

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

MICHAEL ARTEAGA, LENI
FERNANDEZ, ANDREA HERSHORIN,
JEAN ROBERT LOUIS, MELVA
BENTLEY ROSS, DENNY TRONCOSO,
BRANDON NELSON, GERALDINE
WARE, and NINA WOLFSON,

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as
Florida Secretary of State, and ASHLEY
MOODY, in her official capacity as Florida
Attorney General,

Defendants.

Case No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs Michael Arteaga, Leni Fernandez, Andrea Hershorin, Jean Robert Louis, Melva Bentley Ross, Denny Troncoso, Brandon Nelson, Geraldine Ware, and Nina Wolfson, by and through their undersigned counsel, file this Complaint for Declaratory and Injunctive Relief against Defendants Laurel M. Lee, in her official capacity as Florida Secretary of State, and Ashley Moody, in her official capacity as Florida Attorney General, and allege as follows:

NATURE OF THE ACTION

1. This action challenges Florida's current congressional districts as unconstitutionally malapportioned. Because of Florida's significant population growth over the last decade, its current congressional districts are significantly under- and overpopulated and in need of reapportionment. It is now evident, however, that the Florida Legislature (the "Legislature") and Governor Ron DeSantis (the "Governor") will not reach consensus on a

congressional redistricting plan to remedy these population imbalances. Plaintiffs therefore ask this Court to declare Florida’s current congressional districting plan unconstitutional; enjoin Defendants from using the current congressional districting plan in any future elections; and implement a new congressional districting plan that adheres to the constitutional requirement of one person, one vote, should the Legislature and Governor fail to do so.

2. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President. These data confirmed that population shifts during the last decade have rendered Florida’s congressional districts unconstitutionally malapportioned. *Cf. Clark v. Putnam County*, 293 F.3d 1261, 1263–64 (11th Cir. 2002) (“The 1990 census revealed that, as a result of these population shifts, the County’s four electoral districts had become seriously malapportioned.”).

3. Specifically, the current configuration of Florida’s congressional districts, adopted by the Florida Supreme Court in *League of Women Voters of Florida v. Detzner*, 179 So. 3d 258 (Fla. 2015), violates Article I, Section 2 of the U.S. Constitution. Because it is unconstitutional, the current congressional districting plan cannot be used in any upcoming elections, including the 2022 midterms.

4. In Florida, congressional districting plans must be enacted through legislation, which requires the consent of both chambers of the Legislature and Governor (unless both legislative chambers override the Governor’s veto by a two-thirds vote). *See Fla. Const. art. III, § 20(b); Martinez v. Bush*, 234 F. Supp. 2d 1275, 1278 (S.D. Fla. 2002) (per curiam) (three-judge court).

5. There is no reasonable prospect that Florida’s political branches will reach consensus and enact a lawful congressional redistricting plan in time for the upcoming 2022

elections. The Governor has threatened to veto any congressional map that contains the configuration of Congressional District 5 (“CD-5”) currently present in the Legislature’s proposed congressional districting plan, or any similar configuration, on the baseless ground that CD-5 is an unconstitutional racial gerrymander. To make that point, he petitioned the Florida Supreme Court to issue an advisory opinion in support of his claim—an invitation that the court declined to accept. *See Advisory Op. to Governor Re: Whether Article III, Section 20(A) of Fla. Const. Requires Retention of Dist. In N. Fla.*, No. SC22-139, slip op. at 4 (Fla. Feb. 10, 2022).

6. Even still, the very next day the Governor vowed that he “will not be signing any congressional map that has” the configuration of CD-5 proposed by the Legislature. He said so again on February 28, stating, “I’ve said very clearly that I will veto maps that include some of these unconstitutional districts. And that is a guarantee. They can take that to the bank.” And he said so again on March 4, while the Florida House of Representatives debated the state’s congressional plan: “I will veto the congressional reapportionment plan currently being debated by the House. [Dead on arrival].” The House and Senate nevertheless approved that congressional districting plan only hours later.

7. There is thus little doubt that the Legislature’s proposed congressional districting plan will be vetoed by the Governor. And given this history, there is little hope that the Governor and the Legislature will overcome their differences. The legislative supporters of this plan do not have enough votes to override a veto, and there is not enough time left in the legislative session to bridge the deep division between the state’s political branches: the current legislative session ends today, March 11. As a result, Florida will be left without a congressional districting plan to remedy its malapportioned districts.

8. Given the high likelihood of impasse, this Court should intervene to protect the constitutional rights of Plaintiffs and voters across the state. This Court should assume jurisdiction now and establish a schedule that will enable it to adopt a remedial congressional districting plan in the near-certain event that the political branches fail to do so.

JURISDICTION, PARTIES, AND VENUE

9. This Court has jurisdiction over this matter pursuant to Fla. Stat. § 26.012 and Article V, Section 5(b) of the Florida Constitution. Venue is proper pursuant to Fla. Stat. § 47.011. Plaintiffs’ action for declaratory and injunctive relief is authorized by Fla. Stat. § 86.011, as well as Fla. Stat. § 26.012(3).

10. Plaintiffs are citizens of the United States and are registered to vote in Florida. Plaintiffs intend to vote in the upcoming 2022 primary and general elections. Plaintiffs currently reside in the following congressional districts under the enacted map.

Plaintiff	County of Residence	Congressional District
Michael Arteaga	Orange	CD-9
Melva Bentley Ross	Orange	CD-10
Brandon Nelson	Orange	CD-10
Andrea Hershoin	Duval	CD-04
Jean Robert Louis	Hillsborough	CD-15
Leni Fernandez	Pinellas	CD-12
Denny Troncoso	Marion	CD-11
Geraldine Ware	Lee	CD-19
Nina Wolfson	Hillsborough	CD-15

11. As **Exhibit A** demonstrates, Plaintiffs reside in districts that are overpopulated.

12. Defendant Laurel M. Lee is sued in her official capacity as the Florida Secretary of State. Secretary Lee is Florida's chief election officer and is charged with administering and overseeing the state's elections. *See Fla. Stat. § 97.012.*

13. Defendant Ashley Moody is sued in her official capacity as the Florida Attorney General. Attorney General Moody is Florida's chief legal officer. *See Fla. Const. art. IV, § 4(b); Fla. Stat. § 16.01.*

FACTUAL ALLEGATIONS

I. Florida's current congressional districts were drawn using 2010 Census data.

14. On December 2, 2015, the Florida Supreme Court adopted the state's current congressional district plan, which was drawn based on 2010 Census data.

15. According to the 2010 Census, Florida had a population of 18,801,310. A decade ago, the ideal population for each of Florida's 27 congressional districts was 696,345 persons—the state's total population divided by the number of districts.

16. The current congressional district plan adopted in 2015 has been used in every election cycle since.

II. As a result of significant population shifts in the past decade, Florida's congressional districts are now unconstitutionally malapportioned.

17. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President, and on August 12, 2021, census-block results for the 2020 Census were delivered to Florida lawmakers.

18. The results of the 2020 Census report that Florida's resident population, as of April 2020, is 21,538,187—an increase of more than 2.7 million people from the 2010 Census results.

19. As specified in Exhibit A, the 2020 Census data further demonstrate that population shifts since 2010 have rendered Congressional Districts 2, 3, 5, 6, 7, 8, 13, 14, 17, 18, 20, 21, 22, 23, 24, 25, 26, and 27 significantly underpopulated, and Congressional Districts 1, 4, 9, 10, 11, 12, 15, 16, and 19 significantly overpopulated.

20. Due to these population shifts, Florida's existing congressional districts are unconstitutionally malapportioned. And because the 2020 Census has now been completed, the 2010 population data used to draw Florida's current congressional districts are obsolete, and any prior justifications for the existing map's deviations from population equality are inapplicable.

21. If used in any future elections, the current congressional district plan will unconstitutionally dilute the strength of Plaintiffs' votes because Plaintiffs live in districts with populations that are significantly larger than those in which other voters live.

22. Moreover, in addition to being malapportioned, Florida's current congressional districting plan contains one fewer district than the number of districts to which Floridians are entitled.

23. Because of the increase in Florida's population, the state has been apportioned an additional congressional district: it now has 28 seats in the U.S. House of Representatives, one more than the 27 it was apportioned following the 2010 Census.¹

24. Federal law provides that a state should have "a number of [congressional] districts equal to the number of Representatives to which such State is so entitled." 2 U.S.C. § 2c.

25. It is therefore unlawful for any elections to be held under Florida's current 27-seat congressional map.

¹ Under a 28-district plan, the ideal population for each of Florida's congressional districts is 769,221.

III. Florida’s political branches will not enact a new congressional districting plan in time for the 2022 midterm elections.

26. The Legislature and Governor have had months to reach agreement on a congressional redistricting plan but have yet to do so. In fact, the Governor has made clear that he has no intention of agreeing to the plan passed by the Legislature.

27. On February 11, 2022, the Governor declared that the Legislature’s proposed CD-5 is an unconstitutional racial gerrymander and, as a result, he would veto any plan that contains a district with a similar configuration. He reaffirmed this position repeatedly in the weeks that followed, including mere hours before the Legislature voted to approve the proposed congressional districting plan:



28. The Governor’s opposition to the Legislature’s plan was not limited to press events and social media. To derail the legislative process, he asked the Florida Supreme Court to provide an advisory opinion on the constitutionality of CD-5, which the Court declined to entertain. The Governor submitted several proposed congressional districting plans to the Legislature, all of which included a drastically reconfigured CD-5. And a proxy for the Governor argued during a public redistricting subcommittee hearing that CD-5 is unconstitutional.

29. In the face of the Governor’s opposition, the Legislature has steadfastly pressed on with its preferred congressional districting plan. Indeed, the Florida Senate flatly refused to consider the Governor’s proposed alternative plans. And while the House paused its redistricting efforts pending the Florida Supreme Court’s ruling on the Governor’s request for an advisory

opinion, its congressional districting plan still contains configurations of CD-5 that the Governor opposes. If any reasonable doubt remained as to the Legislature's rejection of the Governor's position, the House and Senate extinguished it when they passed a congressional map with the very configuration of CD-5 that, only hours earlier, the Governor said he would veto.

30. The Legislature also has rejected the Governor's view on the merits. During countless hours of committee and floor hearings, the Legislature defended its proposed map as fully compliant with federal and state laws.

31. There is thus little doubt that the Legislature's proposed congressional districting plan will be vetoed by the Governor. And given this history, there is little hope that the Governor and the Legislature will overcome their differences. There is not enough time left in the legislative session even if the state's political branches were able to bridge their deep division: the current legislative session ends today, March 11. And the legislative supporters of the Legislature's plan do not have enough votes to override a veto. Consequently, Florida will be left without a congressional districting plan to remedy its malapportioned districts.

IV. Florida needs a new congressional map, immediately.

32. Voters, candidates, and Florida's election administration apparatus need a lawful congressional districting plan to ensure the orderly administration of the 2022 midterm elections.

33. Florida's new 28-district congressional districting plan must be implemented as soon as possible. Potential congressional candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing the state's new district boundaries, and the filing deadline for the primary election is June 17, 2022.

34. Moreover, without a valid congressional districting plan, voters will be deprived of time to organize and support candidates running in their new districts.

35. Under these circumstances—with political deadlock a near certainty—judicial intervention is needed to ensure that a lawful congressional districting plan is in place ahead of the upcoming midterm elections.

CLAIMS FOR RELIEF

COUNT I

Violation of Article I, Section 2 of the U.S. Constitution Congressional Malapportionment

36. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 35 of this Complaint as though fully set forth herein.

37. Article I, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives “shall be apportioned among the several States . . . according to their respective Numbers.” This provision “intends that when qualified voters elect member of Congress each vote be given as much weight as any other vote,” *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964), meaning that congressional districts must “achieve population equality ‘as nearly as is practicable.’” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry*, 376 U.S. at 7–8).

38. Article I, Section 2 thus “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.” *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). Any variation from exact population equality must be narrowly justified. *See id.* at 731.

39. When Florida’s current congressional district plan was implemented in 2015, the deviation in population among districts was no more than one person. Now, the population deviation is as high as 157,000 people.

40. Given the significant population shifts that have occurred since the 2010 Census—and Florida’s gain of an additional congressional seat—the current congressional districts are now

unlawfully malapportioned. No justification can be offered for deviations among the congressional districts given that these districts were drawn using outdated 2010 population data.

41. Any future use of Florida's current congressional district plan would violate Plaintiffs' constitutional right to an undiluted vote.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

a. Declaring that the current configuration of Florida's congressional districts violates Article I, Section 2 of the U.S. Constitution;

b. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to Florida's current congressional districting plan;

c. Adopting a new congressional districting plan that complies with Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c; and

d. Granting such other and further relief as the Court deems just and proper.

COUNT II
Violation of 2 U.S.C. § 2c
Congressional Malapportionment

42. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 35 of this Complaint as though fully set forth herein.

43. 2 U.S.C. § 2c provides that, in a state containing "more than one Representative," "there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled."

44. Florida's current congressional district plan contains 27 districts. But following the 2020 Census, the state was apportioned 28 seats in the U.S. House of Representatives. As a result, the current congressional district plan violates Section 2c's requirement that the number of

congressional districts be “equal to the number of Representatives to which [Florida] is so entitled.”

45. Any future use of Florida’s current congressional district plan would violate 2 U.S.C. § 2c and unlawfully dilute Plaintiffs’ votes.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- a. Declaring that the current configuration of Florida’s congressional districts violates 2 U.S.C. § 2c;
- b. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to Florida’s current congressional districting plan;
- c. Adopting a new congressional districting plan that complies with Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c; and
- d. Granting such other and further relief as the Court deems just and proper.

Dated: March 11, 2022

/s/ Frederick S. Wermuth

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**Pro hac vice application forthcoming*

EXHIBIT A

District	2010 Population	2020 Population	Percent Deviation
1	696,345	807,881	1.27%
2	696,345	727,858	-8.76%
3	696,345	766,133	-3.96%
4	696,345	871,951	9.31%
5	696,345	748,841	-6.13%
6	696,345	796,187	-0.19%
7	696,345	787,847	-1.24%
8	696,344	783,626	-1.77%
9	696,344	955,656	19.8%
10	696,345	874,602	9.64%
11	696,344	820,902	2.91%
12	696,345	807,093	1.18%
13	696,345	727,509	-8.80%
14	696,345	787,447	-1.29%
15	696,345	819,838	2.77%
16	696,345	884,047	10.82%
17	696,345	779,916	-2.23%
18	696,344	794,724	-0.37%
19	696,345	834,990	4.67%
20	696,344	776,352	-2.68%
21	696,345	787,939	-1.23%
22	696,345	785,762	-1.50%
23	696,345	769,338	-3.56%
24	696,345	742,553	-6.91%
25	696,345	771,456	-3.29%
26	696,345	787,914	-1.23%
27	696,345	739,825	-7.26%