Filing # 164749704 E-Filed 01/13/2023 04:59:57 PM

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

BLACK VOTERS MATTER CAPACITY BUILDING INSTITUTE, INC., et al. Plaintiffs, v. CORD BYRD, in his official capacity as Florida Secretary of State, et al., Defendants.	Case No. 2022-ca-000666

MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Under Florida Rule of Civil Procedure 1.190(a), Plaintiffs move for leave to file an amended complaint, a copy of which is attached as **Exhibit 1**. Defendants have indicated they are not yet able to consent to or oppose amendment of the complaint, but should be able to advise next week whether they are able to stipulate to amendment of the complaint. In support of their motion, Plaintiffs state:

1. On September 29, 2022, the Court entered a scheduling order providing that "[t]he parties shall have until **January 13, 2023,** to amend their pleadings." Joint Scheduling Order at 1 (emphasis in original).

2. Pursuant to that Order, Plaintiffs seek to amend their complaint primarily to (1) add and remove individual plaintiffs, (2) remove defendants who have been dismissed from this action, (3) remove claims Plaintiffs voluntarily dismissed without prejudice, and (4) to add factual allegations, including several related to the 2022 midterm election.

3. Plaintiffs respectfully request that the Court grant their motion.

4. The Court must "freely" grant leave to amend "when justice so requires." Fla. R. Civ. P. 1.190(a). This reflects Florida's policy "to allow amendments to pleadings liberally." *Pangea Produce Distribs., Inc. v. Franco's Produce, Inc.*, 275 So. 3d 240, 242 (Fla. 3d DCA 2019). Accordingly, courts deny motions for leave to amend only when "the amendment 'would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile.'" *Id.* (quoting *JVN Holdings, Inc. v. Am. Constr. & Repairs*, 185 So. 3d 599, 601 (Fla. 3d DCA 2016)).

5. None of the bases for denying motions for leave to amend are present here. *First*, Plaintiffs have not abused their right to amend. This is their first amended complaint and Plaintiffs have filed it within the deadline for amending set by the Court. *See* Joint Scheduling Order at 1. *Second*, Defendants will not be prejudiced. For one thing, they consented to January 13, 2022 as the deadline to amend the pleadings, *id.*; for another, the amended complaint will not impose any new or material discovery burdens on them. *Third*, and finally, Plaintiffs' proposed amendments are not futile. Plaintiffs' proposed amendments are largely in support of claims on which this Court has already found Plaintiffs are likely to succeed. *See* Order Granting Mot. for Prelim. Inj.; *see also Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1082 (Fla. 1st DCA 2022) (vacating injunction on other grounds).

WHEREFORE, Plaintiffs respectfully request entry of an order granting this motion for leave to file their proposed amended complaint.

Dated: January 13, 2023

Respectfully submitted,

/s/ Christina A. Ford
Abha Khanna*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
Facsimile: (206) 656-0180
akhanna@elias.law

Christina A. Ford
Florida Bar No. 1011634
Joseph N. Posimato*
Harleen K. Gambhir*
Julie Zuckerbrod**
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, D.C. 20001
Phone: (202) 968-4490
Facsimile: (202) 968-4498
cford@elias.law
jposimato@elias.law
hgambhir@elias.law
jzuckerbrod@elias.law

Counsel for Plaintiffs

**Admitted pro hac vice*
*** Pro hac vice application pending*

Frederick S. Wermuth
Florida Bar No. 0184111
Thomas A. Zehnder
Florida Bar No. 0063274
Quinn B. Ritter
Florida Bar No. 1018135
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com
qritter@kbzwlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 13, 2023 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

/s/ Thomas A. Zehnder
Thomas A. Zehnder
Florida Bar No. 0063274

Counsel for Plaintiffs

SERVICE LIST

Bradley R. McVay
Ashley Davis
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399
brad.mcvay@dos.myflorida.com
ashley.davis@dos.myflorida.com

Mohammed O. Jazil
Michael Beato
Holtzman Vogel Baran Torchinsky
& Josefiak, PLLC
119 S. Monroe Street, Suite 500
Tallahassee, FL 32301
mjazil@holtzmanvogel.com
mbeato@holtzmanvogel.com

Counsel for Florida Secretary of State

Daniel E. Nordby
Shutts & Bowen LLP
215 S. Monroe Street
Suite 804
Tallahassee, FL 32301
ndordby@shutts.com

Counsel for Florida Senate

Andy Bardos, Esq.
GrayRobinson, P.A.
301 S. Bronough Street
Suite 600
Tallahassee, FL 32302
andy.bardos@gray-robinson.com

Counsel for the Florida House of Representatives

EXHIBIT 1

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

BVM (BLACK VOTERS MATTER) CAPACITY BUILDING INSTITUTE, INC., EQUAL GROUND EDUCATION FUND, INC., LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., LEAGUE OF WOMEN VOTERS OF FLORIDA EDUCATION FUND, INC., FLORIDA RISING TOGETHER, PASTOR REGINALD GUNDY, SYLVIA YOUNG, PHYLLIS WILEY, ANDREA HERSHORIN, ANAYDIA CONNOLLY, LEELA FUENTES, BRANDON P. NELSON, KAITLYN YARROWS, CYNTHIA LIPPERT, KISHA LINEBAUGH, NINA WOLSFON, BEATRIZ ALONSO, GONZALO ALFREDO PEDROSO, and MARVIN HUDSON, Plaintiffs, v. CORD BYRD, in his official capacity as Florida Secretary of State, the FLORIDA SENATE, and the FLORIDA HOUSE OF REPRESENTATIVES, Defendants.	Case No. 2022-ca-000666

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs BVM (BLACK VOTERS MATTER) CAPACITY BUILDING INSTITUTE, INC., EQUAL GROUND EDUCATION FUND, INC., LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., LEAGUE OF WOMEN VOTERS OF FLORIDA EDUCATION FUND, INC., FLORIDA RISING TOGETHER, PASTOR REGINALD GUNDY, SYLVIA YOUNG, PHYLLIS WILEY, ANDREA HERSHORIN, ANAYDIA CONNOLLY, LEELA FUENTES, BRANDON P. NELSON, KAITLYN YARROWS, CYNTHIA LIPPERT, KISHA LINEBAUGH,

NINA WOLFSON, BEATRIZ ALONSO, GONZALO ALFREDO PEDROSO, and MARVIN HUDSON, file this Amended Complaint for Declaratory and Injunctive Relief against Defendant Cord Byrd, in his official capacity as Florida Secretary of State, the Florida Senate, and the Florida House of Representatives, and allege as follows:

NATURE OF THE ACTION

1. In 2010, the people of Florida voted overwhelmingly to enact the Fair Districts Amendment to the state's constitution, imposing constraints on the worst abuses of congressional redistricting and entrusting the Florida judiciary to enforce those safeguards. Over the next decade, states across the country have followed Florida's lead by adopting similar constitutional amendments, prompting the U.S. Supreme Court to cite the Fair Districts Amendment as an exemplar of "provisions in state statutes and state constitutions [that] can provide standards and guidance for state courts to apply" to ensure that "complaints about districting" are not "condemn[ed] . . . to echo into a void." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019).

2. Indeed, just seven years ago, the Florida Supreme Court invalidated the Legislature's congressional redistricting plan under the Fair Districts Amendment after finding that partisan intent tainted the entire redistricting process. *See League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (2015) (" *Apportionment VII*"). That litigation demonstrated Florida courts' "important duty to honor and effectuate the intent of the voters in passing Florida's groundbreaking constitutional amendment," "not because [courts] seek to dictate a particular result, but because the people of Florida have, through their constitution, entrusted that responsibility to the judiciary." *Id.* at 416 (cleaned up).

3. At the beginning of this redistricting cycle, the Legislature indicated its desire comply with the Fair Districts Amendment. Governor Ron DeSantis, however, had other ideas. He

unilaterally declared the Fair Districts Amendment unconstitutional. He vetoed the Legislature's congressional plan and convened a special legislative session, the result of which the Legislature's agreement to pass his own redistricting scheme, SB 2-C (the "DeSantis Plan").

4. The DeSantis Plan does not comply with the Fair Districts Amendment. It does not even purport to.

5. The DeSantis Plan, for example, obliterates Congressional District ("CD-") 5—an existing district that allowed North Florida's Black voters to elect their candidates of choice, and that the Legislature originally sought to protect this redistricting cycle—plainly resulting in unlawful diminishment. When asked on the House floor whether Governor DeSantis's new CD-4 or CD-5 would perform for Black candidates of choice, Redistricting Committee Chair Leek responded simply, and honestly, "No."

6. Both Governor DeSantis and the Legislature well knew that dismantling CD-5 would diminish the voting power of Black residents within North Florida and violate the plain command of the Florida Constitution. From the beginning, Governor DeSantis publicly stated that he would not accept *any* congressional plan that contained a configuration of CD-5 that protected Black voters in North Florida from diminishment. Governor DeSantis was tireless in his efforts, attempting to derail the Legislature's protection of CD-5 through public statements, by filing an extraordinary request for an advisory opinion from the Florida Supreme Court, and by hiring a proxy to appear on his behalf during the Legislature's redistricting hearings. And yet despite this, the Legislature repeatedly affirmed that CD-5 was a protected district and proposed plans that maintained the same configuration the district held under Florida's previous congressional plan (the "Benchmark Plan"). The Legislature's about-face in enacting the DeSantis Plan did not

represent a change of heart, but rather the knowing destruction of a district that the Legislature had for months acknowledged is protected by the Florida Constitution.

7. The DeSantis Plan also violates the Fair Districts Amendment because it intentionally favors the Republican Party at nearly every turn, eliminating at least three Democratic seats and transforming competitive seats into Republican-leaning ones. And in so doing, it needlessly produces noncompact districts that split geographic and political boundaries. As Princeton University Professor Sam Wang described, the DeSantis Plan will result in "one of the most extreme gerrymanders in the country"—precisely the result Florida voters sought to eradicate in passing the Fair Districts Amendment.

8. Shortly after the Legislature enacted the DeSantis Plan into law, and well before the 2022 midterm election, Governor DeSantis predicted his plan would send 20 Republicans and just 8 Democrats to Congress from Florida—an increase of six Republicans from just four years earlier. Indeed, that is exactly what it did, and today Democrats make up just 28.5% of Florida's congressional delegation. Under the DeSantis Plan, Democratic voters in Florida face no realistic chance of increasing their representation in Congress, whether in a "red tsunami" year, or in a "blue wave." The DeSantis Plan was built to be a durable gerrymander, and it is an effective one.

9. Governor DeSantis believes Florida's judiciary will, just like the Legislature, stand aside while he runs roughshod over the Florida Constitution and the will of Florida voters. But "[i]t is this Court's duty, given to it by the citizens of Florida, to enforce adherence to the constitutional requirements and to declare a redistricting plan that does not comply with those standards constitutionally invalid." *In re S. J. Res. of Legis. Apportionment 1176*, 83 So. 3d 597, 607 (Fla. 2012) ("*Apportionment I*"). Florida's voters ask this Court to uphold that duty here.

JURISDICTION, PARTIES, AND VENUE

10. 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).

11. Plaintiff BVM Capacity Building Institute, Inc. ("Black Voters Matter") is a 501(c)(3) nonpartisan civic organization. Its goal is to increase power in communities of color. Black Voters Matter knows that effective voting allows a community to determine its own destiny, but communities of color often face barriers to voting that other communities do not. Black Voters Matter focuses on removing those barriers. It does so by engaging in get-out-the-vote activities, educating voters on how to vote, and advocating for policies to expand voting rights and access to the political process. While Black Voters Matter reaches voters across the state, it has its greatest physical presence in North Florida, where it serves and engages with the state's historic Black communities. The DeSantis Plan, which will decrease representation for Black voters in the state of Florida, stands as a barrier to Black Voters Matter's mission and its ability to ensure Black voters can make their voices heard in Florida.

12. Plaintiff Equal Ground Education Fund ("Equal Ground") is a 501(c)(3) organization with a mission to register, educate, and increase engagement among Black voters in Florida. Equal Ground's principal office is in Orlando, but the organization engages voters throughout the state. Founded in May 2019 to give the rising American electorate greater influence on issues that affect them, Equal Ground focuses on ensuring equal access to democracy in underserved communities. To achieve its goal, Equal Ground conducts extensive voter education, voter registration, and voter engagement work directly through its staff and in alliance with

hundreds of faith partners throughout the state. The DeSantis Plan, which will decrease representation for Black voters in the state of Florida, stands as a barrier to Equal Ground's mission and its ability to ensure Black voters can make their voices heard in Florida.

13. Plaintiffs League of Women Voters of Florida, Inc. and League of Women Voters of Florida Education Fund, Inc. (together, the "League") are nonpartisan voter-focused nonprofit organizations formed under section 501(c)(4) and section 501(c)(3) of the Internal Revenue Code, respectively. The League has 29 chapters across the State of Florida, from Pensacola to the Keys, and thousands of members statewide. The League's mission is to encourage informed and active participation of citizens in government. For more than 10 years, the League has played a key role in Florida's redistricting efforts, first helping to pass the Fair Districts Amendment 12 years ago, and then helping to defend and successfully enforce the Amendment after the last redistricting cycle. During this redistricting cycle, the League has educated numerous Floridians about the redistricting process and advocated for fair maps and adherence to the Fair Districts Amendment before the Legislature. The DeSantis Plan seeks to nullify those efforts. The League also brings these claims on behalf of their members, including its Black, Hispanic, and Asian members, who are harmed by the DeSantis Plan. The League has members in every congressional district in the state, and the vast majority of its members are registered Florida voters who consistently vote in congressional elections.

14. Plaintiff Florida Rising Together (Florida Rising) is a 501(c)(3) organization with a mission to increase the voting and political power of marginalized and excluded constituencies. Florida Rising's principal office is in Miami, although the organization engages with voters throughout the state, most extensively in Orange, Hillsborough, Osceola, Pinellas, Miami-Dade, Broward, Palm Beach, Duval, Leon, Gadsden, and Seminole Counties. Florida Rising's central

focus is to expand democracy by ensuring that every eligible voter in the state, regardless of party affiliation, is able to exercise his or her fundamental and constitutionally protected right to vote. To achieve its goal, Florida Rising conducts massive voter registration, voter education, voter engagement, and election protection programs. The DeSantis Plan, which will decrease representation for minority and Democratic voters in the state of Florida, stands as a barrier to Florida Rising's mission and its ability to ensure its constituents and members can make their voices heard in Florida. Florida Rising also brings these claims on behalf of their members, who are harmed by the DeSantis Plan. Florida Rising has members in every congressional district in Florida and many of its members are registered Florida voters who consistently vote in congressional elections.

15. The Voter Plaintiffs are citizens of the United States and are qualified, registered Florida voters. They are registered Democratic voters and intend to vote in upcoming primary and general elections for Congress. They reside in the following congressional districts:

Plaintiff	County	CD (Benchmark Plan)	CD (DeSantis Plan)
Pastor Reginald Gundy	Duval	CD-5	CD-4
Sylvia Young	Leon	CD-5	CD-2
Phyllis Wiley	Duval	CD-5	CD-4
Andrea Hershorin	Duval	CD-4	CD-4
Anaydia Connolly	Seminole	CD-7	CD-7
Leela Fuentes	Seminole	CD-7	CD-7
Brandon P. Nelson	Orlando	CD-10	CD-10
Kaitlyn Yarrows	Pinellas	CD-13	CD-13
Cynthia Lippert	Pinellas	CD-13	CD-14
Kisha Linebaugh	Hillsborough	CD-14	CD-14
Nina Wolfson	Hillsborough	CD-15	CD-15
Beatriz Alonso	Miami-Dade	CD-27	CD-27
Gonzalo Alfredo Pedroso	Miami-Dade	CD-27	CD-27

Marvin Hudson	Miami-Dade	CD-26	CD-28

16. Pastor Reginald Gundy is a Black Florida citizen and qualified registered voter in Jacksonville, Florida. Pastor Gundy was previously a voter in CD-5 under the Benchmark Plan and resides in the new CD-4 under the DeSantis Plan. Pastor Gundy is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

17. Plaintiff Sylvia Young is a Black Florida citizen and qualified registered voter in Tallahassee, Florida. Ms. Young was previously a voter in CD-5 under the Benchmark Plan and resides in the new CD-2 under the DeSantis Plan. Ms. Young is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

18. Plaintiff Phyllis Wiley is a Black Florida citizen and qualified registered voter in Jacksonville, Florida. Ms. Wiley was previously a voter in CD-5 under the Benchmark Plan and resides in the new CD-4 under the DeSantis Plan. Ms. Wiley is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

19. Plaintiff Andrea Hershorin is a Florida citizen and qualified registered voter in Jacksonville, Florida. Ms. Hershorin was previously a voter in CD-4 under the Benchmark Plan and resides in the new CD-4 under the DeSantis Plan. Ms. Hershorin is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

20. Plaintiff Anaydia Connolly is a Florida citizen and qualified registered voter in Altamonte Springs, Florida. Ms. Connolly was previously a voter in CD-7 under the Benchmark

Plan and resides in the new CD-7 under the DeSantis Plan. Ms. Connolly is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

21. Plaintiff Leela Fuentes is a Florida citizen and qualified registered voter in Altamonte Springs, Florida. Ms. Fuentes was previously a voter in CD-7 under the Benchmark Plan and resides in the new CD-7 under the DeSantis Plan. Ms. Fuentes is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

22. Plaintiff Brandon P. Nelson is a Black Florida citizen and qualified registered voter in Orlando, Florida. Mr. Nelson was previously a voter in CD-10 under the Benchmark Plan and resides in the new CD-10 under the DeSantis Plan. Mr. Nelson is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

23. Plaintiff Kaitlyn Yarrows is a Florida citizen and qualified registered voter in St. Petersburg, Florida. Ms. Yarrows was previously a voter in CD-13 under the Benchmark Plan and resides in the new CD-13 under the DeSantis Plan. Ms. Yarrows is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

24. Plaintiff Cynthia Lippert is a Florida citizen and qualified registered voter in St. Petersburg, Florida. Ms. Lippert was previously a voter in CD-13 under the Benchmark Plan and resides in the new CD-14 under the DeSantis Plan. Ms. Lippert is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

25. Plaintiff Kisha Linebaugh is a Florida citizen and qualified registered voter in Tampa, Florida. Ms. Lippert was previously a voter in CD-14 under the Benchmark Plan and resides in the new CD-14 under the DeSantis Plan. Ms. Linebaugh is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

26. Plaintiff Nina Wolfson is a Florida citizen and qualified registered voter in Temple Terrace, Florida. Ms. Wolfson was previously a voter in CD-14 under the Benchmark Plan and resides in the new CD-14 under the DeSantis Plan. Ms. Wolfson is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

27. Plaintiff Beatriz Alonso is a Florida citizen and qualified registered voter in Miami, Florida. Ms. Alonso was previously a voter in CD-27 under the Benchmark Plan and resides in the new CD-27 under the DeSantis Plan. Ms. Alonso is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

28. Plaintiff Gonzalo Alfredo Pedroso is a Florida citizen and qualified registered voter in Miami, Florida. Mr. Pedroso was previously a voter in CD-27 under the Benchmark Plan and resides in the new CD-27 under the DeSantis Plan. Mr. Pedroso is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

29. Plaintiff Marvin Hudson is a Florida citizen and qualified registered voter in Miami, Florida. Mr. Hudson was previously a voter in CD-26 under the Benchmark Plan and resides in the new CD-28 under the DeSantis Plan. Mr. Hudson is a registered Democrat who has consistently

voted for Democratic candidates for the U.S. House of Representatives and intends to do so in the future.

30. Defendant Cord Byrd is sued in his official capacity as the Florida Secretary of State. Defendant Byrd is Florida's chief election officer and is charged with administering and overseeing the state's elections. *See* Fla. Stat. § 97.012.

31. Defendant Florida Senate (the "Senate") is one of two houses of the Legislature of the State of Florida. The Senate is responsible for drawing reapportionment plans for the U.S. House of Representatives from the State of Florida that comply with the Florida Constitution.

32. Defendant Florida House of Representatives (the "House") is one of two houses of the Legislature of the State of Florida. The House is responsible for drawing reapportionment plans for the U.S. House of Representatives from the State of Florida that comply with the Florida Constitution.

LEGAL BACKGROUND

I. The people of Florida amended the Florida Constitution to reform the congressional redistricting process.

33. On November 2, 2010, the people of Florida voted by an overwhelming margin of 62.9% to 37.1% to enact the Fair Districts Amendment to the Florida Constitution.[1] The Fair Districts Amendment established stringent new standards to constrain the Legislature's once-in-a-decade exercise of its congressional reapportionment powers.

---

[1] *See November 2, 2010 General Election*, Fla. Dep't of State, https://results.elections.myflorida.com/Index.asp?ElectionDate=11/2/2010&DATAMODE= (last visited Apr. 15, 2022). Florida voters adopted a virtually identical constitutional amendment—by a similarly significant margin—to reform Florida's legislative apportionment process. *See id.*; Fla. Const. art. III, § 21. Unless otherwise noted, the "Fair Districts Amendment" as used in this Complaint refers specifically to the *congressional* amendment. *See* Fla. Const. art. III, § 20.

34. The "overall goal" of the Fair Districts Amendment "is to require the Legislature to redistrict in a manner that prohibits favoritism or discrimination, while respecting geographic considerations." *Advisory Op. to Att'y Gen. re Standards for Legislature to Follow in Cong. Redistricting*, 2 So. 3d 175, 181 (Fla. 2009). "These express new standards imposed by the voters clearly act as a restraint on the Legislature in drawing apportionment plans." *Apportionment I*, 83 So. 3d at 597.

35. The Fair Districts Amendment standards are enumerated within two "tiers" in Article III, Section 20 of the Florida Constitution. The "Tier I" standards provide that (1) no congressional plan "shall be drawn with the intent to favor or disfavor a political party or an incumbent;" (2) "districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice;" and (3) "districts shall consist of contiguous territory." Fla. Const. art. III, § 20(a).

36. The "Tier II" standards provide that (1) "districts shall be as nearly equal in population as is practicable;" (2) "districts shall be compact;" and (3) "districts shall, where feasible, utilize existing political and geographical boundaries." *Id.* § 20(b).

37. The "Tier II" standards "are subordinate and shall give way where compliance 'conflicts with the [Tier I] standards or with federal law.'" *Apportionment I*, 83 So. 3d at 639 (quoting Fla. Const. art. III, § 20(b)). But while "the tier-two standards are subordinate to the tier-one requirements, the constitution further instructs that no standard has priority over the other within each tier." *Id.* (citing Fla. Const. art. III, § 20(c))

38. This Court's duty to enforce the Fair Districts Amendment "arises from the well settled principle that the state Constitution is not a grant of power but a limitation upon power."

Id. at 599 (cleaned up). This principle applies with force in the context of reapportionment. "Indeed, the right to elect representatives—and the process by which we do so—is the very bedrock of our democracy. To ensure the protection of this right, the citizens of the state of Florida, through the Florida Constitution, employed the essential concept of checks and balances, granting to the Legislature the ability to apportion . . . in a manner prescribed by the citizens and entrusting this Court with the responsibility to review the apportionment plans to ensure they are constitutionally valid." *Id.* at 600.

A. The Florida Constitution protects racial and language minorities against discriminatory intent and results in the congressional redistricting process.

39. The protection of racial and language minorities is a Tier I standard, "meaning that the voters placed this constitutional imperative as a top priority to which the Legislature must conform during the redistricting process." *Apportionment I*, 83 So. 3d at 615.

40. Article III, Section 20(a) of the Florida Constitution provides that "districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process *or* to diminish their ability to elect representatives of their choice." (emphasis added). This portion of Section 20(a) prevents both vote dilution and diminishment of a minority group's ability to elect candidates of its choice.

41. The Florida Supreme Court has labeled this latter requirement as the "non-diminishment standard." *See Advisory Op. to Gov.*, No. SC22-139, 2022 WL 405381, at *1 (Fla. Feb. 10, 2022); *Apportionment VII*, 172 So. 3d at 402; *Apportionment I*, 83 So. 3d at 677. It prohibits congressional districting plans that have "the purpose or will have the effect of diminishing the ability of any citizens on account of race or color to elect their preferred candidates of choice." *Id.* at 620 (cleaned up).

42. "Accordingly, the Legislature cannot eliminate majority-minority districts or weaken other historically performing minority districts where doing so would actually diminish a minority group's ability to elect its preferred candidates." *Id.* at 625. The non-diminishment standard accordingly calls for a comparative analysis: "The existing plan of a covered jurisdiction serves as the 'benchmark' against which the 'effect' of voting change is measured." *Id.* at 624.

43. This comparative or "functional" analysis requires "consideration not only of the minority population in the districts, or even the minority voting-age population in those districts, but of political data and how a minority population group has voted in the past." *Id.*

44. Unlawful intent can be discerned from both direct and circumstantial evidence. *See Apportionment VII*, 172 So. 3d at 388–89. Direct evidence of improper intent is often found in the statements and communications of those "responsible for drafting districting plans." *Id.* (citing *Easley v. Cromartie*, 532 U.S. 234, 254 (2001)).

45. Circumstantial evidence, however, can be enough by itself to show improper intent. Indeed, the "specific sequence of events leading up to the challenged decision also may shed light on the decisionmaker's purposes." *Apportionment VII*, 172 So. 3d at 389 (quoting *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977)). "Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role." *Id.* (quoting *Arlington Heights*, 429 U.S. at 267).

46. In determining intent, courts have also "considered the role of alternative plans," because if "an alternative plan can achieve the same constitutional objectives that prevent vote dilution and retrogression of protected minority and language groups and also apportions the districts in accordance with tier-two principles . . . this will provide circumstantial evidence of improper intent." *Apportionment I*, 83 So. 3d at 641.

B. The Florida Constitution prohibits the drawing of congressional districts to favor or disfavor a political party.

47. The Florida Constitution's prohibition on partisan gerrymandering is also a Tier I standard.

48. "The acceptability of partisan political gerrymandering in this state dramatically changed" after the people of Florida amended the Constitution with the Fair Districts Amendment. *Apportionment VII*, 172 So. 3d at 374.

49. Article III, Section 20(a) of the Florida Constitution provides that "[n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent." This requirement "prohibits what has previously been an acceptable practice, such as favoring incumbents and the political party in power." *Apportionment I*, 83 So. 3d at 615. "While some states have sought to minimize the political nature of the apportionment process by establishing independent redistricting commissions to redraw legislative districts, Florida voters have instead chosen to place restrictions on the Legislature by constitutional mandate in a manner similar to the constitutions of other states." *Id.* at 616.

50. The Florida Constitution "prohibits drawing a plan or district with the intent to favor or disfavor a political party or incumbent; there is no acceptable level of improper intent." *Id.* at 617. It "does not reference the word 'invidious' as the term has been used by the United States Supreme Court in equal protection discrimination cases, and Florida's provision should not be read to require a showing of malevolent or evil purpose." *Id.* (cleaned up). The Florida Constitution's prohibition on partisan gerrymandering, moreover, "applies to both the apportionment plan as a whole and to each district individually." *Id.*

FACTUAL BACKGROUND

II. The Fair Districts Amendment is enforceable against Florida's congressional reapportionment plans.

51. When the U.S. Supreme Court held that partisan gerrymandering claims could not be brought in federal court, it explained that its holding did not "condemn complaints about districting to echo into a void." *Rucho*, 139 S. Ct. at 2507. The task of reforming the redistricting process is one for the states and their citizens because "[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Id.*

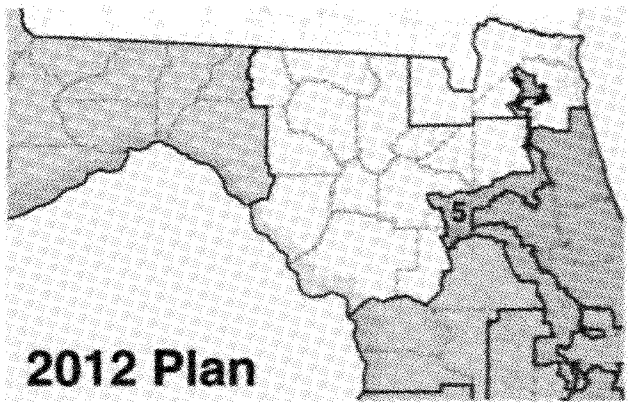
52. The U.S. Supreme Court pointed to Florida as a model for the nation. Citing favorably to the Florida Supreme Court's decision to strike down the Legislature's 2012 congressional redistricting plan, the U.S. Supreme Court held that federal courts were not similarly empowered to adjudicate partisan gerrymandering claims because "[t]here is no 'Fair Districts Amendment' to the Federal Constitution." *Rucho*, 139 S. Ct. at 2507 (citing *Apportionment VII*, 172 So. 3d at 363). And it observed that other states, including Missouri, Iowa, and Delaware, followed Florida's lead by amending their constitutions in similar fashion. *Id.* at 2507–08.

53. In *Apportionment VII*, plaintiffs alleged that Florida's 2012 congressional plan was drawn to benefit the Republican Party in violation of the Fair Districts Amendment's prohibition on partisan gerrymandering. The trial court agreed, enforcing the Fair Districts Amendment against the Legislature's plan. *See Romo v. Detzner*, No. 2012-CA-000412, 2014 WL 3797315, at *3 (Fla. 2d Cir. Ct. July 10, 2014).

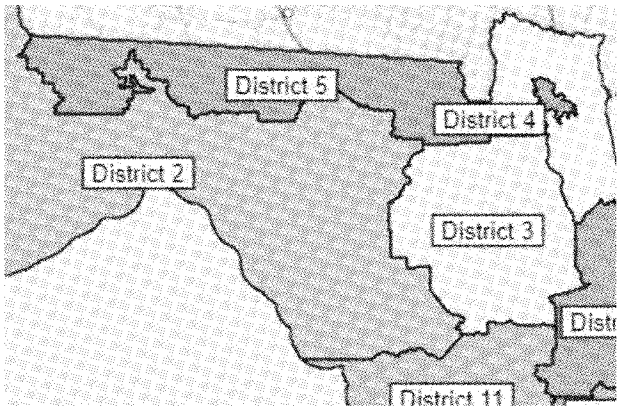
54. The Florida Supreme Court agreed that the Legislature had made a "mockery" out of the Fair Districts Amendment in drawing its 2012 congressional plan. *Apportionment VII*, 172 So. 3d at 377. The Court gave no deference to the Legislature's justifications for the challenged district boundaries given its finding that the entire map had been "tainted by unconstitutional intent

to favor the Republican Party and incumbent lawmakers." *Id.* at 369 (cleaned up). It then ordered the Legislature "to redraw, on an expedited basis, Congressional Districts 5, 13, 14, 21, 22, 25, 26, 27, and all other districts affected by the redrawing." *Id.* at 371–72.

55. The Court also provided precise guidelines to ensure that the Legislature redrew the map in accordance with the Florida Constitution. For example, the Court ordered the Legislature to redraw North Florida's CD-5, which, as shown below, was "visually not compact, bizarrely shaped" and contravened "traditional political boundaries as it [wound] from Jacksonville to Orlando, narrowing at one point to the width of a highway." *Id.* at 402.



56. The Florida Supreme Court rejected the Legislature's assertion that this north-to-south configuration was necessary to comply with the Fair Districts Amendment's non-diminishment standard, explaining that the Legislature "placed more black voters in the district than [was] necessary to ensure that they can elect a candidate of choice—thereby diluting the influence of Democratic minorities in surrounding districts." *Id.* at 402. It then ordered the Legislature to redraw CD-5 in an East-West configuration as legislative staffers had initially done in draft plans, *id.* at 403–04, and subsequently affirmed the redrawn configuration as shown below:



See League of Women Voters of Fla. v. Detzner ("*Apportionment VIII*"), 179 So. 3d 258, 271–72 (Fla. 2015).

57. The Florida Supreme Court rejected arguments that the East-West configuration of CD-5 "causes the redistricting map to become significantly less compact." *Apportionment VII*, 172 So. 3d at 405–06. While the redrawn CD-5 had a longer perimeter than the Legislature's version, "length is just one factor to consider in evaluating compactness." *Id.* at 406. Indeed, "the phrase 'as compact as possible' does not mean 'as small in size as possible, but rather 'as regular in shape as possible.'" *Id.* (cleaned up). After all, "numerical compactness scores actually favor[ed] the East-West orientation." *Id.* The redrawn CD-5 also produced fewer city and county splits. *Id.*

58. The Court provided additional guidance for redrawing the Tampa Bay-based CDs-13 and 14. It explained that the Legislature adopted a configuration of these districts that was "known to have been favored by political operatives" in which CD-14 "crossed Tampa Bay, add[ing] more Democratic voters to an already safely Democratic District 14, while ensuring that District 13 was more favorable to the Republican Party." *Id.* at 406–07. The Court then ordered CDs-13 and 14 to be "redrawn to avoid crossing Tampa Bay." *Id.* at 409.

59. The Court further held that CDs-21, 22, 25, 26, and 27 were likewise drawn with impermissible partisan intent, in each instance rejecting the Legislature's justifications for the

district lines and providing specific guidance for redrawing the district boundaries. *See id.* at 410–13.

60. After the Florida Supreme Court issued its decision and remanded, the Legislature quickly convened a special session that ended without agreement. In the absence of an agreed plan, the trial court analyzed and recommended remedial districts drawn by the House, Senate, and plaintiffs. *Apportionment VIII*, 179 So. 3d at 261. The Florida Supreme Court adopted the trial court's recommendation in December 2015, resulting in the congressional map that would be used in Florida's next three congressional elections—the Benchmark Plan. *See id.*

61. The Court acknowledged that *Apportionment VII* was "neither the first, nor likely the last time" that the Florida judiciary would need to "confront a challenge to a redistricting plan enacted by the Legislature." 172 So. 3d at 415. Future courts, it pressed, must continue to "endeavor[] to give meaning to the intent of the framers and voters who passed the Fair Districts Amendment." *Id.* at 415.

III. After the Legislature indicated that they would protect CD-5 from diminishment, Governor DeSantis hijacked the process and declared the Amendment unconstitutional.

62. The U.S. Census Bureau released the 2020 census data needed for redistricting on August 12, 2021. The Florida Senate and House commenced the redistricting process by holding initial hearings in September 2021, kicking off an iterative process of drafting congressional maps.

63. Throughout the process, both chambers repeatedly asserted that CD-5 was a protected district under the Florida Constitution's non-diminishment standard and explained the importance of keeping the district intact.

64. That process culminated in the Senate approving, on a bipartisan basis, a congressional redistricting plan that retained the east-west configuration of CD-5.[2] The Senate Reapportionment Committee voted to advance its congressional plan to the full Senate on January 13, 2022.[3] The full Senate then voted overwhelmingly—by a vote of 31 to 4—in favor of the plan.[4] That plan was expected to produce 16 Republican seats and 12 Democratic seats.

65. At that time, the House was also in the process of finalizing a congressional map that retained the core of CD-5. But before it could do so, Governor DeSantis upended the redistricting process by threatening to veto the House and Senate plans over the configuration of CD-5. Describing CD-5 as an "unconstitutional gerrymander," Governor DeSantis then claimed repeatedly that he would "not be signing any congressional map that has an unconstitutional gerrymander in it. That is going to be the position that we stick to. Take that to the bank."[5]

66. On February 1, 2022, Governor DeSantis requested that the Florida Supreme Court issue an advisory opinion on whether the Fair Districts Amendment's non-diminishment standard "requires the retention" of CD-5 in either the east-west configuration adopted in *Apportionment VII* or the north-south version preceding it. *See Advisory Op.*, 2022 WL 405381, at *1. The Court denied the request.

67. The Legislature attempted to appease Governor DeSantis by passing a redistricting plan on March 4, 2022, that modified CD-5 to make it more compact and eliminated the so-called

---

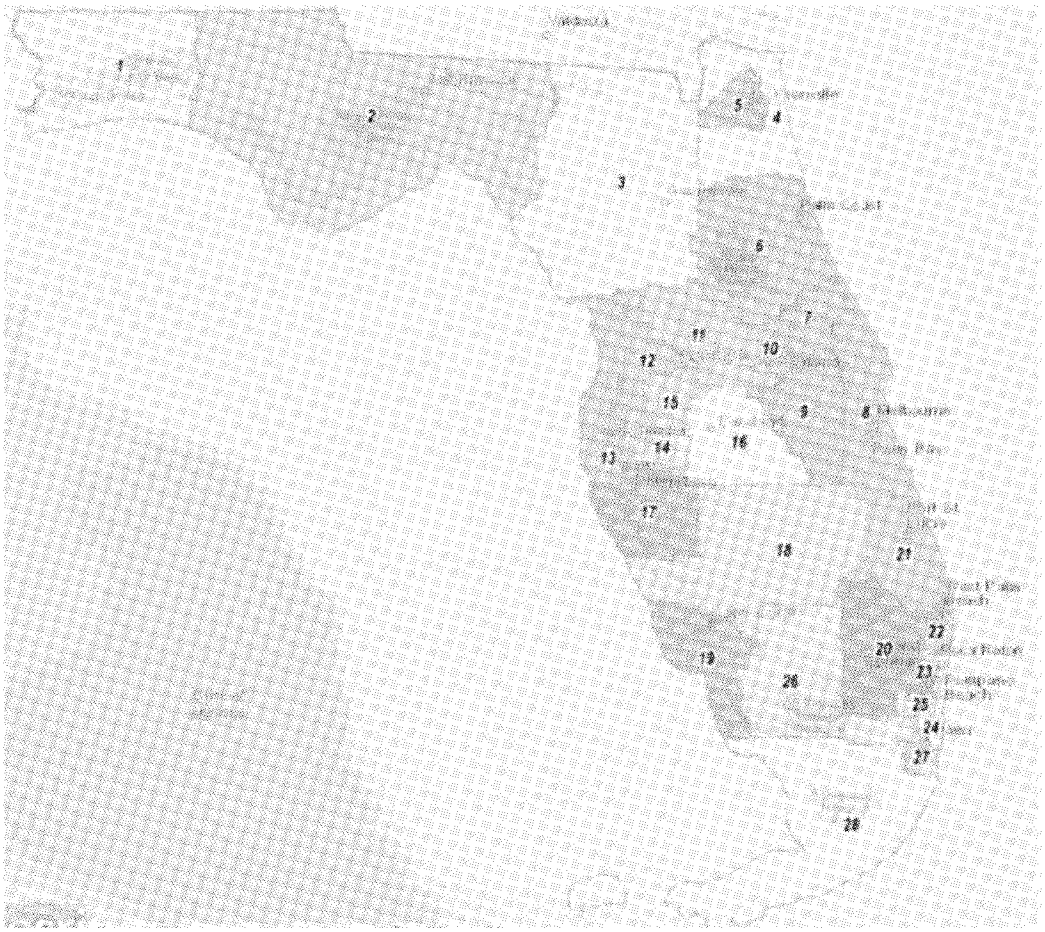
[2] *See CS/SB 102: Bill Analysis and Fiscal Impact Statement* at 13, Fla. Sen. (Jan. 14, 2022), https://www.flsenate.gov/Session/Bill/2022/102/Analyses/2022s00102.re.PDF.

[3] *See CS/102: Establishing the Congressional Districts of the State*, Fla. Sen., https://www.flsenate.gov/Session/Bill/2022/102 (Mar. 29, 2022).

[4] *See id.*

[5] *DeSantis Says He Will Not Sign Legislation That Has 'Unconstitutional Gerrymander,'* WTXL (Feb. 11, 2022) https://www.wtxl.com/news/local-news/desantis-says-he-will-not-sign-legislation-that-has-unconstitutional-gerrymander.

"sprawling" nature of the district, which Governor DeSantis had opposed. While the modified version, as shown below, substantially reduced the Black population of the district, the Legislature contended that it still would have allowed the Black candidate of choice to prevail in a majority of elections:[6]



68. The Legislature's March 4 plan favored Republicans even more than the Senate's version; it was anticipated to produce 18 Republican seats and 10 Democratic seats.

69. The Legislature's plan also included an alternative map that the Legislature intended to take effect if courts found that the primary map diminished Black voting power in

[6] *CS/SB 102: Establishing the Congressional Districts of the State*, Fla. Sen., https://www.flsenate.gov/Session/Bill/2022/102/?Tab=BillHistory (Mar. 29, 2022).

violation of the Florida Constitution. The alternative map retained the East-West configuration of CD-5 and, like the primary plan, was expected to produce 18 Republican seats and 10 Democratic seats.

70. On March 29, 2022, Governor DeSantis vetoed the Legislature's plan despite the changes the House made to appease him and called a special legislative session. Governor DeSantis claimed that the Legislature's plan still contained "unconstitutional racial gerrymanders."[7]

71. In advance of the special session, House Speaker Sprowls and Senate President Simpson informed lawmakers that legislative staff would not draw new maps and that the Legislature would instead consider a congressional plan from Governor DeSantis.[8] The intent of the special session, they explained, "is to provide the Governor's Office opportunities to present [a plan] before House and Senate redistricting committees."[9]

72. Governor DeSantis released his proposed congressional plan on April 13, 2022.

73. During the special session, the Governor's Deputy Chief of Staff, Alex Kelly, and Legal Counsel, Ryan Newman, presented the DeSantis Plan to the House and Senate.

74. During his testimony, Mr. Kelly confirmed that Governor DeSantis had hired Adam Foltz, a well-known Republican redistricting operative, to help draw the map. Up until that point, the Governor's Office failed to disclose that Foltz had been working behind the scenes with the

---

[7] *Gov. DeSantis Vetoes Congressional Redistricting Maps Passed by Florida Lawmakers*, WTSP (Mar. 29, 2022), https://www.wtsp.com/article/news/politics/desantis-vetoes-congressional-redistricting-maps/67-f04f20fd-9113-4cb7-9704-1fb0aac22159.

[8] Associated Press, *Florida Legislature Gives up, Asks DeSantis for Congressional Maps*, WTXL (Apr. 11, 2022), https://www.wtxl.com/news/local-news/florida-legislature-gives-up-asks-gov-for-congressional-map.

[9] *Id.*

Governor's Office to draw maps, including the prior maps that the Governor's Office released in January and February 2022.

75. The Legislature passed the DeSantis Plan on April 21, 2022, without amendment, over the vigorous protest of the chambers' Black representatives.

IV. The DeSantis Plan violates the Florida Constitution by diminishing the ability of Black voters to elect representatives of their choice.

76. As the 2020 census revealed, Florida is home to over 3.7 million Black residents, a substantial increase from the last decennial census. Today, Florida has three times the Black population of Alabama and a larger Black population than Georgia.

77. Under the Benchmark Plan, as ordered by the Florida Supreme Court in 2015, Black voters could and did elect their candidates of choice in four districts across the state: CD-5, in North Florida; CD-10, in Central Florida; and CDs-20 and 24 in South Florida.

78. Under the Benchmark Plan, CD-5 consisted of the historic Black population in North Florida.

79. While CD-5 was known for its inclusion of Tallahassee and Jacksonville, both of which have substantial Black populations, Black voters also comprise a substantial portion of the lower-density counties that made up the rest of CD-5. Gadsden County, for instance, is 55% Black, and Jefferson, Madison, and Hamilton Counties are all more than 30% Black.

80. Under the Benchmark Plan, Black voters made up 46.2% of the citizen and total voting-age populations of CD-5. At this threshold, CD-5 elected Black voters' candidates of choice in every election since the Benchmark Plan's adoption:

Election	Black Candidate of Choice	Vote Share
2016	Al Lawson (D)	64.2%
2018	Al Lawson (D)	66.8%

2020	Al Lawson (D)	65.1%

81. The DeSantis Plan obliterates CD-5 and Black voters' ability to elect their candidate of choice in North Florida.

82. Specifically, the DeSantis Plan takes existing CD-5 and carves up its Black population among four new districts: the new CD-2, CD-3, CD-4, and CD-5. The resulting Black populations of those districts are now 23.3%, 16.3%, 29.6%, and 11.8%, respectively. The white populations of those districts now subsume the Black populations considerably in each district.

83. As a result, there are no districts in North Florida that permit Black voters to elect their candidates of choice.

84. In passing the DeSantis Plan, the Legislature did not even attempt to argue that the DeSantis Plan's obliteration of CD-5 complied with the Florida Constitution's non-diminishment standard. Rather, legislative leadership stated only that they believed there was a "legitimate question" as to whether they were required to honor that provision of the Fair Districts Amendment.

V. The DeSantis Plan violates the Florida Constitution by intentionally diminishing and abridging the ability of Black voters to elect representatives of their choice.

85. The DeSantis Plan does not result in diminishment by happenstance; it was intended to have that precise effect.

86. Governor DeSantis stated that he intended to dismantle the historically black CD-5 when he released his redistricting plan in advance of the special legislative session. At a news conference following the release of the DeSantis Plan, the Governor stated that "[w]e are not going

to have a 200-mile gerrymander . . . . That is wrong. That's not the way we've governed in the state of Florida."[10]

87. Indeed, the special legislative session came on the heels of months of repeated statements from Governor DeSantis and his staff pledging to eliminate CD-5. Following the release of the first iteration of the DeSantis Plan earlier this year, Governor DeSantis's press secretary was unequivocal: "We eliminated this flagrant gerrymander." And Governor DeSantis used similar language regarding CD-5 in explaining his decision to veto the Legislature's proposal in March.[11]

88. Governor DeSantis's desire to eliminate CD-5 was also apparent in his request for an advisory opinion from the Florida Supreme Court on "whether Article III, Section 20(a) of the Florida Constitution requires the retention of [CD-5]." *Advisory Op.*, 333 So. 3d at 1107–08.

89. The Legislature passed the DeSantis Plan with full knowledge and acceptance of the fact that the plan would eliminate a historically performing Black district.

90. During the special session, when asked on the House Floor whether new CD-4 or CD-5 would perform for Black candidates of choice, Chair Leek responded that it would not. He further explained, "[O]ur [House] staff did a functional analysis and confirmed it does not perform."

---

[10] Jane C. Timm & Marc Caputo, *DeSantis Draws Congressional Map That Would Dramatically Expand GOP's Edge in Florida*, NBC News (Apr. 13, 2022), https://www.nbcnews.com/politics/elections/desantis-draws-congressional-map-dramatically-expanding-gops-edge-flor-rcna24317.

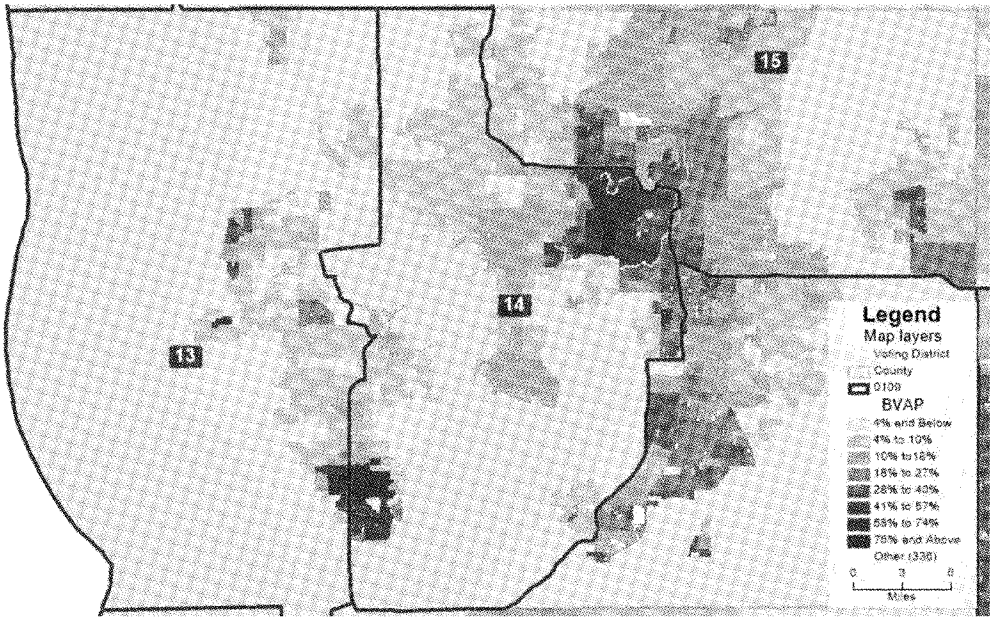
[11] Steve Contorno, *DeSantis Vetoes New Florida Congressional Map and Calls for Special Session*, CNN (Mar. 29, 2022), https://www.cnn.com/2022/03/29/politics/desantis-vetoes-florida-congressional-map/index.html (Governor DeSantis describing CD-5 as "pure racial gerrymander" that must be eliminated).

91. And in signing the plan, Governor DeSantis made good on a promise he had made months earlier to veto any plan that complied with the Fair Districts Amendment's protection of CD-5 as a Black-opportunity district.

92. Beyond knowingly dismantling CD-5, the DeSantis Plan also engages in race-based line drawing throughout the state to abridge and diminish the voting strength of minority voters.

93. In Central Florida, for example, the DeSantis Plan pulls *hundreds of thousands* of minority voters out of their existing districts and subsumes them into white districts. Most notably, the DeSantis Plan removes approximately 300,000 people from CD-10. The majority of those removed are persons of color who have now been pushed into CD-11, a predominantly white district.

94. In Tampa Bay too the DeSantis Plan splits St. Petersburg's Black population in half, cracking Black voters in CD-13 between two congressional districts, thereby diminishing and abridging the Black community's ability to influence elections. The picture below shows the new split of the Black population in Pinellas County, shown in blue:



95. Across the state, the DeSantis Plan intentionally and repeatedly carves out Black voters from districts where they previously exercised electoral power.

VI. The DeSantis Plan violates the Florida Constitution by intentionally favoring the Republican Party and disfavoring the Democratic Party.

96. With nearly every line-drawing decision, the DeSantis Plan advantages the Republican Party.

97. Under the Benchmark Plan, Democrats were expected to consistently win 11 of the state's 27 congressional districts: one in North Florida, three in Central Florida, two in Tampa Bay, and five in South Florida. Several more congressional seats beyond those 11 were competitive between the parties: Under the Benchmark Plan, depending on prevailing national trends, the Democratic Party could have plausibly claimed 13 or 14 seats (or roughly half) of Florida's 27 congressional districts.

98. While the Benchmark Plan was widely thought to exhibit a slight Republican bias, it at least gave Democrats a roadmap to compete for half the state's congressional seats. This was a reasonable outcome in a longstanding purple state.

99. During the regular legislative session, the Legislature produced at least some plans that resulted in a roughly similar breakdown of seats as the Benchmark Plan. For example, while the Senate's final congressional plan exhibited a Republican bias, it was still expected to elect 16 Republicans and 12 Democrats to Congress.

100. The DeSantis Plan, however, was expected to and did elect 20 Republicans and only 8 Democrats to Congress.

101. As Princeton University Professor Sam Wang described, the DeSantis Plan will result in "one of the most extreme gerrymanders in the country."[12]

102. As a Florida campaign consultant similarly described, the DeSantis Plan "is the conservative dream map. It aims to compact Democrats into as few districts as possible."[13]

103. That is exactly what the DeSantis Plan does: It intentionally favors Republicans at nearly every turn. The result is devastatingly effective, resulting in a loss of at least three safely held Democratic seats as compared to the Benchmark Plan.

104. Both as a whole, and as considered at an individual district level, the DeSantis Plan is an intentional partisan gerrymander.

105. Below are just a few of the examples of how the DeSantis Plan intentionally favors Republicans across the state:

A. North Florida

106. In the Benchmark Plan, North Florida consistently elected one Democrat to Congress: Al Lawson, from CD-5. As discussed, the DeSantis Plan obliterates CD-5, cracking its Black (and Democratic-leaning) populations across the new CDs-2, 3, 4, and 5, creating four safe-Republican seats. Because CDs-1 and 6 also remain reliably Republican, no district in North Florida will elect a Democrat under the DeSantis Plan.

107. Even taken at face value, Governor DeSantis's articulated desire to comply with the U.S. Constitution (and the consequent elimination the East-West configuration of CD-5) does not plausibly explain the elimination of a Democratic seat in North Florida.

---

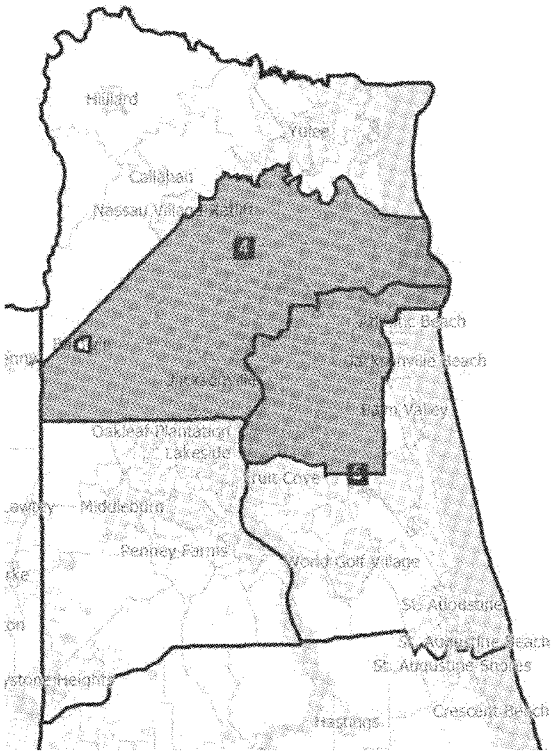
[12] Paul LeBlanc, *Ron DeSantis Is Drawing Democrats out of the Equation in Florida*, CNN (Apr. 14, 2021), https://www.cnn.com/2022/04/14/politics/desantis-florida-redistricting-what-matters/index.html.

[13] Matthew Isabel, *Issue 44: A Good Friday Analysis of a Bad Redistricting Map*, MCIMAPS Report (Apr. 15, 2022).

108. As the Legislature's March 4 map demonstrated, before it was vetoed by Governor DeSantis, it was possible to draw a compact, Jacksonville-only district with a substantial Black population. That version of CD-5 would have consistently elected Democrats.

109. Governor DeSantis vetoed that plan, decrying what he deemed to be the plan's unfair treatment of Jacksonville, which was divided in the Legislature's plan, even while it kept the city's Black population substantially together.

110. Governor DeSantis's plan, however, still cleaves Jacksonville—and its Black population—in two. It just now does so in a way that disadvantages both Black voters and Democrats, resulting in two safe-Republican seats. The DeSantis Plan's division of Jacksonville is shown below:



111. In the 2022 midterm election, North Florida elected only Republicans to Congress, just as observers expected it would under the DeSantis Plan.

B. Central Florida

112. In the Benchmark Plan, Central Florida consistently elected three Democrats to Congress, from CDs-9, 10, and 7. Of these districts, CD-7 was the most competitive for Republicans, though it still elected a Democrat by more than 10 percentage points in 2020.

113. The DeSantis Plan ensures that Republicans will safely be elected in CD-7.

114. In the Benchmark Plan, CD-7 sat in the northeast corner of Orlando and its suburbs, encompassing the University of Central Florida. The Benchmark CD-7 encompassed all of Seminole County and took a portion of Orange County to the south. The district was relatively compact.

115. At the start of this redistricting cycle, CD-7 needed to lose only a small amount of population to reach population equality. It did not need to be drastically reconfigured.

116. The DeSantis Plan wholly reconfigures CD-7. The new CD-7 exits Orange County entirely, then reaches out all the way to the Space Coast to take the southern half of Volusia County. The new district sheds about 300,000 residents from the prior district, the majority of whom are persons of color, retaining only about 30% of its prior area. The resulting district is far whiter and Republican, resulting in a reliably safe-Republican seat.

117. Moreover, by moving into Volusia County, the new CD-7 creates an additional unnecessary county split in the map, further diminishing its compliance with traditional redistricting principles.

118. In the 2022 midterm election, CD-7 switched from Democratic hands to Republican hands, just as observers expected it would under the DeSantis Plan.

C. Tampa Bay

119. As proposed plans from even the Republican Senate demonstrated this cycle, Tampa Bay can elect as many as three Democratic representatives from compact districts.

120. In the Benchmark Plan, Tampa Bay consistently elected two Democrats to Congress, from CDs-13 and 14.

121. In the Benchmark Plan, CD-13 was situated wholly in Pinellas County and included all of St. Petersburg. CD-14 was similarly situated wholly in Hillsborough County.

122. The Benchmark Plan's configuration of CDs-13 and 14 was the result of three years of litigation. In *Apportionment VII*, the plaintiffs alleged that the Legislature's enacted configuration of these districts—in which CD-14 jumped across Tampa Bay to pack Democratic voters from St. Petersburg into CD-14—was an intentional partisan gerrymander. The trial court and Florida Supreme Court agreed, ordering the configuration of CDs-13 and 14 as found in the Benchmark Plan.

123. The DeSantis Plan does precisely what the Florida Supreme Court told the Legislature it could not do in 2015: jump across Tampa Bay to pack Democratic voters into CD-14 and drain them away from CD-13, thereby turning CD-13 from a safe-Democratic seat to a safe-Republican seat.

124. The DeSantis Plan's treatment of CDs-13 and 14 is not easily explained by the need to meet population equality or improve upon other Tier II criteria.

125. At the start of this redistricting cycle, CD-13 needed to gain approximately 40,000 people to reach population equality. CD-14, conversely, needed to lose approximately 20,000 people. CD-13 thus needed to expand slightly, and CD-14 needed to contract slightly.

126. In the DeSantis Plan, however, CD-14 jumps across Tampa Bay to seize nearly 200,000 of Pinellas County's residents from CD-13, the district that needed to *gain* population. This configuration splits one of Florida's major cities—and specifically, splits St. Petersburg's Black population in half, cracking Black voters in CD-13 and packing them into CD-14 to ensure

a new safely held Republican seat in Tampa Bay. In so doing, the DeSantis Plan reduces the compactness of CD-13 as compared to the Benchmark Plan

127. In the 2022 midterm election, CD-13 switched from Democratic hands to Republican hands, just as observers expected it would under the DeSantis Plan.

128. The new representative of CD-13 is Republican Anna Paulina Luna. Shortly after her election, Representative Luna was asked by a reporter to explain the "red tsunami" in Florida in 2022. In response, Representative Luna did not credit Republican policies or Republican popularity, but responded that it was the result of Governor DeSantis's redistricting plan and willingness to stand up to both Democrats and the Legislature in passing his plan.[14]

D. South Florida

129. In the Benchmark Plan, South Florida had two fiercely competitive seats: CDs-26 and 27. Both seats were winnable by either party. For example, both seats switched hands from a Republican in 2016, to a Democrat in 2018, and back to a Republican in 2020.

130. The DeSantis Plan redraws both districts to ensure Democrats cannot realistically win either seat going forward. CD-26 (now CD-28), for example, shaves off Palmetto Estates and West Perrine, communities with substantial Democratic populations. It trades those communities for Fontainebleau, which is more reliably Republican. CD-27 makes similar moves, trading its Democratic-heavy portions of Miami Beach for more reliably Republican areas. The result is to put both districts of out of reach for Democrats.

---

[14] Anna Paulina Luna (@VoteAPL), Twitter (Dec. 28, 2022, 9:18 PM), https://twitter.com/VoteAPL/status/1608286181770539015.

CLAIMS FOR RELIEF

COUNT I
Violation of Article III, Section 20 of the Florida Constitution
Diminishment of Minority Ability to Elect (Tier I Violation)

131. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 130 of this Complaint as though fully set forth herein.

132. Under the Florida Constitution, districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice

133. The DeSantis Plan and individual districts in the plan, including specifically the elimination of Benchmark CD-5, result in diminishment of Black voters' ability to elect their candidates of choice in violation of Article III, Section 20 of the Florida Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

a. Declaring that the DeSantis Plan and/or individual districts in the DeSantis Plan violate Article III, Section 20 of the Florida 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 the DeSantis Plan, including enjoining Defendants from conducting any elections for the U.S. House of Representatives under the DeSantis Plan;

c. Ordering or adopting a new congressional districting plan that complies with Article III, Section 20 of the Florida Constitution;

d. Issuing an order requiring Defendants to pay Plaintiffs' costs and expenses incurred in the prosecution of this action, as authorized by Fla. Stat. § 86.081; and

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

COUNT II
Violation of Article III, Section 20 of the Florida Constitution
Intent to Abridge and Diminish Minority Voting Strength (Tier I Violation)

134. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 130 of this Complaint as though fully set forth herein.

135. The DeSantis Plan was intended to result in diminishment of Black voters' ability to elect their candidates of choice in violation of Article III, Section 20 of the Florida Constitution.

136. The DeSantis Plan further intentionally abridges and diminishes the equal opportunity of minority voters to participate in the political process by targeting minority populations in North Florida, Tampa Bay, and Central Florida to draw them out of minority-opportunity districts.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

a. Declaring that the DeSantis Plan and/or individual districts in the DeSantis Plan violate Article III, Section 20 of the Florida 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 the DeSantis Plan, including enjoining Defendants from conducting any elections for the U.S. House of Representatives under the DeSantis Plan;

c. Ordering or adopting a new congressional districting plan that complies with Article III, Section 20 of the Florida Constitution;

d. Issuing an order requiring Defendants to pay Plaintiffs' costs and expenses incurred in the prosecution of this action, as authorized by Fla. Stat. § 86.081; and

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

COUNT III
Violation of Article III, Section 20 of the Florida Constitution
Intent to Favor or Disfavor a Political Party (Tier I Violation)

137. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 130 of this Complaint as though fully set forth herein.

138. The DeSantis Plan and individual districts in the plan, including but not limited to CDs-4, 5, 7, 10, 11, 13, 14, 15, 26, and 27, were drawn with the intent to favor the Republican Party and to disfavor the Democratic Party in violation of Article III, Section 20 of the Florida Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

a. Declaring that the DeSantis Plan and/or individual districts in the DeSantis Plan violate Article III, Section 20 of the Florida 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 the DeSantis Plan, including enjoining Defendants from conducting any elections for the U.S. House of Representatives under the DeSantis Plan;

c. Ordering or adopting a new congressional districting plan that complies with Article III, Section 20 of the Florida Constitution;

d. Issuing an order requiring Defendants to pay Plaintiffs' costs and expenses incurred in the prosecution of this action, as authorized by Fla. Stat. § 86.081; and

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

Dated: January ____, 2023

Respectfully submitted,

Frederick S. Wermuth
Florida Bar No. 0184111
Thomas A. Zehnder
Florida Bar No. 0063274
Quinn B. Ritter
Florida Bar No. 1018135
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com
qritter@kbzwlaw.com

Abha Khanna*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
Facsimile: (206) 656-0180
akhanna@elias.law

Christina A. Ford
Florida Bar No. 1011634
Joseph N. Posimato*
Harleen K. Gambhir*
Julie Zuckerbrod**
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, D.C. 20001
Phone: (202) 968-4490
Facsimile: (202) 968-4498
cford@elias.law
jposimato@elias.law
hgambhir@elias.law
jzuckerbrod@elias.law

Counsel for Plaintiffs

**Admitted pro hac vice*
*** Pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January _____, 2023 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

/s/
Thomas A. Zehnder
Florida Bar No. 0063274

Counsel for Plaintiffs

SERVICE LIST

Bradley R. McVay
Ashley Davis
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399
brad.mcvay@dos.myflorida.com
ashley.davis@dos.myflorida.com

Counsel for Florida Secretary of State

Mohammed O. Jazil
Michael Beato
Holtzman Vogel Baran Torchinsky
& Josefiak, PLLC
119 S. Monroe Street, Suite 500
Tallahassee, FL 32301
mjazil@holtzmanvogel.com
mbeato@holtzmanvogel.com

Counsel for Florida Secretary of State

Daniel E. Nordby
Shutts & Bowen LLP
215 S. Monroe Street
Suite 804
Tallahassee, FL 32301
ndordby@shutts.com

Counsel for Florida Senate

Andy Bardos, Esq.
GrayRobinson, P.A.
301 S. Bronough Street
Suite 600
Tallahassee, FL 32302
andy.bardos@gray-robinson.com

Counsel for the Florida House of Representatives