IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

Case. No. 1D2026-1539
L.T. Case No. 2026-CA-914

Equal Ground Education Fund, Inc., et al.,

Appellants,

v.
Cord Byrd, in his official capacity as Florida Secretary of State, the Florida House of Representatives, and the Florida Senate,

Appellees.

INITIAL BRIEF OF APPELLANTS

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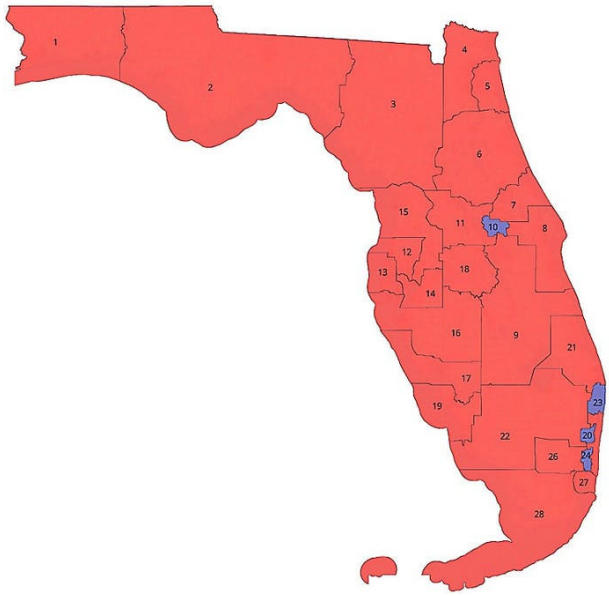
INTRODUCTION

The trial court's cursory eight-page order denying Plaintiffs temporary relief is irreconcilable with the substantial record demonstrating partisan intent, unlike anything Florida courts have seen in the redistricting context. The Governor's own map drawer admitted he drew Florida's 2026 congressional map using partisan data and without regard for the Fair Districts Amendment. The Governor's Office released the map to Fox News, with 24 districts shaded red and 4 shaded blue (as shown below), boasting its pro-Republican dominance. Expert analysis confirms the intended result: a plan so extreme it ranks at the very top of the most partisan congressional maps enacted by any state in the past 50 years—even more extreme than the Legislature's 2012 Plan that the Florida Supreme Court struck down as an unconstitutional partisan gerrymander.



The trial court denied temporary relief anyway, concluding there was "insufficient evidence of partisan intent"—without making any factual findings on that question and despite the unrefuted evidence before it. The trial court also failed to address Plaintiffs' Tier II claims even though Plaintiffs moved for relief on that independent basis. Finally, the trial court declined to restore the 2022 Plan—the map Defendants drew, defended in court, and touted as constitutionally compliant—based on the Secretary's newfound litigation position that it is unconstitutional.

The trial court's reasoning, if it stands, guts the Fair Districts Amendment. It means the political branches can replace a lawful map with a partisan gerrymander, preemptively declare their own prior map unconstitutional to block status quo restoration, and try to run out the clock until the courts have no time to act. But the clock has not run out. Florida's primary is not until August 18. Candidate qualifying runs from June 8 through June 12. And all 67 Supervisors of Elections were instructed to preserve the 2022 Plan's infrastructure just three weeks ago, in express anticipation of this contingency. Restoring the 2022 Plan remains feasible, and this Court has both the authority and the obligation to order it. The voters who

passed the Fair Districts Amendment entrusted Florida's courts with that responsibility. This Court should honor it.

STATEMENT OF THE CASE AND FACTS

I. FACTUAL BACKGROUND

A. The Florida Constitution imposes strict limits on the redistricting process.

In 2010, Floridians enacted the Fair Districts Amendment to the Florida Constitution, which "dramatically alter[ed] the landscape" for redistricting, "prohibiting practices that have been acceptable in the past, such as crafting a plan or [a] district with the intent to favor a political party or an incumbent." *In re Senate Joint Resol. of Legis. Apportionment 1176* ("*Apportionment I*"), 83 So. 3d 597, 607 (Fla. 2012). The "overall goal" of the Amendment is to require redistricting "in a manner that prohibits favoritism or discrimination, while respecting geographic considerations." *Advisory Op. to Att'y Gen. re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 175, 181 (Fla. 2009). The Florida Constitution accordingly prohibits plans created with *any* partisan intent. Under Article III, Section 20, "there is no acceptable level of improper [partisan] intent." *Apportionment I*, 83 So. 3d at 617.

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." Art. III, § 20(a), Fla. Const. 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." Art. III, § 20(b), Fla. Const.

Florida courts have since enforced those provisions repeatedly, and the U.S. Supreme Court has held up Florida's standards as a model for the nation. In 2015, the Florida Supreme Court found that the Legislature had made a "mockery" of the Fair Districts Amendment in passing Florida's 2012 Plan, holding that the entire map was "tainted by unconstitutional intent to favor the Republican Party." *League of Women Voters of Fla. v. Detzner* ("*Apportionment VII*"), 172

So. 3d 363, 416, 437 (Fla. 2015). The Court acknowledged that this would not be the last time Florida courts would likely need to confront a partisan gerrymander. *Id.* at 415. And when the U.S. Supreme Court held in *Rucho v. Common Cause* that federal courts could not adjudicate partisan gerrymandering claims under the federal constitution, it made clear that "[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply"—and cited Florida's enforcement of the Amendment as proof, noting that "[t]here is no 'Fair Districts Amendment' to the Federal Constitution." 588 U.S. 684, 719 (2019) (citing *Apportionment VII*, 172 So. 3d at 363).

B. Florida's 2026 Plan was the last puzzle piece in a nationwide mid-decade redistricting blitz for partisan advantage.

The 2026 Plan represents the culmination of a yearlong push for mid-decade partisan redistricting. In June 2025, President Trump pressured Texas Republicans to redraw congressional districts to more heavily favor Republicans in advance of the 2026 midterms. *See* App.1625-29. The North Carolina and Missouri legislatures followed Texas's lead, and voters in California and Virginia responded by amending their state constitutions to allow for mid-decade partisan

redistricting. *See* App.1634-43, 1722-26. In contrast, Florida made no efforts to amend its constitution when it sought to redistrict mid-decade for partisan gain.

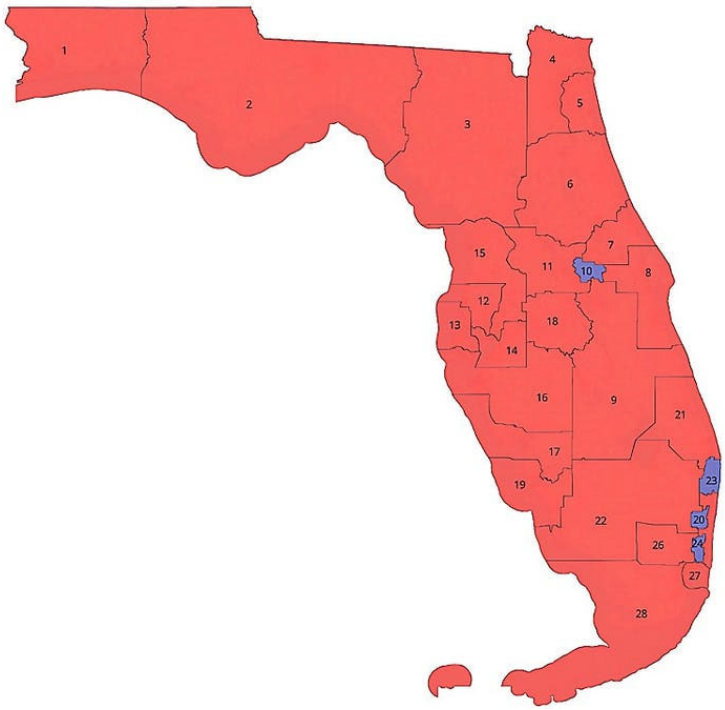
Governor DeSantis announced his desire to redistrict shortly after President Trump called for mid-decade redistricting, App.1625-29, 1646-50, 1683-88. In the months that followed, Florida's Republican lawmakers were candid that Florida's redistricting was about pure partisan advantage. *See* App.1644-57, 1681-94. In December 2025, Florida State Senator Joe Gruters reposted a prediction that Florida would add five Republican congressional seats. App.1644-45. Multiple members of Florida's congressional delegation publicly mused about how many Republican seats Florida could add without jeopardizing their own seats. App.1646-53. U.S. Representative Byron Donalds, the Florida Republican Party's leading gubernatorial candidate, argued that because of "California and Virginia responding to Texas . . . Florida needs to respond." App.1656. And after Virginia voters approved a partisan congressional map shortly before Florida's special session, "Team DeSantis"—the "Official TEAM account of @RonDeSantis"—reposted on social media that Florida should "cancel out Virginia" and "go for BROKE in Florida."

App.1682. The post was quickly taken down but captured by reporters. *See id.*

This public celebration of partisan aims was matched with an unprecedentedly secretive map development process. No public hearings were held, no draft maps were released for public review, and no venue was available for the public to submit proposed plans. *See* App.918-20. This process stood in stark contrast to the 2021-2022 cycle, in which the Legislature held over twenty redistricting meetings and operated a website to facilitate public review and submission of plans. *See* App.1309-17.

C. The Governor and Legislature openly flouted the Florida Constitution in releasing, considering, and enacting the 2026 Plan.

The Governor and Legislature made a mockery of the Fair Districts Amendment at every stage of the 2026 Plan's process. The day before the special session was set to convene, the Governor's Office made no effort to conceal the plan's partisan purpose, releasing the color-coded map to Fox News as an exclusive—with 24 districts shaded in red and 4 in blue. App.1713-17.



In a statement to Fox News, Governor DeSantis explained that the map was drawn to reflect the increase of the Republican population of the state. App.1700-06. The map was accompanied by a memorandum from the Governor's General Counsel confirming the 2026 Plan was drawn in deliberate disregard of the Fair Districts Amendment. *See* App.369-71. In particular, the memo argued that the Fair Districts Amendment's race provisions are unconstitutional, and that the entire Fair Districts Amendment must fall with them, including the Amendment's prohibition on partisan gerrymandering and Tier II requirements. *See* App.371.

One day later, the Legislature heard from Jason Poreda, a member of the Governor's staff who claimed to have drawn the map

himself in consultation with the Governor's Office. *See* App.503-04, 720-21. Poreda's testimony removed any doubt that the 2026 Plan was drawn with partisan intent. Poreda explained that he drew the map "not having to comply with the Fair Districts Amendment," which allowed him to use "the entire suite of redistricting criteria that are available to other states . . . including partisan data." App.693. Just months earlier, DeSantis himself had acknowledged such use would be unlawful: When reporters asked DeSantis whether the plan would favor the Republican Party, he responded: "[Mapmakers are] not allowed to use the partisan data." App.1720. Poreda's admission also stood in stark contrast to four years earlier, when Alex Kelly, the 2022 Plan's map drawer, was adamant that he "did not consider or even look at pol[it]ical data, including party registration[] [and] voter data," in drawing the 2022 Plan. App.1132. When asked by a Senator, "[H]ow does this map comply with the Florida Fair District[s] Amendment?" Poreda was clear: "[I]t does not have to." App.691.

The floor debate the next day confirmed the 2026 Plan's partisan intent and disregard for the Fair Districts Amendment. The bill's House sponsor, for example, acknowledged that the map drawer considered partisan data and was unable to provide any substantive

justification for the 2026 Plan's departure from traditional redistricting principles—including its reduction in compactness and increase in county and city splits compared to the 2022 Plan. App.2149-50, 2153-54. When the bill's Senate sponsor, Senator Gaetz, was asked whether passing a map drawn using partisan data violated the Florida Constitution, Senator Gaetz responded that it would only be illegal if it were proven in court that partisan intent was the "controlling factor" for line-drawing decisions—an interpretation that neither the Fair Districts Amendment's plain text nor Florida Supreme Court precedent supports. *See* App.841; *infra* Argument I.A.

When asked whether the Legislature had ceded its redistricting authority to the Governor's Office, Senator Gaetz emphasized the Legislature had "the authority to accept [the 2026 Plan], to reject it, or to amend it. It is not the Governor's prerogative as to what the maps will be. It is ours now." App.863. Although several Republican Senators voted against the 2026 Plan, the Legislature ultimately enacted it. App.907.

D. The 2026 Plan is an extreme and intentional partisan gerrymander.

The virtually undisputed evidence below showed unequivocally that the 2026 Plan is an extreme and intentional pro-Republican partisan gerrymander. All told, the 2026 Plan eliminates *half* of the districts that could be expected to elect Democratic representatives under the 2022 Plan—a plan that was already quite favorable to Republicans. *See* App.325. That is no accident: the map drawer freely admitted he disregarded compliance with the Fair Districts Amendment and considered partisan data in crafting the 2026 Plan. App.693. The 2026 Plan accomplishes its goals by carving up Florida's Democratic-leaning cities, drawing sprawling and non-compact districts, and ruthlessly packing and cracking Democrats across the state. The expert analyses of Plaintiffs' experts Dr. Jonathan Rodden, Dr. Jowei Chen, and Dr. Chris Warshaw, all of whom are recognized experts in redistricting, confirm what is plainly visible to any lay observer: the result cannot be explained by anything other than partisan intent.

Dr. Rodden examined how the 2026 Plan impacts district partisanship and performance on traditional redistricting principles. *See* App.170-220. Dr. Chen, an expert in redistricting simulations,

developed 5,000 race-blind and partisan-blind computer-simulated congressional plans that follow the redistricting criteria in the Fair Districts Amendment. *See* App.221-312, 2528-51. By comparing the simulations to the 2026 Plan, Dr. Chen can determine whether the 2026 Plan's extreme partisan characteristics can be explained by another factor, such as a race-neutral plan, by a desire to prioritize the traditional redistricting criteria in the Fair Districts Amendment, or by Florida's political geography. And Dr. Warshaw used a variety of standard measures to evaluate whether the 2026 Plan exhibits partisan bias. *See* App.313-48.

1. The 2026 Plan carves up the State to benefit the Republican Party and at the expense of traditional redistricting criteria.

The first notable feature of the 2026 Plan is the districts it does not change. The 2026 Plan preserves in their entirety CDs 1 through 7, each of which has reliably elected a Republican since the 2022 Plan's inception. App.179. And it leaves those districts alone even though population in CDs 5 and 6 is growing rapidly, *see* App.182, which was one of the Governor's purported justifications for redistricting, App.449-50. The 2026 Plan also makes virtually no changes to the Republican-performing Latino minority districts CDs 27 and

28 in South Florida, App.1217-19, each of which remains "almost identical" to its 2022 Plan predecessor, App.684, even though the 2026 Plan was purportedly designed to eliminate all racial considerations.

In every other region of the state, however, including those regions that had *no* recognized minority-protected districts, the 2026 Plan radically reconfigures the map to eliminate four reliable Democratic districts. *See* App.178-80. The result is a map that is *less* compact, *increases* county and city splits, and *deviates more frequently* from political and geographical boundaries than the 2022 Plan. *See* App.182, 440, 1232.

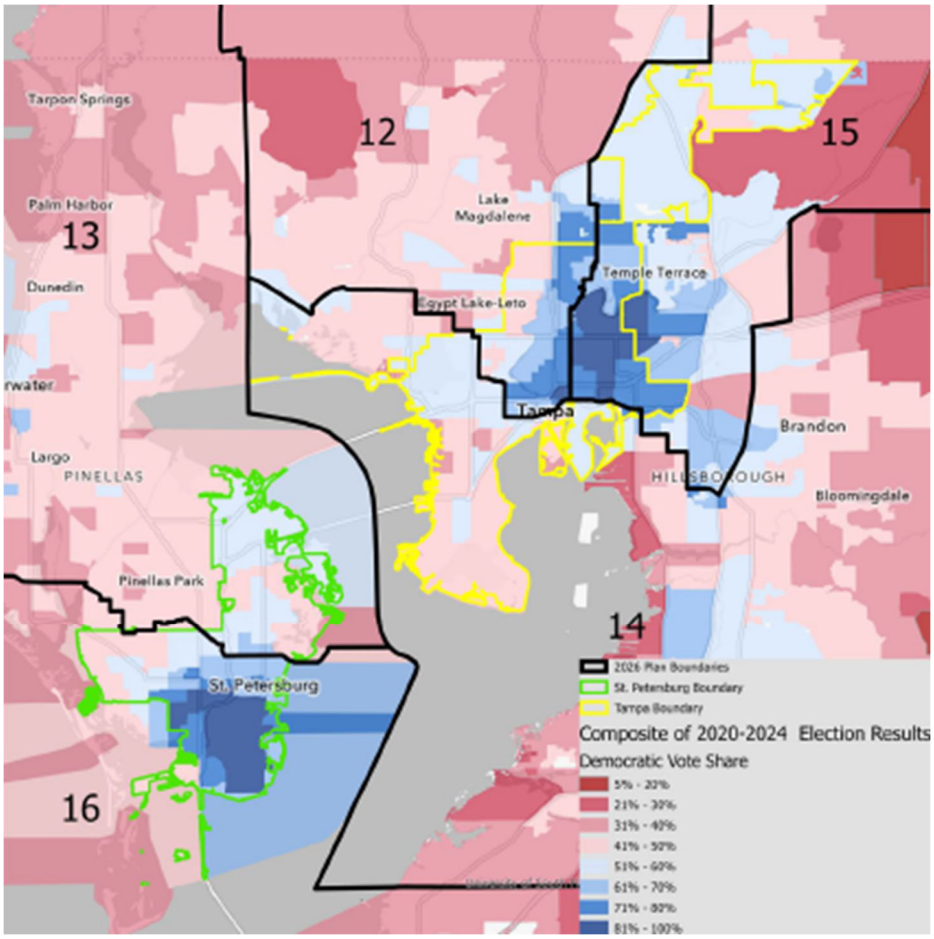
a) Tampa Bay

Until as recently as 2022, Tampa Bay had two Democratic members of Congress, one from CD-14, which kept the city of Tampa whole, and one from CD-13, which kept St. Petersburg whole. App.182-83. The 2022 Plan eliminated CD-13 as a Democratic district by combining Democratic voters from both St. Petersburg and Tampa into CD-14. *See* App.183.

The 2026 Plan accomplishes what the 2022 Plan could not without retreating from the Fair Districts Amendment: eliminating *all* of

Tampa Bay's Democratic districts by meticulously cracking Democratic voters across the region, all while subordinating traditional redistricting criteria to accomplish that goal. *See* App.182-84, 188-92, 274-82. The 2026 Plan creates a pinwheel out of Tampa, dividing it into three segments, each of which takes a third of Tampa's population and then reaches out to the rural periphery to overwhelm urban Democrats. App.183-87. Under the 2026 Plan, CD-14 goes from a reliable Democratic-performing district (with a predicted vote share of 54.5% Democratic) to a Republican district (43.9% Democratic). App.188-89. Such a configuration of Tampa Bay has never existed in modern history. A single district composed primarily of the population of the city of Tampa has existed and elected a Democratic member of Congress in every single U.S. Congressional election since 1962. App.183.

Meanwhile, the 2026 Plan ensures that CD-13 does not become a Democratic-performing district by splitting St. Petersburg, connecting its southern half with the new, sprawling CD-16. The cracking of Tampa Bay's Democratic voters is shown below. App.2522.



In eliminating CD-14 as a Democratic district, the 2026 Plan violates traditional redistricting principles. To crack Democratic voters, the plan pairs urban voters in Tampa and St. Petersburg with voters in faraway, rural counties. *See* App.177, 183. CD-15, for example, pairs residents of downtown Tampa in Hillsborough County with residents much further north in Citrus County, including Crystal River and Homosassa Springs, App.183, an outcome Plaintiffs' expert Dr. Chen showed would almost never occur in a race-blind, partisan-blind map that is designed to prioritize the Fair Districts

Amendment's criteria, *see* App.276-79. Pairing such distant Floridians also creates noncompact districts. Indeed, CD-15 in the 2026 Plan is now less compact on every single mathematical compactness measure than CD-20 in the 2022 Plan, which the Governor has decried as noncompact. *Compare* App.1216, *with* App.440; *see also* App.210.

A similar pattern emerges for the new CD-16, which in the 2022 Plan consisted only of Hillsborough and Manatee Counties, but which now reaches west to grab the bottom of Pinellas County (splitting St. Petersburg), dips into Sarasota County, and goes as far east as DeSoto, Hardee, and Polk Counties, *see* App.183-84, 908-17, 1230, a configuration that Dr. Chen shows would virtually never occur in a race-blind, partisan-blind map that is designed to prioritize the Fair Districts Amendment's criteria, *see* App.281-83. The change substantially increases the footprint of CD-16 and decreases its compactness, both mathematically and visually. *See* App.183-84, 190-91.

CDs 13 and 14 in the 2026 Plan also become less compact than their predecessors. App.190-91. Moving from the 2022 Plan to the 2026 Plan, the districts that encompass Tampa Bay—Districts 12

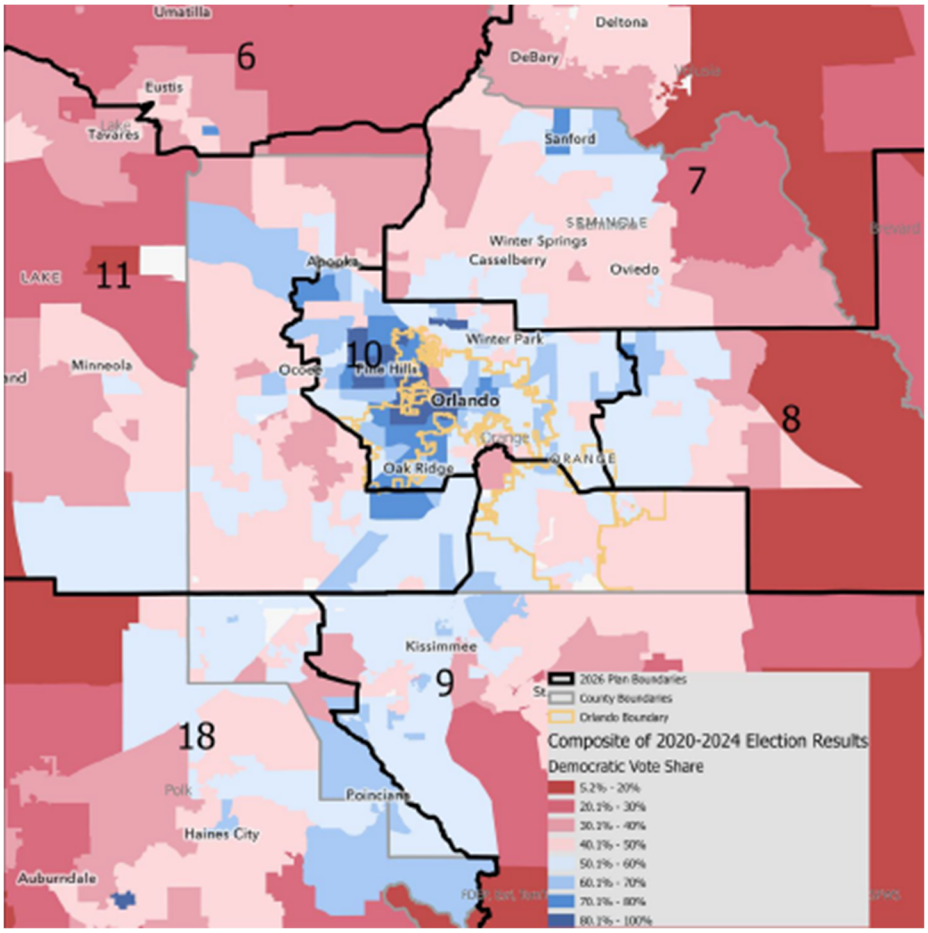
through 16—become on average less compact *on every commonly used mathematical compactness measure*. *See* App.191. This outcome, too, would not emerge without partisan intent. As Dr. Chen shows, race-blind and partisan-blind maps that are designed to prioritize the Fair Districts Amendment's criteria *almost always* produce districts in Tampa Bay that are more compact (and more Democratic-leaning) than those in the 2026 Plan. *See* App.276-77, 279-81.

b) Orlando Metro

Until 2022, the Orlando metropolitan area had three Democratic members of Congress, from CDs 7, 9, and 10. App.192. The 2022 Plan, however, created only two districts that could reliably elect a Democrat to Congress: CD-10, anchored in Orange County, and CD-9, anchored in Orange, Osceola, and Polk Counties. *See* App.192.

Unlike Tampa Bay, which can be successfully cracked to leave no Democratic districts, Democrats are so numerous in Central Florida that it is mathematically impossible to construct the region with no Democratic seats. App.192. So the 2026 Plan does the next best thing: it packs Democrats tightly into CD-10 and scatters Democrats from CD-9 across neighboring districts, all while subordinating

traditional redistricting criteria to accomplish that goal. *See* App.192, 194-99. The figure below shows how efficiently Democrats have been packed into CD-10 and cracked among the remaining districts. App.2524.



The 2026 Plan accomplishes its goal of eliminating CD-9 as a Democratic-performing district by reducing CD-9's footprint in Orange and Osceola Counties, where more Democratic voters reside, and taking the district so far south that it reaches the southwestern shore of Lake Okeechobee. App.192, 194-95. Under the 2026 Plan,

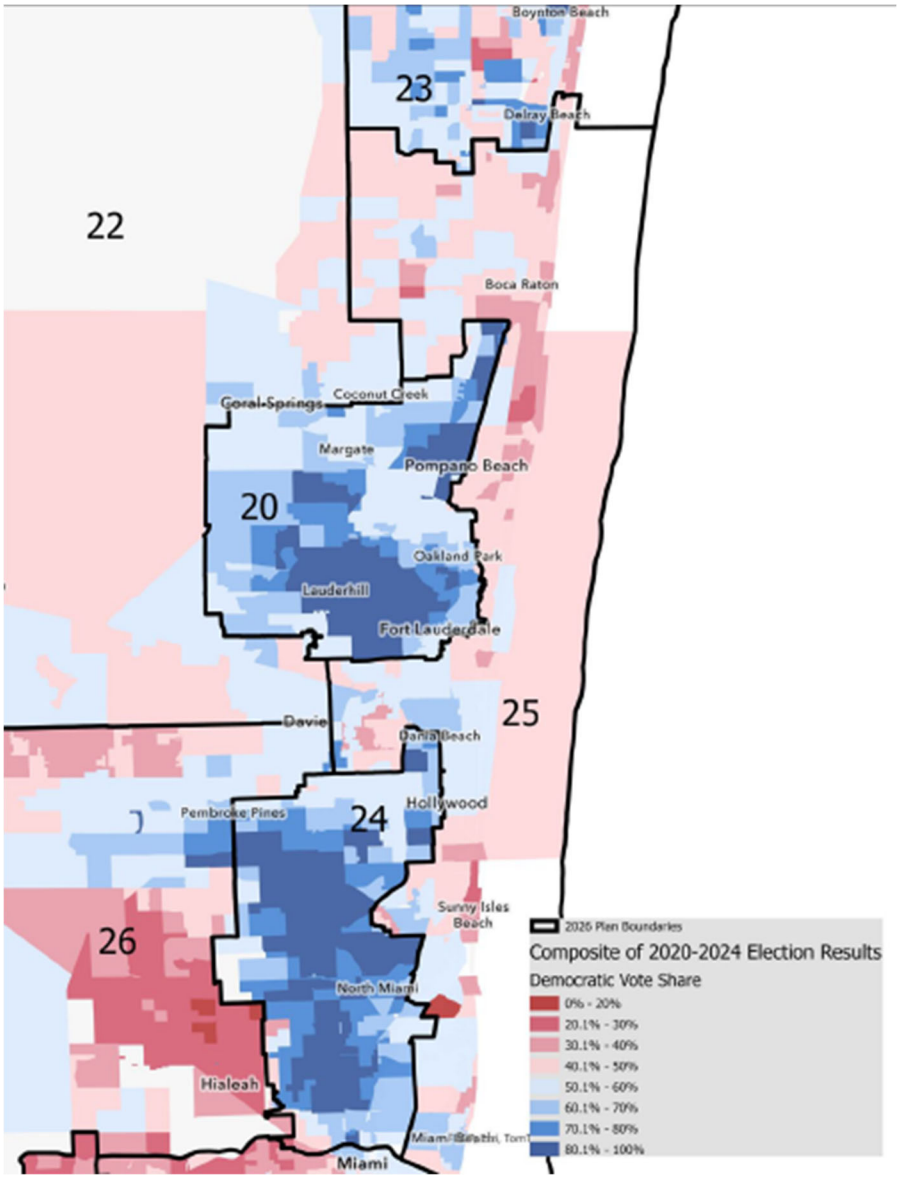
CD-9 goes from a relatively safe Democratic district (52.4% Democratic) to a Republican district (40.6% Democratic). App.197. Neighboring districts absorb some of CD-9's Democratic voters, but no district takes on enough to lose its Republican advantage. *Id.* In the end, CD-9 and its neighboring districts (CDs 8 and 11) end up with virtually identical Democratic vote shares of 40.6, 40.7 and 40.5 percent. *Id.*

In eliminating CD-9 as a Democratic district, the 2026 Plan violates traditional redistricting principles. It creates a sprawling new CD-9, pairing voters in Orange County with voters over a hundred miles south in Glades County, bordering Lake Okeechobee. App.192, 194. As Dr. Chen shows, the 2026 Plan's Orlando-based districts are less compact than nearly every race-blind, partisan-blind map he produced, again indicating partisanship predominated over traditional redistricting criteria in this region. App.283-85.

c) South Florida

Until the 2022 Plan, South Florida elected between five and seven Democrats to Congress. App.200. The 2022 Plan, however, redrew South Florida to leave only five districts that would elect a Democrat to Congress: CDs 20, 22, 23, 24, and 25. *Id.*

The 2026 Plan decimates the five reliably held Democratic seats in South Florida into only three. App.200-01. It does so by packing Democratic (and particularly Black Democratic) voters into CDs 20 and 24 as shown below, even though there is no race-related reason to do so under the Governor's reasoning:



See App.2527; *see also* App.202-03, 440. Despite allegedly being drawn "race-neutrally," CD-24's Black voting age population (BVAP) *increases* from 42.17% to 47.72%, while the district substantially *decreases* in compactness on every mathematical compactness measure compared to its 2022 predecessor. *Compare* App.1216, *with* App.440. CD-24 in the 2026 Plan also splits eight cities (more cities than it keeps whole), whereas its predecessor split only two cities. *Compare* App.1231, *with* App.441; *see also* App.205. To the extent that new CD-24 was in fact drawn race-neutrally, as Poreda claimed it was, the only other explanation for this district is a desire to pack Democratic voters into a single district in Miami.

The 2026 Plan's CD-20, with a BVAP of 42.08%, also performs substantially worse than the 2022 Plan's CD-20 on adherence to political and geographic boundaries. *Compare* App.1232, *with* App.440. In total, 32% of CD-20's boundaries do not follow a recognized political or geographic boundary, making it one of the worst performing districts on this measure in the 2026 Plan, App.440, and suggesting partisan intent prompted deviations from established boundaries to pick and choose voters. Again, to the extent this district was in fact drawn race-neutrally, as Poreda claimed it was, the only other

explanation for its configuration is a desire to pack Democratic voters into a single district in Broward County.

The 2026 Plan surrounds these two packed Democratic districts with new CDs 25 and 22, which transform into Republican-performing districts by subverting traditional redistricting criteria. App.204. New CD-25, for example, stretches down Florida's coast all the way from Boca Raton to Miami Beach, darting in and out of the coast to evade heavily Democratic areas. *See* App.201, 908-17. As Dr. Chen's analysis shows, a map drawn to adhere to the Fair Districts Amendment would virtually *never* assign Miami-Dade County municipalities (such as Miami Beach or North Miami) to the same district as Boca Raton and other portions of Palm Beach County or produce such a grossly noncompact district as CD-25. *See* App.287-303. The choice to do so is only explainable by partisan intent. *See* App.287-92.

In stringing these coastal regions together, new CD-25 becomes *substantially* less compact than the 2022 Plan's CD-20 that the Governor has criticized for its non-compactness. *Compare* App.1216, *with* App.440; *see also* App.210. Indeed, new CD-25 is nearly as non-compact as the prior CD-5 that stretched from Tallahassee to Jacksonville that the Florida Supreme Court held was non-compact in

Black Voters Matter Capacity Building Institute, Inc. v. Sec'y, Fla. Dep't of State, 415 So. 3d 180, 199 (Fla. 2025). *Compare* App.440, *with* App.1269. CD-25 also splits 11 cities, none of which is required to be split because of its population. *See* App.191 n.3, 206.

The 2026 Plan also creates a substantially noncompact CD-22, which stretches all the way from Marco Island on southwest Florida's coast to Parkland, Wellington, and Weston on Florida's east coast, splitting six cities in the process. *See* App.442, 908-17; *see also* App.201.

Together, new CDs 25 and 22 split 15 cities, just one fewer than the number of cities split in the 2022 Plan *across all 28 districts*. *See* App.206, 441-42, 1230-31. Similarly, the 2026 Plan splits Broward five ways, Miami-Dade five ways, and Palm Beach four ways—far more than necessary, and in each case splitting the county to advantage Republicans and disadvantage Democrats. *See* App.205.

2. The 2026 Plan's extreme partisan results cannot be explained by a race-neutral plan, by adherence to traditional redistricting criteria, or by Florida's political geography.

Plaintiffs' expert Dr. Chen developed 5,000 race-blind and partisan-blind computer-simulated congressional maps that follow the

redistricting criteria in the Fair Districts Amendment. *See* App.228-31, 2528-51. By comparing those maps to the 2026 Plan, Dr. Chen can determine whether the 2026 Plan's extreme partisan characteristics can be explained by a race-neutral plan, by a desire to prioritize the traditional redistricting criteria in the Fair Districts Amendment, or by Florida's political geography. *See* App.228-31. Dr. Chen's analysis confirms that none of those factors can explain the extreme partisan results in the 2026 Plan; those results are only explainable by partisan intent.

In particular, Dr. Chen's race-blind, partisan-blind analysis shows the 2026 Plan creates more Republican-favoring districts than *all 5,000* of the computer-simulated plans and creates far fewer competitive districts compared to the simulated plans. *See* App.249-56. Because Dr. Chen controls for these factors, he can conclude that these results are not the result of a race-neutral plan, a plan that attempts to adhere to the Fair Districts Amendment's criteria, or a plan that naturally occurs because of Florida's political geography. *See* App.262.

Finally, Dr. Chen compared the 2026 Plan to the 5,000 computer-simulated plans along common measures of partisan bias

(such as the efficiency gap or partisan symmetry measure), which showed the 2026 Plan is an extreme statistical outlier in its bias toward the Republican Party as compared to the simulated plans. *See* App.265-73. The evidence is unequivocal. In an election in which Democrats and Republicans each take 50% of the vote, Democrats would win between 11 and 14 congressional seats under most simulated plans—but only 8 seats under the 2026 Plan. *See* App.271-73.

Based on all these findings, including Dr. Chen's analysis of the 2026 Plan's lack of compactness and unnecessary political subdivision splits, *see* App.232-45, 274-92, Dr. Chen concluded that partisanship not only informed but predominated in the drawing of the 2026 Plan—it subordinated traditional redistricting criteria to its political goals, and did so to a quantifiable, statistical extreme. *See* App.304-05.

3. The 2026 Plan favors the Republican Party at historically extreme levels.

As Plaintiffs' expert Dr. Warshaw demonstrated, a variety of traditional metrics of partisan gerrymandering show that the 2026 Plan has a historically extreme level of partisan bias. *See* App.318. Indeed, it has a substantially larger partisan bias than Florida's 2012 Plan

that was struck down as a partisan gerrymander and any other congressional plan enacted by a large state in the past fifty years. *See* App.325-26. By every measure, the 2026 Plan bears the statistical signature of a map engineered for partisan dominance.

II. PROCEDURAL HISTORY

The Equal Ground Plaintiffs filed this action on May 4, the day the Governor signed the 2026 Plan into law. Plaintiffs moved for a temporary injunction with supporting expert reports just two days later, on May 6, on the basis that the 2026 Plan violated (1) the Florida Constitution's prohibition on drawing districts with the intent to favor a political party and (2) the Florida Constitution's compactness mandate and requirement to adhere to political and geographical boundaries, where feasible. App.83-150. Defendants responded to Plaintiffs' motion with accompanying expert reports one week later, on May 13, Plaintiffs replied on May 14, and the trial court held a hearing on Plaintiffs' motion on May 15.

Defendants' opposition to Plaintiffs' motion was notably thin on substance. On the merits, Defendants offered no explanation for why Poreda used the partisan data at all, how the specific district configurations emerged, or how any district was explainable based on

anything other than partisan intent. Defendants also protested the trial court's ability to analyze Tier II claims on an abbreviated timeline but did not defend the Tier II compliance of any challenged district.

Only the Secretary—not the House or Senate—argued that the 2022 Plan could not be reinstated as the status quo, alleging it was drawn with impermissible racial considerations—and even then, the Secretary did so only in passing reference without presenting any expert analysis, any judicial finding, or any other evidence. *See* App.2236-37. In total, the Secretary cited a *single paragraph* from a legal memorandum prepared by the Governor's counsel for the proposition that the 2022 Plan might be unlawful. *See* App.2237. That memo does nothing more than claim CD-20 has an "odd shape" that is "arguably a telltale sign of racial predominance" and claim the "legislative record shows" other districts in South Florida were drawn with the Hispanic voting age population in mind, without putting that legislative record forward or even identifying which districts those might be. App.2237 (citation omitted).

The trial court denied Plaintiffs' motion on May 26 in a brief eight-page order. Its factual findings were exceedingly limited. The court found that Poreda was the sole map drawer, that his stated

justification for the 2026 Plan was removing racial aspects of the 2022 Plan and accounting for population growth, and that the map was voted out of committee and enacted by the Legislature. App.2774-75. The court made no findings whatsoever on the specific district configurations Plaintiffs challenged, on Plaintiffs' evidence regarding compactness and boundary violations, or even on the substantial evidence of partisan intent.

The trial court's denial rested on three grounds. On the threshold question of authority to issue a temporary injunction, the court correctly held that it retains "all writs power to enjoin and maintain the status quo during litigation," but then declined to exercise that authority, concluding that Plaintiffs had not sufficiently demonstrated the constitutional permissibility of the 2022 Plan and that the Secretary's passing characterization of CD-20 as a racial gerrymander was enough to avoid restoring the status quo. App.2776-77. On the merits, the court acknowledged that Poreda admitted using partisan data to draw the 2026 Plan, and that he drew the map "without the need to comply with the Fair Districts Amendment," App.2774, but nonetheless characterized Poreda's admission as merely circumstantial evidence that did not give rise to a likelihood of success on

the merits. App.2778-79. The court did not analyze *any* of Plaintiffs' other substantial evidence of partisan intent, nor did it address Plaintiffs' Tier II claims at all. On the equities, the court correctly recognized that *Purcell v. Gonzalez*, 549 U.S. 1 (2006), is "a federal prudential policy of restraint" that does not bind state courts, but applied its logic anyway, holding that the public interest weighed against relief, while acknowledging that if Plaintiffs ultimately prevail, "there likely will be additional elections held on maps that violate the FDA." App.2778, 2780. This appeal swiftly followed.

SUMMARY OF ARGUMENT

The trial court's merits analysis was flawed from the start. Although the court summarily concluded that Plaintiffs presented "insufficient evidence of partisan intent," it made no factual findings whatsoever on partisan intent in the 2026 Plan—the central issue in this case. *See* App.2774-75. Instead, it cast aside direct evidence of partisan intent—including the map drawer's admission that he used partisan data and drew the map without regard to the Fair Districts Amendment—as insufficient and reduced its consideration of Plaintiffs' extensive circumstantial evidence to a paragraph before dismissing it as irrelevant and improperly considered at the temporary

injunction stage. *See* App.2778-79. A court cannot conclude that evidence is insufficient without actually weighing it.

Compounding that error, the trial court ignored Plaintiffs' Tier II claims entirely. *See* App.2778-79. Plaintiffs moved for a temporary injunction on the independent basis that the 2026 Plan fails to comply with the Florida Constitution's compactness and boundary requirements, supporting those claims with substantial evidence that Defendants barely contested. *See* App.131-39. The trial court said nothing. That omission cannot be excused by the accelerated posture of this proceeding and must be corrected.

The trial court's refusal to restore the 2022 Plan as the status quo was independently erroneous. First, it elevated the political branches' decision to replace the 2022 Plan to a sufficient basis to deny status quo restoration. Second, it assigned Plaintiffs the burden to prove the 2022 Plan's constitutional validity, inverting the presumption of validity that attaches to any lawfully enacted map. Third, it failed to grapple with the substantial evidence confirming the constitutionality of the 2022 Plan. Finally, on the equities, the trial court applied a federal doctrine that does not bind Florida courts and improperly applied it under these circumstances, where any time

pressure is of Defendants' own making. The public interest favors reinstating the 2022 Plan rather than allowing the 2026 elections to proceed under a congressional plan adopted in open disregard of the Florida Constitution.

This Court should reverse the trial court's judgment and direct entry of a temporary injunction.

STANDARD OF REVIEW

"Under Florida law, a party seeking a temporary injunction must prove four things: '(1) a substantial likelihood of success on the merits, (2) the unavailability of an adequate remedy at law, (3) irreparable harm absent entry of an injunction, and (4) that the injunction would serve the public interest.'" *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 73 n.4 (Fla. 2024) (quoting *Fla. Dep't of Health v. Florigrown, LLC*, 317 So. 3d 1101, 1110 (Fla. 2021)). An appellate court "review[s] a trial court's factual findings on these elements for competent, substantial evidence, and [reviews] its legal conclusions de novo." *Florigrown*, 317 So. 3d at 1110. "[W]hether the evidence is legally sufficient to justify entry of an injunction is a question of law that [appellate courts] review *de novo*." *Holland M. Ware*

Charitable Found. v. Tamez Pine Straw LLC, 343 So. 3d 1285, 1289 (Fla. 1st DCA 2022).

ARGUMENT

I. Appellants are substantially likely to succeed on the merits of their claims that the 2026 Plan violates both Tier I and Tier II of the Florida Constitution.

A. The 2026 Plan was drawn with intent to favor the Republican Party and disfavor the Democratic Party.

Plaintiffs showed that the 2026 Plan unequivocally violates the Florida Constitution's requirement that "[n]o apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party." Art. III, § 20(a), Fla. Const. In contrast to "equal protection political gerrymandering claims" previously brought under the federal Constitution, which ask when partisan intent "has gone too far," under the Florida Constitution, "there is no acceptable level of improper [partisan] intent." *Apportionment I*, 83 So. 3d at 616-17 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 296 (2004)).

A partisan intent claim under the Florida Constitution may be shown with either direct or circumstantial evidence of intent. *See id.* at 617. Direct evidence, found in the statements and communications of those "responsible for drafting districting plans,"

Apportionment VII, 172 So. 3d at 388-89, is rare. As the Florida Supreme Court recognized, in a challenge to a plan's partisan intent, "circumstantial evidence is often essential" "and indeed may be the only type of evidence available." *Id.* at 378. This case, however, presents the Court with direct evidence of intent. And the circumstantial evidence confirms what the map's drawer and its supporters publicly expressed—the 2026 Plan is an avowed, unequivocal, extreme partisan gerrymander.

1. Direct Evidence of Partisan Intent

Before the Legislature, the 2026 Plan's map drawer, Jason Poreda, admitted that he did not consider himself bound by the Fair Districts Amendment and consequently used partisan data to draw it. *See supra* Background I.C. This admission would have been a bombshell to discover in a trove of emails after years of litigation; it should be no less shocking because the map drawer admitted it on the public record.

In prior redistricting cycles conducted under the Fair Districts Amendment, Florida's map drawers have gone to great lengths to disclaim consideration of *any* partisan data. *See supra* Background I.C. And just months before his office released the 2026 Plan, Governor

DeSantis himself acknowledged that mapmakers "[are] *not allowed to use* the partisan data." App.1720 (emphasis added).

The trial court dismissed this direct evidence, concluding that Poreda's use of partisan data might not translate to partisan intent. *See* App.2778. But neither the trial court, nor Defendants, nor Poreda himself provided *any other explanation of what it might have been used for*. The context of Poreda's admission confirms that he used data that the Fair Districts Amendment prohibits: When Senator Osgood asked, "Did you analyze any partisan performance of districts before finalizing the maps?" Poreda responded, "So . . . not having to comply with the Fair Districts Amendments, the entire suite of redistricting criteria that are available to other states, I used here, including partisan data." App.693.

Although the trial court did not consider it, Plaintiffs also presented direct evidence from the Governor's Office, which employed Poreda, *see* App.700-01, and with whom Poreda consulted in drawing the map, App.720-21. The day before the Legislature's special session began, the Governor's Office sent Fox News a partisan color-coded version of the 2026 Plan that depicted 24 red districts and 4 blue districts to show just how many seats Republicans would win under

the 2026 Plan. App.1714-17. In a statement to Fox News, Governor DeSantis explained that the map was drawn to reflect the increase of the Republican population of the state. App.1701-06.

The trial court further discounted Plaintiffs' undisputed direct evidence of unlawful intent—in a single sentence—by suggesting the unlawful intent might not be attributable to "the entire Legislature." App.2778. But the Florida Constitution states simply that "[n]o apportionment plan or individual district *shall be drawn* with the intent to favor or disfavor a political party or an incumbent." Art. III, § 20(a), Fla. Const. (emphasis added). Consequently, intent under the Fair Districts Amendment is primarily ascertained based on "the actions and statements of . . . those directly involved in the map drawing process." *Apportionment VII*, 172 So. 3d at 388.

In any event, legislators adopted and gave effect to the partisan efforts announced by "those directly involved in the map drawing process." *Id.* Unlike the process that led to the 2012 Plan that the Florida Supreme Court struck down as a partisan gerrymander, where external operatives "influence[d] the redistricting process and the congressional plan" unbeknownst to many legislators and even some map drawers, *Apportionment VII*, 172 So. 3d at 392, here the map

drawer's damning admissions were presented in open session, in response to questioning from legislators, *see generally* App.443-768, and both the 2026 Plan's House and Senate sponsors acknowledged that Poreda used partisan data, *see* App.828, 2143-44. Far from being mere dupes to a covert mapmaker, the legislators were active participants in the 2026 Plan's violation of the Fair Districts Amendment.

2. Circumstantial Evidence of Intent

This case also features circumstantial evidence in spades, and the trial court erred in casting it aside entirely. *See* App.2779.

The trial court ignored Plaintiffs' expert evidence on the dubious grounds that Defendants raised "evidentiary objections" to them and did not have an "adequate chance at rebuttal." *Id.* That explanation ignores that Defendants did in fact serve two opposing expert reports to Plaintiffs' motion, albeit poorly constructed and unpersuasive ones. *See* App.2243 (Secretary's brief claiming his experts "rebut" Plaintiffs' experts).

As an initial matter, sworn affidavits such as Plaintiffs' expert reports can provide the basis for a court's *ex parte* grant of a temporary injunction, for which an adverse party would have *no opportunity*

for rebuttal at all. *See* Fla. R. Civ. P. 1.610(a)(1)-(2). When an adverse party does participate in a temporary injunction hearing, as occurred here, the trial court may rely on an even broader range of evidence, in addition to sworn expert reports. *See id.* Moreover, temporary injunction proceedings need not conform to traditional rules of evidence, as Defendants acknowledged below. *See* App.2585. For example, Florida appellate courts have agreed that they may "rely on hearsay evidence and may even give inadmissible evidence some weight" during temporary injunction proceedings. *Bee Line Ent. Partners v. State*, 791 So. 2d 1197, 1205-06 (Fla. 5th DCA 2001) (citation omitted).

Regardless, Defendants had a sufficient opportunity to respond to Plaintiffs' expert evidence below. Defendants received the Equal Ground Plaintiffs' expert reports more than a week before the trial court's hearing and, indeed, filed multiple expert reports in response.[1] App.2243. Defendants' failure to adequately rebut Plaintiffs'

[1] This litigation was also not a surprise to Defendants. During legislative proceedings on April 28, the Secretary's counsel described the 2026 Plan as a way "to tee . . . up" legal issues, indicating he anticipated litigation even before the map was signed into law. App.698-99.

expert evidence is not grounds to deny a temporary injunction, but rather underscores the propriety of entering one. *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243 (Fla. 2017), is instructive here. There, the Florida Supreme Court quashed this Court's reversal of the trial court's entry of a temporary injunction. *Id.* at 1247. The Supreme Court based its decision on the State's failure to counter a physician's verified affidavit submitted by the plaintiffs, even though that hearing occurred just two weeks after the complaint was filed. *Id.* at 1264, 1249. Under *Gainesville Woman Care*, the State's failure to rebut plaintiffs' expert affidavits supports, rather than undermines, entry of a temporary injunction.

Accordingly, the trial court should have considered Plaintiffs' expert evidence, as well as Plaintiffs' additional circumstantial evidence of partisan intent, virtually none of which Defendants rebutted, and which is summarized below:

Effects of the 2026 Plan. Although the "partisan imbalance" of a plan alone does not establish partisan intent, partisan "effect" still serves as an "objective indicator[] of intent." *Apportionment I*, 83 So. 3d at 618. Consistent with the Governor's color-coded map, the 2026 Plan is expected to elect 24 Republicans and only 4 Democrats,

giving Democrats only 14% of the state's congressional seats, even though Democrats receive a much larger statewide vote share. *See* App.325. Defendants did not rebut this. And the trial court did not consider it.

Plaintiffs also showed the 2026 Plan's partisan bias is historically extreme. Florida's 2026 Plan is more extreme than 99% of all plans enacted nationwide over the past fifty years, and is the *single most extreme plan* among states with comparably sized congressional delegations. *See* App.325-26. These kinds of partisan bias measures evince partisan intent. *See League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 192 N.E.3d 379, 411-12 (Ohio 2022). Defendants' expert did not dispute any of Plaintiffs' expert's conclusions or claim to find any errors in his analysis about Florida's 2026 Plan on this score. Nor did the trial court consider this evidence.

Shape of District Lines. The "shape of district lines," in conjunction with "the demographics of an area," also serve as "objective indicators of intent." *Apportionment I*, 83 So. 3d at 617. Here, the 2026 Plan's packing and cracking of Democratic voters is so stark that even a political novice can understand the goal. *See* App.182-92 (showing how the 2026 Plan creates a pinwheel out of the

Democratic-leaning city of Tampa), App.192-99 (showing how the 2026 Plan packs Democrats in Orange County and cracks the rest), App.200-06 (showing how the 2026 Plan creates blue islands out of CDs 20 and 24). Defendants did not defend how a single line in the 2026 Plan was drawn. Nor did the trial court consider this evidence, even though much of it does not require sophisticated expert analysis. One would have to strain to avoid seeing the partisan motivation in 2026 Plan's South Florida districts on page 20 of this Brief.

Disregard for Tier II Principles. Florida's Tier II criteria, including its mandate to draw compact districts and to adhere to political and geographical boundaries, is meant to cabin improper partisan intent. *See Apportionment I*, 83 So. 3d at 632, 635, 638. Consequently, "the extent to which the Legislature complies with the sum of Florida's traditional redistricting principles [under Tier II] serves as an objective indicator of [partisan intent]." *Id.* at 639.

As compared to the 2022 Plan, the 2026 Plan is *less* compact, splits *more* counties, splits nearly *double* the number of cities (from 16 to 30), and *decreases* adherence to political and geographical boundaries generally. *See* App.182; *see also infra* Argument I.B. (detailing the 2026 Plan's Tier II violations). And it does so most

dramatically in the specific regions and districts whose partisanship has been altered the most. *See* App.171, 188, 198, 204. Below, Defendants did not rebut these conclusions; they simply argued the proceeding was too abbreviated to consider Tier II violations. Nor, again, did the trial court consider this evidence; indeed, it did not address Plaintiffs' Tier II claims *at all. See infra* Argument I.B.

Alternate Plans. Alternate maps may serve as "relevant proof that the [plan] consist[s] of district configurations that are not explained other than by [partisan intent]." *Apportionment I*, 83 So. 3d at 611. Courts have repeatedly relied on computer-simulated maps, including specifically by Plaintiffs' expert Dr. Chen, to find evidence of partisan gerrymandering. *See Adams v. DeWine*, 195 N.E.3d 74, 87-89 (Ohio 2022) (crediting Dr. Chen's simulation analysis in striking down map as partisan gerrymander); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 817-20 (Pa. 2018) (same).

Here, that proof is stark: Dr. Chen produced 5,000 computer-simulated plans that are race-blind, partisan-blind, and comply with traditional redistricting criteria better than the 2026 Plan does. *See* App.229-30, 2528-51. The 2026 Plan is a statistical outlier in favor of the Republican Party on every partisan measure that Dr. Chen

examines. *See generally id.*

Because these maps are based on Florida's demographics and geography, Florida's political geography cannot explain the 2026 Plan's extreme partisan results. *See* App.225, 229-30. Because the maps are drawn race-blind, a race-neutral plan cannot explain the 2026 Plan's extreme partisan results. *See* App.225, 230. And because the maps are designed to prioritize traditional redistricting criteria, any attempted compliance with Tier II criteria cannot explain the 2026 Plan's extreme partisan results. *See id.*

Defendants' experts do not even attempt to rebut these conclusions. Indeed, although Defendants' expert Dr. Trende has regularly produced simulations and reviewed Dr. Chen's simulations in other litigation, *see* App.2531, Dr. Trende has nothing to say about Dr. Chen's simulations here. And Defendants' expert Dr. Voss—who has no clear background in redistricting simulations at all but was nonetheless tasked with examining them here—similarly offered no substantive refutation of Dr. Chen's findings. And the trial court, again, did not even discuss Dr. Chen's simulations.

Sequence of Events Leading to 2026 Plan. The "specific sequence of events leading up to the challenged decision also may shed

some light on the decisionmaker's purposes." *Apportionment VII*, 172 So. 3d at 389 (citation omitted). The sequence of events here speaks for itself: The Governor announced his intention to redistrict Florida mere weeks after the U.S. President pressured Republicans to redistrict for partisan gain. *See supra* Background I.B. National and state Republicans (including Florida state legislators) called on Florida to join the fray, openly speculating about how many Republican seats Florida could realistically add. *See supra* Background I.B. This included the Governor's own staff, who reposted arguments that Republicans should "go for BROKE in Florida" to "cancel out Virginia." *See supra* Background I.B. The Governor's Office then began the special session by releasing the 2026 Plan, color coded in red and blue, as a media exclusive. *Supra* Background I.C. It is impossible to believe a partisan-neutral map came out of that process, and indeed it did not. Defendants brushed this evidence aside, but they did not contest it. And the trial court did not consider it, even though none of this evidence depended on expert analysis.

Departure from Normal Sequence. In evaluating intent, courts may also consider "[d]epartures from the normal procedural sequence." *Apportionment VII*, 172 So. 3d at 389 (citation omitted).

This redistricting process was unusual from the start: it was conducted voluntarily and mid-decade, a break from the traditional course of redistricting once per decade on a non-partisan, reapportioning basis. The map drawing process was conducted entirely in secret, with no public hearings dedicated to congressional map development, no release of draft maps for public or legislator review, and no venue for the public to submit proposed plans before the special session—a dramatic departure from prior redistricting cycles. *See supra* Background I.B. And when the plan was finally released, the Governor's team argued they were not actually constrained by the Fair Districts Amendment in drawing it. *See id.* That alone is a significant departure from the normal sequence. In the normal course, including in other cycles in which a map has been struck down as violating the Fair Districts Amendment, Florida lawmakers and mapmakers at least feign compliance with Florida law. *See, e.g.*, *Apportionment VII*, 172 So. 3d at 376. Defendants did not contest any of this evidence or the fact that these *were* unusual departures from the normal sequence. Nor did the trial court appear to consider this evidence, even though, once again, none of it depended on expert analysis.

Pretextual Explanations. Finally, courts may also consider whether any explanations appear pretextual in assessing intent. *Apportionment I*, 83 So. 3d at 673. There are two such pretextual explanations here. The first is the Governor's explanation that Florida needed to redistrict to respond to population changes since 2020. But the 2026 Plan could not have accomplished that goal: Both the 2022 Plan and the 2026 Plan use the 2020 Census to divide population among districts; it is therefore not possible for the 2026 Plan to reflect population growth. *See* App.181, 692-93. Nor do the 2026 Plan's changes correlate at all with the areas that have actually seen the most population growth. *See* App.181-82. Defendants did not contest this point. Nor did the trial court find that population changes do explain the alterations made in the 2026 Plan; instead, the trial court mused that perhaps Poreda relied on a different data set than Plaintiffs' experts to evaluate population shifts to target certain areas for redistricting, and perhaps those data would have created different results. *See* App.2779. But even if that were true, it would not address Plaintiffs' fundamental critique of this explanation for redistricting, which is that *it is not possible* for the 2026 Plan to reflect population growth *in any area* because, as Poreda conceded,

the 2026 Plan is based on 2020 Census data. *See* App.692.

The second pretextual explanation for the 2026 Plan was the need for a race-neutral plan. But the professed aim of race-neutrality, even if genuine, would not require changes to any congressional districts in Tampa Bay or Central Florida, both of which the Governor's map drawer in 2022 proclaimed were drawn without *any* consideration of race. *See infra* Argument II.A. And the extreme partisan changes that the 2026 Plan made to the rest of South Florida were not required to achieve a race-neutral plan. As Dr. Chen's plans showed, race neutrality does not yield such extreme partisan consequences. *See supra* Background I.D.

This entire mid-decade redistricting process made a mockery of the Fair Districts Amendment. Even if any one factor did not suffice to prove intent, when "viewed cumulatively," they "demonstrate a clear pattern." *Apportionment I*, 83 So. 3d at 654. Because "[a] finding of partisan intent . . . renders the Legislature's redistricting plan constitutionally invalid," *Apportionment VII*, 172 So. 3d at 375 (citation omitted), the Court should reverse the trial court and enjoin the 2026 Plan. *See Gainesville Reg'l Utilities Auth. v. City of Gainesville*, 416 So. 3d 1284 (Fla. 1st DCA 2025) ("An appellate court has at its disposal

a writ of injunction to preserve the status quo and aid in the exercise of its jurisdiction.") (citing *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1075 (Fla. 1st DCA 2022)).

B. The 2026 Plan violates the Florida Constitution's Tier II requirements.

The trial court's order discussed only Plaintiffs' partisan intent claim, neglecting Plaintiffs' two additional claims that the 2026 Plan and its individual districts violate the Fair Districts Amendment's Tier II requirements. *See* App.2779. This alone requires reversal.

The trial court's failure to find any facts or render any legal conclusions on Plaintiffs' Tier II claims constitutes an abuse of discretion. *See Mulbery v. Forman*, 207 So. 3d 894, 896 (Fla. 2d DCA 2017) ("[A] trial court abuses its discretion where it fails to address the merits of a petition or complaint for declaratory judgment."). Where a trial court fails entirely to evaluate a plaintiff's claim in a motion for temporary injunction, the appellate court can find the appellant substantially likely to succeed on that claim based on the record and remand for entry of a temporary injunction. *See, e.g.*, *Tower Hotel, LLC v. City of Miami*, 395 So. 3d 196, 201 (Fla. 3d DCA 2024) (reversing trial court's denial of a temporary injunction and remanding for entry of

the same). The Court should do so here, or enjoin the 2026 Plan itself, because Plaintiffs are substantially likely to succeed in showing that the 2026 Plan violates the Amendment's Tier II requirements that "districts shall be compact" and "districts shall, where feasible, utilize existing political and geographical boundaries" "[u]nless compliance . . . conflicts with the [Tier I requirements] or with federal law." Art. III, § 20(b), Fla. Const.

1. The 2026 Plan violates the constitutional compactness mandate.

The constitutional compactness mandate "ensure[s] that districts are logically drawn and that bizarrely shaped districts are avoided." *Apportionment I*, 83 So. 3d at 636 (quotation omitted). "Compactness can be evaluated both visually and by employing standard mathematical measurements." *Id.* Noncompact districts are impermissible "unless . . . necessary to comply with some other requirement." *Id.* at 634.

Plaintiffs demonstrated a substantial likelihood that the 2026 Plan violates the Florida Constitution's compactness requirement. The 2026 Plan is less compact than the 2022 Plan on multiple measures of compactness. *Compare* App.440, *with* App.1211, 1216;

see also App.182. And setting the 2022 Plan aside, Dr. Chen's race-blind and partisan-blind simulated plans show the 2026 Plan is substantially less compact than can be achieved in Florida, both statewide and in every region he examines. App.232 (plan-wide), 276, 279-81 (Tampa Bay), 283-85 (Orlando), 287-92 (South Florida). This lack of compactness cannot be explained as the product of the Amendment's Tier I criteria, including its race protections, as Poreda was explicit that he did not consider himself bound by those criteria. *See* App.693. The 2026 Plan's unnecessary reduction in statewide compactness thus likely violates the mandate that "districts shall be compact." Art. III, § 20(b), Fla. Const.

Plaintiffs further demonstrated a substantial likelihood that the 2026 Plan's CDs 9, 15, 16, 22, and 25 are individually unlawfully noncompact, as demonstrated by their visual appearance and compactness metrics. For example, CD-25 scores poorly on each of the compactness metrics, App.201, 210, is an outlier compared to Dr. Chen's maps, App.287-89, and bears a striking resemblance to coastal districts the Florida Supreme Court has previously held to violate the constitutional compactness requirement, *compare* App.917, *with Apportionment I*, 83 So. 3d at 672, 674. CDs 9, 15, and

16 are similarly visually and mathematically noncompact, *see* App.908-17; *see also* App.190-91,199, and are statistical outliers in their sprawling configurations, *see* App.276-85. CD-22, which stretches across southern Florida, from Marco Island in the west to Wellington in the east, is likewise noncompact. *See* App.910; *see also* App.201.

Defendants barely attempted to rebut Plaintiffs' Tier II evidence before the trial court. The Secretary rested on the assertion that "the overall compactness of the [2026 Plan] is consistent with the" 2022 Plan. App.2245-46. This characterization glossed over the fact that the 2026 Plan is in fact *less* compact that than the 2022 Plan, App.440, 1232, ignored that the compactness inquiry includes "visual examination" in addition to consideration of compactness metrics, *see Apportionment I*, 83 So. 3d at 613, and left entirely unaddressed Plaintiffs' district-specific arguments, *see* App.131-39. The Senate, for its part, protested employing simulation evidence to assess compactness or boundary utilization, *see* App.2461, but did not defend the Tier II compliance of the 2026 Plan or of any individual district. And the House did not address the 2026 Plan's Tier II compliance at all. *See generally* App.2266-422.

Unable to dispute what is plainly visible, Defendants suggested Tier II violations are too difficult for courts to resolve in temporary injunction proceedings because they are "fact-dependent." App.2461. But the Florida Supreme Court has had no trouble finding Tier II violations on an expedited basis pursuant to the facial review procedure for state legislative districts. *See Apportionment I*, 83 So. 3d at 653-83; *see also* Art. III, § 16(c), Fla. Const. (requiring automatic, expedited judicial review of the validity of legislative apportionments). Although the Secretary warned there is "no precise boundary score that serves as a cutoff for compliance," App.2232, that has not prevented the Florida Supreme Court from evaluating compactness metrics to invalidate districts before. *See, e.g.*, *Apportionment I*, 83 So. 3d at 662-65.

The trial court erred in failing to consider Plaintiffs' claim that each of the districts discussed above, and the 2026 Plan as a whole, violate the Florida Constitution's compactness requirement. This Court should hold that Plaintiffs are substantially likely to succeed on this claim, reverse the trial court, and enjoin the 2026 Plan on those grounds.

2. The 2026 Plan violates the constitutional requirement to utilize existing political and geographical boundaries where feasible.

Plaintiffs also demonstrated a substantial likelihood that the 2026 Plan and individual districts, including CDs 9, 10, 12, 14, 15, 16, 20, 22, 23, 24, and 25, violate the Florida Constitution's requirement that "districts shall, where feasible, utilize existing political and geographical boundaries." Art. III, § 20(b), Fla. Const. The Florida Supreme Court considers "adherence to county and city boundaries as political boundaries, and rivers, railways, interstates and state roads as geographical boundaries." *Apportionment I*, 83 So. 3d at 638.

Compared to the 2022 Plan, the 2026 Plan splits nearly twice as many cities (30 split cities instead of 16 cities), splits two additional counties, increases the total number of times that counties are split, and decreases its adherence to political and geographical boundaries generally. *See* App.441-42, 1211, 1230-32; *see also* App.182.

At the district level, first starting in Tampa Bay, the 2026 Plan slices Tampa into three and St. Petersburg into two even though each city could be kept in one congressional district. App.191-92.

Counties such as Hillsborough and Pasco are also divided far more than necessary. App.191.

In Central Florida, the 2026 Plan unnecessarily splits the city of Orlando as well as Orange, Osceola, and Polk Counties. App.191-92, 196-99. Approximately one-third of CD-10's boundaries do not correspond to existing political or geographical boundaries, making it one of the worst-performing districts on this basis. App.440.

And finally, in South Florida, CDs 20, 22, 23, 24, and 25 unnecessarily split numerous cities. *See* App.191 n.3, 206-09, 442. CDs 22 and 25 alone split 15 cities, only one less than the 2022 Plan for all 28 districts. App.206, 1211. The districts also unnecessarily increase the number of splits of Broward, Miami-Dade, and Palm Beach Counties. App.205. Nearly one-third of CD-20's boundaries fail to correspond to existing political or geographic boundaries, and other districts in the area perform similarly poorly. App.440.

The failure of these districts and the 2026 Plan as a whole to utilize existing political and geographical boundaries cannot be explained by the need to comply with other provisions in the Fair Districts Amendment, because the map drawer avowedly did not consider himself bound by those constitutional requirements. App.693.

The Legislature had no legal obligation to redistrict mid-decade, and in doing so chose to enact a plan with two more split counties and 14 more split cities—all split substantially more times—than the 2022 Plan, and that adheres less closely to existing political and geographic boundaries than the 2022 Plan. *See* App.441-42, 1211, 1230-32.

Here again, the trial court made no effort whatsoever to address Plaintiffs' boundary-utilization claims, even though the Florida Supreme Court has found Tier II violations in expedited proceedings. *See, e.g.*, *Apportionment I*, 83 So. 3d at 673. The trial court abused its discretion by ignoring the 2026 Plan's glaring Tier II violations, which provide an independent basis for enjoining the 2026 Plan.

II. This Court can and should preserve the status quo by reinstating the 2022 Plan.

The Court has authority to restore the 2022 Plan pending final judgment. Defendants have not carried their burden to demonstrate the 2022 Plan is constitutionally impermissible, and the equities favor prompt action rather than leaving the 2026 elections to proceed under a map enacted with blatant disregard for the Florida Constitution.

A. The Court has the authority to enter a temporary injunction reverting Florida back to the 2022 Plan.

The trial court correctly recognized that *Byrd v. Black Voters Matter Capacity Building Institute, Inc.*, 339 So. 3d 1070 (Fla. 1st DCA 2022), permits a court to "reinstate the former congressional map" to preserve the status quo pending a final adjudication on the merits. App.2775 (quoting *Byrd*, 339 So. 3d at 1079). It also correctly rejected Defendants' argument that *Byrd* categorically forecloses temporary injunctive relief in a declaratory judgment action. *See* App.2776. Indeed, the trial court noted that "Defendants seem to concede that if the map were obviously deficient, some interim relief would be warranted." *Id.* Plaintiffs ask only for that.

But the trial court then erred in several respects. First, it treated the political branches' choice to replace the 2022 Plan as a general "declaration" of that plan's unconstitutionality that prevented the trial court from reinstating it. App.2777 (trial court noting, "the 2022 map was declared unconstitutional when the Governor and Legislature replaced it with the 2026 map challenged in this litigation"). But the trial court's observation that the political branches chose to replace the 2022 Plan says nothing definitive about the 2022 Plan's

constitutionality. Notably, neither the Florida House nor the Florida Senate actually contend in this litigation that the 2022 Plan is unlawful, *see supra* Background II. Denying a temporary injunction simply out of respect for the political branches' choice to replace the redistricting plan (true in any redistricting challenge) would effectively give the political branches veto power over temporary injunctive relief. That result is irreconcilable with *Byrd*'s express recognition that a court may reinstate the former congressional map.

The Court also erred in crediting the Secretary's evidence-free characterization of the 2022 Plan as constitutionally infirm—a litigation position, not a judicial determination—as a "finding" sufficient to defeat status quo restoration. App.2777. As Plaintiffs explain below, particularly in light of the presumption of validity due to the 2022 Plan, the Secretary's two-paragraph contention at the trial court that the 2022 Plan *might* be unlawful—a position that was not supported by any evidence, App. 2236-37—merits virtually no weight.

The trial court then separately erred in treating the 2022 Plan's constitutional validity as Plaintiffs' burden to carry before the court could restore the status quo. That is wrong in two respects.

First, it misreads *Byrd*. The inquiry *Byrd* identified—whether "maintaining the status quo would be constitutionally permissible"—is a threshold issue the *court* must satisfy before issuing a temporary injunction, not Plaintiffs' affirmative burden. *See* 339 So. 3d at 1081. *Byrd* imposed that inquiry to address a specific and narrow concern in redistricting cases following a decennial census: that the prior map would itself violate the cardinal principle of one-person-one-vote if restored, as was the case in 2022 (and 2012). It was never intended to transform status quo restoration into a full merits adjudication of the prior map's constitutionality. *Byrd* simply does not condition re-instatement of the former map on a plaintiff's ability to affirmatively disprove every constitutional objection that might be raised against it.

Second, requiring Plaintiffs to affirmatively prove the lawfulness of the 2022 Plan contravenes established precedent. The 2022 Plan is a lawfully enacted map that has been upheld by two courts, and, under Florida Supreme Court precedent, "is entitled to a presumption of validity." *Black Voters Matter Capacity Bldg. Inst.*, 415 So. 3d at 197. Under U.S. Supreme Court precedent, too, the Legislature also receives a "presumption of legislative good faith" when it comes

to race-based accusations—an "especially stringent" presumption that directs courts "to draw the inference" that race did not predominate. *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 10-11 (2024). Moreover, the burden of proving a racial gerrymander rests with the party asserting it—here, the Secretary. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995). The Secretary's argument that Plaintiffs bear the burden of establishing the 2022 Plan's constitutional validity turns *Black Voters Matter* on its head. In that case, the plaintiffs claimed the 2022 Plan was unconstitutional, so they bore the burden of making that showing. *See* 415 So. 3d at 198. Here, it is the Secretary who claims the 2022 Plan is unconstitutional, and the burden rests with him to make that showing. Accepting Defendants' contrary framing requires Plaintiffs to prove a negative: that a court-approved map, which Defendants themselves drew and defended for years, is not unconstitutional. That is not what *Byrd* requires.

Even setting aside the question of burden, the record before the trial court amply supported the constitutionality of the 2022 Plan. From its *inception*, the 2022 Plan was introduced as a plan that the State knew was "constitutional." *See* App.1708-12. The 2022 Plan's chief map drawer—the Governor's then-Deputy Chief of Staff, Alex

Kelly—contended the plan "resolv[ed] [the] federal constitutional objections" from the Governor's Office, *and was drawn without race as a factor*. App.1134-35, 1159; *see also* App.1077 (Kelly telling the Legislature "we drew districts in a race neutral way"). The only district the Governor's Office identified as an impermissible racial gerrymander was CD-5, which Kelly's map eliminated. In subsequent litigation concerning then-CD-5, the Defendants here—including the Florida House and Senate—were adamant: "No other district . . . raises the same equal-protection concerns" as CD-5. App.2563. As Defendants explained, "[i]n contrast to Benchmark Congressional District 5, concerns about racial predominance did not prohibit Florida from drawing congressional districts elsewhere in the State that satisfy the Florida Constitution, the VRA, and the Fourteenth Amendment." App.2563. That position is fatal to Defendants' argument here.

The 2022 Plan's map drawers further explained that race did not drive any of their redistricting decisions in any of the relevant regions. For Tampa Bay districts, Kelly was explicit: "Race and political partisan data in no way related at all to my drawing[] of Districts 13, 14, 15, 16." App.1079. Kelly similarly asserted the Central Florida districts were "drawn on race neutral principles." App.1136. And

Poreda, who helped draw the 2022 Plan's South Florida districts, testified before a federal court that such districts "were drawn race-neutrally," App.1439, and that even for the minority-protected CDs 24 and 26, "race-neutral factors" drove the line-drawing decisions. App.1438-39. Indeed, the only way to conclude that the districts in the 2022 Plan were racially gerrymandered is to find that the State's map drawers lied to the Legislature, the public, and the courts about how they drew district lines.

Although the Governor recently professed concern over the compactness of the 2022 Plan's CD-20, *see* App.369-71, that district outperforms the prior configuration of prior CD-5 on every compactness measure by a substantial margin. *Compare* App.1292, *with* App.440. Indeed, the Governor's alleged concern with CD-20's compactness rings especially hollow given the 2026 Plan's sprawling districts, including some (new CDs 15 and 25) that are less compact on *every compactness measure* than CD-20 in the 2022 Plan. *Compare* App.1216, *with* App.377. And at the time of its drawing, House Redistricting Chair Sirois emphasized CD-20's Tier II compliance, explaining, "[t]his decade, we were able to create this district in such a way that respects more major roadways in the area such as US 441,

I-95, and the Florida Turnpike, and keeps more cities whole . . .” App.1959.

The 2022 Plan has been upheld by the Florida Supreme Court, *Black Voters Matter*, 415 So. 3d at 180, and by the Northern District of Florida after a full bench trial, *Common Cause v. Byrd*, 726 F. Supp. 3d 1322 (N.D. Fla. 2024). No court—none—has held that race predominated in the drawing of any of its districts. In fact, the State is currently vigorously *defending* the 2022 Plan against racial gerrymandering claims in federal court. *See generally Cubanos Pa'lante v. Fla. H.R.*, No. 1:24-cv-21983 (S.D. Fla. filed May 23, 2024).

Against the prevailing presumptions and the lack of evidence demonstrating that CD-20 is a racial gerrymander, it cannot be that the Secretary or the Governor can simply invoke CD-20's “odd shape,” *see* App.2236-37, and preclude a court from restoring the 2022 Plan based on its alleged unlawfulness—a contention that again, neither the House nor the Senate actually made below. *See supra* Background II.

Finally, the trial court's suggestion that the proper relief if Plaintiffs prevail is an order directing the Legislature to redraw the map (rather than restoration of the 2022 Plan) misreads *Byrd*. That

observation goes to the scope of the *final* remedial relief after a full trial on the merits, not to the permissible scope of a temporary injunction at this preliminary stage. *See Byrd*, 339 So. 3d at 1083 (observing that "the supreme court did not expect" a remedial plan by court order "until after a full trial on the merits"). At this stage, *Byrd* is clear: the only available interim relief is reinstatement of the former map. The trial court erred by declining to do so on the ground that a different remedy might be appropriate at the end of the case.

B. The equities and public interest require reinstating the 2022 Plan.

The trial court's denial of a temporary injunction on the basis that the "election machinery of the state is already underway" and "the public interest weighs more in favor of certainty than a haphazard judicial mandate of discarded maps," App.2780, mischaracterizes the relief Plaintiffs seek and the equitable principles that govern it. The equities and public interest overwhelmingly favor reinstatement of the 2022 Plan.[2]

[2] Two of the four temporary injunction factors were essentially undisputed below. No Defendant disputed that Plaintiffs lack an adequate remedy at law. App.2779. Nor did the Secretary or House dispute irreparable harm. *Id.* The Senate argued that the per se

First, reinstating the 2022 Plan is not a "haphazard judicial mandate of discarded maps." It is the restoration of a court-approved map that Defendants drew, enacted, and defended in years of litigation. It is the map that governed Florida's congressional elections in 2022 and 2024. And it is the map that all 67 Supervisors of Elections were instructed to preserve the day the Governor signed the 2026 Plan into law—"in case the need to implement [the 2022 Plan] becomes necessary." App.922. That instruction is the State's own acknowledgement that reverting to the 2022 Plan is operationally feasible and far less disruptive than the trial court's characterization suggests.

The public interest reinforces this conclusion. As Florida courts have consistently recognized, "enjoining the enforcement of a law that encroaches on a fundamental constitutional right presumptively

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irreparable harm rule does not apply to redistricting cases, but that argument contravenes well-established law. Plaintiffs "will suffer an irreparable harm if they must vote in the [] congressional elections based on a redistricting plan that violates federal law." *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *77 (N.D. Ala. Jan. 24, 2022), *aff'd sub nom. Allen v. Milligan*, 599 U.S. 1 (2023); *see also GRACE, Inc. v. City of Miami*, 674 F. Supp. 3d 1141, 1160-61 (S.D. Fla. 2023).

would serve the public interest." *Green v. Alachua Cnty.*, 323 So. 3d 246, 254 (Fla. 1st DCA 2021) (citation modified); *see also League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) (The "vindication of constitutional rights . . . serve[s] the public interest almost by definition."). The right to vote in congressional elections conducted under a lawful map is precisely such a fundamental constitutional right.

Moreover, this Court should not lose sight of what makes this case unusual, and what makes the need for temporary relief particularly acute. The 2026 Plan was not enacted on the basis of a good-faith legal judgment that it complies with the Florida Constitution as written. It was enacted on an explicit bet that future courts will relieve Defendants from complying with it. But the Governor's legal theories about what future courts might do does not suspend the Fair Districts Amendment's operation, relieve the Legislature of its obligation to comply with it, or authorize this Court to look the other way while elections are conducted under a map drawn in knowing violation of it. The public interest is served by enforcing the Constitution as it exists today, not as the Governor hopes it might someday be rewritten. That is precisely what the voters who passed the Fair

Districts Amendment asked the Florida judiciary to do. *See Apportionment I*, 83 So. 3d at 607.

Second, equitable principles related to election timing do not support the trial court's refusal to enter a temporary injunction under the circumstances presented here. The trial court invoked *Purcell v. Gonzalez*, 549 U.S. 1 (2006), but correctly recognized it is "more of a federal prudential policy of restraint for federal courts." App.2780. That is precisely right: *Purcell* is a *federal* doctrine rooted in *federalism* concerns about *federal* courts overriding state election rules, and it does not bind Florida state courts enforcing the Florida Constitution. *See, e.g.*, *Harkenrider v. Hochul*, 197 N.E.3d 437, 454 n.16 (N.Y. 2022) (*Purcell* "does not limit state judicial authority where, as here, a state court must intervene to remedy violations of the State Constitution"). This matter poses no threat of a federal court "swoop[ing] in and re-do[ing] a State's election laws." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). It involves a Florida state court enforcing a Florida constitutional mandate.

Nor do the Florida cases the trial court cited—*State ex rel. Haft v. Adams*, 238 So. 2d 843 (Fla. 1970), and *State ex rel. Walker v. Best*, 163 So. 696 (Fla. 1935)—establish any bright-line rule against pre-

election injunctive relief. *Haft* involved a candidate's belated attempt to force others off the ballot after sitting on information about an alleged filing fee discrepancy for weeks—circumstances the court found amounted to an attempt to "belatedly take advantage" of the situation. 238 So. 2d at 845. And *Best* involved only whether a town clerk could be ordered to publish a charter amendment within a 15-day statutory notice period. Neither case stands for the proposition that injunctive relief is categorically unavailable in the months before an election. Even in federal court, *Purcell* has never constituted a per se bar: the U.S. Supreme Court itself recently enjoined a redistricting plan *amid early voting* without any mention of *Purcell*. *See* Order on Appl. to Issue the J. Forthwith, *Louisiana v. Callais*, No. 25A1197 (U.S. May 4, 2026). Courts have consistently granted redistricting relief on timelines comparable to or shorter than what remains available here. *See Harkenrider*, 197 N.E.3d at 454-56 (enjoining plan after qualifying period had already passed).

The true equitable principle that applies here is the one the trial court overlooked: equity does not reward a party that creates the very urgency it seeks to exploit. *See Purcell*, 549 U.S. at 4-5. The Governor indicated his interest in mid-decade redistricting in the summer of

2025, announced in *January* that a special session would not occur until *April*, delayed that special session, and then waited to sign the 2026 Plan into law until May 4, five days after its passage. In contrast, Plaintiffs moved with all deliberate speed: they filed this action *the same day* the Governor signed the 2026 Plan into law, and filed their motion for temporary injunction with supporting expert reports two days later. Plaintiffs could not have moved faster.

Finally, the Secretary's assertion below that May 25 was an immovable deadline by which a final redistricting plan must be in place overstated both the legal and practical limits on this Court's authority. App.2256. To start, Florida's qualifying period does not officially begin until June 8. § 99.061(9), Fla. Stat. May 25 is merely the date by which the Secretary's Office "may accept and hold qualifying papers . . . to be processed and filed during the qualifying period," *id.* § 99.061(8), not a constitutional or jurisdictional cutoff after which relief becomes unavailable. The fact that qualifying is approaching does not make a remedy impossible; it simply underscores the need for

prompt action.[3]

Additionally, courts have inherent equitable authority to adjust the qualifying schedule when relief is granted close to or during that period. *See Johnson v. Mortham*, 926 F. Supp. 1540, 1542 (N.D. Fla. 1996); *Connor v. Johnson*, 402 U.S. 690, 692-93 (1971). In *Mortham*, the Northern District of Florida construed Florida's qualifying statute to extend the qualifying deadline during a redistricting year and invoked its equitable authority "[t]o remove any uncertainty" by extending the period for congressional candidates statewide. 926 F. Supp. at 1542 n.1. The court also rejected administrative burden as a basis for denying relief, explaining that "the mere administrative inconvenience the Florida Legislature and Florida elections officials will face in redistricting simply cannot justify denial of Plaintiffs' fundamental rights." *Id.* That reasoning applies here as well.

No adjustment of the qualifying period would be necessary, however, if this Court moves promptly. Even under existing law,

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[3] Notably, the trial court itself did not make a factual finding that implementation of the 2022 Plan would be infeasible after May 25. It instead found the "Secretary of State estimates" that such a date would be the cutoff for implementation, a step short of endorsing that deadline. App.2775.

qualifying extends until June 12, § 99.061(9), Fla. Stat., more than two weeks from now. As a practical matter, the upcoming elections can occur under the same congressional district lines that have governed elections since 2022 and that the Department of State has instructed Supervisors to preserve. App.351-52. The fact that qualifying will begin soon is therefore a reason to act quickly—not a reason to deny relief altogether.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reverse the trial court's decision and enjoin the 2026 Plan.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 28, 2026 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.

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I HEREBY CERTIFY that the foregoing brief is in Bookman Old Style 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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