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Proskauer Files Amicus Briefs in Support of Voting Rights

Proskauer For Good on **November 16, 2023**

Proskauer teams recently submitted amicus briefs in two critical voting rights cases, which are becoming increasingly important in the runup to the 2024 U.S. elections. On August 18, 2023, Proskauer submitted an amicus brief to the United States Supreme Court on behalf of 30 historians and legal scholars specializing in the history of the Southern U.S. with a focus on South Carolina, race relations and election laws. The brief was submitted in support of appellees in *Alexander v. The South Carolina State Conference of the NAACP.* Then, on September 25, 2023, Proskauer filed— on behalf of the American Civil Liberties Union, the ACLU Foundation of Florida, the Brennan Center for Justice, and the NAACP Legal Defense and Educational Fund— an amicus brief in the Third District Court of Appeal of Florida in support of the appellee in the case of *State of Florida v. Miller*.

Alexander v. South Carolina State Conference of the NAACP

After an eight-day bench trial, the United States District Court for the District of South Carolina held that the defendants, South Carolina state officials, violated the Equal Protection Clause of the Fourteenth Amendment by enacting into law a plan for congressional reapportionment that included a racially gerrymandered district in Charleston County. The District Court held that race was the predominant factor motivating the South Carolina legislature's decision to move over 30,000 Black voters out of Congressional District No. 1 and into a neighboring congressional district. The District Court further found that Republicans in control of the reapportionment process committed the racial gerrymander by reducing the Black voting age population in Congressional District No. 1 to tilt it into Republican control—as the Black voters were anticipated to mostly vote for Democrats—and adding those Black voters to a neighboring district, which already heavily favored Democrats. As this case challenges the constitutionality of a congressional legislative apportionment plan, it was originally heard by a three-judge panel, as required by 28 U.S.C. § 2284. Defendants directly appealed the decision to the Supreme Court, as required by 28 U.S.C. § 1253, which must render a final decision on the merits. Oral argument took place on October 11.

Proskauer's brief, submitted on behalf of 30 historians and scholars, examined historical racial discrimination in South Carolina, especially in connection with the right to vote. The brief highlighted the strong resemblance between a racially gerrymandered map Democrats drew in 1882 and the racially gerrymandered map Republicans enacted in 2022, both cutting out Black voting centers from the district with surgical precision and brazenly slicing through the Charleston area. The two gerrymanders, 140 years apart, both had the same intentions and the same results—to diminish the political influence of Black voters and the political parties that they favored (Republicans in the 1880s and Democrats in the 2020s). It also provided historical support for key aspects of the appellees' arguments that (i) Black voters historically tended to vote as a bloc in South Carolina, thereby providing a motive for Republicans to push Black voters out of a hotly-contested district, and (ii) the weaponization of race is not excused by the fact that it may serve partisan objectives.

The Proskauer team includes partner Dietrich Snell, pro bono counsel Michelle Moriarty, associates Godfre Blackman, Emily Kline, Michael Guggenheim, Reut Samuels, Daniel Wesson and paralegal Joan Hoffman.

Florida v. Miller

Ronald Miller was arrested in 2022 for registering to vote while ineligible. Unbeknownst to Mr. Miller, his prior felony conviction prevented him from registering and voting legally. Despite the facts that (i) Mr. Miller held a good-faith belief that he was eligible; (ii) a voter registration volunteer assured him as much; and (iii) the State of Florida issued him a voter ID card, Florida's Office of Statewide Prosecution ("OSP") sought to prosecute him anyway. In fact, Mr. Miller was one of 19 returning citizens (i.e., individuals with a prior felony conviction) arrested for allegedly voting while ineligible in 2020, nearly all of whom made what appear to be honest mistakes about their voting eligibility. In December 2022, the Eleventh Judicial Circuit of Florida granted Mr. Miller's motion to dismiss, agreeing with Mr. Miller's assertion that OSP lacked the authority to bring charges. The State thereafter appealed.

Proskauer's amicus brief was premised on three interdependent themes: (i) the inappropriate and unlawful expansion of the authority of OSP to fulfill the State's misplaced efforts to prosecute voting crimes; (ii) Florida's failure to properly administer its voting rights restoration system; and (iii) the resulting confusion that causes a chilling effect among Black voters.

In 2018, Florida voters passed Amendment 4, an amendment to Florida's Constitution, which sought to restore voting rights for most returning citizens who completed the terms of their sentences. The State legislature quickly walked back that progress by passing SB7066 the next year, requiring returning citizens to pay off all fines, fees, and restitution before they could fully regain their right to vote. In addition, the State made it extremely difficult for any affected citizen to determine whether they had satisfied their obligations, which has left many prospective voters confused about their eligibility and led to the kinds of inadvertent mistakes that resulted in the arrest and prosecution of Mr. Miller, among others.

The State previously told federal courts, in litigation over SB7066, that returning citizens who made good-faith mistakes about their voter eligibility need not fear prosecution because Florida's criminal voting statutes require a demonstrated, willful disregard of the law in order to bring suit. However, in direct contradiction to this statement, the State has made the prosecution of returning citizens for voting crimes a priority, as evidenced by an August 2022 press conference during which Gov. Ron DeSantis announced that the arrests of the 19 returning citizens were just the "opening salvo." DeSantis emphasized that the OSP's actions were an effort to prosecute cases where Florida's local State Attorneys had decided not to bring charges.

Proskauer's brief argued that these prosecutions are inappropriate because OSP only has authority to prosecute crimes that happen in multiple judicial circuits. Mr. Miller's case was originally dismissed, as were others in the same posture, on the basis that OSP did not have proper authority to bring charges against a returning citizen if their registration and voting did not happen in more than one judicial circuit. The amicus brief underscored this argument and emphasized that OSP was created to target organized, complex, criminal conspiracies—not the good-faith mistakes of isolated individuals attempting to exercise their right to vote.

Finally, the brief highlighted the practical consequences of OSP's overreach: In Florida, where one in eight Black people are disenfranchised, OSP's prosecutions will work to harm Black voters disproportionately. Reporting has already shown that the cases have caused even eligible voters to fear participating in elections over concerns that they may be prosecuted.

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