

No. 1D2026-1557

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FIRST DISTRICT

COMMON CAUSE, ET AL.,
Appellant,

v.

CORD BYRD, IN HIS OFFICIAL CAPACITY AS FLORIDA
SECRETARY OF STATE, ET AL.,
Appellees.

**APPELLEES' RESPONSE TO APPELLANTS' SUGGESTION OF
PASS-THROUGH CERTIFICATION**

On May 26, 2026, the circuit court denied the Plaintiffs' request for the extraordinary relief of temporarily enjoining the new congressional redistricting plan passed by the Legislature and signed into law by the Governor. Having lost below, Plaintiffs double down on their requests for extraordinary relief—now asking this Court to step aside and certify that the circuit court's order be resolved immediately by the Florida Supreme Court.

But this Court is the one “the constitution has designated to hear this appeal.” *Sec’y of State Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 375 So. 3d 335, 361 (Fla. 1st DCA 2023) (Winokur, J., concurring); Art. V, § 4(b)(1), Fla. Const. Certifying the order to the Florida Supreme Court is a rare exception to this rule. *See State*

v. Adkins, 71 So. 3d 184, 186 n.1 (Fla. 2d DCA 2011) (the “court has invoked the rule only in a handful of very exceptional appeals”). For four separate reasons, this Court should deny Plaintiffs’ suggestion.

First, nothing about the issues in this case requires “immediate resolution” by the Florida Supreme Court. Art. V, § 3(b)(5), Fla. Const. Below, the circuit court denied Plaintiffs’ request for a temporary injunction for three straightforward, threshold reasons: (1) Plaintiffs’ failure to establish that the court could legally maintain the status quo—the 2022 congressional map—given the racial motivations behind Congressional District 20, *see Louisiana v. Callais*, 146 S. Ct. 1131 (2026); *Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec’y, Fla. Dep’t of State*, 415 So. 3d 180, 196 (Fla. 2025) (“*BVM II*”); (2) the insufficiency of the record at this nascent stage to establish a substantial likelihood of success on Plaintiffs’ claim that the challenged districts were drawn with partisan intent; and (3) the public interest in certainty in state election administration this close to an election, *see Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006); *State ex rel.*

Haft v. Adams, 238 So. 2d 843, 845 (Fla. 1970).¹ This Court can readily affirm the denial on any of these grounds.

Second, review by the Florida Supreme Court is premature. The circuit court denied the requested injunction without adjudicating the factual disputes or the ultimate merits given the threshold grounds mentioned above. See Order at 4–8. It noted the “insufficient” factual record offered by Plaintiffs to show that the 2026 map was drawn based on “impermissible [partisan] intent,” Order at 6–7, as necessary for a violation of the Fair Districts Amendment. The circuit court therefore never opined on whether the Fair Districts Amendment remains operative after the Florida Supreme Court’s decision in *BVM II* and the Supreme Court’s decision in *Callais*. And without deciding these questions, there is little basis for the Florida Supreme Court to reverse.

Third, pass-through jurisdiction is inapt where the Florida

¹ Florida’s right to an automatic stay of any temporary injunction that might have issued, see Fla. R. App. P. 9.310(b)(2), made the timing problems more acute. The State’s inevitable notice of appeal would have “automatically” stayed the injunction “pending review.” *Id.* That provision—designed to protect the State’s interests in administering its programs in the public interest—would have required litigation below concerning the propriety of lifting the stay and subsequent litigation in *this* Court regarding the circuit court’s ruling.

Supreme Court would benefit from the studied views of the lower courts. *See Fla. Dep’t of Agric. & Consumer Servs. v. Haire*, 824 So. 2d 167, 168 (Fla. 2002) (Pariente, J., concurring) (noting “it would be unwise for this Court . . . to accept jurisdiction over a non-final order in a case that is still being actively litigated in the trial court and for which there has been no intermediate appellate court decision”). The Florida Supreme Court has accordingly declined pass-through jurisdiction when “the underlying litigation has been ongoing, and is still pending in the trial court, and that any emergency matters can be appropriately handled by the District Court of Appeal.” *Id.* at 167. Each factor holds true here. *Cf. BVM II*, 415 So. 3d at 190, 193; *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015) (passing through case only after final judgment by the circuit court).

Fourth, this case realistically will at most decide the 2028 and 2030 elections given that the practical deadline for implementing Florida’s congressional maps for the 2026 election has passed, Order at 3, and “[t]he election machinery of the state is already underway.” *Id.* at 8; *contra* Appellants’ Suggestion at 3 (“Time remains to preserve the status quo by reinstating the 2022 Plan.”). And any ruling now on the Order would risk depriving candidates of the opportunity to

run and cause serious voter confusion. *See* App. 2, Decl. of Maria Matthews (noting local officials have resigned their positions to run for Congress). Not only that, but the whiplash of enjoining the 2026 map *now* would hamper state officials’ administration of the election.

Plaintiffs’ challenge is therefore “more geared toward the 2028 or 2030 election cycles than the 2026 election cycle.” Order at 5 n.6.² Plaintiffs can and will litigate the merits of the new map for future elections, but that is years away, so nothing “require[s] immediate resolution by the supreme court.” Art. V, § 3(b)(5), Fla. Const.³

CONCLUSION

This Court should deny Appellant’s suggestion.

² That timing is unremarkable in the election law context. *See, e.g., Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1083 (Fla. 1st DCA 2022) (noting two elections went forth under map that was eventually invalidated).

³ In *BVM II*, the Florida Supreme Court commented on the practice of using pass-through jurisdiction in election cases, reminding district courts of “their constitutional authority to certify for this Court’s direct review” trial court orders requiring immediate resolution. *See* 415 So. 3d at 193; Appellees’ Suggestion at 1. That hardly dictates pass-through certification here. “The parties in [*BVM II*] jointly asked” for pass-through, *id.*, which isn’t the case here. For another, the timing in *BVM II* would have permitted the Florida Supreme Court to “resolve[]” the case “before the 2024 election cycle.” *Id.* Yet here, the Florida Supreme Court could not realistically order an injunction at this late date. Finally, *BVM II*’s comment is in a merits opinion, not the preliminary posture here.

Date: June 1, 2026

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CERTIFICATE OF SERVICE

I certify that on June 1, 2026, a true and correct copy of the foregoing has been furnished to all counsel of record by electronic mail via the Florida Courts E-Filing Portal:

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.045(e), I certify that this response to Appellants' suggestion of certification complies with the page limit in Rule 9.125(e). I further certify that the response was prepared in Bookman Old Style, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure.

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