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

RENE ROMO, an individual, *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,

Defendants.
_____/

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

Plaintiffs,

vs. Case No. 2012-CA-000490

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

Defendants.
_____/

THE LEGISLATIVE PARTIES' SUBMISSION OF
REMEDIAL PLAN AND MEMORANDUM IN SUPPORT

Pursuant to this Court's Order of August 1, 2014, 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 (collectively, the "Legislative Parties"), respectfully submit as Exhibit A the congressional redistricting plan (the "Remedial Plan") enacted by the Florida Legislature in Special Session in response to the Final Judgment entered by this Court on July 14, 2014.

INTRODUCTION

On July 10, 2014, this Court declared Florida's enacted congressional redistricting plan unconstitutional. It identified two specific deficiencies. First, it concluded that the decision to draw District 5 with an appendage and thus increase its Black VAP above 50% was not compelled by the Florida Constitution's minority-protection provisions, and that the appendage was drawn with partisan intent and in violation of the compactness requirement. Second, the Court concluded that the appendage on District 10 was not compact and was drawn with partisan intent.

On August 11, 2014, the Legislature responded to the Final Judgment and enacted a remedial plan for Florida's congressional districts. The Legislature acted promptly and in good faith not only to correct the deficiencies identified by this Court but also to enact a plan that dramatically enhances both the visual and numerical compactness of the entire region, while protecting from diminishment the ability of minorities to elect their preferred candidates. The Remedial Plan complies with the mandates of the Constitution and this Court's Final Judgment.

BACKGROUND

The Court rejected challenges to eight districts, and thus found no fault with twenty-five of twenty-seven districts. Nevertheless, the Court found that Districts 5 and 10 were drawn in contravention of Article III, Section 20 of the Florida Constitution, and that the redistricting plan created in 2012 (the "2012 Plan") was therefore unconstitutional as drawn. *See* Final J. at 1.

The Court's Final Judgment

The Court found that political consultants conspired to manipulate and influence the redistricting process. *Id*. at 21. The Court found that professional staff of the Legislature—including John Guthrie and Jason Poreda—were "not part of the conspiracy," and that their motivation was to produce a map that would "comply with all the requirements of the Fair District Amendments." *Id*. at 22. Even so, the Court concluded that the political consultants "managed to find other avenues, other ways to infiltrate and influence" the Legislature. *Id*.

This improper influence resulted in two specific deficiencies identified by the Court. First, the Court found that "the decision to increase [District 5] to majority BVAP, which was accomplished in large part by creating the finger-like appendage jutting into District 7 and Seminole County, was done with the intent of benefiting the Republican Party." *Id*. at 20. The Court found that "it was not legally necessary to create a majority-minority district," *id*. at 32, and that the change produced a "narrow appendage jutting from the body of the district into Seminole County," *id*. at 18. The Court concluded that District 5 was drawn with an intent to favor the Republican Party and violated the Constitution's compactness requirement. *Id*. at 32.[1]

The Court correctly recognized that the minority-protection provisions take precedence over compactness. *Id*. at 18. Still, the Court found that a "more tier-two compliant district could have been drawn that would not have been retrogressive." *Id*. In particular, the Court referenced the earlier drafts of District 5 drawn by the House, which "were all more compact" and avoided the appendage into Seminole County. *Id*. The Court noted the testimony of Alex Kelly, who

[1] The "appendage" into Seminole County was contained in Benchmark District 3 and in fact had existed since a federal court first created a minority district in that region in 1992.

opined that these earlier iterations—which united minorities between Jacksonville and Orlando and achieved BVAPs from 47.5% and 48.3%—would not have been retrogressive. *Id*. at 18-19.[2]

Second, the Court found that District 10 included an unjustified, odd-shaped appendage between Districts 5 and 9. *Id*. at 32. Because District 9 was not entitled to Tier-One protection, the Legislature's desire to draw that district as a Hispanic-influence district did not excuse District 10's deviation from compactness. *Id*. at 33-34. The Court observed that prior iterations drawn by the House did not contain the appendage and were otherwise more compact in Central Florida generally. *Id*. at 33. The Court noted that, while these prior iterations divided Osceola County, and though the preservation of political subdivisions is "laudable and required where 'feasible,'" the constitutional compactness mandate is unqualified and therefore less flexible. *Id*. at 34 n.14. Finally, the Court noted that the addition of the appendage enhanced the Republican performance of District 10, supporting a finding that portions of District 10 were drawn with improper intent. The Court directed the Legislature to redraw District 5 and 10 and affected districts. *Id*. at 41.

The Legislature's Remedial Process

As soon as this Court rendered its Final Judgment, the Legislature took precautions to ensure that its remedial process would be irreproachable. Professional redistricting staff were promptly advised to avoid contacts with political consultants and to retain all documents related to redistricting. To ensure that new districts were drawn collaboratively and in consultation with legal counsel, professional staff were further advised to draw no districts until further notice.

[2] The Final Judgment rounds the numbers to a range of 47% to 48%. *See* Final J. at 18-19. The lowest Black VAP among the districts to which the Court referred was 47.5% in Plan H000C9001 and H000C9033. The highest was 48.3% in Plans H000C9003 and H000C9007.

Five days after this Court entered its Final Judgment, the Legislature announced that it did not intend to appeal the determination that Districts 5 and 10 are invalid. The Legislature advised the Court that it would fulfill its responsibilities and enact a remedial plan consistent with the Judgment. *See* Legislative Parties' Mot. to Alter or Amend the J., at 2 (July 15, 2014).

On August 1, the Court directed the Legislature to submit a remedial map to the Court no later than August 15. *See* Order on Defs.' Mot. to Amend the J., at 5 (Aug. 1, 2014). The Court rejected Plaintiffs' demands for an unprecedented and unconstitutional remedial process, finding the Legislature's "positions more sensible and legally sound on almost all points." *Id*. at 2. The Court agreed that "the Legislature should redraw the map" and refused to prescribe the process the Legislature should follow or the particular manner in which the districts were to be redrawn. *Id*. "The Legislature's only obligation [was] to produce a constitutionally compliant map." *Id*.

On the same day, all staff and members were advised in writing to retain "any and all records related to redistricting, including copies of unfiled draft maps, unfiled draft bills and amendments, correspondence, emails, texts and other electronic communications, whether sent or received on official House accounts or devices or personal email accounts or devices." Exh. B.

On Monday, August 4—the next business day after this Court's Order of August 1—the Speaker of the House and the President of the Senate issued a joint proclamation pursuant to Article III, Section 3(c)(2) of the Florida Constitution and Section 11.011(1) of the Florida Statutes to convene the Legislature in Special Session on Thursday, August 7. The sole and exclusive purpose to the Special Session was to "amend Congressional Districts 5 and 10 . . . consistent with the Final Judgment in *Romo v. Detzner* . . . and to make conforming changes to districts that are a direct result of the changes to Congressional Districts 5 and 10." *See* Exh. C.

On the same day, the presiding officers appointed redistricting committees. The Speaker established a thirteen-member Select Committee on Redistricting and appointed Representative Richard Corcoran as its Chair. The Senate President established a seven-member Committee on Reapportionment and appointed Senator Bill Galvano as its Chair. Jason Poreda and John Guthrie were selected to be the staff directors of the House and Senate committees, respectively.

On Tuesday, August 5, Chairs Corcoran and Galvano issued memoranda to members and staff of their respective chambers. *See* Exh. D. The memoranda described the remedial process and set forth precautions to ensure that the new districts were untainted. In the afternoon, the Chairs met in the Senate Office Building with House and Senate legal counsel and professional staff to discuss the Court's Judgment and, in conceptual terms, the modifications that the Judgment might require.

On Wednesday, August 6, the Chairs again met with legal counsel and professional staff in the Senate Office Building. In a series of thorough, thoughtful, and businesslike discussions driven by counsel and professional staff—with this Court's Final Judgment as their guide—the framework of a new map was forged. The Remedial Plan was drawn by John Guthrie and Jason Poreda, in collaboration with Raoul Cantero, George Meros, Andy Bardos, George Levesque, and Dan Nordby as legal counsel for the House and Senate.[3] It was drawn in a single day, in an environment free from partisan calculation and impervious to all improper influence. Once the map was drawn, House and Senate staff each independently performed a functional analysis of District 5 to determine whether the district diminishes the ability of minorities to elect the

[3] Also in attendance at some or all of these meetings (besides Representative Corcoran and Senator Galvano) were the House's new General Counsel, Matt Carson; Jay Ferrin, Jeff Takacs, and Jeff Silver of professional staff; and Michael Maida with the Senate General Counsel's Office.

candidates of their choice. No other examination of political data was made by professional staff prior to enactment of the Remedial Plan.

At noon on Thursday, August 7, the Legislature officially convened in Special Session. That afternoon, the House and Senate redistricting committees met jointly to receive a legal briefing from counsel. The Remedial Plan—designated H000C9057 and revising Districts 5 and 10, as well as Districts 6, 7, 9, 11, and 17—was published soon after the meeting commenced.

On Friday, August 8, the House and Senate committees met separately to consider the Remedial Plan. The Senate committee reported the Remedial Plan by a unanimous vote, as three Democrats joined with four Republicans. *See* Exh. E. In the House, the committee rejected a proposal by Representative Perry Thurston (D) and reported the Remedial Plan by an eight-to-five vote. *See id*. In both committees, representatives of the Florida NAACP spoke earnestly and forcefully in support of new District 5 and expressed significant concern with an east-west orientation that relies on prison populations in North Florida as a portion of its minority composition. *See* Exh. F. The Florida NAACP also sent correspondence to the members of the redistricting committees, urging them to support the Jacksonville-to-Orlando configuration and to reject as a diminishment of minority voting strength any east-west reconfiguration of District 5. *See* Exh. G.

On Monday, August 11, the Senate rejected a proposal by Senator Darren Soto (D)—the same proposal that Representative Thurston had offered in the House. *See* Exh. L at 00169. It then passed the Remedial Plan by a vote of twenty-five to twelve. *See id*. Among those who supported the Remedial Plan were Senator Audrey Gibson (D), an African-American member from Duval County, and Senator Bill Montford (D), who represents Tallahassee and the surrounding region. *See id*. The House then passed the Remedial Plan by a vote of seventy-one

to thirty-eight, with the support of two African-American members from Duval County, Representatives Reggie Fullwood (D) and Mia Jones (D). *See id*. at 00007-00008. The bill was presented to the Governor and, on August 13, 2014, was signed into law. *See* Exh. H (Ch. 2014-255, Laws of Fla.).

Plaintiffs did not appear before either committee to comment on the Remedial Plan. The Coalition Plaintiffs sent letters to the presiding officers and all members of the Legislature, providing ample criticism of the Legislature's process and actions, as well as an alternative plan (accessible by Dropbox account) that any member of the Legislature might introduce. *See* Exh. I. Though represented by lobbyists experienced and skilled in the legislative process, the League of Women Voters of Florida could not find a single member willing to introduce its plan for consideration.

The creation of the Remedial Map was a legal process—not a political one. The Court's findings and conclusions were the polestar that directed the process. The Legislature relied on professional staff—whose integrity this Court vindicated from Plaintiffs' attacks—and on legal counsel to provide an effective and appropriate remedy. The intent of the Legislature was so clear and unimpeachable that a senior member of the Democratic caucus in the House, while attacking the Remedial Plan, made the following candid concessions at the close of the debate:

> I have to say, and I will say it, I would say it if I were called to court in the future. I don't think that Representative Corcoran's intent was drawn to favor or disfavor any party. I don't, I don't think you personally did that, and nor do I think that Senator Galvano did. I don't question the staff today, I don't question ours, I don't question theirs. I think that, I think you guys probably did a pretty good job of complying with what the Court said you should have done for redistricting . . . .

Exh. J at 00506:7-00507:17 (statement of Rep. Waldman). Determined to satisfy this Court's concerns, the Legislature responded in good faith and enacted a remedial plan that complies with the Constitution and this Court's Final Judgment.

ARGUMENT

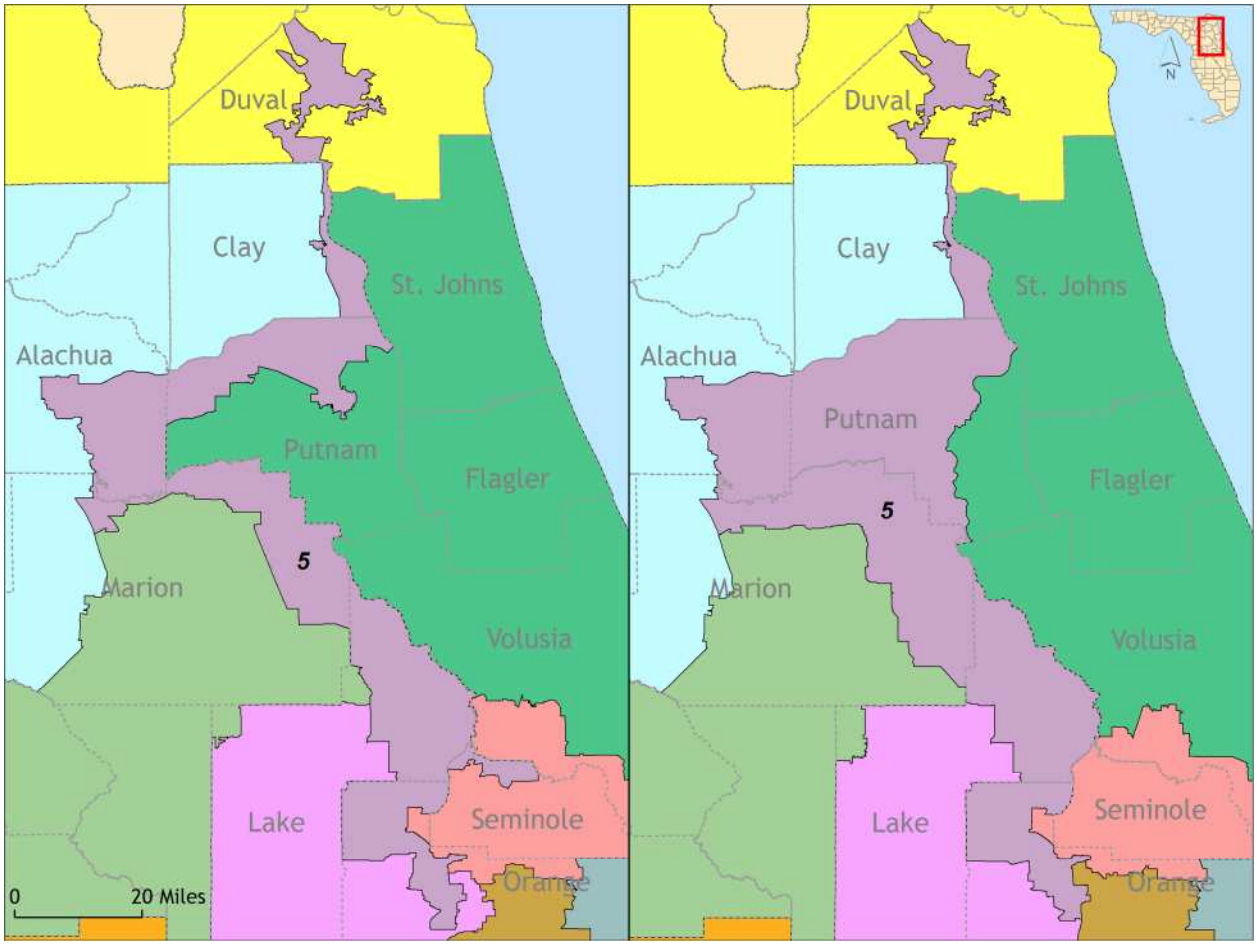
I. REMEDIAL DISTRICT 5 CORRECTS THE DEFICIENCIES IDENTIFIED BY THE COURT.

The Remedial Plan corrects the deficiencies identified by this Court, but also improves the map through stricter adherence to the Tier-Two requirement of compactness. This Court found that the Legislature's decision to draw a non-compact appendage and thus increase the Black VAP of District 5 was not justified by the Tier-One minority-protections in Article III, Section 20, Florida Constitution. It observed that the House had drawn iterations of District 5 that did not include the appendage and, with Black VAPs between 47.5% and 48.3%, did not diminish the ability of minorities to elect their preferred candidates. The Court held that District 5 subordinated compactness more than necessary and was drawn with improper partisan intent.

In response, the Remedial Plan eliminates the non-compact appendage that extended into Seminole County, and thus preserves Seminole County whole. Its Black VAP of 48.1% is squarely within the range of the earlier House iterations of District 5 that this Court deemed non-retrogressive, and which Plaintiffs continually held up throughout trial as exemplars against which to contrast the 2012 Plan.[4] Professional staff performed functional analyses of Remedial District 5 and concluded that it does not diminish the ability to elect.

The Legislature, however, did more than remove the appendage from Seminole County. Rather than adopt an earlier iteration of District 5, the Legislature redrew the entire district in a more compact fashion, moderating the winding shape of the invalid district to the extent consistent with the equal-population and minority-protection provisions. These changes rendered the entire district far more compact than its predecessor, both visually and numerically:

[4] The new district's Black VAP is comparable to Black VAP of the corresponding district drawn by the Florida NAACP in 2012. In the NAACP's plan, Black VAP was 48.0%. Plaintiffs used the Florida NAACP's plan at trial as an exemplar to prove the invalidity of the 2012 Plan.



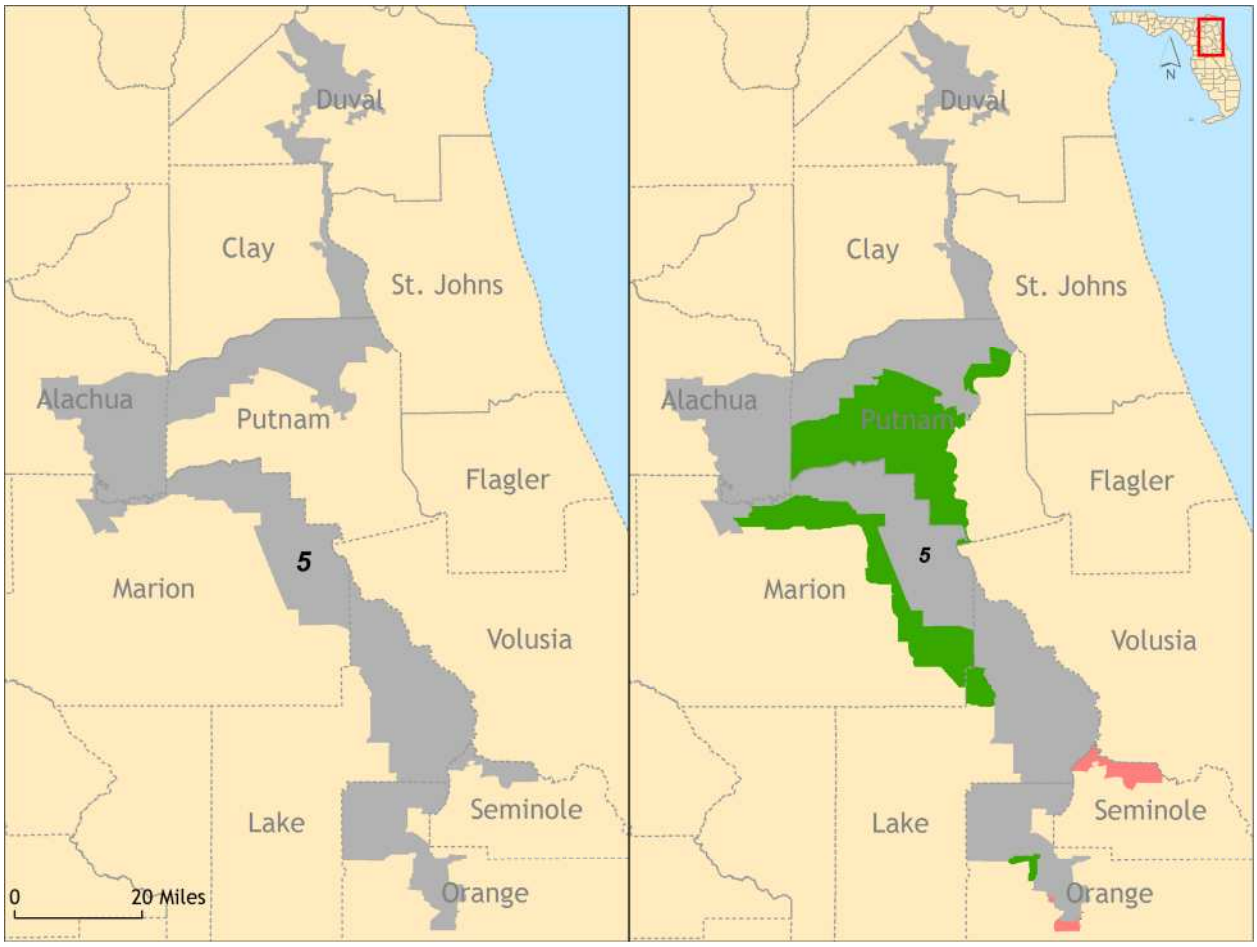
District 5 – 2012 Plan **District 5 – Remedial Plan**

Mathematical measures confirm the impression that Remedial District 5 is much more compact than its predecessor, and more compact than *any* of the House drafts to which this Court referred, and which Plaintiffs cited throughout trial as exemplars to prove the invalidity of the 2012 Plan:

	Reock Score	Convex Hull Score	Perimeter
District 5 – Remedial Plan	0.13	0.42	583 miles
District 5 – 2012 Plan	0.09	0.29	707 miles
District 5 – H000C9043	0.10	0.35	639 miles

Thus, the district's Reock and Convex Hull scores have increased by 44% and 45%, respectively. Its perimeter is 124 miles shorter, and the district divides one fewer county than the prior district. District 5 also follows the St. Johns River along its eastern boundary from Duval to Seminole County, and the river corresponds to the boundaries between Clay and St. Johns Counties and

Volusia and Lake Counties. The following depiction illustrates the alterations made to District 5. Territory added to District 5 is depicted in green, while territory removed from District 5 is depicted in red:



District 5 – 2012 Plan **District 5 – Remedial Plan**

While the Black VAP of District 5 decreases from 49.9% in the 2002 Benchmark Plan to 48.1%, a functional analysis established that minority voting strength in Remedial District 5 is analogous to minority voting strength in Benchmark District 3.[5] This finding is consistent with

[5] To determine whether a district diminishes the ability to elect, a court must compare the plan under consideration to the "last legally enforceable redistricting plan in force or effect." Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 76 Fed. Reg. 7470, 7470 (Feb. 9, 2011); *accord Abrams v. Johnson*, 521 U.S. 74, 96 (1997); 28 C.F.R. § 51.54(b). Thus, here, the appropriate standard for diminishment is the 2002 Benchmark Plan.

the Court's conclusion that prior iterations within the same range were non-retrogressive, and finds support in the emphatic support of the Florida NAACP expressed in the legislative process.

To maintain minority voting strength without diminishment, the Legislature adhered to the Jacksonville-to-Orlando configuration. That configuration does not indicate partisan intent. In fact, it has attracted strong, bipartisan support since 1996, when Democrats and Republicans acted together to create the Jacksonville-to-Orlando district after the prior district had been declared invalid. That configuration passed the House, which was then controlled by Democrats, by a vote of 116 to three, *see* Fla. H.R. Jour. 1630 (Reg. Sess. 1996),[6] and passed the Senate, which was controlled by Republicans, by a vote of forty to zero, *see* Fla. S. Jour. 784 (Reg. Sess. 1996).[7] Governor Lawton Chiles signed the bill into law. *See* Ch. 96-192, Laws of Fla.

Even this week, the Legislature showed bipartisan support for a Jacksonville-to-Orlando district. The alternative plan introduced by Representative Thurston and Senator Soto—the only alternative filed in the Legislature—also contained a district that extended from Jacksonville to Orlando. It received unanimous support from Democrats on the House committee, and *every* Democratic Senator voted for a Jacksonville-to-Orlando district, whether in the Remedial Plan or Senator Soto's proposal. No member—Democrat or Republican—introduced a plan that did *not* in some fashion unite minority communities in Jacksonville and Orlando. With strong support from both sides of the aisle, a Jacksonville-to-Orlando district does not reflect a partisan gerrymander.

The Legislature did not consider the political performance of the new districts during the map-drawing process, except to the extent necessary to evaluate minority voting strength in

[6] One of the three who voted nay—Representative Lynn—changed her vote to yea after the roll call. *See* Fla. H.R. Jour. 1630 (Reg. Sess. 1996).

[7] The Democratic advantage in the House was 63 to 57. The Republican advantage in the Senate was 21 to 19.

Remedial District 5. A retrospective analysis shows, however, that the changes had the effect of enhancing Democratic performance in the more competitive, surrounding districts:[8]

	2012 Plan			Remedial Plan		
	Obama 2012	Sink 2010	Obama 2008	Obama 2012	Sink 2010	Obama 2008
District 6	41.8%	43.1%	45.9%	42.3%	43.4%	46.4%
District 7	47.6%	47.5%	49.6%	48.6%	48.1%	50.5%
District 10	46.1%	45.6%	47.6%	47.6%	45.0%	48.4%

The Legislature corrected the invalid features of District 5. This Court faulted the district's intrusion into Seminole County and observed that earlier iterations of the district were more compact. The Legislature redrew the district in a manner more compact than even those drafts. Remedial District 5 complies with the Constitution and with this Court's Judgment.

II. REMEDIAL DISTRICT 10 CORRECTS THE DEFICIENCIES IDENTIFIED BY THE COURT.

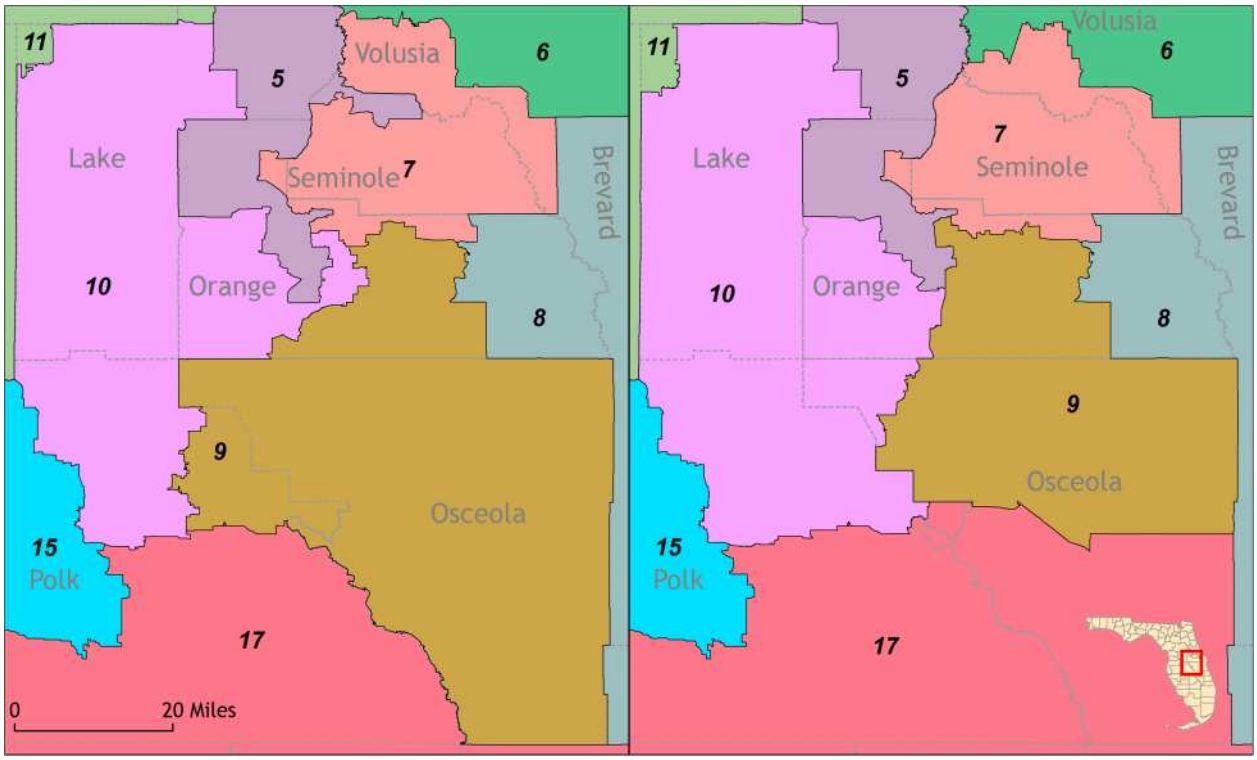
This Court also found District 10 unconstitutional. Because adjacent District 9 was not entitled to protection under the Florida Constitution's minority-protection provisions, the Court found no legal justification for District 10's non-compact appendage into Orlando. It concluded that the appendage was drawn with improper intent and violated the requirement of compactness.

The Legislature eliminated the appendage and corrected the deficiency identified by the Court. New District 10 has no bizarre features and is visually and mathematically compact. Its Reock score increased from 0.39 to 0.42, and its Convex Hull score increased from 0.73 to 0.83. District 10's perimeter decreased by 46 miles—from 298 miles to 253 miles. District 9, which is not protected by the Constitution's minority-protection provisions, absorbed the appendage.

[8] As this Court noted in its Final Judgment, "close political races are almost always won or lost on the margins." Final J. at 32 n.13.

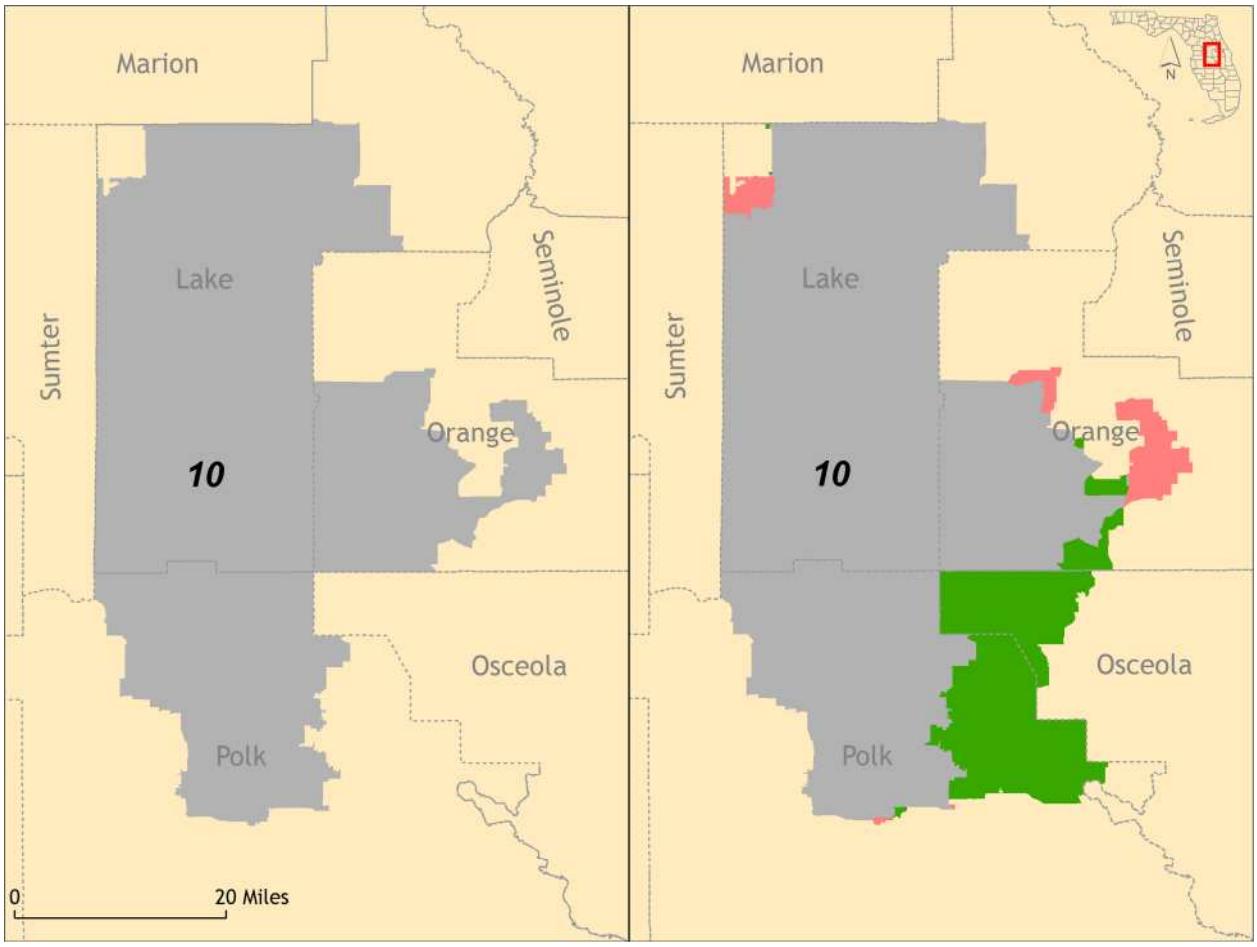
While the Remedial Plan splits Osceola County, the county's preservation would have detracted from the compactness of both District 9 and District 10. The northwestern corner of Osceola County would then have protruded into District 10 and forced District 10 further east in Orange County in search of the necessary population. The resulting configuration would have been markedly less compact than new District 10. And this Court noted—specifically in reference to Osceola County—that the preservation of counties is a more flexible mandate than compactness. *See* Final J. at 34 n.14.

The reconfiguration of Districts 5 and 10 dramatically increased the compactness of the affected region. The next comparison depicts the elimination of the appendages into Seminole County and Orlando and the marked improvement in compactness throughout Central Florida:



Central Florida – 2012 Plan **Central Florida – Remedial Plan**

The next image depicts in green the territories added to, and in red the territories removed from, District 10:



District 10 – 2012 Plan **District 10 – Remedial Plan**

In fact, the compactness scores of the seven districts redrawn in the Remedial Plan—Districts 5, 6, 7, 9, 10, 11, and 17—reveal the notable improvements in compactness throughout the region. Thus, in five of seven affected districts, both measures of compactness increase. In the other two districts, a slight decrease in the Reock score is offset by an increase in the Convex Hull score:

	2012 Plan		Remedial Plan	
	Reock	**Convex Hull**	**Reock**	**Convex Hull**
District 5	0.09	0.29	0.13	0.42
District 6	0.33	0.72	0.30	0.79
District 7	0.60	0.77	0.61	0.85
District 9	0.48	0.80	0.51	0.81
District 10	0.39	0.73	0.42	0.83
District 11	0.49	0.71	0.50	0.73
District 17	0.67	0.82	0.64	0.83

Most importantly, the districts appear far more compact upon a visual inspection. For these reasons, the Legislature has remedied the deficiencies identified in this Court's Final Judgment.

III. THE OBJECTIONS TO THE REMEDIAL PLAN ARE BASELESS.

The Remedial Plan's opponents in the Legislature advanced several misguided criticisms. The most common objections are set forth and addressed below. Plaintiffs will surely devise other objections, concocting stories and hurling epithets in order to smear a blameless process.

"The Remedial Plan was drawn at a 'nonpublic meeting.'" Amendment Six does not impose procedural requirements on the map-drawing process. The Florida Supreme Court has stated in clear and explicit terms that Amendment Six imposes "substantive standards." *League of Women Voters of Fla. v. Fla. House of Representatives*, 132 So. 3d 135, 140 n.2 (Fla. 2013); *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 603 (Fla. 2012). Thus, *every* district that this Court upheld and *every* state legislative district that the Supreme

Court upheld in *Apportionment I* and *Apportionment II* was drawn at "nonpublic meetings."[9] So too were the alternative plans that Plaintiffs nevertheless urge the Court to impose on the State of Florida. The Remedial Plan is not invalid because it was not drawn in the Capitol Rotunda.

The Florida Constitution does not require that map-drawers work in an environment similar to a hospital operating room, where bystanders oversee the work performed below. The Constitution requires neither this nor any other particular process. It requires that districts not be drawn with the intent to favor or disfavor a political party or an incumbent. Within these bounds, the process by which districts are drawn remains within the Legislature's discretion.

"The 2012 Plan was the framework for the Remedial Plan." This Court did not order the Legislature to begin anew and draw new districts. It identified two specific deficiencies, and the Legislature made modifications to bring the plan into compliance with the Constitution.

In *Apportionment I*, the Supreme Court invalidated eight Senate districts. Rather than draw a new plan, the Legislature made modifications in conformity with the Court's judgment. The opponents sought radical changes, but the Supreme Court demurred: "The Court did not instruct the Legislature to redraw the entire plan or to change other, unspecified districts . . . ." *Apportionment II*, 89 So. 3d 872, 879-80 (Fla. 2012). Likewise, this Court did not instruct the Legislature to begin from scratch, but to correct concrete and specific deficiencies. The Court upheld eight of the ten challenged districts and directed only that the Remedial Plan address the deficiencies in the two districts and the surrounding districts impacted by the changes. *See*, *e.g.*,

[9] Plaintiffs refer to "nonpublic" meetings, or meetings outside of the "sunshine," in order to insinuate that the Legislature violated the Sunshine Law. Though willing to bandy about ambiguous insinuations of illegal conduct, Plaintiffs know that the insinuation is false and make no serious attempt to establish a violation of the Sunshine Law. Instead, Plaintiffs cover their false attacks with loose phrases and ambiguous words that permit them to disclaim any intention of imputing Sunshine Law violations to the Legislature. The Sunshine Law was not violated. All meetings of the Legislature were duly and properly noticed. All constitutional requirements were met.

Final J. at 9 ("Therefore, I have focused on those portions of the map that I find are in need of corrective action in order to bring the entire plan into compliance with the constitution.").

"Democrats were not invited to participate in the map-drawing process." This objection mistakes the map-drawing process. The map-drawing process was a legal process driven by legal counsel and professional staff. It was not a political process. In fact, neither Democrats nor Republicans were invited to participate. The only members who attended the meetings that produced the Remedial Plan were the Chairs of the redistricting committees.

The objection also mistakes the legislative process. Bills are drafted by their sponsors—not by committee—and then are subject to debate and amendments offered by members of both parties throughout the legislative process. The Remedial Plan was debated, and all members had a full opportunity to file amendments, as Representative Thurston and Senator Soto did.

Notably, the leadership of the House explicitly offered to make legal counsel and professional staff available to the Democratic caucus, but the offer was never embraced, and no Democratic member of the House visited the redistricting suite during the Special Session. In the Senate, Senator Soto lauded the readiness of professional staff to assist his efforts to prepare an amendment to the Remedial Plan.[10] Any member of the Legislature could have filed a plan or proposed an amendment to the plan under consideration. All members of the Legislature—both Democrats and Republicans—participated in the manner the legislative process contemplates.

[10] Asked whether any of his requests of professional staff had been denied, Senator Soto stated: "I make no allegation that I was denied any access to Senate staff. Everybody has been wonderful here. . . . What you are referencing is a response to whether I did a Reock or convex analysis and, no, I did not do those analysis (*sic*), but I don't allege that at any point that I was denied access to any staff if I wanted to have those analysis (*sic*) done whatsoever. Everybody has been great." Exh. J at 00315:11-24.

The Florida Constitution requires, quite simply, the absence of partisan intent—and the Remedial Plan complies with all provisions of the Florida Constitution.

"The Remedial Plan does not go far enough." The Court did not order the Legislature to violate Tier One and dismantle District 5. Nor did it conclude that the general Jacksonville-to-Orlando configuration is the product of partisan gerrymandering. Any contrary suggestion is historical revisionism: that configuration of District 5 was created with nearly unanimous, bipartisan support in 1996, and was signed into law by Governor Chiles, a Democrat. *Johnson v. Mortham*, 926 F. Supp. 1540, 1544 (N.D. Fla. 1996). As discussed above, that configuration received strong support from Democratic and Republican members at the recent Special Session.

The long-standing, bipartisan support for the Jacksonville-to-Orlando configuration of District 5 is powerful evidence that all other configurations that have been presented are either less compact or diminish the ability of minorities to elect their preferred candidates—or both. If necessary, the Legislature will show in detail that Plaintiffs' alternative configuration, which no legislator proposed, and which the testimony at trial and in the legislative committee process counseled against, is less compact than Remedial District 5, is retrogressive with respect to the voting strength of minorities, and was drawn not with the bipartisan support of the State's elected representatives, but by political consultants at the behest of partisan operatives.

The suggestion that the changes in the Remedial Plan are too limited is further refuted by the Democratic alternative offered by Representative Thurston and Senator Soto, which affected only three districts—not seven—and which, like the Remedial Plan, preserved the Jacksonville-to-Orlando configuration of District 5.

"The Remedial Plan goes too far." While some opponents alleged that the changes made by the Remedial Plan were inadequate, others argued that the Remedial Plan affects too

many counties and districts, requiring too many elections. Neither the Constitution nor the Court's Final Judgment requires or even suggests that the Legislature should strictly minimize the number of districts affected in a remedial plan. Obviously, the Remedial Plan cannot be both too little and too much. The fact that the same opponents bring both charges suggests that the Legislature struck the proper balance.

"The Remedial Plan's effective date compels elections in invalid districts." The exact opposite is true. This Court has already concluded that new districts cannot be implemented by November 4, 2014. *See* Order on Defs.' Mot. to Amend the J., at 2-3 (Aug. 1, 2014) ("There is just no way, legally or logistically, to put in place a new map, amend the various deadlines and have elections on November 4th . . . ."). At the same time, the Court reserved the possibility of conducting elections in new districts sometime *after* November 4. The Remedial Plan, by its own terms, applies to all elections "held after the 2014 general election." *See* Ch. 2014-255, § 9, 10, Laws of Fla. Thus, any special election held after November 4, 2014, whether occasioned by resignation, death, or any other cause, would be conducted in the new districts established by the Remedial Plan.[11]

CONCLUSION

The Legislature responded diligently and in good faith to the Court's Final Judgment. Mindful of the Court's criticisms, the Legislature corrected the deficiencies in Districts 5 and 10 and significantly improved the compactness of the entire affected region. The Remedial Plan complies with all requirements of the Florida Constitution and with the Court's Final Judgment.

[11] The Legislative Parties reaffirm their position that federal law does not permit the election scheduled to take place on November 4, 2014, to be canceled or rescheduled, or the candidates elected to Congress at that election to be removed from office or their terms truncated. *See* Reply in Support of Their Mot. to Alter or Amend the J., dated July 29, 2014.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by electronic mail on August 15, 2014, to the individuals identified on the Service List that follows.

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