to conduct further proceedings to draw up a new map. And, however

those proceedings on remand end, the losing party will likely have the right to appeal. Thus, there needs to be significant time built in to allow not only the disposition of this appeal before the 2016 election, but also potential remand proceedings.

Second, even if the disposition of this appeal will ultimately resolve the 2016 districts once and for all without the need for any further proceedings, it would be incredibly disruptive for that disposition to wait until the eve of the election. Absent court orders for an expedited or special election, the Department of State is required to publish notice of the 2016 general election for each district starting April 2, 2016.[1] So the eve of the election process is actually only eighteen months away.

III. THE EXPERIENCE OF THE LEGISLATIVE PRIVILEGE PROCEEDINGS DEMONSTRATES WHY PASS-THROUGH REVIEW IS APPROPRIATE.

The dissent and the Legislature suggest that because this Court "benefitted" from the district court's dissent in the legislative privilege appeal, *League of Women Voters of Florida v. Florida House of Representatives*, 132 So. 3d 135

[1] Working backwards, the general election will be on November 8, 2016, the first Tuesday after the first Monday in November 2016. § 100.031, Fla. Stat. (2014). The primary election will be on August 30, 2016, the Tuesday ten weeks prior to the general election. § 100.061, Fla. Stat. (2014). The qualifying period will be May 2-6, 2016, between the 116th and 120th days prior to the primary election. § 99.061(1), Fla. Stat. (2014). The notice of general election must be published during the thirty days prior to the beginning of the qualifying period. § 100.021, Fla. Stat. (2014).

(Fla. 2013), there is good reason to delay resolution of this appeal by first allowing briefing, argument, decision, post-decision motions, and en banc review in the district court before briefing, argument, and decision in this Court (which they appear to agree is inevitable). While the dissent certainly makes a valid point that this Court benefits from the opinions of lower courts, the legislative history appeal demonstrates the price of that delay.

Despite expedited treatment of a much narrower and less fact-intensive issue, it took the First District over five months after briefing was complete to issue its decision. And after expedited briefing in this Court, it took another three months for the final decision.[2] Had the five months necessary for the district court to complete its review been bypassed, the trial below would have had a much better chance of being completed in time to avoid the terrible current state of affairs – Florida is in the process of having an election for congressional districts that have been found to be unconstitutional. To avoid the same thing happening in 2016, this Court should accept review and decide this case without waiting for a district court decision.

[2] The dissent's reference to the fact that this Court has only 30 days to adjudicate facial review of a redistricting plan (Dissent at 12 n.1) overlooks the incredible strain that places on this Court, the attention it diverts from other urgent matters, the fact that the Court had time to prepare for that challenge in advance, and that unlike that case, this case depends on a complicated and well-developed factual record.

This is especially so because, unlike the legislative privilege appeal, the legal and factual issues in this case can be much more quickly and efficiently resolved by this Court in the first instance. This Court is already versed in the various complex, statistical issues implicated by the merits of this redistricting challenge, issues with which the district courts have no experience and would require substantial time to get up to speed.

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