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

RENE ROMO, *et al*.,

Plaintiffs,

vs. Case No. 2012-CA-000412

KEN DETZNER, in his official capacity as Florida Secretary of State, and PAMELA JO BONDI, in her official capacity as Attorney General,
_____/

THE LEAGUE OF WOMEN VOTERS OF FLORIDA, *et al*.,

Plaintiffs,

vs. Case No. 2012-CA-000490

KEN DETZNER, in his official capacity as Florida Secretary of State, *et al*.,

Defendants.
_____/

LEGISLATIVE PARTIES' PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendants, the Florida House of Representatives; Will Weatherford, in his official capacity as Speaker of the Florida House of Representatives; the Florida Senate; and Don Gaetz, in his official capacity as President of the Florida Senate (the "Legislative Parties"), respectfully present their proposed findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS CAUSE came before the Court on a bench trial held from May 19 to June 4, 2014, addressing the validity under the standards set forth in Article III, Section 20 of the Florida Constitution of the congressional redistricting plan enacted by the Florida Legislature on February 9, 2012 (the "Congressional Plan"). Having considered the evidence presented at trial, the deposition designations submitted by the parties, the parties' memoranda and legal authority, and the arguments of counsel, and being otherwise fully advised in the premises, the Court finds that the Congressional Plan complies with the standards set forth in the Florida Constitution.

FINDINGS OF FACT

Undisputed Facts[1]

1. On November 2, 2010, Florida voters approved Amendment 6, which established new standards applicable to congressional districts in Florida. Amendment 6 was codified as Article III, Section 20 of the Florida Constitution.

2. On March 17, 2011, the United States Census Bureau released 2010 Census data for the State of Florida. Soon after this release, the Florida House of Representatives and Florida Senate released MyDistrictBuilder and District Builder, online software applications that enabled members of the public to draw and submit redistricting plans to the Florida Legislature.

3. From June 20 to September 1, 2011, the Senate Committee on Reapportionment and House Redistricting Committee jointly held twenty-six public hearings at locations across the State to receive public comments in advance of the preparation of redistricting plans.

[1] The undisputed facts are based on the Joint Statement of Admitted Facts set forth in the Amended Joint Pretrial Statement dated May 6, 2014.

4. On November 28, 2012, the Senate Committee on Reapportionment released a congressional plan, designated S000C9002. On December 6, 2011, the Committee voted 23-3 to introduce Senate Proposed Bill ("SPB") 7032, which reflected the plan described in S000C9002.

5. On December 6, 2011, the House Congressional Redistricting Subcommittee released seven congressional plans designated H000C9001, H000C9003, H000C9005, H000C9007, H000C9009, H000C9011, and H000C9013.

6. On December 30, 2011, the Senate Committee on Reapportionment released a congressional plan, S000C9006.

7. On January 9, 2012, at a meeting of the House Congressional Redistricting Subcommittee, Vice-Chair Mike Horner offered amendments to PCBs 12-05, 12-06, and 12-07, which included the districts described in H000C9009, H000C9011, and H000C9013.

8. Pursuant to the amendments offered by Vice-Chair Horner, Plans H000C9041, H000C9043, and H000C9045 were adopted as amendments to PCBs 12-05, 12-06, and 12-07. The Subcommittee voted to report PCBs 12-05, 12-06, and 12-07 favorably. On January 10, 2012, the PCBs were filed as House Bill ("HB") 6003, HB 6005, and HB 6007.

9. On January 10, 2012, the Legislature convened for the 2012 Regular Session.

10. On January 11, 2012, the Senate Committee on Reapportionment voted 21-5 to report Senate Bill ("SB") 1174 favorably with a Committee Substitute ("CS"), including the districts described in S000C9006.

11. On January 12, 2012, Senator Don Gaetz, Chairman of the Senate Committee on Reapportionment, submitted, and the Senate publicly released, a congressional plan designated S004C9014.

12. On January 17, 2012, CS/SB 1174 was considered on the Senate floor. Plan S004C9014 was adopted as an amendment, and CS/SB 1174 passed the Senate 34-6.

13. On January 27, 2012, at a meeting of the House Redistricting Committee, Vice-Chair Precourt offered an amendment to HB 6005. The amendment included the districts described in H000C9047. The Committee adopted the amendment offered by Vice-Chair Precourt. The House Redistricting Committee then voted 14-6 to report CS/HB 6005 favorably.

14. On February 2, 2012, the House approved the districts described in H000C9047 as an amendment to CS/SB 1174. On February 3, 2012, the House passed the bill, as amended, 80-37.

15. On February 9, 2012, the Senate concurred in the House amendment. The vote on final passage of CS/SB 1174 (H000C9047) was 32-5.

16. On February 16, 2012, Florida Governor Rick Scott signed the Congressional Plan into law (Chapter 2012-2, Laws of Florida).

Preparation of the Congressional Plan

17. The Congressional Plan was drawn by professional committee staff of the Florida Legislature. Alex Kelly and Jason Poreda, staff members of the House Redistricting Committee, and John Guthrie, staff director of the Senate Committee on Reapportionment, were the primary architects of the Congressional Plan (June 2 Tr. 150:14-18; June 4 AM Tr. 18:14-22).

18. The Legislature directed their respective professional staff to adhere to the requirements of the law and afforded professional staff substantial discretion to develop a compliant redistricting plan. Mr. Guthrie, Mr. Kelly, and Mr. Poreda each testified at trial that, in the preparation of the Congressional Plan, they did not intend to favor or disfavor a political party or an incumbent (May 23 Tr. 39:19-23, June 2 Tr. 177:10-13, 234:4-15, June 4 Tr. 92:15-

24). Except as necessary to perform a functional analysis of minority districts, professional staff did not review political performance data or conduct any political performance analysis (June 2 Tr. 166:17-167:11, June 4 Tr. 72:22-25). Mr. Guthrie, Mr. Kelly, and Mr. Poreda each testified that no outside political consultant, including Republican consultants Marc Reichelderfer, Pat Bainter, Frank Terraferma, and Rich Heffley, provided redistricting maps, performance information, or other map-drawing advice to, or in any way influenced the map-drawing decisions of, professional staff (May 23 Tr. 39:7-18; June 2 Tr. 232:25-234:3; June 4 AM Tr. 92:22-14). The Court finds the testimony of Mr. Guthrie, Mr. Kelly, and Mr. Poreda to be credible.

19. Throughout the legislative process, professional staff worked continuously to improve the objective metrics and legal compliance of the Congressional Plan. In the Senate, the basic metrics[2] of the final, enacted plan were equal to or superior to earlier Senate proposals:

Plan	Reock Score	Convex Hull Score	Split Counties	Split Municipalities
S000C9002	0.40	0.71	23	63
S000C9006	0.39	0.71	24	45
S000C9014	0.39	0.71	24	46
H000C9047	*0.40*	*0.72*	*21*	*27*

20. Similarly, in the House, the objective metrics of the proposal that advanced at each stage were superior to those of the other proposals. The seven proposals initially considered by the House Congressional Redistricting Subcommittee reflected the following data:

[2] Unless otherwise noted, the statistics for maps discussed in this Order are incorporated as part of Joint Exhibit 1.

Plan	Reock Score	Convex Hull Score	Split Counties	Split Municipalities
H000C9001	0.39	0.74	24	51
H000C9003	0.40	0.74	26	57
H000C9005	0.39	0.73	22	50
H000C9007	0.40	0.73	24	55
H000C9009	0.41	0.75	26	52
H000C9011	*0.42*	*0.74*	*22*	*48*
H000C9013	0.40	0.74	23	58

The Subcommittee reported three maps—H000C9009, H000C9011, and H000C9013—to the House Redistricting Committee. The Committee amended each of the proposals and reported H000C9043, the objective metrics of which were again superior to the competing proposals:

Plan	Reock Score	Convex Hull Score	Split Counties	Split Municipalities
H000C9041	0.41	0.74	26	44
H000C9043	*0.42*	*0.74*	*22*	*39*
H000C9045	0.40	0.74	23	48

The final revision—H000C9047—reflected further improvement. While its compactness scores decreased slightly, the plan preserved one additional county and twelve additional municipalities:

Plan	Reock Score	Convex Hull Score	Split Counties	Split Municipalities
H000C9047	0.40	0.72	21	27

21. The consequence of the Congressional Plan was to disrupt and inconvenience Republican incumbents (May 19 Tr. 198:22-204:5; May 20 Tr. 116:18-117:8; May 27 AM Tr. 91:25-93:1, 93:9-94:3-20, 95:8-96:2; Holder Dep. 192:21-193:1-5, 193:8-13, 194:5-8). Republican incumbents John Mica and Sandy Adams were paired, and Mica defeated Adams in the primary election. Republican incumbents Cliff Stearns and Ted Nugent were paired, forcing Stearns to run in a district that did not include his home town, and Stearns was defeated by a challenger in the primary election. Republican incumbent Dan Webster ran in a district that included only 56.2% of the population that resided in his former district, did not include his

home, and narrowed his margin of victory from 17.9% to 3.4%. Republican Mario Diaz-Balart's home was placed in a district that included only 18.2% of his former constituents; he ran in a different district that was populated by only 51.1% of his former constituents. Republican incumbent David Rivera's home was placed into the district from which Diaz-Balart chose to run, forcing Rivera to run in a different district, and Rivera was defeated in the general election by Democratic challenger Joe Garcia. Republican Allen West sought reelection in a district 40 miles from his home and was defeated by Democratic challenger Patrick Murphy. And Republican incumbent Tom Rooney sought reelection 30 miles from his home in a district with only 37.1% of his former constituents.

Congressional District 5

22. Benchmark CD3 was a historically performing district entitled to constitutional protection. With a Black VAP of 49.86%, Benchmark CD3 and its predecessor districts had consistently elected the African-American candidate of choice for the previous 20 years.

23. In the Congressional Plan, CD5 has a Black VAP of 50.06%. It includes the African-American community of Sanford. This community has been an integral part of the benchmark district since it was first created by a federal district court in 1992. Plaintiffs contend that inclusion of the African-American community of Sanford in CD5 indicates an intent to favor the Republican Party and violates the Tier-Two standards of the Florida Constitution.

24. Plaintiffs offer two alternative configurations of CD5, both of which extend from Jacksonville to the Chattahoochee River west of Tallahassee. The testimony establishes that no one has shown how to draw a majority-minority district in northeast Florida without including urban populations of Jacksonville, Orlando, Gainesville, and Sanford, as well as smaller communities in between that historically have been included in the district (June 2 Tr. 190:19-192:14). Plaintiffs offered no evidence to suggest that a district that travels south from

Jacksonville can stop short of Orlando and avoid diminishment in the ability of minorities to elect their preferred candidates.

25. The Legislature drew CD5 as a majority-minority district in part to satisfy the "majority-minority rule" announced in *Bartlett v. Strickland*, 556 U.S. 1 (2009). The Legislature was well aware of the implications of *Bartlett*, which construed Section 2 of the Voting Rights Act ("VRA"). In 2009 and 2010, Speaker Cannon chaired the Select Policy Council on Strategic and Economic Planning, which held several meetings at which the implications of *Bartlett* were discussed (May 28 AM Tr. 67:10-68:13. When the House and Senate conferred in January 2012 to reconcile their redistricting plans, there was agreement that, to avoid Section 2 liability, the Legislature should draw CD5 as a majority-minority district (May 20 Tr. 179:24-180:2, 182:2-22, 183:18-25, 184:24-185:15, 193:25-194:4; May 21 Tr. 150:24-151:3, 151:24-152:5, 229:4-8; May 22 Tr. 200:15-22; June 2 Tr. 193:19-194:6). Mr. Poreda and Mr. Guthrie prepared the final plan and found it possible to draw CD5 as a majority-minority district and minimize its impact on other districts (June 2 Tr. 197:18-198:18, June 4 Tr. 66:22-67:16).

26. The minority communities that comprise CD5 share common challenges and common needs, interests, and characteristics. The expert testimony of Professors Darryl Paulson and Robert Cassanello and the fact testimony of the witnesses of Defendant-Intervenor, Florida State Conference of NAACP Branches, establishes that the communities comprising CD5 share both a common history of discrimination and present, common challenges, needs, interests, and characteristics. Turner Clayton of Seminole County, Evelyn Foxx of Alachua County, Whitfield Jenkins of Marion County, George Young of Duval County, Beverlye Neal of Orange County, and Sanford City Commissioner Velma Williams, citizens with a history of civic engagement, testified credibly about the social, historical, and political conditions that black voters confront in

their communities. Collectively, their testimony establishes that the minority communities in CD5 share political objectives and are united by economic and other challenges apart from race.

27. The minority populations in these communities are therefore reasonably compact as determined in *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1301 (S.D. Fla. 2002). In addition, as both the NAACP's expert witness, Dr. Richard Engstrom, and Plaintiffs' expert, Dr. Stephen Ansolabehere, agree, voting is racially polarized in Northeast Florida, including CD5 (May 28 PM Tr. 93:6-9; June 2 Tr. 83:7-84:22, 85:14-19, 86:3-7).

28. Professional staff of the House performed a functional analysis of CD5, as well as the other minority districts in the Congressional Plan. Professional staff reviewed the same data that the Florida Supreme Court found relevant in *Apportionment I*, and performed the same functional analysis on congressional districts as it performed on State House districts (May 23 Tr. 59:5-13; June 4 Tr. 30:14-20).

Congressional District 10

29. District 10 includes an extension into Orlando. The extension is situated between two minority districts—CD5, a historically performing African-American district, and CD9, a new Hispanic opportunity district centered in Osceola County.

30. The extension from District 10 into Orlando contains approximately 105,000 people, of whom more than 70% are white. The addition of this population to CD5 or CD9 would have compromised the ability of minorities in those districts to elect the candidates of their choice. While some drafts considered in the Legislature did not include the extension, CD9 in those drafts divided Osceola County and did not achieve 40% Hispanic VAP. There is no evidence that these objectives could have been achieved and the extension eliminated.

Congressional Districts 13 and 14

31. Benchmark CD11 preceded CD14. It is uncontested that, in Benchmark CD11, minority voters were able to elect the candidate of their choice. Blacks and Hispanics vote cohesively in this area, and together comprised approximately 50% of the VAP of CD11.

32. Benchmark CD11 included parts of Hillsborough, Pinellas, and Manatee Counties. In new CD14, the Legislature eliminated the extension into Manatee County. The Legislature concluded, however, that, given the history of preclearance in Florida, CD14 could not be further removed from Pinellas County without a diminishment in minority voting strength (May 23 Tr. 73:18-24).

33. In enacting CD14, the Legislature stated that CD14 is consistent with Section 5 of the VRA and "does not deny or abridge the equal opportunity of racial or language minorities to participate in the political process or diminish their ability to elect representatives of their choice." Ch. 2012-2, at 4, Laws of Fla. The Legislature included a discussion of CD14 in its preclearance application, and the Department of Justice precleared the Congressional Plan.

34. Compared to Benchmark CD11, CD14 in Plaintiffs' alternative maps reduces the combined black and Hispanic share of the Democratic primary electorate from 44.1 to 35.0%. Thus, Plaintiffs remove more than one-fifth of the minority population from the Democratic primary. The alternative maps also decrease the compactness of the entire region of the State:

	Reock Score		**Convex Hull Score**	
	Congressional Plan	**Romo Maps**	**Congressional Plan**	**Romo Maps**
CD12	0.40	0.38	0.81	0.79
CD13	0.46	0.57	0.82	0.91
CD14	0.36	0.28	0.69	0.60
CD15	0.44	0.33	0.75	0.67
CD16	0.42	0.32	0.81	0.80
CD17	0.67	0.39	0.82	0.68
MEAN	**0.46**	**0.38**	**0.78**	**0.74**

Plaintiffs' map-drawer testified that the lesser compactness of these districts is a function of CD13 and CD14, as drawn in the alternative maps (Hawkins Dep. at 272:15-275:22.) In the same region, Plaintiffs divide Charlotte County, which the Congressional Plan preserves.

Congressional Districts 21 and 22

35. Districts 21 and 22, which have a vertical orientation in the Congressional Plan, have Reock scores of 0.28 and 0.18 and Convex Hull scores of 0.60 and 0.61, respectively. Plaintiffs' alternative maps contain the same vertical pattern. Plaintiffs' map-drawer testified that the vertical orientation was acceptable and appropriate (Hawkins Dep. at 271:11-272:14.) Plaintiffs' expert, Dr. Ansolabehere, testified that the configuration made sense (May 28 PM Tr. 155:8-19).

Congressional District 25

36. The configuration of CD25 depends in part on the configuration of neighboring CD20. The predecessor of CD20—Benchmark CD23—was a majority-minority district in which African-American voters were able to elect their preferred candidates. Benchmark CD23 included part of Hendry County—one of five counties protected by Section 5 of the VRA.

37. If the Legislature had excluded from CD20 the part of Hendry County that was contained in Benchmark CD23, it would have removed African-Americans in a protected county from a minority district in which they previously possessed the ability to elect the candidates of their choice. Plaintiffs' alternative maps do so, and assign Hendry County in its entirety to CD25. Dr. Ansolabehere, however, was unable to cite any authority to suggest that the Department of Justice would have precleared the alternative configuration: "I don't know how they would treat this particular issue. I don't know how the Department would treat this issue" (May 28 PM Tr. 140:23-25).

Congressional Districts 26 and 27

38. Hispanic voters are less cohesive politically than African-American voters. In addition, approximately one half of Florida's Hispanics are foreign born and, unless naturalized, are not entitled to vote, while some Hispanic populations in Florida exhibit low rates of turnout. For these and other, similar reasons, the creation of Hispanic districts generally requires careful consideration of primary election data, and usually a supermajority Hispanic population.

39. The Legislature drew CD26 and CD27 to preserve the ability of Hispanics to elect the candidates of their choice (May 23 Tr. 63:23-64:3). The Legislature attempted to keep whole the City of Homestead, but concluded that the preservation of Homestead would have diminished the ability of Hispanic voters to elect the candidates of their choice, and made the region less compact (June 4 Tr. 78:15-79:2). Professor Moreno testified that Plaintiffs' alternative maps, which preserve Homestead, diminish the ability of Hispanics to elect their preferred candidates (May 30 PM Tr. 24:21-25:7).

The Activities of Political Consultants

40. At trial, Plaintiffs attempted to establish the existence of a secret, parallel process in which Republican political consultants advised legislators and legislative staff with respect to the drawing of districts with the intent to favor or disfavor a political party or an incumbent.

Two Meetings

41. In December 2010 and January 2011, two meetings occurred between political consultants and legislative staff and attorneys, and, in the latter meeting, two legislators. The purpose of the meetings, which were approved in advance by then-Speaker Dean Cannon, was to evaluate the effect of Amendments 5 and 6, which had then recently been adopted, on the redistricting process. In Speaker Cannon's view, it was important to clarify even before the redistricting process commenced—and before the release of data by the Census Bureau—the

nature of any participation by the political consultants in the approaching redistricting process (May 28 AM Tr. 19:6-20).

42. The unrebutted testimony of all witnesses who attended the meetings is that the consultants were advised and directed at the second meeting not to interfere or attempt to participate in the drawing of districts (May 19 Tr. 16:6-16; 25:6-19; 42:23-43:10; 44:11-14; May 20 Tr. 155:6-11, 158:16-24; May 21 Tr. 18:10-18; May 28 AM Tr. 75:6-11; May 29 AM Tr. 21:9-12; May 29 PM Tr. 109:11-16). Far from supporting Plaintiffs' contention that the Legislature cooperated with political consultants to draw districts with an intent to favor or disfavor a political party or incumbent, the evidence establishes that at this early stage the Legislature informed the political consultants, to their great disappointment, that the consultants would not be permitted to participate in the preparation of the Legislature's redistricting plans. This directive was delivered to the political consultants at different times by Senator Don Gaetz, Representative Will Weatherford, and Speaker Dean Cannon, and supports the Legislature's contention that the Congressional Plan was not drawn with impermissible intent (May 21 Tr. 99:15-21; May 20 Tr. 155:15-20; May 28 Tr. 75:6-11; June 4 PM Tr. 68:14-18).

43. The meetings in December 2010 and January 2011 occurred months before the Census Bureau released the data necessary to draw districts (May 19 Tr. 195:10-22; May 22 Tr. 73:5-8; May 23 Tr. 7:15-19; May 28 AM Tr. 12:15-20). The testimony confirms that no districts or district configurations were discussed at the meetings, and Plaintiffs offered no evidence of similar meetings occurring after January 2011, when the consultants were informed that their participation in the map-drawing process was not welcome and would not be permitted (May 28 Tr. 75:6-11).

Kirk Pepper and Marc Reichelderfer

44. Beginning in November 2011, Kirk Pepper, the Deputy Chief of Staff for External Affairs to Speaker Dean Cannon, sent a series of draft maps prepared by professional staff to Marc Reichelderfer, a political consultant. The transmissions occurred before the maps were available to the public.

45. Mr. Pepper and Mr. Reichelderfer were personal friends. Mr. Pepper was not a map-drawer and did not advise the map-drawers with respect to the configuration of districts (May 20 Tr. 106:16-107:3, 110:24-111:4-10, May 23 Tr. 42:21-43:2, May 28 AM Tr. 69:19-70:7, June 4 AM Tr. 12:6-14). Mr. Pepper, however, worked in the Speaker's Office, and therefore had access to maps prepared by professional staff of the House, and maps received by professional staff of the House from professional staff of the Senate. Mr. Pepper provided the maps to Mr. Reichelderfer because Mr. Reichelderfer, as a political consultant, made his livelihood in campaigns, and advance knowledge of the Legislature's redistricting plans might advance Mr. Reichelderfer's professional standing (May 19 Tr. 54:16-23; 184:16-185:3). Mr. Reichelderfer testified that he never provided advice to legislators or legislative staff regarding the drawing of districts (May 20 Tr. 106:16-107:3, 110:24-111:4-10). The testimony was consistent, moreover, that neither Speaker Cannon nor professional staff were aware that Mr. Pepper was providing draft redistricting maps to Mr. Reichelderfer (May 23 Tr. 144:13-16; May 28 AM Tr. 31:10-17).

46. Plaintiffs offered no evidence that Mr. Reichelderfer or Mr. Pepper participated in drawing the Congressional Plan. Plaintiffs offered no evidence that Mr. Reichelderfer provided legislators or professional staff, or even Mr. Pepper, with advice about district configurations or political performance.

47. Plaintiffs note that some of the earliest draft maps prepared by professional staff of the House (eight files that contain the letters "JAK") appear on Mr. Reichelderfer's computer but are no longer in the possession of the House. Professional staff, however, frequently modified maps and changed their file names, and Mr. Kelly and Mr. Poreda both recognized features of those maps, as well as their naming conventions (May 22 Tr. 92:23-25, 93:20-23, June 4 AM Tr. 48:11-21, 49:16-19). Plaintiffs note that several of these maps contain a District 5 with a Black VAP in excess of 50%, and that Mr. Kelly testified that he did not draw such a district so early in the map-drawing process. Plaintiffs theorize that Mr. Reichelderfer drew these districts. The forensic evidence establishes, however, that Mr. Reichelderfer did not modify these files after they were placed on his computer (Jt. Exh. 2.). Mr. Poreda explained that these maps were compiled by Jeff Silver, a legislative staff member, from public submissions, and that the iteration of District 5 in these maps correlates to a district presented by Nicholas Ortiz, a member of the public who made the first public submission, HPUBC0001 (June 4 Tr. 52:17-53:10, 54:23-55:11).

48. The fact that no draft maps produced by the House in discovery bear a "date modified" between November 1 and November 18, 2011, is consistent with Mr. Poreda's testimony that professional staff was continuously engaged in the preparation of the initial House proposals during this period (June 4 AM Tr. 33:3-7). The date modified reflects only the last date on which a file is modified, and of course does not reflect the intermediate changes made by House staff throughout this period and incorporated into the same electronic file. A file with a date modified of November 19 might have been modified innumerable times in the preceding weeks; the "date modified" would not reflect this activity.

Political Consultants' Maps

49. Plaintiffs presented evidence that certain political consultants discussed redistricting and drew their own redistricting maps, and that, in some cases, districts contained in the political consultants' maps appeared in maps submitted by members of the public through the public portal on the House and Senate websites.

50. There is no evidence that legislators or legislative staff were aware of the map-drawing activities of the political consultants. In fact, the testimony established that legislators and legislative staff were unaware of the map-drawing efforts of political consultants, and that these efforts occurred separately from the official preparation of the Congressional Plan (May 23 Tr. 39:7-18; June 2 Tr. 232:25-234:3; June 4 AM Tr. 92:10-14)

51. Mr. Reichelderfer drew some districts on his own. He testified that he never drew a complete map, but used publicly available maps as a baseline for modifications (46:25-47:3). Plaintiffs offered no evidence that Mr. Reichelderfer's drafts were ever transmitted to the Legislature. Plaintiffs contend that, in some drafts, Mr. Reichelderfer drew District 5 with a black voting-age population ("VAP") in excess of 50%, and that the Legislature ultimately did the same. Mr. Reichelderfer's maps also reflect iterations of District 5 in which Black VAP was less than 50%. The Black VAP of the benchmark district—District 3—was 49.9%.

52. Mr. Terraferma also drew redistricting maps, as did Mr. Bainter's consulting firm, Data Targeting. Mr. Terraferma, Mr. Heffley, and Mr. Bainter shared these drafts among themselves and with other political consultants. They encouraged members of the public to submit maps to the Legislature through the public portal made available by the House and Senate. Two redistricting maps submitted under the name "Alex Posada" and designated

HPUBC0132 and HPUBC0133 contain several districts that may match districts in a draft map drawn by Mr. Terraferma. These districts do not appear in the enacted Congressional Plan.

53. Districts 3, 4, and 13 in the Congressional Plan are similar to districts contained in HPUBC0132 and HPUBC0133, but none of these districts is found in Mr. Terraferma's map. Plaintiffs do not individually challenge Districts 3 and 4. A district similar to District 13 appeared in the Benchmark and many public submissions, including HPUBC0003, HPUBC0006, HPUBC0031, HPUBC0065, HPUBC0069, HPUBC0130, HPUBC0131, HPUBC0165, HPUBC0166, HPUBC0167, HPUBC0168, HPUBC0172, HPUBC0173, and HPUBC0174.

54. Plaintiffs offered no evidence to show that any legislator or legislative staff member was aware that HPUBC0132 and HPUBC0133 were influenced by political consultants, that there was some inherent constitutional infirmity involving those submissions, or that any district was incorporated into the Congressional Plan for the purpose of influencing Republican interests (May 23 Tr. 39:7-18; June 2 Tr. 232:25-234:3; June 4 AM Tr. 12:6-24, 16:3-7).

Email Correspondence

55. Plaintiffs introduced email correspondence between Speaker Cannon, Mr. Pepper, and Mr. Reichelderfer in November 2011. In one email, sent one day before the Senate publicly disclosed its first congressional plan proposal, Speaker Cannon wrote to Mr. Reichelderfer: "As long as the Senate accommodates the concerns that you and Rich [Heffley] identified in the map that they put out tomorrow, then we are in fine shape." Plaintiffs suggest that this email indicates coordination between consultants and the Legislature regarding the drawing of districts.

56. The testimony contradicts this suggestion. Speaker Cannon, Mr. Pepper, and Mr. Reichelderfer each testified that, during the period in question, relations between the House and Senate were strained and characterized by mistrust (May 19 Tr. 130:3-4; May 20 Tr. 22:20-23:3;

May 28 AM Tr. 38:7-10). The parties were concerned that the Senate's proposal, which the Senate had not shared with the House, would reflect a line-drawing approach so different from the approach adopted by the House that ultimate reconciliation of the House and Senate proposals would be difficult or impossible (May 28 AM Tr. 38:1-10). And the testimony is undisputed that the "concerns" addressed in the email are not about the draft map, but rather whether the Senate and House would be able to cooperate during a time of distrust between the chambers to achieve a mutually agreeable plan (May 28 AM 40:10-41:3, 41:16-25, 42:22-43:10). As Speaker Cannon testified, "the concerns were that the House and Senate not approach the initial rollout of the congressional maps with completely different approaches or that were designed to show defects in the other side's map" (May 28 Tr. 43:1-5). No substantive comments about draft maps were offered (May 28 AM 88:4-8). The testimony is confirmed by the fact that only later did Mr. Pepper provide Mr. Reichelderfer the Senate's draft proposal, suggesting that Mr. Reichelderfer had not seen the Senate's proposal and was therefore unable to express "concerns" regarding particular features of that map. Speaker Cannon had not seen the Senate's draft congressional map before the email correspondence in question took place.

Alleged Spoliation

57. Plaintiffs also ask the Court to assume that documents discarded in the regular course of legislative business contained incriminating information.

58. The Constitution empowers each house of the Legislature to adopt rules regulating legislative records, Art. I, § 24(c), Fla. Const., and to "determine its own rules of procedure," *id*. Art. III, § 4(a). Furthermore, each house is constitutionally obligated to keep and publish a journal of its proceeding. Art. III, § 4(c). Consistent with the long-standing practice of adopting legislative rules at the biennial organization session, on November 16, 2010, the House

and Senate adopted the rules that would govern their proceedings until the next general election. *See* Fla. H.R. Jour. 6-23 (Org. Sess. Nov. 16, 2010); Fla. S. Jour. 6-38 (Org. Sess. Nov. 16, 2010). As is customary, these rules included provisions that regulated the retention and disposal of legislative records. *See* Fla. H.R. Rule 14.2 (2010-2012); Fla. S. Rule 1.444 (2010-2012). By their terms, these record-retention policies applied evenhandedly to all legislative business and all areas of legislative concern, including congressional redistricting. The record-retention policies in the biennially adopted legislative rules have remained substantially unchanged for nearly two decades.

59. At trial, every legislator or legislative staff member who testified about their retention practices indicated that they did so in accordance with House or Senate rules (May 21 Tr. 93:15-16; May 22 Tr. 22:8-11; May 23 Tr. 140:2-4; May 28 AM 63:12-18, 217:17-23, 218:7-11; Holder Dep. 52:11-16, Precourt Dep. 159:18-160:13). Plaintiffs offered no evidence that documents related to redistricting were selectively discarded, or that documents were discarded because of their contents. Plaintiffs offered no evidence that any material documents are unavailable due to any spoliation of evidence by the Legislative Parties. Indeed, the completeness and veracity of the official legislative record has never been challenged. Nor do Plaintiffs allege any violation of the Sunshine Law.

Plaintiffs' Experts

60. Plaintiffs called three experts in an attempt to show that the enacted map is biased in favor of Republicans, and asked the Court to infer improper intent from that bias.

61. Jonathan Katz, a professor of social sciences and statistics at the California Institute of Technology, testified that the enacted map contained significant levels of Republican bias.

62. Dr. Katz admitted, however, that he was not offering any opinion on the issue of intent (May 27 AM Tr. 136:10-14; May 27 PM Tr. 2:15-17).

63. Dr. Katz also admitted that his analysis did not take into account the constraints of geography, and that he did not study how the compactness requirement or the natural packing of Democrats could affect the presence of Republican bias (May 27 PM 4:14-16, 4:17-20, 7:20-23, 9:17-20).

64. Moreover, the predictive value of Dr. Katz's analysis was dubious. Dr. Katz predicted low Democratic performance in areas won by Democrats. Dr. Katz's analysis also varied greatly depending on which election data he selected to use as a basis of his model.

65. Jonathan Rodden, a professor of political science at Stanford University, testified that according to computer simulations he developed with Jowei Chen, the enacted map was a statistical outlier because it contained 17 districts that voted for John McCain in 2008.

66. At trial, however, Dr. Rodden admitted that his analysis could not discern the Legislature's intent (May 27 PM 169:22-170:3).

67. Dr. Rodden agreed that to serve as a fair comparison, a simulation must observe the same constraints as the enacted map. (May 27 PM 136:16-137:6).

68. Dr. Rodden admitted, however, that his simulations did not satisfy the constitutional standards, including the equal population requirements (May 27 PM 137:7-14, 152:8-19, 155:4-13). Dr. Rodden also acknowledged that his simulations created districts that are not visually compact (May 27 PM Tr. 176:2-14, 177:24-178:1, 185:10-13, 185:23-186:6).

69. The testimony of Stephen Hodge, meanwhile, demonstrated that Dr. Rodden's algorithms are not truly random, fail to create Hispanic-performing districts, and fail to match the enacted plan on objective metrics, such as compactness and split cities.

70. Dr. Rodden also admitted that the natural packing of Democrats, as well as the creation of minority protection districts, could create a Republican bias (May 27 PM Tr. 134:1-16).

71. Dr. Nolan McCarty testified that Dr. Rodden's conclusions were inconsistent with his earlier research. Among other things, Dr. McCarty noted that Dr. Rodden's work relies on the results of the 2008 presidential election, but Dr. Rodden failed to apply a uniform swing that he employed in his earlier work. When a uniform swing is applied, the enacted plan is not statistically anomalous.

72. Dr. McCarty also found that if other statewide election results were used, there was "dramatic variation" in the results obtained (June 3 PM Tr. 76:14-16).

73. Moreover, under Dr. Rodden's own analysis, the Romo maps are also statistical outliers that create a disproportionate number (15) of McCain districts. Indeed, using 2012 data, the enacted map and the Romo plans all produced 16 districts that voted in favor of the Republican presidential candidate, Mitt Romney.

74. Finally, Dr. Stephen Ansolabehere, a professor of government at Harvard University, testified about the Romo Plaintiffs' alternative plans, which he helped design.

75. Dr. Ansolabehere admitted, however, that the alternative plans have similar performance data using the 2012 election results, even though Dr. Ansolabehere did not intend to favor any political party or incumbent (May 28 PM Tr. 56:8-23).

76. The political performance of the alternative plans presented by Plaintiffs is similar to the political performance of the Congressional Plan. In all three plans, Governor Romney received more votes than President Obama in sixteen congressional districts. In the seven statewide races held in 2010 and 2012, Republican statewide candidates received more votes

than their Democratic counterparts in more districts in the alternative plans than in the Congressional Plan (123 districts in each alternative map and 122 in the Congressional Plan):

	Districts Won by Republican in Congressional Plan	**Districts Won by Republican in Romo Map A**	**Districts Won by Republican in Romo Map B**
2012 President	16	16	16
2012 U.S. Senate	7	7	7
2010 U.S. Senate	20	21	21
2010 Governor	17	16	16
2010 CFO	20	22	22
2010 Attorney General	21	19	19
2010 Agriculture Comm'r	21	22	22
TOTAL	**122**	**123**	**123**
AVERAGE	**17.4**	**17.6**	**17.6**

CONCLUSIONS OF LAW

Standard of Review

77. This Court's review is limited and deferential. Like other statutes, the Congressional Plan enjoys a strong presumption of validity that can be overcome only if this Court finds constitutional invalidity "beyond a reasonable doubt." *Crist v. Fla. Ass'n of Criminal Defense Lawyers*, 978 So. 2d 134, 139 (Fla. 2008).

78. Plaintiffs argue that this Court should apply a preponderance of evidence standard. Even if this Court agreed, Plaintiffs have failed to establish any facts demonstrating that the Legislature acted with improper intent when it adopted the Congressional Plan, or otherwise violated the standards set forth in Article III, Section 20 of the Florida Constitution.

A. The Tier-One Standards of the Florida Constitution.

1. Intent to Favor or Disfavor.

79. "No 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. By its express terms, this prohibition upon partisan favoritism "prohibits intent, not effect." *In re*

Senate Joint Resolution of Legislative Apportionment 1176, 83 So. 3d 597, 617 (Fla. 2012). The political consequences of a redistricting plan do not, therefore, establish a violation. *Id*. at 642 (explaining that "mere effect will not necessarily invalidate a plan"). The Florida Supreme Court appropriately recognized that "any redrawing of lines, regardless of intent, will inevitably have an effect on the political composition of a district and likely whether a political party or an incumbent is advantaged or disadvantaged." *Id*. Thus, redistricting will "inherently have political consequences, regardless of the intent used in drawing the lines." *Id*.

80. Similarly, partisan imbalance might result from "a legitimate effort to comply with VRA principles or other constitutional requirements." *Id*. Where minority voters disproportionately affiliate with one political party, the creation of minority districts tends to concentrate the voters of that party into a small number of districts. Thus, demography, residential patterns, and legal compliance can introduce an unintended partisan bias into a redistricting plan.

81. The Constitution recognizes "no acceptable level of improper intent." *Id*. at 617. The relevant intent, though, is the intent of the Legislature as a collective body—not the isolated intent of an individual legislator or staff member. *See*, *e.g.*, *Apportionment IV*, 132 So. 3d at 139 ("[T]he Florida Constitution prohibits *the Legislature* from drawing an apportionment plan or individual district 'with the intent to favor or disfavor a political party or an incumbent' . . . ." (emphasis added)). [3]

[3] In this Order, the Court refers to the Florida Supreme Court's first decision interpreting the new standards—*In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597 (Fla. 2012)—as "*Apportionment I*." It refers to the subsequent decision upholding the State Senate plan—*In re Senate Joint Resolution of Legislative Apportionment 2- B*, 89 So. 3d 872 (Fla. 2012)—as "*Apportionment II*," and to the decision allowing limited discovery of legislators and legislative staff members—*League of Women Voters of Florida v. Florida House of Representatives*, 132 So. 3d 135 (Fla. 2013)—as "*Apportionment IV*."

82. To assess the Legislature's collective intent, the Court must consider both direct and circumstantial evidence of intent. *Apportionment I*, 83 So. 3d at 617. In *Apportionment I*, with respect to political parties, the Supreme Court considered "the effects of the plan, the shape of district lines, and the demographics of an area," while noting that the Constitution "does not prohibit political effect." *Id*. With respect to incumbents, the Court weighed "the shape of the district in relation to the incumbent's legal residence," the "maneuvering of district lines in order to avoid pitting incumbents against one another in new districts," as well as "the drawing of a new district so as to retain a large percentage of the incumbent's former district." *Id*. at 618-19.

83. A redistricting plan's degree of compliance with the traditional redistricting principles in Tier Two—equality of population, compactness, and adherence to political and geographical boundaries—can illuminate legislative intent. *Id*. at 618. At the same time, a lesser degree of compliance with the Tier-Two standards does not necessarily indicate improper intent. *Id*. at 640. For example, state and federal protections for minorities "may require the preservation or creation of non-compact districts or may help to explain the shape of a challenged district." *Id*. Because unusually shaped districts "may be the result of legitimate efforts by the Legislature to comply" with the VRA or with the Tier-One protections in the Florida Constitution, the creation of minority districts "could be misinterpreted as an action intended to favor (or disfavor) a political party or an incumbent." *Id*. But if "adherence to a tier-one requirement explains the irregular shape of a given district, a claim that the district has been drawn to favor or disfavor a political party can be defeated." *Id*. at 641. The evidence of intent must be viewed together. *See id*. at 618 ("One single piece of evidence in isolation may not indicate intent . . . .")

84. The isolated communications of legislators and legislative staff members are not probative of legislative intent unless those communications are "part of a broader process to develop portions of the map." *Apportionment IV*, 132 So. 3d at 150 ("[T]he communications of individual legislators or legislative staff members, *if part of a broader process to develop portions of the map*, could directly relate to whether the plan as a whole or any specific districts were drawn with unconstitutional intent." (emphasis added)). Any challenger who relies on such communications must, therefore, show that the communications were part of a broader process to develop portions of the map and, with improper intent, actually affected the enacted districts.

2. Protection of Racial and Language Minorities.

85. Consistent with Florida's commitment to the protection of minorities in the redistricting process, the Constitution places minority protection in Tier One. Specifically, districts shall not be drawn either (i) with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process, or (ii) to diminish their ability to elect representatives of their choice. Art. III, § 20(a), Fla. Const.

86. Notably, these protections are contained in Tier One and therefore take precedence, to the extent of any conflict, over the standards in Tier Two.

87. Tier One contains two distinct protections for minorities: prevention of "vote dilution" and prevention of "diminishment" in a minority group's ability to elect candidates of its choice. *Id*. at 685. The two standards, both modeled upon provisions of the Voting Rights Act, are discussed below.

a. Vote Dilution.

88. The constitutional mandate that districts not deny or abridge the equal opportunity of minorities to participate in the political process "is essentially a restatement of Section 2 of the Voting Rights Act," which prohibits vote dilution. *Id*. at 619 (citing 42 U.S.C. § 1973(b)). The vote-dilution standard in Tier One thus embraces the principles of Section 2 of the VRA, and its interpretation is "guided by prevailing United States Supreme Court precedent." *Id*. at 620.

89. The essential feature of the vote-dilution standard is that, in some cases, it requires the creation of a majority-minority district. *Id*. at 623 ("A successful vote dilution claim under Section 2 requires a showing that a minority group was denied a majority-minority district that, but for the purported dilution, could have potentially existed."). A majority-minority district is a district in which minorities are a "numerical, working majority of the voting-age population." *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) (plurality opinion), *quoted in Apportionment I*, 83 So. 3d at 623. It is insufficient to show that the Legislature might have created an additional influence district—*i.e.*, a district in which minorities are a minority and, though perhaps able to influence elections, are unable to elect their preferred candidates. *Apportionment I*, 83 So. 3d at 623. It is also insufficient to show that the Legislature might have drawn a crossover district—*i.e.*, a district in which minorities, though not a majority of the voting-age population, might be large enough, with the aid of white voters who "cross over," to elect their preferred candidates. *Id*. Under the vote-dilution standard, "what is required is that 'the minority population in the potential election district be greater than 50 percent.'" *Id*. (quoting *Bartlett*, 556 U.S. at 19-20).

90. Generally speaking, the vote-dilution standard is aimed at the practices of "cracking" and "packing." For example, "packing" is cognizable when a minority group that could have comprised a majority in multiple districts instead is a supermajority in fewer districts. *Apportionment I*, 83 So. 3d at 622 (noting that packing "might occur when a minority group has 'sufficient numbers to constitute a majority in three districts' but is 'packed into two districts in which it constitutes a super-majority'" (quoting *Voinovich v. Quilter*, 507 U.S. 146, 153 (1993))). One court found vote dilution where minorities comprised 86% of one district and 23% of another, but might have formed majorities in two districts—not one. *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 984-85 (D.S.D. 2004), *aff'd*, 461 F.3d 1011 (8th Cir. 2006). In either case, the central question is whether an additional majority-minority district might be created. *See Apportionment I*, 83 So. 3d at 655 (finding no vote dilution in Senate plan because challengers did not show "that an additional majority-minority district can be created").

91. The vote-dilution standard does not require the creation of a majority-minority district wherever possible, but only where certain conditions—conditions first announced in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)—are satisfied. First, three preconditions must be present: (i) the minority population is sufficiently large and geographically compact to be a majority of the voting-age population; (ii) the minority population is politically cohesive; and (iii) the majority population votes sufficiently as a bloc to enable it usually to defeat the candidates preferred by minorities. *Apportionment I*, 83 So. 3d at 622 (citing *Gingles*, 478 U.S. at 50-51). If all three preconditions exist, and if, in the "totality of circumstances," the minority group has less electoral opportunity than other members of the electorate, then a majority-minority district must be created. *Id.*; *accord LULAC v. Perry*, 548 U.S. 399, 425-26 (2006).

92. As noted above, under the first *Gingles* precondition, the minority population must be "sufficiently large . . . to be a majority." In 2009, the United States Supreme Court rejected a contention that the VRA's vote-dilution standard requires the creation of districts in which minorities are less than a majority. *See Bartlett*, 556 U.S. 1. *Bartlett* clarified that the relevant measure is whether minorities can constitute a majority of a district's *voting-age population*. *See id*. at 18 ("[T]he majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area?").

93. Moreover, to satisfy the majority-minority requirement of Section 2, the minority population must consist of a single minority group. *Perry v. Perez*, 132 S. Ct. 934, 944 (2012) (per curiam). A coalition of minority voters who together, but not separately, are sufficiently large to constitute a numerical majority in a district cannot prevail on a vote-dilution claim. *Id*.

94. As noted above, the *Gingles* preconditions also require that the minority population be "geographically compact." *Id*. at 622. In the context of vote dilution, "compactness" does not refer to the geographical shape of the district. "The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district," *LULAC*, 548 U.S. at 433, and a minority population is compact if it is either geographically concentrated *or* united by common characteristics, needs, and interests, *id*. at 435 ("[I]t is the enormous geographical distance separating the Austin and Mexican border communities, coupled with the disparate needs and interests of these populations—not either factor alone—that renders District 25 noncompact . . . ."). The compactness requirement serves to deny protection to districts in which "the only common index is race." *Id*. If the minority

population is geographically concentrated or united through common characteristics, needs, and interests, then it is compact for purposes of vote dilution.

95. For example, in *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1301 (S.D. Fla. 2002), the United States District Court for the Southern District of Florida held that the black population of Northeast Florida that comprised Benchmark District 3—the predecessor to current District 5— was "reasonably compact" under the vote-dilution standard.

96. Thus, "members of a minority group who live in separate enclaves may still be included in a single district where it can be shown that they constitute a single community having similar interests." *De Grandy v. Wetherell*, 794 F. Supp. 1076, 1085 (N.D. Fla. 1992). The requirement of compactness is a "'practical' or 'functional' concept, which must be considered in relation to § 2's laudatory national mission of opening up the political process to those minorities that have been historically denied such." *Dillard*, 686 F. Supp. at 1466.

97. The second and third *Gingles* preconditions—that the minority population be politically cohesive and that the majority population vote sufficiently as a bloc to enable it usually to defeat the candidates preferred by minorities—describe racial polarization. Whether voting is racially polarized—in other words, whether voters of different races exhibit a consistent preference for different candidates, *see Gingles*, 478 U.S. at 54 n.21—is usually the subject of expert analysis.

b. Diminishment.

98. The constitutional mandate that districts not diminish the ability of minorities to elect the representatives of their choice reflects the standard codified in Section 5 of the Voting Rights Act. *Apportionment I*, 83 So. 3d at 619-20. Like the vote-dilution standard,

interpretation of the diminishment standard relies on "prevailing United States Supreme Court precedent." *Id*. at 620.

99. As the word "diminish" implies, the diminishment standard entails a comparison between the prior redistricting plan, known as the "benchmark" plan, and the enacted plan. *Id*. at 624. The diminishment standard prohibits a diminishment—or an erosion or weakening—in the voting strength of minorities in the so-called "ability-to-elect districts"—districts in which minorities were previously able, under the benchmark plan, to elect their preferred candidates.

100. Florida's diminishment standard was patterned after language that Congress added to Section 5 of the VRA in 2006. *See Apportionment I*, 83 So. 3d at 625 ("This amended language mirrors the language of Florida's provision."). Congress amended Section 5 to overrule *Georgia v. Ashcroft*, 539 U.S. 461 (2003), in which the Court had construed Section 5 to permit States to "trade off 'safe' districts with 'influence or coalition districts,'" *Apportionment I*, 83 So. 3d at 624 (quoting *Ashcroft*, 539 U.S. at 482), and thus "risk having fewer minority representatives," *Ashcroft*, 539 U.S. at 484. Congress concluded that "trade-offs" in which safe districts are weakened to create neighboring influence or coalition districts "would allow the minority community's own choice of preferred candidates to be trumped by political deals struck by State legislators purporting to give 'influence' to the minority community while removing that community's ability to elect candidates." *Id*. (quoting H.R. Rep. No. 109-478, at 44 (2006)); *see also* S. Rep. No. 109-295, at 20 (2006) (concluding that if States are permitted to "break up" majority-minority districts "and replace them with vague concepts such as influence, coalition, or opportunity[,] . . . this may actually facilitate racial discrimination against minority voters").

101. The new language enacted by Congress imposed a "more stringent" mandate—one that "prohibit[s] more conduct than before." *Shelby Cnty. v. Holder*, 133 S. Ct. 2612, 2617, 2621 (2013). Under the new language, the controlling question is "whether the electoral power of the minority community was *more*, *less*, *or just as able* to elect a preferred candidate of choice after a voting change as before." *Apportionment I*, 83 So. 3d at 624-25 (quoting H.R. Rep. No. 109-478, at 44 (2006)) (emphasis added). As Congress explained, a redistricting plan that leaves minorities "less able to elect a preferred candidate of choice" violates the amended Section 5. *Id*. at 625 (quoting H.R. Rep. No. 109-478, at 44 (2006)). In other words, a change that decreases the likelihood that the candidate preferred by minorities will be elected is a diminishment.

102. The Florida Constitution reflects the same diminishment standard. "Florida has now adopted the retrogression principle *as intended by Congress* in the 2006 amendment." *Id*. (emphasis added). As a result, "the Legislature cannot eliminate majority-minority districts or weaken other historically performing districts where doing so would actually diminish a minority group's ability to elect its preferred candidates." *Id*.; *accord id*. at 655 (noting that the State Senate plan contained "as many" ability-to-elect districts as the benchmark, and that the voting ability of minorities in the new districts was "commensurate" with their former voting ability).

103. The diminishment standard protects any district in which minorities were able to elect their preferred candidates in the Benchmark—*i.e.*, any "historically performing" district. *Id*. at 625. In addition to majority-minority districts, the diminishment standard protects "coalition or crossover districts that previously provided minority groups with the ability to elect a preferred candidate under the benchmark plan." *Id*. Coalition and

crossover districts are districts in which a minority group, though not a majority, is able to elect its preferred candidates with the support of other minorities (coalition) or white voters (crossover). *Id*. at 623. The diminishment standard does *not* protect influence districts. In influence districts, minorities are unable to elect their preferred candidates and thus have no "ability to elect" that can be protected from diminishment.

104. To determine whether a district diminishes the voting strength of minorities, courts do not consider voting-age population in isolation. Rather, a court must examine political data as well as population data to gauge the voting ability of minorities. *Id*. at 625. This broader analysis of data to assess the voting strength of minorities—and to predict how the district will "function"—is referred to as a "functional analysis." *Id*. The diminishment standard requires a functional analysis "because a minority group's ability to elect a candidate of choice depends upon more than just population figures." *Id*.; *accord id*. at 626-27 (same). In addition to voting- age population, a court must consider voter registration, voter turnout, and election results. *Id*. at 627. A district with a lower minority voting-age population might nevertheless afford minorities a superior ability to elect the candidates of their choice if, for example, the minority population is more cohesive politically or is more galvanized and exhibits higher turnout. A "slight change" in minority VAP is permissible if the district, according to all data viewed collectively, does not in fact diminish the likelihood that minority-preferred candidates will prevail. *Id*. at 625. The Constitution does not, however, permit even slight changes that diminish the ability to elect. It would defeat the purpose of Tier One to permit successive, incremental erosions of minority voting strength.

105. In *Apportionment I*, the objectors argued that the diminishment standard does not (as its plain words imply) prohibit a diminishment in the ability of minorities to elect the

candidates of their choice, but only a total destruction of the ability of minorities to elect. In other words, the objectors asserted that the Legislature *may* erode or weaken the voting power of minorities, as long as minorities maintain an ability to elect of some kind—though a much lessened or impaired ability. Under this view, a diminishment is permissible unless it crosses an arbitrary line and wholly deprives minorities of the ability to elect. The Supreme Court rejected this position and recognized that diminishment in the ability to elect is a question of degree. *See id*. at 624-25 (noting that the question is whether minorities are "more, less, or just as able to elect" their candidates); *id*. at 625 (noting that a redistricting plan is invalid if minorities are "less able to elect a preferred candidate of choice"); *id*. (noting that the redistricting plan may not "weaken" historically performing minority districts); *id*. at 655 (requiring "commensurate voting ability").

106. The Court's interpretation is supported by the language and history of the diminishment provision. In the interpretation of constitutional amendments, the Supreme Court looks to dictionary definitions because "in general, a dictionary may provide the popular and common-sense meaning of the terms presented to the voters." *In re Adv. Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786 (2014) (quoting *Adv. Op. to Governor–1996 Amendment 5 (Everglades)*, 706 So. 2d 278, 282 (Fla. 1997)). For example, in *Apportionment I*, the Court turned to dictionary definitions of the word "compact." *See* 83 So. 3d at 632; *see also id*. at 631 ("[A] fundamental tenet of constitutional construction . . . is that the Court will construe a constitutional provision in a manner consistent with the intent of the framers and the voters and will interpret its terms in their most usual and obvious meaning.").

107. "Diminish" means "to make smaller or less." *See* THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (1979). The Constitution thus prohibits districts that

make smaller or *make less* the ability of minorities to elect their preferred candidates—precisely as Congress and the Supreme Court intended. Plaintiffs rewrite the Constitution to provide that the Legislature *may diminish*, *as long as it does not completely abolish*, the ability of minorities to elect their preferred candidates. The Constitution, however, does not permit a diminishment (as Plaintiffs wish) from existing levels down to the absolute minimum predicted to be necessary to enable minorities to elect their candidates. The Constitution prohibits diminishment, period. It therefore ensures that minorities will be *as likely as before* to elect their preferred candidates.

108. The Supreme Court's interpretation also comports with the history of the diminishment language and its genesis in the amendments by Congress to the VRA in 2006. In 2006, Congress created a stronger standard than existed before, as the word "diminish" became a part of Section 5 for the first time. Congress intended the new diminishment standard to prohibit trade-offs in which minority districts are weakened in order to create influence districts. *Apportionment I,* 83 So. 3d at 624. In interpreting citizen initiatives, courts consider the materials that were available to the voters "as a predicate for their collective decision." *Williams v. Smith*, 360 So. 2d 417, 420 n.5 (Fla. 1978); *accord Dep't of Envtl. Prot. v. Millender*, 666 So. 2d 882, 886 (Fla. 1996). This history, filled with content, was available as a guide when the voters adopted Amendment 6.

109. The Supreme Court's interpretation is also consistent with the commonsense realities of elections. One recognized expert in redistricting explained the diminishment concept as follows:

> In reality, the ability to elect preferred candidates, like the ability to play the violin, is a matter of degree, not a difference in kind. Some districts have a near-100% ability to elect (so-called performing or safe districts); in others, minorities' ability to elect their preferred candidates might be closer to 50% or next to nothing. Districts can be arrayed along a continuum according to their ability to perform. Diminishing a district's ability to elect does not necessarily mean

> reducing it from a safe district to a hopeless district (*i.e.*, a move from a guaranteed district to one where minorities have no chance of electing their preferred candidates). It could mean reducing a safe district to a competitive district, or a competitive district to a hopeless district or any downward shifts along that very wide spectrum.

Nathaniel Persily, *The Promise and Pitfalls of the New Voting Rights Act*, 117 YALE L.J. 174, 243-44 (2007). In reality, there is not a single, minimum point of voting strength that enables minorities to elect their candidates of choice. The results of elections fluctuate with countless circumstances, including the attributes and qualifications of candidates and the financing of campaigns. A degree of voting strength that is sufficient in one election might be woefully insufficient in another. The Constitution does not indulge the fiction that there is one minimum, ascertainable threshold of voting strength that is "necessary" to enable minorities to elect. Rather, it directs that minority voting strength—whatever it may have been—not be diminished.

110. A federal court has confirmed this interpretation. In *Alabama Legislative Black Caucus v. Alabama*, __ F. Supp. 2d)), 2013 WL 6925681 (M.D. Ala. Dec. 20, 2013), *prob. juris. noted*, 82 U.S.L.W. 3456 (U.S. June 2, 2014) (Nos. 13-895, 13-1138), the Court concluded that the "relevant question now is whether the candidate minorities voted for in the general election under the benchmark plan is *equally likely* to win under the new plan." *Id*. at *73 (emphasis added). The Court rejected the contention that, as long as the legislature maintained the same number of minority districts, it might weaken minority voting strength within those districts. *Id*. at *74. The diminishment standard requires the legislature both to maintain the existing number of ability-to-elect districts and the "same relative percentages of black voters in those districts." *Id*. The legislature may not "spread black voters out to other districts and substantially reduce the percentages of black voters within the majority-black districts because that change, by definition, would diminish black voters' ability to elect their preferred candidates." *Id*. at *73.

111. Another misconstruction is that the diminishment provision prohibits an *increase* in a district's minority voting strength. Plaintiffs invert the prohibition upon *diminishing* into a prohibition upon *increasing* minority voting strength. The Supreme Court has rejected this backward reading.

112. In *Apportionment I*, the Court stated that districts that "increase minority voting strength" are consistent with Section 5 of the VRA, and it applied the "same principle" under the Tier One. 83 So. 3d at 645; *accord id*. at 655 ("Districts that increase minority voting strength when compared to the benchmark are entitled to preclearance under Section 5, and we conclude that the same principle applies under Florida law."). Thus, the Court found no defect in the State House plan, which contained 28 majority-minority districts—an increase of four from the Benchmark. *Id*. at 645-46. And it found no violation of the minority protections in the State Senate plan, which increased by two the number of majority-Hispanic districts. *Id*. at 655.

113. The Florida Constitution's diminishment provision differs from Section 5 of the VRA in at least two respects. First, Section 5 required States to submit redistricting plans to the United States Department of Justice or the United States District Court for the District of Columbia prior to its implementation, and placed a burden on the State to prove compliance with Section 5. *Shelby Cnty. v. Holder*, 133 S. Ct. 2612, 2620 (2013). The Florida Constitution, by contrast, neither requires "preclearance" nor places the burden of proof on the State. *Id*. at 624 n.26.

114. Second, unlike Florida's diminishment provision, which applies statewide, Section 5 protected minorities in specified jurisdictions only—in Florida, minorities in Collier, Hardee, Hendry, Hillsborough, and Monroe Counties. *Apportionment I*, 83 So. 3d at 624; *accord id*. at 652-53 (noting that Section 5 protected "minority voting strength only in those counties").

Thus, in 2002, the Department of Justice denied preclearance to Florida's State House plan because "Collier County Hispanics" who, in the prior redistricting plan, had been united with Miami-Dade Hispanics in a performing district, were instead connected to Broward County. Letter from Ralph F. Boyd, Jr., to John M. McKay and Tom Feeney (July 1, 2002), *available at* http://www.justice.gov/crt/about/vot/sec_5/ltr/l_070102.php. Under Section 5, the question was "how a proposed change . . . affects minority voters within a covered county. Our analysis here only goes to the effect of the change within Collier, and on that county's minority residents." *Id*. Because Collier County Hispanics were part of a performing district in the benchmark plan, the State was required to include Collier County Hispanics in a performing district in the new plan, even if it required their joinder with minorities who resided outside of the covered counties.[4]

3. Contiguity.

115. Tier One also requires that districts "consist of contiguous territory." Art. III, § 20(a), Fla. Const. To be contiguous, a district must consist of a single geographical area. "A district lacks contiguity when a part is isolated from the rest by the territory of another district or when the lands mutually touch only at a common corner or right angle." *Apportionment I*, 83 So. 3d at 628 (marks omitted).

B. The Tier-Two Standards of the Florida Constitution.

116. Tier One prohibits an intent to favor or disfavor political parties or incumbents, protects the rights of minorities, and ensures that districts are contiguous. Art. III, § 20(a),

[4] In *Shelby County v. Holder*, which was decided after the redistricting process concluded, the United States Supreme Court declared that the so-called "coverage formula" in Section 4 of the VRA—the formula by which Congress selected the jurisdictions that Section 5 covered—exceeded Congress's enforcement authority under the Fifteenth Amendment. 133 S. Ct. 2612 (2013). The preclearance process established by Section 5 of the VRA is thus no longer in effect. *Shelby County* does not, however, affect the validity of the statewide diminishment standard in the Florida Constitution. *Shelby County*'s holding regarding the enforcement powers of Congress has no application to a statewide standard embodied in state law.

Fla. Const. Tier Two requires that districts be as nearly equal in population as practicable, that districts be compact, and that, where feasible, districts utilize existing political and geographical boundaries. *Id*. § 20(b). In case of conflict, Tier-One standards take precedence; the Constitution expressly establishes the primacy of Tier One. *See id*. § 20(b) ("Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) . . . ."); *accord Apportionment I*, 83 So. 3d at 639 ("[The Constitution] provides that the tier-two standards are subordinate and shall give way where compliance conflicts with the tier-one standards . . . ." (marks omitted)); *id*. at 653 ("The tier-two requirements of compactness and utilizing existing political and geographical boundaries must yield when necessary in order to avoid conflict with tier-one requirements."). As discussed below, however, Tier-Two standards yield only to the extent necessary. *Id*. at 626.

1. Equality of Population.

117. Tier Two requires that districts "be as nearly equal in population as is practicable." Art. III, § 20(b), Fla. Const. Though located in Tier Two, this standard is, in effect, superior to all others because it mirrors the equal-population requirement that Article I, Section 2 of the United States Constitution imposes on congressional districts. As construed by the United States Supreme Court, the Federal Constitution requires that congressional "districts be apportioned to achieve population equality 'as nearly as is practicable.'" *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)). States must "make a good-faith effort to achieve precise mathematical equality." *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969). Under this strict standard, all avoidable variances from precise mathematical equality, however small, must be justified. *Id*. at 531; *accord Apportionment I*, 83 So. 3d at 629 n.29.

2. Compactness.

118. Tier Two states that "districts shall be compact." Art. III, § 20(b), Fla. Const. The purpose of the compactness requirement is to "ensure that districts are logically drawn and that bizarrely shaped districts are avoided." *Apportionment I*, 83 So. 3d at 636. By restricting the Legislature's line-drawing discretion, it opposes obstacles to intentional political favoritism. *Id*. at 632. Compactness is "almost universally recognized as an appropriate anti-gerrymandering standard." *Id*. (quoting *Schrage v. State Bd. of Elections*, 430 N.E.2d 483, 486 (Ill. 1981)).

119. Compactness "refers to the shape of the district." *Id*. at 685. Compactness is assessed, first and foremost, by the so-called "ocular" test: a simple, visual examination of the general shape of the district. *Id*. at 634 ("[A] review of compactness begins by looking at the shape of a district."). "Compact districts should not have an unusual shape, a bizarre design, or an unnecessary appendage unless it is necessary to comply with some other requirement." *Id*.

120. In addition to a visual inspection, quantitative measures of compactness can assist courts in assessing compactness. *Id*. at 635. The Supreme Court relied on two common, quantitative measures of compactness: the Reock and Convex Hull methods. *Id*. at 635.

121. The Florida Constitution does not require perfect or maximum compactness—only that districts be "compact." Thus, the Constitution "does not mandate . . . that districts within a redistricting plan achieve the highest mathematical compactness scores." *Id*. at 635. A compact district is not unconstitutional merely because it can be redrawn in a more compact fashion.

122. Compactness "cannot be considered in isolation." *Id*. A district that appears bizarre or yields low compactness scores is not *per-se* unconstitutional, but calls for further investigation into the reasons that dictated or influenced its shape. *Id*. at 636 (explaining that non-compact districts "require close examination"); *id*. at 641 (explaining that, where Tier One does not justify a non-compact district, "further inquiry into the Legislature's intent becomes necessary").

123. For example, the Supreme Court has recognized that "the requirement of compactness must yield when necessary to avoid a conflict with the tier-one standard of protecting minority voting." *Id*. at 675; *accord id*. at 640 (noting that "both federal and state minority voting-rights protections may require the preservation or creation of non-compact districts."). *Id*. at 640. "Therefore, the reason for drawing lines a certain way may be the result of legitimate efforts by the Legislature to comply with federal law or Florida's tier-one imperative." *Id*.; *see also id*. at 641 ("Where adherence to a tier-one requirement explains the irregular shape of a given district, a claim that the district has been drawn to favor or disfavor a political party can be defeated."). Tier One is superior to Tier Two and, so far as necessary, prevails in case of conflict. *Id*. at 640.

124. The State's geography can also produce non-compactness. *Id*. at 635. "Given Florida's unique shape, some of Florida's districts have geographical constraints, such as those located in the Florida Keys, that affect the compactness calculations." *Id*.; *accord id*. at 646 ("We also note that District 120 includes the unusual geography of the Florida Keys and will therefore necessarily score low on the compactness scales."). Similarly, a degree of non-compactness might "result from the Legislature's desire to follow political or geographical

boundaries or to keep municipalities wholly intact." *Id*. at 635. Adherence to county and municipal boundaries is one method of achieving compactness.

125. The Supreme Court rejected the contention that adherence to municipal boundaries—though many municipalities are quite non-compact—will necessarily violate the constitutional compactness requirement. *Id*. at 638. "In a compactness analysis, we are reviewing the general shape of a district; if a district has a small area where minor adjustments are made to follow either a municipal boundary or a river, this would not violate compactness." *Id*. "Thus, if an oddly shaped district is a result of the state's irregular geometry and the need to keep counties and municipalities whole, these explanations may serve to justify the shape of the district in a logical and constitutionally permissible way." *Id*. at 636.

3. Political and Geographical Boundaries.

126. Tier Two also provides that "districts shall, where feasible, utilize existing political and geographical boundaries." Art. III, § 20(b), Fla. Const. The mandate to utilize political and geographical boundaries where feasible is expressly subordinate to the standards in Tier One. *Id*. "Political boundaries" refers to county and municipal lines. *Apportionment I*, 83 So. 3d at 636-37. The ballot summary of Amendment 6 referred to "city, county and geographical boundaries," *id*. at 603, and protection for counties and municipalities is consistent with the purpose of the standards to respect existing community lines, *id*. at 636-37 (citing *Adv. Op. to Att'y Gen. re Standards For Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 187-88 (2009)). In *Apportionment I*, while it noted that the standards might be balanced differently, *id*. at 653, the Court endorsed the House's implementation, which emphasized respect for county integrity, *id*. at 637.

127. "Geographical boundaries" refers to boundaries that are "easily ascertainable and commonly understood, such as rivers, railways, interstates, and state roads." *Id*. at 638 (marks omitted).

128. Seldom, if ever, will the total population of one county, or a combination of counties, equal the ideal population of a district. Thus, counties must inevitably be divided to satisfy the equal-population mandate of the United States Constitution. Many municipalities, moreover, have unusual boundaries that cannot easily be accommodated.

129. Accordingly, in *Apportionment I*, the Court recognized that "[t]here will be times when districts cannot be drawn to follow county lines or to include the entire municipalities within a district," and that "not every split of a municipality will violate" the Constitution. *Id*.; *see also id*. at 680 (recognizing that in some regions of the State "the splitting of municipalities was necessitated by population sizes and the close proximity between major municipalities"); *id*. at 682 ("[T]he Florida Constitution does not require the Legislature to use every municipality.").

130. The requirement to utilize political and geographical boundaries where feasible must also be balanced with compactness. Both standards are contained in Tier Two, and standards within Tier Two are of equal rank. *See* Art. III, § 20(c), Fla. Const.; *Apportionment I*, 83 So. 3d at 599 ("The order in which the constitution lists the standards in tiers one and two is not to be read to establish any priority of one standard over the other within that tier." (marks omitted)). In fact, respect for county and municipal boundaries is one method of achieving compactness.

131. Because "no standard has priority over the other within each tier," the "Legislature is tasked with balancing the tier-two standards together in order to strike a

constitutional result." *Id*. at 638. Sometimes a desire to follow political and geographical boundaries will result in lower compactness scores, *id*. at 635, or require minor adjustments to a district boundary, *id*. at 638. At other times, the constraints of the State's geography or demography will require the Legislature to make choices between political boundaries and geographical boundaries.

132. Courts, therefore, remain appropriately "sensitive to the complex interplay of forces that enter a legislature's redistricting calculus." *Id*. (quoting *Miller v. Johnson*, 515 U.S. 900, 915-16 (1995)).

C. The Relevance of Alternative Redistricting Plans.

133. The constitutional duty of the Legislature is to enact a redistricting plan that complies with the minimum, threshold requirements of the Florida Constitution—not to enact the best conceivable plan. Thus, the responsibility of a Court is "not to select the best plan, but rather to decide whether the one adopted by the legislature is valid." *Id*. at 608 (quoting *In re Senate Joint Resolution 2G, Special Apportionment Session 1992*, 597 So. 2d 276, 285 (Fla. 1992)).

134. Rather, an objector must first demonstrate that the redistricting plan adopted by the Legislature violates a constitutional standard. Then, the objector must demonstrate, through an alternative plan, that disregard of that standard was not necessary, and that it would have been possible to implement that standard. "That is to say, an alternative plan that achieves all of Florida's constitutional criteria without subordinating one standard to another demonstrates that it was not necessary for the Legislature to subordinate a standard in its plan." *Apportionment I*, 83 So. 3d at 641. Thus, an alternative plan does not become relevant

unless the objector first establishes that the challenged plan disregards, or subordinates, a constitutional standard.

D. The Validity of the Enacted Plan as a Whole.

135. With respect to the enacted congressional plan as a whole, Plaintiffs have failed to demonstrate that the Legislature acted with improper intent to favor or disfavor a political party or incumbent.

136. Plaintiffs presented evidence that political consultants otherwise excluded from the map-drawing process attempted to draw maps that apparently were submitted through the public processes established by the Legislature. But Plaintiffs offered no evidence that links those efforts to the Congressional Plan enacted by the Legislature, and the efforts of third parties—Republicans or Democrats—to influence the process cannot be ascribed to the Legislature.

137. Plaintiffs offered no evidence that the Legislature received or accepted any advice from political consultants regarding the configuration of districts, or that the Legislature knew that any maps submitted through the public process were created even in part by political consultants. Nor have Plaintiffs demonstrated that a single line in the enacted map is based on any map drawn by a political consultant.

138. Plaintiffs' other evidence attempting to show a link between the activities of political consultants and the Legislature is unavailing. Plaintiffs rely on the fact Kirk Pepper sent Marc Reichelderfer draft congressional maps before they were available to the public, but Plaintiffs offer no evidence that Mr. Reichelderfer provided comments to Mr. Pepper about the draft maps, or that Mr. Pepper himself had any role in the drawing of maps. In fact, on both points, the testimony shows the contrary.

139. Plaintiffs' remaining evidence—such as meetings with consultants before Census data was even available, or emails containing public hearing schedules or political cartoons—do not lend any support to Plaintiffs' assertion that the Congressional Plan is the product of a secret, parallel process. The two meetings occurred before it was possible to draw districts, and the result of those meetings was a directive to political consultants to avoid any involvement in the map-drawing process.

140. Moreover, throughout the trial, Plaintiffs focused on the activities of only three legislators—Speaker Cannon, Speaker Weatherford, and President Gaetz—and disregarded the intent of the 157 other members of the Legislature. Even if Plaintiffs had established that those three legislators acted with improper intent (which they could not), their intent cannot be ascribed to the Legislature as a whole. Plaintiffs failed to demonstrate the improper intent of a single legislator or map-drawer, and of course have failed to demonstrate the improper intent of the Legislature as a collective body.

141. Plaintiffs' expert evidence also fails to demonstrate that the Legislature acted with improper intent. Dr. Katz did not opine as to intent, and admitted that he did not study whether standards such as compactness led to Republican bias. Dr. Rodden admitted that his simulations did not meet the very constitutional standards at issue in this litigation. And the conclusions of both Dr. Rodden and Plaintiffs' third expert, Dr. Ansolabehere, are undercut by the fact that Plaintiffs' alternative maps exhibit similar levels of political performance as the enacted map.

142. Plaintiffs' contention that the Congressional Plan was drawn with improper intent is contradicted by the evidence. The testimony of Mr. Guthrie, Mr. Kelly, and Mr. Poreda, which this Court finds credible, established that the Legislature entrusted the development of congressional maps to its professional staff. The Legislature insulated staff from partisan

influences and instructed staff to ignore partisanship and develop constitutional maps. Professional staff testified that consultants never influenced their map-drawing efforts, and that the Congressional Plan was not drawn with an intent to favor or disfavor parties or incumbents.

143. Next, the strict compliance of the Congressional Plan with Tier-Two standards rebuts Plaintiffs' allegations of improper intent. When measured by objective, numerical indicators, the Congressional Plan is superior to the alternative maps that Plaintiffs presented at trial. The following tables compare the maps according to the clearest indicators of compliance:

Map	**Mean Reock Score**
Congressional Plan	*0.40*
Romo Map A	0.37
Romo Map B	0.37
Benchmark	0.30

Map	**Mean Convex Hull Score**
Congressional Plan	*0.72*
Romo Map A	0.71
Romo Map B	0.69
Benchmark	0.63

Map	**Split Counties**
Congressional Plan	*21*
Romo Map A	23
Romo Map B	25
Benchmark	30

Map	**Split Municipalities**
Congressional Plan	*27*
Romo Map A	28
Romo Map B	30
Benchmark	110

The Congressional Plan stands supreme even though Plaintiffs' alternative maps were created one year after the Congressional Plan was enacted. Plaintiffs were unable to produce a map that surpassed the Congressional Plan in even one of these most obvious measures of compliance.

144. Similarly, the metrics and overall legal compliance of the Congressional Plan improved at each stage of the legislative process. The following table shows the progress of successive map proposals through the Senate:

Plan	Reock Score	Convex Hull Score	Split Counties	Split Municipalities
S000C9002	0.40	0.71	23	63
S000C9006	0.39	0.71	24	45
S000C9014	0.39	0.71	24	46
H000C9047	*0.40*	*0.72*	*21*	*27*

145. The following table shows the seven proposals initially considered in the House by the Congressional Redistricting Subcommittee. Plan H000C9011—the genesis of the enacted Congressional Plan—reflected the best objective metrics of the seven initial House proposals:

Plan	Reock Score	Convex Hull Score	Split Counties	Split Municipalities
H000C9001	0.39	0.74	24	51
H000C9003	0.40	0.74	26	57
H000C9005	0.39	0.73	22	50
H000C9007	0.40	0.73	24	55
H000C9009	0.41	0.75	26	52
H000C9011	*0.42*	*0.74*	*22*	*48*
H000C9013	0.40	0.74	23	58

The Subcommittee reported three maps—H000C9009, H000C9011, and H000C9013—to the House Redistricting Committee. The Committee amended each of the proposals and reported H000C9043—the most impressive of the three proposals:

Plan	Reock Score	Convex Hull Score	Split Counties	Split Municipalities
H000C9041	0.41	0.74	26	44
H000C9043	*0.42*	*0.74*	*22*	*39*
H000C9045	0.40	0.74	23	48

The final revision—H000C9047—was the most impressive of all. While its compactness scores decreased marginally, the plan preserved whole one additional county and twelve

additional municipalities, while ensuring compliance with the Constitution's Tier-One requirements:

Plan	Reock Score	Convex Hull Score	Split Counties	Split Municipalities
H000C9047	*0.40*	*0.72*	*21*	*27*

146. Plaintiffs' alternative maps provide additional, compelling evidence that the Legislature did not draw the Congressional Plan with improper intent. The political performance of Plaintiffs' alternative maps is identical to the political performance of the Congressional Plan. In each, Governor Mitt Romney received more votes than President Obama in sixteen districts. In fact, in seven statewide races held in 2010 and 2012, Republican statewide candidates won more districts under Plaintiffs' maps (17.6 on average) than under the Congressional Plan (17.4). Thus, while Plaintiffs contend that the Congressional Plan is a Republican gerrymander, the empirical evidence shows that their own alternative maps are more favorable to Republicans.

147. The comparable performance of the alternative maps is telling because the alternative maps were drawn and approved by national Democratic interests. Because the performance of the Congressional Plan is consistent with the performance of alternatives drawn for the Democratic Party, the assertion that the Congressional Plan was drawn to favor Republicans rings hollow.

148. The effect of the Congressional Plan on incumbents is further evidence that the Congressional Plan was not drawn with an intent to favor a political party or its incumbents. As detailed above, the Congressional Plan caused extensive disruption for Republicans. Under the Congressional Plan, four Republican incumbents were defeated—two in the primary and two in the general election. Under the Congressional Plan, Democrats gained four seats in 2012, reducing the Republican share of congressional seats from 76% (19 of 25) to 63% (17 of 27).

149. Accordingly, Plaintiffs have failed to meet their burden to demonstrate that the Legislature as a whole acted with improper intent when it adopted the Congressional Plan.

E. The Validity of Individual Districts.

150. Plaintiffs have not offered sufficient evidence to demonstrate that any district within the enacted congressional map violates the standards set forth in Article III, Section 20 of the Florida Constitution.

District 5

151. Plaintiffs have failed to show that District 5 violates Article III, Section 20 of the Florida Constitution. The Court cannot find that the establishment of CD5 as a majority-minority district, and the continued inclusion of the African-American community of Sanford, is prohibited by the Constitution. The evidence supports the Legislature's position that it made a reasonable legislative judgment when it drew CD5 with a modest increase in Black VAP—from 49.9% to 50.1%—to satisfy the "majority-minority rule" announced in *Bartlett v. Strickland*.

152. The Legislature's decision to create a majority-minority district was appropriate. First, the Legislature appropriately concluded that CD5—with a Black VAP of 50.1% and the African-American community of Sanford—better guards against a diminishment of minority voting ability, and better ensures that minorities will be as likely as in the benchmark district to elect their preferred candidates, than a district that excludes the African-American community of Sanford from a historically performing district and reduces the district's Black VAP to 48%.

153. Plaintiffs incorrectly characterize the decision to redraw CD5 as a majority-minority district as a radical step. It is not. A change (whether an increase or a decrease) of less than 0.2% in Black VAP is not extraordinary and is well within the constitutional discretion of the Legislature, especially considering the Legislature's First-Tier responsibility to ensure that

minority voting strength is not diminished. The Constitution did not deprive the Legislature of the ability to preserve this minority district, or to include in the district the minority community of Sanford, which had been represented by a candidate of its choice since the district was first drawn by a federal court in 1992. The emergence of new majority-minority districts did not offend the Supreme Court in *Apportionment I*, *see* 83 So. 3d at 645-46, 655 (noting with approval the emergence of new majority-minority districts in state legislative plans), and it does not offend the Constitution. The Legislature, moreover, conducted a proper functional analysis to ensure that minority voting strength was not decreased, and that the district could not be drawn much more compactly while preserving the same degree of minority voting strength.

154. Further, the Legislature appropriately concluded that the creation of CD5 as a majority-minority district secured minorities against vote dilution and the Legislature against a vote-dilution challenge. Given the recent holding of *Bartlett v. Strickland*, 556 U.S. 1 (2009), that only majority-minority districts satisfy Section 2, the Legislature reasonably concluded that the exclusion of Sanford and resulting failure to create a majority-minority district would have invited allegations of vote dilution. In fact, ten years earlier, the predecessor district had been challenged under Section 2. *See Martinez v. Bush*, 234 F. Supp. 2d 1275, 1301 (S.D. Fla. 2002). Because the Black VAP of Benchmark CD3 was 49.9%, the Legislature made an appropriate and responsible decision to increase CD5's Black VAP from 49.9 to 50.1%, achieving majority-minority status and ensuring compliance with the state and federal vote-dilution standards.

155. The legislative judgment that the *Gingles* preconditions were satisfied was sound and is entitled to respect. First, as CD5 demonstrates, the minority population is sufficiently

large to comprise a numerical majority in a single district.[5] Second, both Dr. Engstrom and Plaintiffs' own expert, Dr. Ansolabehere, testified that voting in Northeast Florida is racially polarized. Finally, the Legislature appropriately concluded that the minority population is "reasonably compact" for vote-dilution purposes. In 2002, a three-judge federal district court so held. *See Martinez v. Bush*, 234 F. Supp. 2d at 1301. Indeed, in the vote-dilution context, compactness refers not to the shape of a district, but to the characteristics of a minority population. Even if the boundaries of CD5 are not compact under Tier Two, it would not follow that the minority population is not "compact" under vote-dilution principles. For vote-dilution purposes, a district is compact if the minority population shares common characteristics, needs, and interests. *See LULAC,* 548 U.S. at 435. The testimony presented at trial resoundingly demonstrates that the minority communities that comprise CD5 form a single community.[6]

[5] Plaintiffs suggest that the relevant measure is *citizen* voting-age population ("CVAP") and that, by this measure, CD5 is not a majority-minority district. CVAP is the relevant measure, if at all, "only where there is reliable information indicating a significant difference in citizenship rates between the majority and minority populations." *Negron v. City of Miami Beach*, *Fla*., 113 F.3d 1563, 1569 (11th Cir. 1997); *but see Bartlett*, 556 U.S. at 18 ("[T]he majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area?"); *id*. at 27-28 (Souter, J., dissenting) (contending that CVAP is the relevant measure). Plaintiffs reach their result, however, only by (1) failing to consider Census estimates showing that for CD5, unlike the state as a whole, citizenship rates among blacks are in fact higher than those for the overall voting age population and (2) failing to account for multi-race black voters. If multi-race black voters are included, as they should be, *see Ashcroft*, 539 U.S. at 473 n.1, then CD5 has a Black CVAP in excess of 50%.

[6] In *LULAC*, the Court concluded that a 300-mile district that extended from Austin to the Rio Grande Valley was not reasonably compact for vote-dilution purposes. Essential to its holding, however, was that the Hispanic populations concentrated at the two extremities of the district had "different characteristics, needs, and interests" and that the "practical consequence" of drawing a district to incorporate both disparate communities was that "one or both groups will be unable to achieve their political goals." *See* 548 U.S. at 434. Here, fact and expert testimony supports the conclusion that the minority population in CD5 shares common characteristics, needs, and interests, and is effectively represented in Congress by their common representative.

156. Because the Legislature reasonably concluded that the *Gingles* preconditions are satisfied, and because the expert and fact testimony presented at trial shows that, in the totality of circumstances, minorities in Northeast Florida have less opportunity than other members of the electorate to participate in the political process and elect the candidates of their choice, the Legislature correctly drew CD5 with a modest increase in Black VAP, from 49.9% to 50.1%.

157. The fact that the Legislature did not draw CD5 as a majority-minority district in earlier drafts considered during the legislative process is immaterial. The enacted Congressional Plan reflects the Legislature's most deliberate consideration of applicable legal standards. It is equally immaterial for vote-dilution purposes that Benchmark CD3 was not a majority-minority district. Nothing about the previous district matters in a vote-dilution claim. What matters is whether another majority-minority district can be drawn. *Apportionment I*, 83 So. 2d at 623.

158. The Legislature stated its intent to comply with the diminishment and vote-dilution standards in Chapter 2012-2, Laws of Florida:

> WHEREAS, it is the intent of the Legislature to establish Congressional District 5, which is equal in population to other districts; ***is consistent with Section 2 of the federal Voting Rights Act; does not deny or abridge the equal opportunity of racial or language minorities to participate in the political process or diminish their ability to elect representatives of their choice***; preserves the core of the existing district in accordance with public testimony and ties communities in Northeast Florida of similar socioeconomic characteristics; includes portions of Alachua, Clay, Duval, Lake, Marion, Orange, Putnam, and Seminole Counties; includes all of the municipalities of Eatonville, Green Cove Springs, Hawthorne, McIntosh, Palatka, and Reddick; improves the use of county and city boundaries as compared to the comparable district in the benchmark plan; and uses the St. Johns River and other waterways as portions of its eastern boundary . . . .
>
> Ch. 2012-2, Laws of Fla., at 2 (2012) (emphasis added).

159. While Plaintiffs complain that CD5 divides Seminole County to include Sanford, their alternative maps contain an alleged minority district that does the same thing. Plaintiffs assert that their Alternative District 10 was drawn to present minority voters an opportunity to

elect their candidate of choice. It has a combined Black and Hispanic VAP of 47.1%. It too enters Seminole County, and even extends further, crossing into Volusia County.

160. Plaintiffs' alternatives to CD5 are less faithful to Tier-One standards and are no more compact than Enacted CD5. In fact, Plaintiffs' alternatives are worse because, unlike Enacted CD5, the alternatives wreak havoc on the compactness of surrounding districts.

161. CD5 in Romo Map A reduces Black VAP from 49.9% in the Benchmark to 45.1%. It removes approximately 20,000 black residents from CD5 in the Congressional Plan. At the same time, CD5 in Romo Map A has an admittedly non-compact shape, as its own creator testified. The district is more than 200 miles long—longer than Enacted CD5 by 62 miles—and stretches from Jacksonville to the Chattahoochee River, 50 miles west of Tallahassee.

162. CD5 in Romo Map B is even less compact. It reduces Black VAP to 47.3% and contains a perpendicular arm that extends to Gainesville and Ocala. Thus, while Plaintiffs complain that Enacted CD5 extends from Jacksonville to Orlando, their own alternatives, if oriented in the same direction, would extend past Orlando to the City of Sebring.

163. Plaintiffs' alternatives make no improvement to the compactness of CD5:

	Area	**Perimeter**	**Length**
CD5 – Congressional Plan	1,536 sq. miles	707 miles	144 miles
CD5 – Romo Map A	3,911 sq. miles	711 miles	206 miles
CD5 – Romo Map B	4,440 sq. miles	931 miles	204 miles

164. Plaintiffs contend that their reductions in Black VAP do not diminish minority voting strength, but they do. The alternative maps increase the district's single-race white VAP from 37.2% in Benchmark CD3 to 45.8% and 44.5%—increases of 8.6% and 7.3%. While Black VAP exceeded White VAP in Benchmark CD3 by a large margin (12.7%), it falls behind White VAP in one of the alternative districts, and exceeds White VAP by a mere 2.8% in the other. In an area of the State that exhibits racially polarized voting, these changes are not trivial.

165. Plaintiffs' alternative maps do violence to other districts. Because Alternative CD5 extends into the Panhandle, CD2 is forced to the South and to the East. Alternative CD2 is enormous, extending from the Choctawhatchee River west of Bay County to Bradford and Levy Counties. The damage that Plaintiffs inflict on the compactness of CD2 far outweighs any small improvement that the alternative maps might achieve in the compactness of any other district:

	Reock	**Convex Hull**	**Area**	**Perimeter**	**Length**
CD 2 – Congressional Plan	0.46	0.78	10,076 sq. mi.	550 miles	167 miles
CD 2 – Romo Map A	0.29	0.62	13,146 sq. mi.	1,010 miles	241 miles
CD 2 – Romo Map B	0.31	0.63	13,022 sq. mi.	966 miles	232 miles

166. The changes that Plaintiffs propose would undermine the substantial progress in voting rights over recent decades. Until 1992, African Americans in Florida had no ability to elect a candidate of their choice. Until that time, redistricting plans had splintered CD5's black population into various "influence" districts. In fact, since Reconstruction, Florida had not elected a single African American to Congress.

167. This history changed only after the intervention of a federal court. *See De Grandy v. Wetherell*, 794 F. Supp. 1076 (N.D. Fla. 1992) (Hatchett, Stafford, and Vinson, JJ.). In 1992, the Legislature failed to enact a congressional redistricting plan, so the federal court performed the task. *Id.* The Court began by noting that Florida's "minorities have had very little success in being elected to either the United States Congress or the Florida Legislature. An African-American has not represented Florida in Congress in over a century." *Id.* at 1079. To remedy that unfortunate history, the Court endeavored to draw performing minority districts:

> The approach of fracturing the African-American community in order to create influence districts does not further Congress's intent of completely remedying the prior dilution of minority voting strength and providing a meaningful opportunity to participate in the political process. It is not enough for minority groups to be able to influence elections because, under the Voting Rights Act, they must be

> able to determine the outcome of elections and elect representatives of their choice.

Id. at 1085-86. Democrats in the Legislature resisted that effort and submitted a plan which, according to the Court, "elevate[d] the secondary criteria of compactness, coherent communities of shared interest, and respect for traditional political boundaries over the primary principle of ensuring that minority voting strength is not diluted." *Id.* at 1087. The Court rejected this approach, finding that a plan that "fractures the African-American community into influence districts would merely continue the past dilution of minority voting strength." *Id.* at 1085.

168. The Court adopted an expert's plan. The court-approved plan created CD3 (CD5's predecessor) as a majority-minority district, along with a second majority-black district. *Id.* at 1088. Like CD5, the Black VAP of original CD3 exceeded 50%. As a result of this new map, Floridians had their first African-American member of Congress since Reconstruction.

169. In 1996, another three-judge court invalidated CD3 on an Equal Protection grounds, finding that CD3 "was drawn for predominately race-based reasons." *Johnson v. Mortham*, 926 F. Supp. 1460, 1466 (N.D. Fla. 1996) (three-judge court). Over Judge Hatchett's dissent, the majority invalidated CD3 but allowed the Legislature to enact a valid substitute. *Id.* The three-judge court then approved the newly drawn version of CD3. *See Johnson v. Mortham*, No. 94-40025, 1996 WL 297280, at *1 (N.D. Fla. May 31, 1996). The court-approved district had a different shape but maintained a substantial Black VAP. Like its predecessor and its successors, the district connected Jacksonville and Orlando, and part Seminole County.[7]

[7] Plaintiffs rely on *Johnson*'s conclusion that the original CD3, as established by a federal three-judge court in 1992, was not reasonably compact for vote-dilution purposes. But *Johnson* invalidated the earlier wishbone configuration and *approved* the general configuration of current CD5. *Id*. *Johnson*, moreover, preceded both *Martinez*, which found the minority population of redrawn CD3 to be compact, and *LULAC*, which clarified the vote-dilution compactness inquiry.

170. In 2002, the Legislature again drew CD3 to protect minority rights, and, with a Black VAP of 46.8%, the district continued to perform for minorities. That plan was challenged, but all challenges were rejected. *See Martinez v. Bush*, 234 F. Supp. 2d 1275 (N.D. Fla. 2002) (three-judge court). The plaintiffs claimed that "the newly drawn performing districts are either not sufficiently likely to perform or are excessively packed so as to 'waste' minority votes." *Id.* at 1298. The Court found that the "legislature recognized that adopting districts that would not dilute black or Hispanic voting strength was fully consistent with—perhaps even essential to—the goal of adopting a plan that would withstand legal challenges." *Id.* at 1301. It also found it likely that newly redrawn CD3 would "in fact perform for black candidates of choice, and that black candidates of choice will be elected in [CD3] throughout the coming decade." *Id.* That finding proved correct, as CD3 continued to elect the African-American candidate of choice.

171. Between 2000 and 2010, population changes in CD3 increased its Black VAP. The 2010 Census revealed that, during the preceding decade, the district's Black VAP had increased from 46.8 to 49.9%. In 2012, finding it possible to create a majority-minority district, the Legislature drew the district with a modest, 0.2% increase in Black VAP. Redrawn CD3 maintains the same basic shape and minority voting strength as its predecessors.

172. Plaintiffs claim that CD5 is analogous to Senate District 6, which the Supreme Court invalidated in *Apportionment I*. But aside from touching Jacksonville, the districts are not analogous.

173. The Supreme Court invalidated District 6 because, while the district's stated justification was minority protection, the Senate "never performed an appropriate functional analysis." 83 So. 3d at 666. In invalidating District 6, the Court noted that neither District 6 nor

its benchmark was a majority-minority district. *Id*. at 666-67. The Court stated that "this is not a district where the Senate's goal was to create a majority-minority district." *Id*. at 667.

174. After reviewing election data as part of a functional analysis, the Supreme Court concluded that a reduction in Black VAP in District 6 from 46.9% in the benchmark to the 42.4% drawn by challengers would not actually diminish the ability to elect in District 6. *Id.* at 667; *see also id*. at 625 (holding that "a slight change" in minority VAP "does not necessarily have a cognizable effect on a minority group's ability to elect" because the "ability to elect a candidate of choice depends upon more than just population figures"). And because it was not possible to establish a majority-minority district, vote-dilution principles were not implicated.

175. On the other hand, the reduction in Black VAP enabled District 6 to be drawn "much more compactly." *Id*. at 669; *accord id*. ("In addition to being much more visually compact, the compactness measurements are much better." (emphasis added)). Rather than stretch the district across five counties, it was possible to draw the district within Duval County.

176. None of these conditions applies here. The Legislature performed a functional analysis. It drew a majority-minority district. The proposed reduction in minority VAP will diminish minority voting strength. And the changes Plaintiffs seek will not make the district much more compact and exponentially more respectful of political and geographical boundaries.

177. A better analogy to CD5 is House District 88, which the Supreme Court upheld, and which—like CD 5—protects minority voting rights. Plaintiffs contended in the Supreme Court that House District 88 could not be justified. They argued there that District 88 was the least compact House district, that it packs minorities to achieve a Black VAP of 51.8%, and that the Black VAP was more than "necessary" to elect minority-preferred candidates. They noted that the district's Reock score was 0.08 (lower than CD5's), and, while the Supreme Court found

the district "clearly visually non-compact" with "the lowest compactness measurements of all the districts in the 2012 House plan," it rejected Plaintiffs' arguments. The Court upheld District 88 because the "Legislature formed this district with the stated intent to preserve minority voting opportunities." *Id.* at 649. The House conducted a functional analysis, as it did with CD5, and District 88 was a majority-minority district, as is CD5. *Id*. Importantly, though the Court found District 88 visually non-compact, it did not disregard the Legislature's vote-dilution concerns. Quoting the joint resolution, the Court noted that the Legislature intended that District 88 be "consistent with Section 2 of the federal Voting Rights Act" and "not deny or abridge the equal opportunity of racial or language minorities to participate in the political process." *Id.* at 649. The Legislature made similar findings with respect to CD5, which, like District 88, is valid.

District 10

178. Plaintiffs argue that District 10 violates compactness because it includes "an appendage" between District 5 and District 9.

179. The so-called "appendage," however, is situated between two minority districts: CD5, a historically performing African-American majority-minority district, and CD9, a new Hispanic opportunity district in the Congressional Plan that keeps Osceola County whole.

180. The addition of the "appendage" to either CD5 or CD9 would have compromised the ability of minorities in those districts to elect their preferred candidates. Mr. Guthrie testified that the "appendage" contains approximately 105,000 people, and that more than 70% of its population is white. Plaintiffs presented no evidence that the "appendage", which is Democratic-leaning, was included to help Republican candidates.

181. Plaintiffs note that the "appendage" did not exist in the House's initial drafts of the Congressional Plan. Those drafts, however, divided Osceola County, and the Hispanic VAP

of CD9 was below 40%. To respect county boundaries while affording the growing Hispanic population the earliest opportunity to elect the candidates of its choice, the Legislature united Osceola County and increased the Hispanic VAP of CD9 to more than 40% in the Congressional Plan—a level similar to the Hispanic VAP of Plaintiffs' Alternative CD9. Mr. Poreda testified that these changes required CD9 to recede from Orange County, thus creating the appendage. Plaintiffs did not show that these objectives could have been achieved without the appendage.

182. Plaintiffs cite *Apportionment I*, in which the Supreme Court invalidated a Senate district that contained a similar "appendage" in Central Florida. 83 So. 3d at 669-72. Critical to the Court's conclusion, however, was that an incumbent Senator resided in the appendage and that the Senate had not performed a proper functional analysis in order to determine whether the appendage might have been incorporated into two adjacent minority districts. *Id*. at 671-72. Importantly, when the Legislature reconvened to revise the Senate plan, it performed a functional analysis and found it essential to retain the appendage. In *Apportionment II*, the Court upheld the district—even with the appendage. The Court explained that the Legislature "could not completely eliminate the appendage without impairing minority voting rights." *Id*. at 889.

183. This case resembles *Apportionment II*. No incumbent member of Congress resides in the so-called appendage, and the Legislature performed a functional analysis and concluded that the appendage could not be eliminated without impairment of minority rights.

184. Plaintiffs' own alternative maps contain an appendage in Orlando. Alternative District 7 contains essentially the same appendage. The difference is that Plaintiffs' appendage is connected to a district to the north—not a district to the west. This difference is insignificant. In fact, Plaintiffs' map-drawer testified that the appendage in the alternative maps resulted from

the same considerations that influenced the Congressional Plan: an attempt to create two nearby minority districts. (Hawkins Dep. 258:15-261:11.) Plaintiffs cannot distinguish their appendage.

185. Plaintiffs have thus failed to offer any evidence that District 10 violates Article III, Section 20 of the Florida Constitution.

Districts 13 and 14

186. Plaintiffs challenge CD14, contending that it unconstitutionally combines population in Pinellas and Hillsborough Counties, which are located across Tampa Bay, in violation of second-tier standards. The Legislature created CD14 to avoid diminishment in the ability of black and Hispanic voters to elect the candidates of their choice, and Plaintiffs failed to establish that a different configuration would have avoided diminishment.

187. Benchmark CD11 preceded CD14. It is uncontested that, in Benchmark CD11, minority voters were able to elect the candidate of their choice. Blacks and Hispanics vote cohesively in this area, and together comprised approximately 50% of the VAP of CD11.

188. The Constitution, therefore, required that the Legislature not diminish the ability of minorities to elect their preferred candidates. *See* Art. III, § 20(a), Fla. Const. Furthermore, Hillsborough County was one of five counties in Florida protected by Section 5 of the VRA. If the Legislature had failed to protect minorities in Hillsborough County from diminishment, the Congressional Plan would have been denied preclearance by the Department of Justice.

189. Benchmark CD11 included parts of Hillsborough, Pinellas, and Manatee Counties. In new CD14, the Legislature eliminated the extension into Manatee County, and therefore better balanced the second-tier requirements of compactness and adherence to political boundaries.

190. The Legislature concluded, however, that, given the history of preclearance in Florida, CD14 could not be further removed from Pinellas County without a diminishment in minority voting strength. In 1992, the Department of Justice, noting the "political cohesiveness of minority voters" in Tampa and St. Petersburg, refused to grant preclearance to a Senate plan that failed to unite the minority communities of Pinellas and Hillsborough Counties.[8] And in 2002, in objecting to the House plan, the Department of Justice made clear that the retrogression inquiry concerns only the effect on minorities who reside in the five covered counties—here, Hillsborough County—and that, if necessary to avoid retrogression, the State must unite protected minorities in covered jurisdictions with minorities outside of the covered jurisdictions.

191. The Legislature, therefore, found that minorities in Hillsborough County and Pinellas Counties continue to be politically cohesive and that, to avoid diminishment in the ability of Hillsborough County minorities to elect their candidates of choice, Hillsborough County minorities must continue to be united with minorities in Pinellas County. In enacting CD14, the Legislature expressly stated that CD14 "is consistent with Section 5 of the federal Voting Rights Act" and "does not deny or abridge the equal opportunity of racial or language minorities to participate in the political process or diminish their ability to elect representatives of their choice." Ch. 2012-2, at 4, Laws of Fla. The Legislature included a discussion of CD14 in its preclearance application, and the Department of Justice precleared the Congressional Plan.

192. Plaintiffs' alternative maps render CD14 as well as the broader region of the State less compact and less conformable to second-tier standards. Plaintiffs' Alternative CD14, which

[8] In 1996, a federal court approved a Senate district that, like CD14, was centered in Hillsborough County but also included minority populations in St. Petersburg. In approving a settlement that imposed the remedial district, the Court explained: "Both common sense and the history of this litigation suggest that the residents of District 21 regard themselves as a community and experience considerable comfort with the proposed resolution." *Scott v. U.S. Dep't of Justice*, 920 F. Supp. 1248, 1255 (M.D. Fla. 1996) (Tjoflat, Nimmons, Merryday, JJ.).

is confined to Hillsborough County, diminishes the voting ability of minorities. Compared to Benchmark CD11, Alternative CD14 reduces the combined black and Hispanic share of the Democratic primary electorate from 44.1 to 35.0%—a dramatic reduction in a district in which minorities were already less than a majority of the primary electorate. Thus, Plaintiffs would remove more than one-fifth of the minority population from the Democratic primary, even though voting strength in the relevant primary election is essential to the ability of minorities to elect their preferred candidates. *See*, *e.g.*, *Apportionment II*, 89 So. 3d at 889 (explaining that black voters "would not have controlled the Democratic primary" where "only 38.7% of the Democrats voting in the 2010 primary would have been black"); *Apportionment I*, 83 So. 3d at 668 (noting that black voters "would have also controlled the Democratic primary, with 64.3% of the Democrats voting in the primary being black"). The change proposed by Plaintiffs would substantially increase the risk that the minority-preferred candidate will be defeated.

193. Even apart from Tier One, Plaintiffs have not established a violation of Tier Two. While Plaintiffs' alternative maps confine CD14 to Hillsborough County, they markedly reduce the compactness of CD14 and other districts in the same region. Plaintiffs' alternative maps decrease the compactness of five of six districts in the same region of the State:

	Reock Score		**Convex Hull Score**	
	Congressional Plan	**Romo Maps**	**Congressional Plan**	**Romo Maps**
CD12	0.40	0.38	0.81	0.79
CD13	0.46	0.57	0.82	0.91
CD14	0.36	0.28	0.69	0.60
CD15	0.44	0.33	0.75	0.67
CD16	0.42	0.32	0.81	0.80
CD17	0.67	0.39	0.82	0.68
MEAN	**0.46**	**0.38**	**0.78**	**0.74**

Plaintiffs' map-drawer testified that the lesser compactness of these districts is a function of CD13 and CD14, as drawn in the alternative maps (Hawkins Dep. at 272:15-275:22.) In the

same region, Plaintiffs are forced to divide Charlotte County, which the Congressional Plan preserves. The Legislature properly balanced applicable standards in its construction of CD14.

194. Plaintiffs have thus failed to offer any evidence that Districts 13 and 14 violate Article III, Section 20 of the Florida Constitution.

Districts 21 and 22

195. Plaintiffs allege that Districts 21 and 22 should have been drawn horizontally—not, as in the Congressional Plan, vertically.

196. The configuration selected by the Legislature is reasonable and constitutional. The districts are not visually bizarre, and their compactness scores exceed the scores that the Supreme Court considered low. *See Apportionment I*, 83 So. 3d at 646, 656 (identifying districts with low compactness scores, each of which had a Reock score less than 0.25 and a Convex Hull score less than 0.50). Districts 21 and 22 have Reock scores of 0.28 and 0.18 and Convex Hull scores of 0.60 and 0.61, respectively. The boundary between them divides no municipalities.

197. Plaintiffs' alternative maps contain the same vertical pattern. Their map-drawer testified that the vertical orientation was acceptable and appropriate (Hawkins Dep. at 271:11-272:14.) Plaintiffs' expert, Stephen Ansolabehere, testified that the configuration made sense (May 28 PM Tr. 155:8-19).

198. Thus, Plaintiffs have presented no evidence that the Legislature's decision to draw Districts 21 and 22 was improper.

District 25

199. Plaintiffs argue that, because the enacted Congressional Plan incorporated part of Hendry County into District 20, the Republican performance of District 25 increased in comparison with earlier iterations of the same district.

200. Plaintiffs fail to appreciate the requirements of Section 5 of the VRA, which compelled the continued inclusion of Hendry County in District 20. The predecessor of District 20—Benchmark CD23—was a majority-minority district in which African-American voters were able to elect their preferred candidates. Benchmark CD23 included part of Hendry County, which was one of five counties in Florida protected by Section 5 of the VRA. Section 5 protects minority voting strength only in the five covered counties—here, the voting strength of Hendry County African-Americans. *See Apportionment I*, 83 So. 3d at 652-53 (noting that Section 5 protected "minority voting strength only in those counties"); Letter from Ralph F. Boyd, Jr., to John M. McKay and Tom Feeney (July 1, 2002) (denying preclearance because House plan retrogressed with respect to "Collier County Hispanics"). If the Legislature had removed that portion of Hendry County from District 20, it would have deprived those Hendry County African-Americans of the ability to elect, and afforded the Department of Justice reason to deny preclearance. (*See* Order at 17 (Apr. 30, 2012) (explaining on summary judgment that "District 20 encompasses Hendry County, which is a Federal preclearance county under Section 5 of the Voting Rights Act").) Instead, the Legislature included in new District 20 the same Hendry County population that previously had the ability to elect, avoiding a preclearance objection. The contours of District 25 are a consequence of the configuration of District 20.

201. Plaintiffs' alternative map removes Hendry County from District 20 and transfers the entire county into District 25. Thus, under the alternative map, Hendry County African-Americans who possessed the ability to elect in the Benchmark would have been deprived of that ability and transferred to a predominantly Hispanic district. Dr. Ansolabehere was unable to cite any authority to suggest that the Department of Justice would have precleared Plaintiffs' proposed configuration, and candidly acknowledged: "I don't know how they would treat this

particular issue. I don't know how the Department would treat this issue" (May 28 PM Tr. 140:23-25). The Legislature appropriately chose the safer course and maintained the ability of Hendry County African-Americans to elect the African-American candidates of their choice, as in the Benchmark.

202. Plaintiffs have thus failed to offer any evidence that Districts 15 and 25 violate Article III, Section 20 of the Florida Constitution.

Districts 26 and 27

203. Plaintiffs argue that Districts 26 and 27 unconstitutionally divide the City of Homestead. These districts were carefully drawn, however, to preserve the ability of Hispanics to elect the candidates of their choice. Plaintiffs cannot show that it would have been possible to preserve Homestead and also satisfy the paramount obligations in Tier One of the Constitution.

204. The Benchmark contained three districts in South Florida in which Hispanic voters were able to elect the candidates of their choice. The expert testimony of Dr. Moreno established that the creation of performing Hispanic districts is a sensitive and difficult task. Hispanic voters are less cohesive than African Americans. Approximately one half of Florida's Hispanics are foreign born and, unless naturalized, are not entitled to vote, while some Hispanic populations in Florida exhibit low rates of turnout. For these and other reasons, the creation of Hispanic districts generally requires careful consideration of primary election data, and usually a supermajority Hispanic population. *See De Grandy v. Wetherell*, 794 F. Supp. 1076, 1084 (N.D. Fla. 1992) (Hatchett, Stafford, Vinson, JJ.) ("[B]ecause Hispanic communities are characterized by a large number of noncitizens and lower voter registration rates, a super majority of the VAP is necessary to create districts in which Hispanics can elect candidates of their choice.").

205. As Professor Moreno testified, in Districts 26 and 27, the Legislature provided a path to electoral success for the Hispanic-preferred candidate. Plaintiffs' alternatives do not. As Professor Moreno testified, Plaintiffs' District 26 is a Democratic district in the general election:

Election	Democratic Vote Share
2012 President	58.6%
2010 Governor	54.5%
2008 President	55.2%

In the Democratic primary election, however, Hispanics comprised only 19.3% of voters—less than one-fifth. While Alternative District 26 has a Hispanic VAP of 65.0%, Hispanics will not control the Democratic primary, while Democrats will control the general election. These forces ensure that Hispanics will be unable to elect their preferred candidate in Alternative District 26.

206. By including Homestead wholly within Alternative District 26, Plaintiffs ensure that the district will perform for the political party (Democrats) whose primary election Hispanics would not control. Plaintiffs have not shown that the Legislature might have preserved undiminished the ability of Hispanics to elect the candidates of their choice, while at the same time preserving the City of Homestead. For the same reason, the Supreme Court rejected a similar challenge in *Apportionment I*. *See* 83 So. 3d at 652 (holding that the objectors did not establish that it would have been possible to preserve more municipalities in Miami-Dade County and at the same time comply with Tier-One protections for Hispanic voters).

207. Mr. Poreda testified that professional staff attempted to preserve Homestead but concluded that the preservation of Homestead would injure the ability of Hispanics in District 26 to elect the candidates of their choice. Mr. Poreda further testified that the preservation of Homestead would have decreased the compactness of the districts in the region. Mr. Poreda's testimony is consistent with Professor Moreno's testimony regarding the difficulty of drawing

performing Hispanic districts in Miami-Dade County. Thus, the Legislature's configuration of Districts 25, 26, and 27 was a reasonable design which ensures that Hispanics have the opportunity to elect candidates of their choice in South Florida.

208. Plaintiffs have failed to offer any evidence that Districts 26 and 27 violate Article III, Section 20 of the Florida Constitution.

F. Adverse Inference.

209. Plaintiffs also asked this Court to make an adverse inference of improper intent, alleging that the Legislative Parties destroyed relevant evidence during the redistricting process.

210. As noted above, the unrebutted testimony at trial is that the Legislature retained records in accordance with legislative rules during the redistricting process, which mandate the retention of documents of archival value. Plaintiffs do not dispute this fact, nor do they identify any relevant evidence that was destroyed by the Legislature. There is no evidence that the Legislature selectively discarded records related to redistricting, or that it departed from the long-standing and even-handed record-retention protocols applicable to all legislative business. In fact, any evidence of departure from normal protocols tipped overwhelmingly in the direction of providing more extensive public records than is the norm through the Legislature's redistricting websites and productions for this case.

211. Accordingly, no adverse inference is appropriate in this case.

G. Invalidity of Amendment 6 Under the Elections Clause.

212. In the alternative, the Court concludes that Amendment 6 was not enacted in accordance with the Elections Clause of the United States Constitution, and is therefore invalid.

213. The Elections Clause of the United States Constitution provides that the "Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in

each State *by the Legislature* thereof." Art. I, § 4, cl. 1, U.S. Const. (emphasis added). The authority conferred by the Elections Clause to regulate congressional elections includes the establishment of congressional district boundaries. *Branch v. Smith*, 538 U.S. 254, 266 (2003).

214. Amendment 6, which regulates the manner of holding elections for Congress, was not enacted by the Legislature. It was a constitutional amendment enacted by citizen initiative wholly outside and contrary to the manner prescribed for legislative acts. It therefore conflicts with the Elections Clause of the United States Constitution, and is void and unenforceable.

215. The contrary determination of the Eleventh Circuit in *Brown v. Secretary of State of Florida*, 668 F.3d 1271 (11th Cir. 2012), is erroneous. Amendment 6 regulates the "Manner" of conducting congressional elections. It prescribes *how* congressional elections will be held: congressional elections will be held, for example, in compact districts that utilize political and geographical boundaries. And the enactment of Amendment 6 by initiative petition runs afoul of the plain constitutional text, which empowers only state legislatures (subject to oversight by Congress) to regulate federal elections. The Supreme Court has long understood this to mean that election regulation "must be in accordance with the method which the state has prescribed for legislative enactments." *Smiley v. Holm*, 285 U.S. 355, 367 (1932; *accord Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916). And in Florida, the method prescribed for legislative enactments is the enactment of bills by the Legislature. *See* Art. III, § 1, Fla. Const. ("The legislative power of the state shall be vested in a legislature of the State of Florida . . . .").

216. Amendment 6 is invalid because it was enacted *outside* Florida's legislative process, and the decision in *Brown* reads the words "by the Legislature" out of the Constitution. The Eleventh Circuit's conclusion that Amendment 6 is constitutional does not bind this Court. *See Doe v. Pryor*, 344 F.3d 1282, 1286 (11th Cir. 2003); *State v. Dwyer*, 332 So. 2d 333, 335

(Fla. 1976). Because Amendment 6 purports to regulate congressional elections but was not adopted in the mode prescribed by the Elections Clause of the United States Constitution, it is unenforceable and unconstitutional.

CONCLUSION

Plaintiffs have failed to meet their burden of demonstrating that the Congressional Plan violates the standards set forth in Article III, Section 20 of the Florida Constitution.

It is hereby **ORDERED and ADJUDGED** that judgment is entered in favor of Defendants and against Plaintiffs with respect to all claims set forth in Plaintiffs' complaints.

DONE AND ORDERED in Tallahassee, Florida this ____ day of _____, 2014.

_____
TERRY P. LEWIS
CIRCUIT COURT JUDGE

cc: All counsel of record

Respectfully submitted,

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I certify that a copy of the foregoing was served by electronic transmission on June 13, 2014, to the persons listed on the following Service List.

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