

No. 23-12472

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**In the United States Court of Appeals  
for the Eleventh Circuit**

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GRACE, INC.; ENGAGE MIAMI, INC.;  
SOUTH DADE BRANCH OF THE NAACP;  
MIAMI-DADE BRANCH OF THE NAACP;  
CLARICE COOPER; YANELIS VALDES;  
JARED JOHNSON; AND ALEXANDER  
CONTRERAS,

*Plaintiffs/Appellees,*

v.

CITY OF MIAMI,

*Defendant/Appellant.*

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On Appeal From The United States District Court  
For The Southern District of Florida  
No. 1:22-cv-24066-KMM

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APPELLANT'S REPLY IN SUPPORT OF EMERGENCY MOTION TO STAY  
ORDER REJECTING REDISTRICTING MAP [DE94]

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GRAYROBINSON, P.A.  
Jason L. Unger (FBN 991562)  
George T. Levesque (FBN 55551)  
Andy Bardos (FBN 822671)  
301 S. Bronough Street Suite 600  
Tallahassee, Florida 32301  
Telephone: (850) 577-9090  
[junger@gray-robinson.com](mailto:junger@gray-robinson.com)  
[glevesque@gray-robinson.com](mailto:glevesque@gray-robinson.com)  
[abardos@gray-robinson.com](mailto:abardos@gray-robinson.com)

GRAYROBINSON, P.A.  
Christopher N. Johnson (FBN 69329)  
Marlene Quintana, B.C.S. (FBN 88358)  
333 S.E. 2<sup>nd</sup> Avenue, Suite 3200  
Miami, Florida 33131  
Telephone: (305) 416-6880  
[Christopher.Johnson@gray-robinson.com](mailto:Christopher.Johnson@gray-robinson.com)  
[Marlene.Quintana@gray-robinson.com](mailto:Marlene.Quintana@gray-robinson.com)

CITY OF MIAMI  
VICTORIA MÉNDEZ, City Attorney  
Florida Bar No. 194931  
JOHN A. GRECO, Chief Deputy City Attorney  
Florida Bar No. 991236  
KEVIN R. JONES, Deputy City Attorney  
Florida Bar No. 119067  
KERRI L. MCNULTY,  
Litigation & Appeals Division Chief  
Florida Bar No. 16171  
Office of the City Attorney  
444 S.W. 2<sup>nd</sup> Avenue  
Miami, FL 33130  
Telephone: (305) 416-1800  
*Attorneys for Defendant/Appellant*

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Appellant, the City of Miami, furnishes this certificate of interested persons and corporate disclosure statement.

1. Abbott, Carolyn, Plaintiff/Appellee's expert
2. ACLU Foundation of Florida, Inc., Counsel for Plaintiffs/Appellees
3. Alford, John, Defendant/Appellant's expert
4. Bardos, Andy, Counsel for Defendant/Appellant
5. Carollo, Joe, Defendant/Appellant
6. City of Miami, Defendant/Appellant
7. Cody, Steven, Defendant/Appellant's expert
8. Contreras, Alexander, Plaintiff/Appellee
9. Cooper, Clarice, Plaintiff/Appellee
10. Covo, Sabina, Defendant/Appellant
11. De Grandy, Miguel, Defendant/Appellant's expert
12. Dechert LLP, Counsel for Plaintiffs/Appellees
13. Diaz de la Portilla, Alex, Defendant/Appellant
14. Engage Miami, Inc., Plaintiff/Appellee
15. GrayRobinson, P.A., Counsel for Defendant/Appellant
16. Grace, Inc., Plaintiff/Appellee
17. Greco, John A, Counsel for Defendant/Appellant
18. Johnson, Christopher N., Counsel for Defendant/Appellant

19. Johnson, Jared, Plaintiff/Appellee
20. Jones, Kevin R., Counsel for Defendant/Appellant
21. King, Christine, Defendant/Appellant
22. Kirsch, Jocelyn Kirsch, Counsel for Plaintiff/Appellee
23. Levesque, George T., Counsel for Defendant/Appellant
24. McCartan, Cory, Plaintiff/Appellee's expert
25. McNamara, Caroline A., Counsel for Plaintiff/Appellee
26. McNulty, Kerri L., Counsel for Defendant/Appellant
27. Méndez, Victoria, Counsel for Defendant/Appellant
28. Merken, Christopher J., Counsel for Plaintiff/Appellee
29. Miami-Dade Branch of the NAACP, Plaintiff/Appellee
30. Moore, K. Michael, United States District Judge, Southern District of Florida
31. Moy, Bryant J., Plaintiff/Appellee's expert
32. Quintana, Marlene, Counsel for Defendant/Appellant
33. Reyes, Manolo, Defendant/Appellant
34. South Dade Branch of the NAACP, Plaintiff/Appellee
35. Steiner, Neil A., Counsel for Plaintiff/Appellee
36. Suarez, Francis, Defendant/Appellant
37. Tilley, Daniel T., Counsel for Plaintiff/Appellee
38. Unger, Jason L., Counsel for Defendant/Appellant

39. Valdes, Yanelis, Plaintiff/Appellee
40. Warren, Nicholas L.V., Counsel for Plaintiff/Appellee
41. Wysong, George, Counsel for Defendant/Appellant

Appellant, the City of Miami, certifies that, to the best of its knowledge, no publicly traded company or corporation has an interest in the outcome of the case or appeal.

**APPELLANT’S REPLY IN SUPPORT OF EMERGENCY MOTION TO STAY ORDER  
REJECTING REDISTRICTING MAP [DE94]**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, Appellant/Defendant, City of Miami (the “City”), files this reply memorandum of law in support of its Emergency Motion to stay the trial court’s Order rejecting its redistricting plan (the “Motion”) (ECF 2) and in reply to Plaintiff/Appellees’ Response Memorandum (the “Response”) (ECF 10).

Plaintiffs premise their Response on flawed procedural arguments. They try to make a rhetorical point, rather than a legal argument, that there is no status quo to preserve because the City passed a new map. Plaintiffs ignore the procedural posture of this case. There has been no trial. Neither the Enjoined Plan nor the New Plan have been found to be unconstitutional. The Court issued an injunction finding a likelihood of success based upon evidentiary points and enjoined going forward on that old map, but it mandated no map in the injunction. The City Commission is a legislative body. It was not stripped of its law-making authority by the Injunction. It passed a new map. The validly passed new map is not remedial in the sense that the Enjoined Plan is no longer at issue and will not be the district map regardless of the outcome of this case.<sup>1</sup> That new, lawfully passed

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<sup>1</sup>For this reason, after the stay was entered by this Court, the City provided the Miami-Dade County Elections Department with its New Plan, otherwise the County may have set the election pursuant to the Enjoined Plan. Plaintiffs also complain that the City did not provide Plaintiffs’ plan to the County elections department on July 31, 2021, but this Court issued a stay of that order. While Plaintiffs themselves provided data to the elections department with regard to their

map has now been enjoined by a District Court that also issued a mandatory injunction to conduct an election pursuant to a different map. Neither this Court nor the lower court would be “implementing” the law. It would simply not be barring the law from being in effect. The City’s motion for stay, therefore, seeks to preserve the status quo. Without the stay, allowing the Mandated Map to go into effect near the eve of the scheduled City-wide election threatens to compromise the integrity and outcome of the entire election process.

The second procedural point is also deeply flawed. Plaintiffs contend that the principle pronounced in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), that “federal district courts ordinarily should not enjoin state election laws in the period close to an election,” has somehow been waived by virtue of the City complying with a court order to participate in setting a remedial schedule pursuant to the Injunction.

As an initial matter, the Injunction itself recognized the *Purcell* principle may be applicable because it left the City without an election map. DE 52 p.99. Plaintiffs filed no objection to that finding. The *Purcell* issue was always part of the process. Additionally, *Purcell* is not waivable.

We are doubtful that the *Purcell* principle is subject to the ordinary rules of waiver (or perhaps more accurately here, forfeiture). As when considering jurisdictional limitations, we have an independent obligation to “weigh ... considerations specific to election cases.” When we are “[f]aced with an application to enjoin” voting laws

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Map 4, the plan mandated by the Court is just a picture of a map without underlying data at a block level as would be necessary for the Elections Department to act.

close to an election—or, as here, a request to stay such an injunction—we are “required to weigh” the injunction's impact for an upcoming election.

*League of Women Voters of Fla., Inc. v. Florida Sec. of State*, 32 F.4th 1363, 1371 n.4 (11th Cir. 2022) (citations omitted).

The Court below exercised what it perceived to be its remedial authority to ensure any new plan corrected rather than perpetuated the alleged harm of racial sorting. But the Mandated Plan then exacerbated that very racial sorting, something Plaintiffs label “irrelevant.” ECF 10 p.22.<sup>2</sup> The City has not ceded the right to challenge that decision; indeed how could it challenge the decision before it was made? In the end, the thrust of Plaintiffs’ Response underscores the points made in the Motion. It was not the City’s burden to prove that the New Map was constitutional. The court below impermissibly shifted that burden and did not afford the City the presumption of good faith.

Plaintiffs’ argument that the City waived any right to raise *Purcell* because of its own proposed schedule is also meritless. Miami-Dade County’s Election Department stated that it needed to have election information by August 1, 2023,

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<sup>2</sup> In *Jacksonville Branch of NAACP v. City of Jacksonville (“Jacksonville II”)*, No. 3:22-cv-493-MMH-LLL, 2022 WL 17751416 (M.D. Fla. Dec. 19, 2022), the Court found that Black voters were stripped from Districts and packed together diminishing their influence elsewhere. *Id.* at \*2. While the city’s remedial plan maintained that packing (*id.* at \*12-14), the plaintiffs’ plans in that case “do not maintain the same level of racial segregation.” *Id.* at \*15. Here, it has been flipped on its head.



for the November 7 election. This was not a date set by the City.<sup>3</sup> That date is less than four months before the election. In the Objection to the R&R, the City pointed out that the injunction sets no map and that the whole process will run afoul of *Purcell* by the time a map is identified for the August 1 deadline. DE 56 pp.19-20; DE 59 pp.5-6. The Injunction nevertheless ordered the parties to a status conference to discuss scheduling. DE 60 p.32. The City cannot have waived the *Purcell* principle by complying with the court-ordered process and giving fair notice to the court and the Plaintiffs of the impracticability of the timeline utilized by the district court.

WHEREFORE, the City respectfully asks this Court to stay the Order pending appeal.

Respectfully submitted,

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<sup>3</sup> The Miami-Dade County's re-precincting process is complicated and time consuming (DE 24-30). The County needs a detailed map with exact district boundaries. *Id.* The City had over a month to work with its Geographic Information Systems team to put the information together for the County. With the Mandated Map, the County would have to start from scratch, adding further confusion and delay, and further running afoul of *Purcell*. For instance in District 1, up for election, the Moore map splits ten existing precincts and their polling places. This is more than any other commission district. District 1 is the only district that has splits with all of the other four districts. This is blatantly confusing to residents and clearly disenfranchises voters. Moreover it is difficult for the Department of Elections to implement and manage the precincts and the designated polling places in such a short timeframe. The other two districts up for election have similar precinct division. In District 2 both Precinct 984 and 534 are split. In District 4, we find three precincts are split (545, 596 and 670). In the other two districts not up for election, the following precincts are also split leading to further voter confusion and disenfranchisement: 581, 564, 669, 566, 534, 984, and 536

By: s/ George T. Levesque

GRAYROBINSON, P.A.

Jason L. Unger, Esquire

Florida Bar No. 991562

George T. Levesque

Florida Bar No. 55551

Andy Bardos

Florida Bar No. 822671

301 S. Bronough Street

Suite 600

Tallahassee, Florida 32301

Telephone: (850) 577-9090

Facsimile: (850) 577-3311

GRAYROBINSON, P.A.

Christopher N. Johnson

Florida Bar No. 69329

Email:

Marlene Quintana, B.C.S.

Florida Bar No. 88358

Email: [Marlene.Quintana@gray-robinson.com](mailto:Marlene.Quintana@gray-robinson.com)

333 S.E. 2<sup>nd</sup> Avenue, Suite 3200

Miami, Florida 33131

Telephone: (305) 416-6880

Facsimile: (305) 416-6887

CITY OF MIAMI

VICTORIA MÉNDEZ, City Attorney

Florida Bar No. 194931

JOHN A. GRECO, Chief Deputy City Attorney

Florida Bar No. 991236

KEVIN R. JONES, Deputy City Attorney

Florida Bar No. 119067

KERRI L. MCNULTY,

Litigation & Appeals Division Chief

Florida Bar No. 16171

Office of the City Attorney

444 S.W. 2<sup>nd</sup> Avenue

Miami, FL 33130

Telephone: (305) 416-1800

Facsimile: (305) 416-1801

*Attorneys for Defendant*

**CERTIFICATE OF COMPLIANCE**

This motion complies with Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1,189 words, excluding the parts that can be excluded. This motion also complies with Federal Rule of Civil Procedure 32(a)(5)-(6) because it has been prepared in a proportionally spaced face using Microsoft Word, 14-point Times New Roman font.

*/s/ George T. Levesque* \_\_\_\_\_

George T. Levesque  
Florida Bar No. 55551  
GRAYROBINSON, P.A.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 2, 2023, the foregoing was filed with the Court's CM/ECF system generating service upon all counsel of record.

*/s/ George T. Levesque* \_\_\_\_\_

George T. Levesque  
Florida Bar No. 55551  
GRAYROBINSON, P.A.