

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Plaintiffs,

v.

Case No: 2022 CA 0666

LAUREL M. LEE, in her official capacity
as Florida Secretary of State, et al.,

Defendants.

_____ /

**DEFENDANT SECRETARY OF STATE LAUREL M. LEE'S
RESPONSE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY INJUNCTION**

Secretary of State Laurel M. Lee opposes Plaintiffs' motion for a temporary injunction. For the reasons explained below, she asks that the Court deny the motion.

INTRODUCTION

“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007). Plaintiffs ask the Court to turn this truism on its head and revert to some racially gerrymandered congressional map that packs Black voters from Florida’s First Coast together with Black voters over 200 miles away from Florida’s Big Bend. Worse still, Plaintiffs ask that the Court do so on the eve of an election *after* election administrators have already begun (and some have already completed) implementing the State’s duly enacted congressional map. This the Court can’t do for three independent reasons.

First, the timing. “Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences.” *DNC v. Wis. State Legis.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurral). For this reason, the U.S. and Florida Supreme Courts have made clear that trial courts can’t issue injunctions that alter State election laws in the months preceding an election. Yet Plaintiffs ask the Court to interfere; they ask for sweeping changes to the State’s congressional map from Nassau and St. Johns Counties in the east to Leon and Gadsden Counties in the west and as far south as Marion and Volusia Counties.

Second, the law. Temporary injunctions are intended to maintain the status quo, not mandate some affirmative action that alters the status quo. Such a mandate before a “final hearing” is “like awarding an execution before trial and judgment.” *Miami Bridge Co. v. Miami Beach Ry. Co.*, 12 So. 2d 438, 469 (Fla. 1943) (cleaned up). It’s wrong. Yet that’s what Plaintiffs seek and what they can’t have.

Third, the U.S. Constitution. Plaintiffs ask this Court to mandate a racially gerrymandered district that they claim is required by Article III, Section 20 of the Florida Constitution. But such a district would violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, which prohibits the “race-based sorting of voters” absent a “compelling interest” and a “narrowly tailored” means to achieve that interest. *Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017).

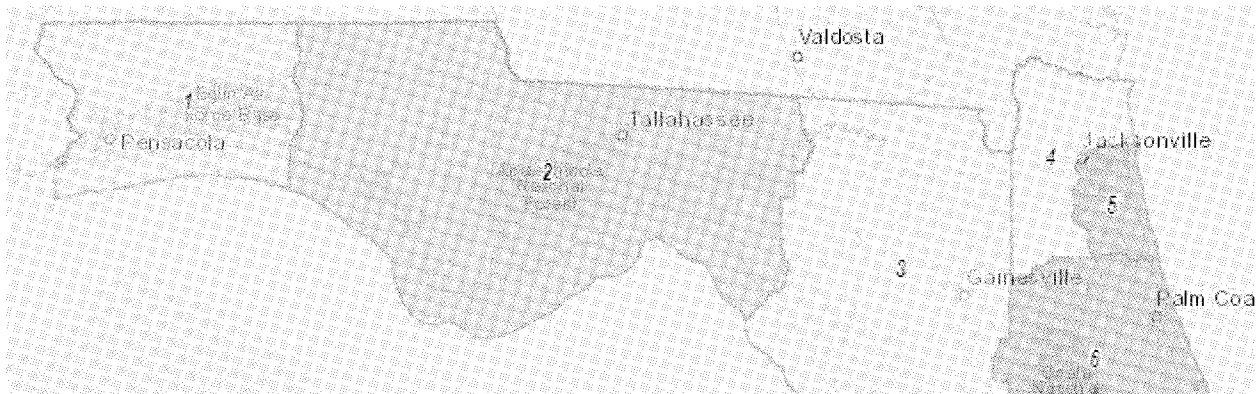
Plaintiffs have made no attempt to demonstrate how the race-based district they propose could satisfy this high constitutional bar. Indeed, they couldn't do so, even if they tried.

In sum, the request for a temporary injunction is speckled with flaws, each more fatal than the one before it. The motion must be denied.

BACKGROUND

I. Florida's duly enacted congressional plan.

Florida gained a congressional seat in the decennial census. To comply with the U.S. Constitution's one-person-one-vote standard, and to avoid malapportioned districts, the State had to enact a new congressional map. *See Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969). The State did so on April 22, 2022, when the Governor signed Senate Bill 2-C (2022) into law. The enacted map divides the State into 28 congressional districts; 27 now have a total population of 769,221 people and one has a total population of 769,220 people. *See* Senate Bill 2-C; floridaredistricting.gov (population summary for P000C0109).¹ The enacted plan looks as follows for north Florida:



This is the plan the supervisors of elections across north Florida are implementing. Supervisor Brown of Columbia County, for example, has already completed the work necessary to ensure that all

¹ Unless otherwise indicated, the cited maps and data come from the State's official redistricting website, floridaredistricting.gov. The Court may take judicial notice of these uncontroverted materials under sections 90.201(1) and 90.202(1), (5), (11), and (12), Florida Statutes.

of Columbia County’s voters can cast ballots for congressional district 3 in the upcoming August statewide primary. **Exhibit 1** ¶¶ 6-9. Precincts for in-person voting are set for approval by her board of county commissioners on May 19, 2022. *Id.* ¶ 9; *see also* § 101.001(1), Fla. Stat. (requiring same).

Supervisor Hogan of Duval County has also been working hard to implement the enacted plan. He has already inputted the district boundaries for congressional districts 4 and 5 into a geographic information system (GIS) mapping program; used that to delineate relevant street-level addresses for the two congressional districts in his county; set precincts for voters within the relevant software; and begun the work of entering relevant data into his election management system so voters have the right ballots for the upcoming election. **Exhibit 2** at ¶¶ 5-8. His board of county commissioners is set to approve the resulting precincts around June 16, 2022. *Id.* ¶ 9.

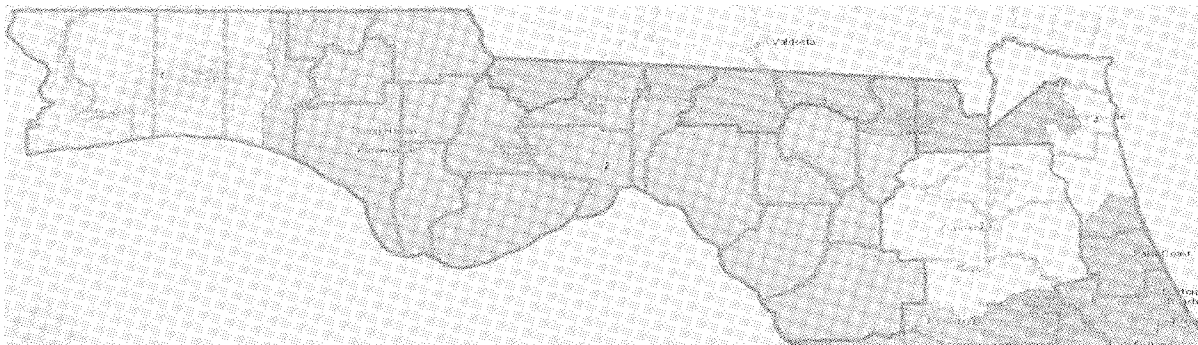
In the words of Supervisor Brown, unwinding this work to implement another congressional plan “is not possible” for the 2022 elections. **Exhibit 1** ¶ 6. She has neither the time nor the resources to split her county into multiple congressional districts for the 2022 elections, which would be required if Plaintiffs’ race-based alternative were imposed by the Court. *Id.* ¶¶ 6-9. Nor can Supervisor Hogan easily unwind the work he’s already done in Duval County to make address-by-address changes for the congressional districts of Duval County’s voters. **Exhibit 2** at ¶¶ 15-17.

II. Plaintiffs’ suggested but still fluid alternative.

But unwinding the work of the supervisors of elections is the only concrete relief sought in Plaintiffs’ Motion. Memo. at 20-21. Plaintiffs ask the Court to “enjoin implementation” of the State’s duly enacted congressional map and “to ensure that a necessary remedy is timely adopted.” *Id.* While Plaintiffs don’t propose any specific remedial plan, they suggest that plans 8015, 8016,² and 8060 on the Florida redistricting website *might* suffice to remedy their alleged injury. *See id.* at 16, 19. Included

² It should be noted that 8016 is a map for the state senate. It appears to have been referenced in error.

below is a map of north Florida from plan 8015—similar to other north Florida configurations Plaintiffs seek—with congressional district 5 in purple and county boundaries highlighted in blue:



As the map illustrates, the remedy Plaintiffs seemingly seek, and which they claim “would have limited geographic scope,” Memo. at 18, would actually affect Florida’s 2nd, 3rd, 4th, 5th, 6th, 7th, and 11th congressional districts. Eight counties would have to be reconfigured *into* Plaintiffs’ preferred congressional district 5, including Columbia and Duval Counties. To the east, congressional lines in two others, Nassau and St. Johns, would change. Even Plaintiffs concede that the cascading effects might reach as far south as Marion and Volusia Counties in north-central Florida. *Id.* at 19.

Plaintiffs say these cascading effects are manageable because Supervisor Scott in Broward can implement any remedial plan like 8015. *Id.* But Supervisor Scott is in the extreme southeastern edge of the State where there are *no* differences between the State’s enacted plan and plan 8015.

Plaintiffs also justify the late changes by citing Leon County Supervisor Earley’s affidavit where he states that “*his* office can implement a remedial plan if *he* receives notice of the new plan by May 27, 2022.” *Id.* at 20 (emphasis added). Notably, Supervisor Earley is careful to speak only to his office in the affidavit. But mere weeks ago, in a federal case challenging Florida’s then-delay in enacting a congressional map, Supervisor Earley submitted an affidavit where, in his capacity as President-Elect of the Florida Supervisors of Elections Association, he swore that he had “spoken to numerous Supervisors who strongly believe that May 27, 2022 *would not* give them enough time to complete the

work for their counties, and who believe the deadline for completing that work is *early May or even late April.*” **Exhibit 3** at ¶ 22 (*Common Cause Fla. v. Lee*, Case No. 4:22-cv-109 (N.D. Fla.) (Doc. 67-2)) (emphasis added).³ In that same federal case, Supervisor Edwards of Polk County submitted an affidavit where she said that, for her county, “a new congressional map needs to be in place between April 29, 2022,” and “May 13, 2022” to “allow adequate time to prepare for the election and meet the relevant election deadlines in advance of the primary election.” **Exhibit 4** at ¶ 19 (*Common Cause Fla. v. Lee*, Case No. 4:22-cv-109 (N.D. Fla.) (Doc. 67-1)). Two of the Plaintiffs in this case (Andrew Hershoren and Brandon P. Nelson) were Plaintiff-Intervenors in the still-pending federal case; the Plaintiffs’ lawyers made appearances in the federal case and argued against even a modest stay of those proceedings so that the Florida Legislature could conclude the special session that resulted in enactment of Florida’s current congressional map. *See generally* **Exhibit 5** at 2-3, 10-11 (*Common Cause Fla. v. Lee*, Case No. 4:22-cv-109 (N.D. Fla.) (Doc. 68)).

LEGAL STANDARD

To obtain a temporary injunction, Plaintiffs must: (1) demonstrate “a substantial likelihood of success on the merits,” (2) show “lack of an adequate remedy at law,” (3) prove “irreparable harm,” and (4) make plain that the injunction is in the “public interest.” *Reform Party of Fla. v. Black*, 885 So. 2d 303, 305 (Fla. 2004); Memo. at 11. But temporary injunctions represent “an extraordinary remedy which should be granted sparingly,” *City of Jacksonville v. Naegele Outdoor Advert. Co.*, 634 So. 2d 750, 752 (Fla. 1st DCA 1994) (cleaned up), and almost always when doing so is necessary to *prohibit* some action and thus maintain the status quo—not to *mandate* action that disturbs the status quo. *See, e.g., Nazia, Inc. v. Amscot Corp.*, 275 So. 3d 702, 705 (Fla. 5th DCA 2019) (“The primary purpose of entering a temporary injunction is to preserve the status quo pending the final outcome of a cause.” (citations

³ The Court may take judicial notice of the docket entries in the still-pending federal case under section 90.202(6), Fla. Stat.

omitted)); *Groff G.M.C. Trucks, Inc. v. Driggers*, 101 So. 2d 58, 60 (1st DCA 1958) (“mandatory injunctions are generally looked upon with disfavor and seldom granted” unless “the right is clear and free from reasonable doubt”).

ARGUMENT

The Court can deny the motion for temporary injunction for any one of three independent reasons: (1) it’s too late to make changes without throwing sand into the election machinery; (2) it’s inappropriate to use these proceedings to grant a mandatory injunction; and (3) it’s unconstitutional to carve up the voters of north Florida based on race absent a showing of compelling interest and a narrowly tailored path to achieve that compelling interest.

I. The U.S. Supreme Court and the Florida Supreme Court make clear that injunctions close to elections are highly disfavored.

Stability and predictability in election-related laws promote “[c]onfidence in the integrity of our electoral process,” which “is essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Conversely, courts risk “voter confusion” and “incentive to remain away from the polls” when they order changes on the eve of elections, with the risk “increas[ing]” “[a]s an election draws closer.” *Id.* at 4-5. Relying on this *Purcell* principle, the U.S. Supreme Court has “repeatedly” held that it’s improper to enjoin state election laws close to an election. *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1283-84 & n.2 (11th Cir. 2020). During the 2020 cycle, all 17 federal district courts that tried to do so met the same fate: either the court of appeals granted a stay of the injunction, or the U.S. Supreme Court did. *See, e.g., RNC v. DNC*, 140 S. Ct. 1205 (2020); *Tex. Democratic Party v. Abbott*, 961 F.3d 389 (5th Cir. 2020), *application to vacate stay denied*, 140 S. Ct. 2015; *Thompson v. Devine*, 959 F.3d 804 (6th Cir. 2020), *application to vacate stay denied*, 2020 WL 3456705; *Merrill v. People First of Ala.*, 141 S. Ct. 190 (2020); *Little v. Reclaim Idaho*, 140 S. Ct. 2616 (2020); *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081 (9th Cir. 2020); *Clarno v. People Not Politicians Ore.*, 141 S. Ct. 206 (2020); *Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020); *Andino v. Middleton*, 141 S. Ct. 9 (2020); *A. Philip*

Randolph Inst. of Ohio v. Larose, 831 F. App'x 188, 189 (6th Cir. 2020); *Texas All. for Retired Ams. v. Hughs*, 976 F.3d 564 (5th Cir. 2020); *Richardson v. Tex. Sec'y of State*, 978 F.3d 220 (5th Cir. 2020); *Priorities USA v. Nessel*, 978 F.3d 976, 978 (6th Cir. 2020); *Common Cause Ind. v. Lawson*, 978 F.3d 1036, 1039 (7th Cir. 2020); *Curling v. Sec'y of State of Ga.*, 2020 WL 6301847 (11th Cir. 2020); *DNC v. Bostelmann*, 977 F.3d 639 (7th Cir. 2020), *application to vacate stay denied*, *DNC v. Wis. State Leg.*, 141 S. Ct. 28.

That trend continues. Just days ago, the U.S. Court of Appeals for the Eleventh Circuit used *Purcell* as one of two independent bases to stay a federal district court's order enjoining Florida from implementing provisions of its election code. The Eleventh Circuit began by asking “[w]hen is an election sufficiently ‘close at hand’ that the *Purcell* principle applies?” *League of Women Voters of Fla. v. Lee*, Case No. 22-11143, Slip. Op. at 6-7 (11th Cir. May 6, 2022) **Exhibit 6**. It noted that the U.S. Supreme Court has relied on *Purcell* to preserve State election laws where elections were as far as “four months away,” and then concluded that “[w]hatever *Purcell*'s outer bounds,” the State of Florida “fits within them” because “the next statewide election [is] set to begin in *less* than four months” and the State's election-machinery is already cranking. *Id.* at 7 (emphasis in original).

So too here, especially since this case involves the *same* state and the *same* statewide election. This case is stronger still. Supervisors for Columbia and Duval Counties plainly state that they can't implement *any* remedial plan without increasing the odds of error and confusion. *See Exhibits 1 & 2*. Supervisor Brown says that it “is not possible.” **Exhibit 1** at ¶ 6. Supervisor Earley states in his federal court affidavit that it's already too late for “numerous Supervisors” to implement any remedial plan with ballots set to be mailed to voters by July 9th—just two months from now. **Exhibit 3** at ¶ 22. And even Plaintiffs' counsel warned in the federal case, while opposing the Secretary's limited request

to stay judicial proceedings until the Florida Legislature’s Special Session concluded on April 22, 2022,⁴ that waiting is too much of “a gamble,” that supervisors need time to do various tasks (like assigning voters to precincts, getting ballots to printers and other administrative projects), and that it’s “not practical to ask candidates to wait until that window to learn of the contours of their potential districts.” **Exhibit 5** at 2, 10.

Plaintiffs’ sudden urge to gamble finds refuge in no legal precedent. In its prior redistricting cases, for example, the Florida Supreme Court waited until *after* a trial on the merits and *after* giving the Florida Legislature an opportunity to adopt a remedial congressional plan before imposing one of its own. *See League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 272 (Fla. 2015) (“*Apportionment VIII*”). And the Florida Supreme Court did so *almost a year before* the next congressional election but still limited the time for filing motions for rehearing and clarification “[b]ecause of the extremely limited timeframe.” *Id.* at 298 (issued on December 2, 2015 for the 2016 congressional election); *see also League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 372 (Fla. 2015) (“*Apportionment VII*”) (“We emphasize the time-sensitive nature of these proceedings, with *candidate qualifying* for the 2016 congressional elections now less than a year away.” (emphasis added)).

Florida Supreme Court precedent, in fact, neatly follows the commonsense contours of the *Purcell* principle. The state high court has long recognized that “[t]o interfere with the election process at [a] late date, even if a clear legal right were shown, would result in confusion and injuriously affect the rights of third persons.” *State ex re. Haft v. Adams*, 238 So. 2d 843, 845 (Fla. 1970). This potential for interference provides reason enough to deny pre-election relief. *Id.*; *see also State ex rel. Walker v.*

⁴ True, in that proceeding the Secretary was asked by the three-judge federal panel about a “drop-dead date” by which the State had to have a congressional map. Without the benefit of the supervisors’ declarations later filed in the case, she responded that the date was June 13, 2022, the date when candidate qualifying begins for congressional races. But hers is not the office responsible for undertaking the tasks outlined in affidavits now before the Court.

Best, 163 So. 696, 697 (Fla. 1935) (same). Like the Florida Supreme Court, this Court too should follow *Purcell* and deny the request for a temporary injunction this close to the August primary election, especially when Plaintiffs have failed to go to *each* affected supervisor and have them explain whether they can implement the still-unknown remedial plan Plaintiffs seek, and when some have unequivocally said they can't do so.

II. Temporary injunctions *prohibit* action to preserve the status quo; they don't *mandate* action to dismantle the status quo.

Separately, the Court should deny Plaintiffs' Motion because it seeks to mandate action rather than simply prohibit action on the State's part. "The primary purpose of entering a temporary injunction is to preserve the status quo pending the final outcome of a cause," not to mandate the judicial creation of a new status quo *before* a final adjudication on the merits. *Nazja*, 275 So. 3d at 705. But Plaintiffs ignore the many cases cautioning trial courts "that injunctions which compel or mandate affirmative action by a party are disfavored," *Bull Motors, LLC v. Brown*, 152 So. 3d 32, 35 (Fla. 3d DCA 2014), and reminding courts that they should be "even more reluctant to issue [mandatory injunctions] than prohibitory ones." *Grant v. GHG014, LLC*, 65 So. 3d 1066, 1067 (Fla. 4th DCA 2010); *see also Kline v. State Beverage Dep't of Fla.*, 77 So. 2d 872, 874 (Fla. 1955) (explaining that it's the "rare case"); *Groff G.M.C. Trucks*, 101 So. 2d at 60 (explaining that such injunctions are "seldom granted").

Plaintiffs seemingly want this case to be the exception. *This* case. The one where they're attempting to restore a racial gerrymander across a wide swath of north Florida without first putting on any evidence at a trial to show how an alleged race-based gerrymander furthers a compelling state interest through narrowly tailored means sufficient to satisfy the requirements of federal equal protection. This is not that rare case where Plaintiffs have established a clear legal right, "free from reasonable doubt." *Spradley v. Old Harmony Baptist Church*, 721 So. 2d 735, 737 (Fla. 1st DCA 1998). So they can't ask for a mandatory injunction *before* trial that compels the State of Florida to implement some new congressional plan that was never enacted into law. *Id.*; *see also Wilson v. Sandstrom*, 317 So.

2d 732, 736 (Fla. 1975) (“It is a general rule that a mandatory injunction can only be granted on a final hearing”) (citations omitted); *Gulf Power Co. v. Glass*, 355 So. 2d 147, 148 (Fla. 1st DCA 1978) (same).

III. Plaintiffs are not entitled to a racial gerrymander in north Florida.

Finally, Plaintiffs’ claim of likely success on the merits rings hollow. *See* Memo. at 11-16. Plaintiffs fail to acknowledge that any congressional map must comply with both the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution as well as the Florida Constitution, and that the U.S. Constitution must prevail when there’s a conflict between the two. *See* U.S. Const. art. VI, cl. 2. Plaintiffs also fail to provide the kind of evidentiary support needed to escape the U.S. Constitution’s strong preference for race-neutral districts. *See Wis. Legis. v. Wis. Elections Comm’n*, 142 S. Ct. 1245, 1249 (2022) (“We said in *Cooper* that when a State invokes [a Voting Rights Act rationale] to justify race-based districting, it must show (to meet the narrow tailoring requirement) that it had a strong basis in evidence for concluding that the statute required its action.” (cleaned up)).

A. Plaintiffs fail to provide evidence proving that their preferred alternative complies with the U.S. Constitution.

“Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools,” the U.S. Supreme Court has made clear that the State also “may not separate its citizens into different voting districts on the basis of race.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (citations omitted). “When the State assigns voters on the basis of race,” the Court explained, “it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, ‘think alike, share the same political interests, and will prefer the same candidates at the polls.’” *Id.* at 911-12 (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)). The U.S. Constitution’s Equal Protection Clause thus prohibits the drawing of congressional maps that use race as “the predominant factor motivating the” “decision to place a significant number of voters within or without a particular district,” *id.* at 916, unless the map drawers can prove that their “race-based sorting of voters serves a ‘compelling interest’ and is ‘narrowly tailored’ to that end.”

Cooper, 137 S. Ct. at 1464. That race was the predominant factor motivating the line-drawing decision can be shown “either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose.” *Miller*, 515 U.S. at 916.

Here, there’s no doubt that race would be the predominant factor in any version of congressional district 5 that Plaintiffs seek. There’s direct evidence from the legislative debate saying exactly that. *See generally* Fla. H.R. Comm. on Redist., recording of proceedings, at 0:00-2:55:19 (Feb. 25, 2022), <https://thefloridachannel.org/videos/2-25-22-house-redistricting-committee>; *id.* at 19:15-19:26 (Chair of the House Redistricting Committee explaining that the districts were drawn to “protect[] a Black minority seat in north Florida”); *id.* at 19:45-19:54 (noting the “attempt at continuing to protect the minority group’s ability to elect a candidate of their choice”); **Exhibit 7** (collecting citations to same in memo accompanying veto message pages 2 and 4).

Circumstantial evidence confirms that race predominates. Plaintiffs’ preferred versions of congressional district 5 span over 200 miles from east to west, cutting across eight counties to connect the Black population in Duval County with separate and distinct Black populations in Leon and Gadsden Counties. *See* Plan 8015 available at floridaredistricting.gov. The district narrows to a handful of miles to avoid non-minority populations in Leon County with nearly the entirety of the district’s Black population residing in Duval and Leon Counties. *Id.*

But there is no evidence that this racial gerrymander furthers a compelling state interest. The U.S. Supreme Court has only ever “assumed” without deciding that compliance with the Voting Rights Act serves a compelling state interest. *Cooper*, 137 S. Ct. at 1464. Even then, congressional district 5 can’t rely on that Act’s two relevant provisions: § 2’s vote-dilution provision or § 5’s non-diminishment (or non-retrogression) provision. In plan 8015, the district’s Black voting age population is only 43.48%. “When a minority group is not sufficiently large to make up a majority in a reasonably shaped district, § 2 simply does not apply.” *Cooper*, 137 S. Ct. at 1472 (citing *Bartlett v. Strickland*, 556

U.S. 1, 18-20 (2009)) (plurality opinion); *see also Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (explaining that one of the threshold conditions for proving vote dilution under § 2 is that the minority group is “sufficiently large and geographically compact to constitute a majority”).

Section 5’s non-diminishment standard can’t apply either. As an initial matter, § 5 is no longer operative because the U.S. Supreme Court invalidated the formula for determining which jurisdictions are subject to § 5. *Shelby Cnty. v. Holder*, 570 U.S. 529, 553-57 (2013); *see also Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 279 (2015) (suggesting that continued compliance with § 5 may not remain a compelling interest in light of *Shelby County*). Regardless, even before the U.S. Supreme Court invalidated the coverage formula, the State of Florida wasn’t a covered jurisdiction subject to § 5. *See In re Senate Joint Resolution of Legislative Apportionment 1176 (“Apportionment I”)*, 83 So. 3d 597, 624 (Fla. 2012). Only five Florida counties—none in north Florida—were covered. *Id.*

The only conceivable justification left for satisfying the strictures of the U.S. Constitution’s Equal Protection Clause is compliance with the race-based provisions in Article III, Section 20(a) of the Florida Constitution. Importantly, however, the U.S. Supreme Court has never even hinted that compliance with a race-based provision of a state constitution can serve as justification for avoiding the federal guarantees of equal protection. This is for good reason: it would turn the U.S. Constitution’s Supremacy Clause on its head. U.S. Const. art. VI, cl. 2. *See generally Reynolds v. Sims*, 377 U.S. 533, 584 (1964) (“[A] state legislative apportionment scheme is no less violative of the Federal Constitution when it is based on state constitutional provisions which have been consistently complied with than when resulting from a noncompliance with state constitutional requirements. When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls.”); *United States v. Stanley (Civil Rights Cases)*, 109 U.S. 3, 11 (1883) (“[The Fourteenth Amendment] nullifies and makes void all State legislation, and State action of every kind, . . . which denies to any [person] the equal protection of the laws.”)

Assuming the State Constitution’s race-based provisions could serve as a compelling state interest, which it doesn’t, those race-based provisions still offer no reprieve to congressional district 5. Because the first of Florida’s race-based provisions is modeled after § 2 of the Voting Rights Act, *see Apportionment I*, 83 So. 3d at 619-24, it simply isn’t implicated where, as here, there isn’t a majority-minority district. *See Gingles*, 478 U.S. at 50-51. The second of Florida’s race-based provisions is modeled after § 5 and protects against non-diminishment. *See Apportionment I*, 83 So. 3d at 625. But there’s no record of a race-based problem that justifies its use as a race-based solution for congressional district 5—a critical flaw that led to the pre-clearance formula’s demise in *Shelby County*.

And even if Plaintiffs could muster a compelling state interest, they still can’t show that the race-based sorting in their preferred district 5 is narrowly tailored to further that interest. Dr. Johnson, the State’s expert, and Mr. Popper, the namesake of the Polsby-Popper compactness metric, explain that this sprawling district fails miserably under traditional redistricting criteria. *See Exhibit 8* at ¶¶ 9-20 (Johnson) (criticizing the low compactness scores for plan 8015 and multiple splits compared to the enacted plan); *Exhibit 9* at 5 (Popper) (“the district clearly violates traditional districting criteria” where “its Popper-Polsby score is 10%, and its Reock score is 11%”).

In his work focused on north Florida, Dr. Johnson’s expert report further shows that, compared to Plaintiffs’ preferred plan 8015, the State’s enacted plan for congressional districts 2, 3, 4, and 5 divides fewer counties and municipalities. *See Exhibit 8* at ¶¶ 9-16. Dr. Johnson also notes that the enacted plan is more compact than plan 8015 (and the plan the Florida Supreme Court adopted in 2015). *Id.* ¶¶ 17-20. And he debunks Plaintiffs’ attempt to argue that the 2015-version of congressional district 5 somehow united historic slave populations in north Florida. *Id.* ¶¶ 21-27. He shows that three of the six counties with the largest slave populations—Jackson, Alachua, and Marion—were never in the 2015 plan; that Black voters have moved from “sharecropper counties” to cities like Jacksonville in the 160 years since the 1860 Census referenced by Plaintiffs; and that

congressional districts 2 and 5 in the enacted plan actually keep these groups of Black voters together. *Id.*; cf. **Exhibit 10** (presentation of the Governor’s Office showing its fewer county splits and improvements to compactness).

Lack of a compelling state interest. Lack of narrow tailoring to further that interest. And lack of evidence for both the interests and the tailoring doom Plaintiffs’ merits argument. Nothing in the Florida Supreme Court’s prior redistricting cases holds otherwise because those cases did not specifically grapple with the U.S. Constitution’s guarantees of equal protection or the more recent cases emphasizing the federal constitutional imperative of race-neutral apportionment. As Plaintiffs must themselves recognize, Memo. at 3-4, the Florida Supreme Court dismantled an earlier north-south configuration that snaked from Jacksonville to Orlando only after concluding that the Florida Legislature’s apportionment work was tainted by improper partisan intent. See *Apportionment VII*, 172 So. 3d at 403. There’s no evidence, none at all, that partisanship resulted in the enacted plan’s current configuration of seats in north Florida. And, unlike the sprawling east-west configuration that the Florida Supreme Court itself recognized *wasn’t* “a model of compactness,” *Apportionment VII*, 172 So. 3d at 406, the enacted plan’s configuration *is* compact. See **Exhibit 8** at ¶¶ 17-20. Plaintiffs now bear the burden of proving why this duly enacted configuration is unconstitutional and why their preferred race-based configuration is constitutional. They fall short of the mark.

B. Plaintiffs fail to prove that the Florida Constitution’s non-diminishment clause is triggered let alone violated.

Even if the Court could overlook the federal constitutional problems with Plaintiffs’ preferred congressional district 5—which the Court can’t do—Plaintiffs still haven’t established a violation of the Florida Constitution’s Tier One non-diminishment standard. That’s so because Plaintiffs fail to disentangle race from partisanship; they fail to show that the enacted plan diminishes the ability of Black voters to elect Black candidates. At best, they show an inability to elect Democratic candidates.

Specifically, Plaintiffs rely on Dr. Ansolabehere’s expert report for the proposition that in the 2015-version of congressional district 5, Black voters had the ability to elect a Democratic candidate. Memo. at 13-15. Plaintiffs contend that because congressional districts 2, 3, 4, and 5 in the enacted plan prevent Black voters from electing a Democratic candidate, Article III, Section 20(a)’s non-diminishment provision is violated. *Id.* But that’s not enough to show that the non-diminishment provision is triggered let alone prove that it’s been violated.

The State’s expert, Dr. Owens, confirms that Black voters in north Florida vote for the Democratic candidate, but they do so regardless of the candidate’s race. **Exhibit 11.** In fact, Dr. Owens’s review of elections in north Florida conclusively demonstrates that partisanship—not race—best explains the voting patterns. *Id.* Black voters’ support for the Democratic Party’s candidates is generally in the 85% to 90% range, regardless of the race of the candidate. If voting patterns are not on the basis of race, but simply correlate with race, then the race-based Tier One standards of the Florida Constitution don’t apply.⁵ There’s no proof that Black voters can’t elect Black candidates.

Cutting through all of the other portions of their motion, what Plaintiffs then seek is a 200-mile, winding and non-compact district where Black voters who would make up about 40% of the proposed district (and support Democratic candidates at high levels) can join with a small percentage of white voters drawn into the district (who also support Democratic candidates) so the two groups can elect a Democrat. Tier One of the Florida Constitution expressly prohibits drawing districts on the basis of such partisan intent. Yet, here, Plaintiffs hope to mask their partisan intentions as race-consciousness, without ever exploring whether race is the cause of voting patterns and not merely

⁵ Florida’s constitutional language is designed to reflect the Voting Rights Act, which uses the phrase “on account of race” in both § 2 and § 5. Plaintiffs here have alleged a correlation, but presented no evidence of causation. *See, e.g., Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1330 (11th Cir. 2021) (collecting cases for proposition that the Voting Rights Act’s “plain language” “requires more” than mere correlation with race).

correlated with partisan voting patterns. The Court shouldn't countenance this at the temporary injunction phase, and should instead require that Plaintiffs establish the necessary causal link at trial.

In sum, the non-diminishment provision wasn't put in place to mandate a safe Democratic congressional district. Plaintiffs must disentangle partisanship from race before they can trigger the non-diminishment provision. Otherwise, the relief they seek would violate Article III, Section 20(a)'s anti-partisan gerrymandering provision by creating a safe Democratic seat. *See* art. III, § 20(a), Fla. Const. ("No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent.").

CONCLUSION

This Court should deny the motion for temporary injunction. The shopkeeper's admonition of "you break it, you buy it," summarizes the *Purvell* principle and the reluctance of both state and federal courts to interfere with election-related statutes; the need to jealously guard against the pre-trial changing of the status quo cautions against the imposition of a mandatory injunction; and the federal constitutional imperative of *not* sorting voters based on race dooms Plaintiffs' argument on the merits of their claim. And, in the final analysis, "[a] reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid." *Shaw*, 509 U.S. at 647. The Court should reject Plaintiffs' request for such an apportionment plan for north Florida.

Dated: May 9, 2022

Bradley R. McVay (FBN 79034)
brad.mcvay@dos.myflorida.com
Ashley Davis (FBN 48032)
ashley.davis@dos.myflorida.com
stephanie.buse@dos.myflorida.com
FLORIDA DEPARTMENT OF STATE
R.A. Gray Building
500 S. Bronough St.
Tallahassee, FL 32399
(850) 245-6536

/s/ Mohammad O. Jazil
Mohammad O. Jazil (FBN 72556)
mjazil@holtzmanvogel.com
Gary V. Perko (FBN 855898)
gperko@holtzmanvogel.com
Michael Beato (FBN 1017715)
mbeato@holtzmanvogel.com
zbennington@holtzmanvogel.com
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK
119 S. Monroe St. Suite 500
Tallahassee, FL 32301
(850) 270-5938

Counsel for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all parties of record through the Florida Courts E-Filing Portal, on May 9, 2022.

/s/ Mohammad O. Jazil
Mohammad O. Jazil

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Plaintiffs,

v.

Case No: 2022 CA 0666

LAUREL M. LEE, in her official capacity
as Florida Secretary of State, et al.,

Defendants.

_____ /

DEFENDANT SECRETARY OF STATE LAUREL LEE'S EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
1	Affidavit of Columbia County Supervisor of Elections Brown
2	Affidavit of Duval County Supervisor of Elections Chief Election Officer Robert Phillips
3	Declaration of Leon County Supervisor of Elections Earley in Common Cause Florida v. Lee
4	Declaration of Polk County Supervisor of Elections Edwards in Common Cause Florida v. Lee
5	Plaintiff-Intervenors' Response in Opposition to Defendant's Motion to Stay in Common Cause Florida v. Lee
6	League of Women Voters v. Lee, Eleventh Circuit Slip Opinion
7	General Counsel Newman's Memorandum Accompanying Veto Message
8	Declaration of Dr. Johnson
9	Mr. Popper Report to Florida House of Representatives
10	Mr. Kelly's Presentation to Florida Senate
11	Declaration of Dr. Owens

EXHIBIT 1

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Case No: 2022 CA 0666

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity
as Florida Secretary of State, et al.,

Defendants.

AFFIDAVIT OF TOMI S. BROWN

STATE OF FLORIDA

COUNTY OF COLUMBIA

BEFORE ME, the undersigned authority, this day personally appeared TOMI S. BROWN,
who, being by me first duly sworn, deposes and says, under penalty of perjury:

1. I am over the age of eighteen (18) and am otherwise competent to make the statements in this Affidavit.
2. I have personal knowledge of the matters contained herein.
3. I am the Supervisor of Elections for Columbia County, Florida. I was elected to that position in 2020.
4. The purpose of this Affidavit is to outline the impact on Columbia County if the map adopted by the Legislature in the recent special session and signed by the Governor (“Enacted Map”) is replaced with a version of map (like that first used in 2016) that split Columbia County into multiple congressional districts (“Substitute Map”).

5. More specifically, it is my understanding that under the Substitute Map, Columbia County would be split between Congressional District 5 (CD-5) and Congressional District 2 (CD-3). Under the Enacted Map, however, all of Columbia County is now within the new CD-3. This in itself necessitated a change in the precincts within Columbia County, which is now complete.

6. Changing the Enacted Plan at this time simply is not possible for upcoming elections. Florida is scheduled to hold a statewide primary election on August 23, 2022. Even before Governor signed the legislation establishing the Enacted Map, our team began their work to meet the timeframes associated with the August 23 primary election. Among other things, we imported the congressional (and other applicable) districts into our GIS map; generated a file for all streets within all precincts; verified the street addresses; and matched the information with registered voters in our County. Due to an employee shortage, we had to outsource some of this work at a cost of approximately \$30,000.

7. In other words, new precincts are set, voters have been assigned to those new precincts, and we have completed all of the work required to implement the Enacted Map. Any Substitute Map would require us to undo the work that has been done and restart from scratch. Moreover, going back to multiple congressional districts would make the work more complicated because we would have to ensure that the right voters are assigned to the right precincts and that these precincts match the appropriate congressional districts. This would once again require us to out-source work at a substantial cost of approximately \$30,000. The constricted timeframe would also increase the chance of error at every stage of the process.

8. We would also have to either eliminate or rethink our plan to send new voter registration cards. We had planned to send out voter cards to all registered voters showing their congressional district by the end of May at a cost of \$35,000 for printing fees. If this works needs

to be re-done, with Columbia County voters in one of two congressional districts because of any Substitute Map, it would impose additional cost and cause voter confusion. Cancellation is an option; however, we would like to send new registration cards reflecting updated information.

9. Finally, any change would affect the required approval of the precincts by the Columbia County Board of County Commissioners. We are currently on the agenda for the board's meeting scheduled for May 19, 2022, to present the new precincts for approval to the board pursuant to section 101.001(1), Florida Statutes. If a Substitute Map is imposed, we would need to cancel that meeting as we try to implement the map. Additional dates would be difficult to come by because our board meets on only the first and third Thursday of every month. And we can only reschedule after we complete all the work necessary to reset precincts and reassign voters in time for the July 9 deadline to mail the first of the ballots for the August primary, which is simply not possible at this late date.

AFFIANT SAYS NOTHING FURTHER.

By *Tomi S. Brown*
Tomi S. Brown
Supervisor of Elections,
Columbia County, Florida

STATE OF FLORIDA
COUNTY OF COLUMBIA

The foregoing document was sworn to and subscribed before me this 9th day of May, 2022, by Tomi S. Brown, as Supervisor of Elections for Columbia County, Florida, who is personally known to me or produced _____ as identification.

Johnna T Horne
NOTARY PUBLIC
My Commission Expires:



JOHNNA T HORNE
Notary Public
State of Florida
Comm# HH162407
Expires 8/8/2025

EXHIBIT 2

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Case No: 2022 CA 0666

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity
as Florida Secretary of State, et al.,

Defendants.

AFFIDAVIT OF ROBERT PHILLIPS

STATE OF FLORIDA
COUNTY OF DUVAL

BEFORE ME, the undersigned authority, this day personally appeared Robert Phillips,
who, being by me first duly sworn, deposes and says, under penalty of perjury:

Overview

1. I am over the age of eighteen (18) and am otherwise competent to make the statements in this affidavit.
2. I have personal knowledge of the matters contained herein.
3. I am the Chief Elections Officer for the Duval County Supervisor of Elections. I began working in the office in 1991. As Chief Elections Officer, I am responsible for legislative services, budget preparation, procurement, calendar, and other election-related duties. My many duties include the implementation of all reapportionment plans in Duval County.
4. The Duval County Supervisor of Elections office administers elections in Duval County. Election administration includes the timely and accurate assignment of voters to the races

in which they can cast ballots; the creation of voting precincts; the preparation of ballots specific to groups of voters who may vote in particular races; the printing of those ballots; and the timely mailing of those ballots to voters consistent with state and federal law. Accurate information concerning delineating this information is also provided to voters on voter information cards.

Implementation of Apportionment Plans

5. The office has been working to implement the enacted city council, state house, state senate, and congressional district maps. This process began around February and March 2022. After the city council, state house, and state senate maps were approved, the office inputted the districts' information on a geographic information system (GIS) mapping program, its voter registration system, and its election management system. Ensuring that this information was accurately inputted took several months to complete.

6. On April 22, 2022, the Governor approved Florida's current congressional district map. Duval County is split into Congressional District 4 and Congressional District 5.

7. After the congressional district maps were approved, the office inputted the district information into the various programs and used that information to ensure that voters were assigned to the right congressional district based on their addresses. With the city council, state house, state senate, and congressional district maps all finalized, the office was able to complete the drawing of voter precincts. The drawing of precincts allows us to then assign the right ballot styles to the right voters—to show to the voter all the races in which that voter may cast a ballot.

8. The office tries to prevent precinct splits—the assignment of more than one congressional district to the same precinct. Splits are burdensome as a programming matter and also lead to voter confusion.

9. Precinct changes must be approved by the Jacksonville City Council. The office submitted the precinct changes to the council on Thursday, May 5, 2022. The precinct changes will be taken up by the council on Tuesday, May 10, 2022. The precinct changes must go through a committee process, as well as public input hearings. Ultimately, the council and mayor must approve the precinct changes. This legislative process is expected to take six weeks. Six weeks from May 5 is June 16, 2022.

10. Around this time, the office must also ensure that the voter registration database and the tabulation database are updated, based on the new maps. This process takes several weeks to complete and should be completed before the candidate qualification period ends.

11. As noted above, updated information is also provided to voters on their individualized voter information cards.

12. The office must provide voter information cards to over 650,000 registered voters. Any further delays in assigning voters to congressional districts numbers will cause issues, especially supply chain issues. Paper shortages and time constraints create a recipe for disaster.

13. The candidate qualification period is from June 13, 2022 to June 17, 2022. After the qualification period ends, ballots must be finalized and prepared for printing and shipping.

14. Under federal law, the office must send vote-by-mail ballots to members of the armed services and overseas citizens no later than 45 days before the primary election. *See* 52 U.S.C. § 20302(a)(8)(A). That date would be July 9, 2022.

15. Imposing a new congressional district map, at this stage, would impose significant burdens on the office. The office has already inputted the enacted congressional district map into its programs and databases and is engaged in the local legislative process needed to approve the new precincts.

16. The office would have to expend significant resources to check to see if the new map created any changes, would have to ensure quality control (i.e., ensure that all voters are assigned to the right congressional district on an address-by-address basis), and would have to submit amended precinct changes to the Jacksonville City Council. A new congressional district map could also lead to more precinct splits.

17. Although the office cannot predict how costly a new map will be or whether it can be completed in time for the upcoming primary election, imposing a new map at this late juncture would increase the chances of administrative mistakes, programming errors, and candidate and voter confusion. Availability of both basic and specialized supplies—like the paper for the ballots themselves—presents other concerns too.

THE AFFIANT SAYS NOTHING FURTHER.

By: _____

Robert Phillips

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing document was sworn to and subscribed before me this 9th day of May, 2022, by Robert Phillips, who is personally known to me or produced _____ as identification.

Personally Appeared

Lana G. Self

NOTARY PUBLIC

My Commission Expires:

LANA G. SELF
Notary Public, State of Florida
My Comm. Expires 08/09/2025
Commission No. HH162692

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

Common Cause Florida, FairDistricts Now,
Dorothy Inman-Johnson, Brenda Holt,
Leo R. Stoney, Myrna Young, and Nancy
Ratzan,

Plaintiffs,

v.

Laurel M. Lee, in her official capacity as
Florida Secretary of State,

Defendant.

Case No.: 4:22-cv-109

DECLARATION OF SUPERVISOR MARK S. EARLEY

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a resident of Florida and am fully familiar with the facts set forth below.
2. I currently serve as Supervisor of Elections for Leon County, Florida (“Leon County Supervisor of Elections”). Leon County is located in northern Florida and is home to Florida’s capital, Tallahassee. Out of 67 counties, Leon County is the 22nd most populous county in Florida.
3. In addition to my elected office as Leon County Supervisor of Elections, I am currently the President-Elect of Florida Supervisors of Elections, Inc., the state association for Florida’s 67 Supervisors of Elections. I have worked in elections administration for over 30 years.
4. I have a degree in mechanical engineering from the FAMU-FSU College of Engineering. I also hold both state and national certifications in the field of election administration as a Certified Elections Registration Administrator and a Master Florida Certified Elections Professional.
5. As Leon County Supervisor of Elections, I hold an elected office. In this role, my duties include administering county, state, and federal elections.
6. In Florida, the Supervisors of Elections administer elections in each county, which includes providing for the distribution of voting systems, assigning voters to districts, preparing ballots, recruiting and training elections officials,

conducting in-person voting and vote-by-mail, and tabulating and canvassing results.

7. On August 23, 2022, Florida is scheduled to hold its 2022 statewide primary election.

8. At this time, I understand that Florida's legislature and Governor have not reached an agreement on a new congressional district plan following the delivery of the 2020 Census data to be used for the 2022 statewide primary election.

9. In order for the primary election to proceed on August 23, 2022, election officials need adequate time to complete an arduous process to prepare for the election and meet certain deadlines prior to the primary. Without adequate time, my staff and I will face an extreme burden moving forward with the necessary election administration processes.

10. For example, in advance of the primary, Florida election officials must have adequate time to prepare and mail ballots to members of the armed services, their dependents overseas, and other citizens residing overseas, and those voters must also have adequate time to return their completed ballots. Under the federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), vote-by-mail ballots that include elections for federal office must be transmitted no later than 45 days before a primary election. *See* 52 U.S.C. § 20302(a)(8)(A). The

deadline to transmit vote-by-mail ballots pursuant to UOCAVA is therefore July 9, 2022.

11. Ballot information must be sent to the printer in advance of the July 9, 2022 UOCAVA deadline for transmittal of vote-by-mail ballots. The following window for mailing the very large initial batches of vote-by-mail ballots is open between 40 and 33 days out from the election. In my experience, vote-by-mail vendors that are used to print and mail ballots typically require the data drop of voter information for the large mailings approximately two to three weeks ahead of time to ensure the materials, data integrity, and other factors are in place to turn these mailings around within the statutory guidelines. Three weeks before the July 9, 2022 UOCAVA deadline is June 18, 2022.

12. Ballots cannot be created before candidates for office are determined. By statute, the names of all duly qualified candidates for election must be certified to Supervisors of Elections within seven days after the closing date for qualifying. Fla. Stat. § 99.061(6). The qualifying period in Florida for candidates for Congress, State Senator, and State Representative, among other candidates, is set to begin on June 13, 2022 and to close on June 17, 2022. Fla. Stat. § 99.061(9). Thus, the list of qualified candidates must be certified by June 24, 2022 (within seven days of June 17, 2022). By June 24, 2022 at the latest, vote-by-mail ballots should be sent to the printer in order to allow sufficient time to create and proof

ballots and conduct a quality control testing back in the local elections offices before ballots are approved and ready for transmittal to voters to meet the July 9, 2022 UOCAVA deadline.

13. Redistricting requires elections staff to complete a process of assigning voters to new districts prior to creating and preparing ballots for the election and prior to sending ballots to be printed. This process is replicated for State House, State Senate, and Congressional maps. My staff cannot begin this process unless we have received shapefiles for all maps to be used.

14. As Supervisor of Elections, I assign voters to their voting districts through a process known as geocoding. Geocoding is the process by which census data for every district, precinct, and other boundary such as for local school boards is entered into the districting software used by state and county elections officials. For Florida electoral districts, the geocoding process typically begins with the receipt of district shapefiles from the Legislature, which include geographic data setting the boundaries for legislative districts. After receiving the relevant shapefiles, my staff uses the files and mapping software to update the voting districts that are assigned to particular voter addresses.

15. After voters are assigned to districts, my staff must also perform an audit of the geocoding to ensure its accuracy before ballot preparation.

16. Every voter must also be coded with a State House, State Senate, and

congressional district (among others) in a voter registration system that is separate from the mapping software system. Information in the voter registration system street tables must be aligned with the data and shapefiles in the mapping software system. For most counties, including Leon, this process is not automated. If the system detects errors, street segment and voter information must be reviewed manually on an individual basis to resolve any issues.

17. Once new congressional districts are set, the shapefiles must also be used to determine and align precincts to congressional districts. New precincts must be approved by the Board of County Commissioners. That body meets every two weeks.

18. After the close of the candidate filing period, elections officials must also create and print ballots, review the ballots for potential errors, and then prepare and test voting equipment.

19. Ballot preparation and proofing ballots cannot begin until after the proper geographic boundaries for voting districts are set, geocoding is complete, the candidates are known, and the candidate-filing period closes. The process of generating and proofing ballots is complex and involves multiple technical systems and quality-control measures that precede ballot editing and coding of voting machines. The lines of each of the maps are incorporated into the process for deciding where new precinct lines will be drawn, whether precincts will need to be

split, and where those splits will be placed. Each of the precincts need to correspond to specific polling places, and every voter needs to be assigned to a precinct and to have an available ballot that includes all of the races they will vote for at that precinct. This all needs to be determined before the precincts are finalized to ensure that the vote-by-mail mailings can be sent out accurately and on time, and that the overlapping district combinations are properly reflected in the precinct/splits in the voter registration street tables.

20. After consulting with my staff, which is especially experienced in this work, and based on my 30 years of experience in election administration, I estimate that it will take our office a minimum of four weeks from the date that a new congressional district plan is enacted and shapefiles are delivered to counties in Florida to complete the necessary tasks before sending ballots to the printer, including determination of new precincts, the geocoding process, and delivery of information necessary to create the ballots.

21. As such, my office needs a new congressional districting map approximately four weeks prior to the June 24, 2022 deadline for certification of all duly qualified candidates, at which time ballots would need to be submitted to be printed to meet the July 9, 2022 UOCAVA deadline. Accordingly, in order to be timely implemented in Leon County, a new congressional map needs to be in place by May 27, 2022 at the absolute latest (4 weeks before June 24, 2022) to

allow my staff and I adequate time to prepare for the election and meet the relevant election deadlines in advance of the primary.

22. In my role as President-Elect of Florida Supervisors of Elections, I have spoken with many of my fellow Supervisors of Elections in other Florida counties. While my staff and I believe we could complete all of the work for Leon County if we had finalized maps by May 27, 2022, I have spoken to numerous Supervisors who strongly believe that May 27, 2022 would not give them enough time to complete the work for their counties, and who believe the deadline for completing that work is early May or even late April. Based upon my knowledge of the additional complexities present with the technical processes in other, larger counties, I believe these concerns are well-founded and should be taken into consideration when setting a deadline for a finalized Congressional map. The reasons for the different estimates of time needed to prepare for the election include that I have a well-trained staff with substantial experience administering prior elections, other counties are also larger and more complex than Leon County, and some smaller counties do not have a wealth of technical resources available to them.

23. I understand that Supervisor Lori Edwards of Polk County estimates that it will take her office a minimum of six to eight weeks prior to the June 24, 2022 deadline for certification of all duly qualified candidates to prepare for the

election and meet the relevant election deadlines in advance of the primary. I have no reason to disagree with the reasonableness of Supervisor Edwards' estimate of the time that her office needs to prepare for the election.

24. I understand that the Florida Secretary of State has stated in court filings in this proceeding and in a state-court proceeding that the deadline for the State to have a new congressional map is June 13, 2022. I do not believe it will be possible for any Supervisor of Elections in Florida, whose county is impacted by uncertainty in the drawing of the Florida Congressional district boundaries, to meet the necessary deadlines for realigning the voter registration street indices, re-precincting voters accurately laying out, proofing and printing ballots, and conducting the initial testing of voting equipment with ballots before the UOCAVA mailing deadlines to confidently comply with the July 9, 2022 UOCAVA deadline, and prepare for the August 23, 2022 primary if a new map is not finalized until June 13, 2022.

25. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of April, 2022.


Mark S. Earley

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

Common Cause Florida, FairDistricts Now,
Dorothy Inman-Johnson, Brenda Holt,
Leo R. Stoney, Myrna Young, and Nancy
Ratzan,

Plaintiffs,

v.

Laurel M. Lee, in her official capacity as
Florida Secretary of State,

Defendant.

Case No.: 4:22-cv-109

DECLARATION OF SUPERVISOR LORI EDWARDS

STATE OF FLORIDA)
 : ss.:
COUNTY OF POLK)

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am a resident of Florida and am fully familiar with the facts set forth below.

2. I currently serve as Supervisor of Elections for Polk County, Florida (“Polk County Supervisor of Elections”). Polk County is located in central Florida. Out of 67 counties, Polk County is the ninth most populous county in Florida.

3. I was elected to my post in November 2000. As Polk County Supervisor of Elections, I hold an elected, non-partisan office. In this role, my duties include administering county, state, and federal elections; maintaining accurate voter rolls; and providing voter registration, campaign finance, and turnout information to the public. I also provide educational programs in schools and to community groups and offer mobile voter registration.

4. The Supervisors of Elections administer elections in each county in Florida, which includes assigning voters to districts, preparing ballots, recruiting and training elections officials, conducting in-person and absentee voting, and tabulating and canvassing results.

5. On August 23, 2022, Florida is scheduled to hold its 2022 statewide

primary election.

6. At this time, I understand that Florida's legislature and Governor have not reached agreement on a new congressional district plan following the delivery of the 2020 Census data to be used for the 2022 statewide primary elections.

7. In order for the primary election to proceed on August 23, 2022, numerous tasks must be completed, many of which cannot be started until initial tasks are finished, and a number of interim deadlines must first be met to prepare for the election. These preparations cannot be completed absent a final congressional district plan.

8. For example, Florida election officials must have adequate time to prepare and mail absentee ballots to members of the armed services, their dependents overseas, and other citizens residing overseas, and those voters must also have adequate time to return their completed ballots. Under the federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), absentee ballots that include elections for federal office must be transmitted no later than 45 days before a primary election. *See* 52 U.S.C. § 20302(a)(8)(A). The deadline to transmit absentee ballots pursuant to UOCAVA is therefore July 9, 2022.

9. Ballot information must be sent to the printer in advance of the July 9, 2022 UOCAVA deadline for transmittal of absentee ballots. In my experience, vendors used to print ballots typically require approximately two to three weeks to

create and ship ballots. The Supervisor of Elections must then proofread and conduct a quality control review before ballots are finalized for transmittal to voters. Three weeks before the July 9, 2022 UOCAVA deadline is June 18, 2022.

10. Ballots cannot be created before candidates for office are determined. By statute, the names of all duly qualified candidates for election must be certified to Supervisors of Elections within seven days after the closing date for qualifying. Fla. Stat. § 99.061(6). The qualifying period in Florida for candidates for Congress, State Senator, and State Representative, among other candidates, is set to begin on June 13, 2022 and to close on June 17, 2022. Fla. Stat. § 99.061(9). Thus, the list of qualified candidates must be certified by no later than June 24, 2022 (within seven days of June 17, 2022). By June 24, 2022 at the latest, absentee ballots should be sent to the printer in order to allow sufficient time to meet the July 9, 2022 UOCAVA deadline.

11. Redistricting requires elections staff to complete a process of assigning voters to new districts prior to creating and preparing ballots for the election and before sending ballots to be printed. My staff and I cannot begin this process unless we have received files containing census block data for each district for all maps to be used.

12. After receiving the census block information, my staff uses the files and mapping software to update the districts that are assigned to each voter

address.

13. Every voter must also be coded with a State House, State Senate, and congressional district (among others) in a voter registration system that is separate from the mapping software system. Information in the mapping software system must be transmitted to the information in the voter registration system. This alignment is not an entirely automated process. If the system detects exceptions, voter information must be reviewed manually on an individual voter-by-voter basis to resolve any issues. In the past, there have been several thousand exceptions requiring manual review in connection with a given election, which involves a time-intensive review process.

14. The amount of time required to complete this process corresponds with the number of district boundaries that are redrawn within the counties. In this case, counties will undergo changes to their districts following decennial redistricting—including state, legislative, congressional, and local jurisdiction districts—and a number of counties are likely to have newly drawn district boundaries within their counties' borders.

15. Once new congressional districts are set, the census block files must also be used to manually align precincts to the new districts. New precincts must be approved by the Board of County Commissioners. That body meets every two weeks.

16. After the close of the candidate filing period, elections officials must also create and print ballots, review the ballots for potential errors, and then prepare and test voting equipment.

17. Ballot preparation and proofing ballots cannot begin until after the proper geographic boundaries for voting districts are set, each voter record is assigned to the correct districts, the candidates are known, and the candidate-filing period closes. The process of generating and proofing ballots is complex and involves multiple technical systems and quality-control measures. This process includes confirming candidates for each race and proofing each ballot for content and accuracy.

18. Based on my experience, I estimate that it will take a minimum of six to eight weeks from the date that a new congressional district plan is enacted and census block files are delivered to counties in Florida to complete the numerous tasks described above.

19. As such, a new congressional districting map is needed approximately six to eight weeks prior to the June 24, 2022 deadline for certification of all duly qualified candidates, at which time ballots would need to be submitted to be printed to meet the July 9, 2022 UOCAVA deadline. Accordingly, a new congressional map needs to be in place between April 29, 2022 (8 weeks before June 24, 2022) and May 13, 2022 (6 weeks before June 24) to allow adequate time

to prepare for the election and meet the relevant election deadlines in advance of the primary election.

20. I understand that the Florida Secretary of State has stated that the deadline for the State to have a new congressional map is June 13, 2022. It will be impossible to perform the tasks of creating new precincts and assigning districts to all voters in time to meet the necessary deadlines for printing ballots, complying with the July 9, 2022 UOCAVA deadline, and preparing for the August 23, 2022 primary if a new map is not finalized until June 13, 2022.

21. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of April, 2022

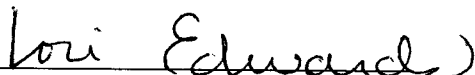

Lori Edwards

EXHIBIT 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

COMMON CAUSE FLORIDA, et al.,

Plaintiffs, and

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

Intervenor-Plaintiffs,

v.

LAUREL M. LEE, in her official
capacity as Florida Secretary of State,

Defendant.

Case No. 4:22-cv-00109-AW-MAF

**INTERVENOR-PLAINTIFFS' OPPOSITION TO DEFENDANT
SECRETARY'S LEE'S MOTION TO STAY**

Intervenor-Plaintiffs Michael Arteaga, Leni Fernandez, Andrea Hershorin, Jean Robert Louis, Melva Bentley Ross, Denny Troncoso, Brandon Nelson, Geraldine Ware, and Nina Wolfson ("Arteaga Intervenors") file this opposition to the Defendant Secretary Lee's ("Secretary") Motion to Stay these proceedings (ECF No. 62).

INTRODUCTION

As of this filing, Florida is one of only three states in the country without a congressional redistricting plan in place. Nevertheless, the Secretary asks this Court to wait three weeks before taking any action to see whether the Legislature and Governor DeSantis (“Governor”) can compromise on a redistricting plan. Should the special session fail to produce a congressional plan, the Secretary further asks this Court to wait several more weeks before taking action to see if a state court can timely remedy the impasse.

The Secretary’s proposal is untenable. Were this Court to wait to move forward until both the political branches *and* state court system had failed to implement new constitutional maps in time for the 2022 elections, there is a good chance there would not be time for this Court to undertake the complicated work of crafting the necessary remedy without moving election deadlines. While the Secretary appears willing to take that risk, this Court should not. The citizens of Florida should not be subjected to such a gamble.

Ample precedent supports this Court asserting jurisdiction and proceeding with this case while the state continues to attempt to resolve the impasse itself. While *Grove v. Emison*, 507 U.S. 25 (1993), instructs that federal courts should give states the opportunity to timely redistrict, *Grove* and other federal precedent hold that this Court may establish a deadline by which it will adopt a plan if the state has not acted.

And because election dates are fast approaching, the path that will best protect the rights of Florida voters is to implement a scheduling order, hear from the parties on proposed remedial plans, and prepare to adopt a congressional plan should the state fail to do so.

BACKGROUND

I. Status of Congressional Impasse

Approximately three weeks ago, at the commencement of this action, the Plaintiffs and the Arteaga Intervenors alleged that the Florida Legislature and Governor were likely to reach an impasse over congressional redistricting. *See* ECF No. 1, 10-1. After that filing, the Legislature waited several weeks to send its congressional plan to the Governor for his signature. When the plan did finally reach the Governor, he vetoed it within hours, announcing at a press conference that he believed the plan to be unconstitutional for its inclusion of a Black opportunity district in North Florida.¹ While a special legislative session is scheduled for April 19-22, that provides little assurance that a map will be adopted. Indeed, throughout the first session, Florida's legislative leaders explicitly rejected the Governor's proposed map, as the two political branches failed to reach agreement upon the

¹ *See* PBS, *Florida Gov. DeSantis vetoes Republican-drawn congressional maps* (Mar. 29, 2022), available at: <https://www.pbs.org/newshour/politics/florida-gov-desantis-vetoes-republican-drawn-congressional-maps>.

inclusion of a Black opportunity district in North Florida.² The Arteaga Intervenors are aware of no public statements by Florida’s legislative leaders indicating that they intend to ignore the requirements of the Florida Constitution’s Fair District Amendments in the special session, as the Governor’s preferred map would require.

II. Status of State Court Action

The Arteaga Intervenors filed their state court complaint on March 11, 2022. Counsel for the Secretary and Attorney General Moody refused to accept service. On April 1, three weeks after the case was filed, and shortly after the parties conducted their meet-and-confer in this case, counsel for the Secretary appeared and answered the complaint. In her Answer, the Secretary asserted it would be improper for the state court to take any action unless and until the special session fails to produce a map. **Ex. 1** (Secretary’s Answer).

As of this filing, counsel for Attorney General Moody still has not appeared, still has not answered the complaint, and still has not indicated whether she will answer before the date she is required to do so, which is April 20, 2022. There is no case schedule in place, and there has not yet been a case management conference. The first such conference is scheduled for Tuesday, April 12.

² *See, e.g.*, Memo from Chair Rodrigues Regarding an Update on State Legislative and Congressional Redistricting (Feb. 28, 2022) (explaining the importance of ensuring “non-diminishment in the ability of racial and language minorities in that district to elect representatives of their choice”), available at: <https://www.floridaredistricting.gov/pages/senate-committee>.

III. Congressional Primary Deadlines

Florida's congressional primary is August 23, 2022. Federal law requires states to mail military and overseas ballots 45 days in advance of an election, *see* 52 U.S.C. § 20302 (8), which means that primary ballots must be sent to those voters no later than July 9, 2022. Before ballots can be mailed, they must also be printed and assembled to be sent to the correct voter, and election officials must engage in geocoding to assign voters to the correct districts.

Aspiring congressional candidates in Florida may qualify for the ballot either by filing a minimum number of petition signatures or by paying a filing fee. The deadline to file petitions is May 16, 2022. *See* Fla. Stat. § 99.095. In an apportionment year, such as this one, a candidate can collect signatures from voters residing anywhere in the state. *See* **Ex. 2** at 4 (Florida Candidate Petition Handbook). In an apportionment year, the window to qualify by paying a filing fee is later than usually prescribed in non-apportionment years—this year, June 13 to June 17, 2022.³ *See* Fla. Stat. § 99.061(9). The state may begin accepting such qualifying forms 14 days before the window opens, *id.* at § 99.061(8), which is May 30, 2022.

³ In non-apportionment years, the qualifying window for federal candidates is 120 to 116 days before the primary, instead of 71 and 67 days before the primary, as it is this year. *See* Fla. Stat. §§ 99.061(1), (9).

ARGUMENT

I. Precedent permits this Court to establish a schedule to be prepared to remedy the impasse now.

While the Secretary boldly proclaims that *Grove v. Emison*, 507 U.S. 25 (1993), requires this Court to stay this case and sit on its hands while the state attempts to remedy the impasse, *Grove* does no such thing. If anything, *Grove* instructs that federal courts should be prepared and ready to remedy impasse when called to do so.

It is true that *Grove* imposes limits on the timing and scope of the *remedies* that federal courts may provide in the redistricting process, but it does not handcuff courts in the way the Secretary suggests. In *Grove*, the U.S. Supreme Court explained the federal district court overstepped its bounds by “actively prevent[ing] the state court from issuing its own congressional plan,” even though the state court at issue—the Minnesota Special Redistricting Panel—was prepared to timely act. 507 U.S. at 26. And that was indeed what happened. The district court at issue in *Grove* repeatedly took affirmative action that halted the state proceedings, including by: (1) *staying* the Minnesota Special Redistricting Panel’s proceedings, (2) *enjoining* the parties to the state proceedings from implementing the Minnesota Panel’s remedial redistricting plan, and (3) proceeding to *adopt* its own districting plans even when the state court was otherwise ready to timely implement a plan. *Id.* Under those circumstances, it was not surprising that the U.S. Supreme Court held

that the district court had improperly “tied the hands” of a state that was willing and able to redistrict. *Grove* thus stands for the principle that federal courts should not proceed to actually reapportion a state’s political boundaries until the state has failed to timely redistrict.

The Arteaga Intervenors are not asking this Court to do anything remotely similar to what the district court did in *Grove*. Instead, they are simply asking the Court to adopt a briefing and hearing schedule and be prepared to act if the state fails to timely redistrict, which is now a distinct possibility. Setting a briefing schedule or hearing date will not interfere with the political process or state judicial process. The Legislature and the Governor remain free to compromise and enact a new redistricting plan during the pendency of this litigation, and the state court is free to set the wheels in motion on a state judicial resolution, though it has yet to do so.

If anything, *Grove* suggests this Court should move forward now. *Grove* instructed that “[i]t would have been appropriate for the District Court to establish a deadline by which, if the Special Redistricting Panel had not acted, the federal court would proceed” to reapportion the state. 507 U.S. at 36. *Grove*’s predecessor, *Scott v. Germano*, 381 U.S. 407 (1965), similarly encouraged federal courts to take ownership of these kinds of disputes when called on to do so. In *Germano*, when it was not clear whether Illinois would produce timely redistricting plans, the U.S. Supreme Court remanded the case to the district court with explicit instructions to

(1) “enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate”; (2) “retain jurisdiction of the case”; and (3) “in the event a valid reapportionment plan for the State Senate is not timely adopted . . . enter such orders as it deems appropriate, including an order for a valid reapportionment plan[.]” 381 U.S. at 409-10.

And for decades, consistent with this precedent, federal courts have done precisely what is asked of the Court here: establish a schedule to resolve an impasse and be prepared to act if the state fails to timely do so itself. *See, e.g., Favors v. Cuomo*, 866 F. Supp. 2d 176 (E.D.N.Y. 2012); *Smith v. Clark*, 189 F. Supp. 2d 503 (S.D. Miss. Jan. 15, 2002); *Prosser v. Elections Bd.*, 793 F. Supp. 859, 862 (W.D. Wis. 1992).

While the Secretary has argued that this Court should stay its hand until both the state political and judicial processes have irreversibly failed to redistrict, the Secretary’s approach would functionally preclude federal courts from remedying claims like this one, particularly because the State has asked the state court to not take any action until after the special session. Were this Court to wait to move forward until both the political branches *and* state court system had failed to implement new constitutional maps in time for the 2022 elections, there is a good chance there would not be time for this Court to undertake the complicated work of

crafting the necessary remedy. The stakes are too high for Florida voters and election administrators to take that risk. We are only two months away from the final qualifying deadline, and there is no congressional plan in sight. And as of this filing, Florida is one of only three states in the country without a congressional plan in place.⁴ Should this Court need to order a new congressional plan, it will need time to do so. Redistricting plans do not spring from thin air; they take time to develop, as this Court has already recognized in requesting recommendations for a special master.

While the Secretary has compared this case to one in Wisconsin, where a federal court panel did enter a stay while a state court proceeded to remedy impasse, Wisconsin's circumstances were markedly different. The Wisconsin federal case, *Hunter v. Bostelmann*, 3:21-cv-00512 (W.D. Wis.) (three judge panel), was convened in mid-August 2021 in light of Wisconsin's anticipated impasse. But the Wisconsin federal panel did not agree to stay the matter right away, even though it was asked to do so. *See id.* at ECF No. 26, 60. It did so in mid-November only after the Wisconsin Supreme Court had (1) fully accepted jurisdiction of the state court impasse action, (2) accepted briefing from the parties on the proper criteria for a new redistricting plan, and (3) set a briefing and hearing schedule that was set to conclude

⁴ *See* FiveThirtyEight, "The Latest With Redistricting," (Apr. 4, 2022) ("Only Florida, Missouri and New Hampshire have yet to approve a new map, and we could be waiting for a while: In all three states, stakeholders in the redistricting process are at odds about what kind of map to pass.").

six weeks before the date by which the Wisconsin Elections Commission had told the federal court it needed new maps.⁵ *See Ex. 3* (Wisconsin Supreme Court ordering simultaneous exchange of proposed plans in impasse dispute). The upshot is that the Wisconsin federal court would have had a six-week buffer to develop a remedial plan if the state court process failed. This Court does not have that luxury of time here.

II. The Court should establish a schedule that will allow it to remedy the impasse without imposing chaos on Florida’s election administrators.

As set out above, Florida’s congressional qualifying window (by filing fee) opens June 13 and closes June 17. As the Court has already recognized, it is not practical to ask candidates to wait until that window to learn of the contours of their potential districts and then make nearly instantaneous decisions on whether to run for Congress.

Even more importantly, however, Florida’s election administrators need time to prepare for the primary election. An August 23 primary requires election officials to send ballots to military and overseas voters no later than July 9. *See supra* at 5. As the Common Cause Plaintiffs describe in more detail, Florida’s election administrators must send ballots to the printers no later than June 18. And to send

⁵ The Wisconsin Elections Commission had previously explained it needed maps in place by March 1, 2022. *See* ECF No. 41 at 2, *Hunter v. Bostelmann*, 3:21-cv-00512 (W.D. Wis. Sept. 7, 2021). The Wisconsin Supreme Court’s briefing process was set to conclude by January 4, 2022, and oral argument was to take place in mid-January. *See Ex. 3*.

finalized ballots to the printers, the administrators need time to assign precincts to the appropriate congressional districts and perform other administrative tasks. To give election administrators at least some cushion and to minimize the possibility of costly errors, the Arteaga Intervenors recommend this Court adopt a congressional plan by mid-May 2022 based on the following schedule:

Date	Event
April 15	Parties' simultaneous exchange of proposed maps, briefs in support, and supporting expert reports, if any
April 22	Parties' simultaneous responses to proposed maps
April 25-29	Discovery window for expert depositions
May 2-4	Hearing
Mid-May	Court adopts congressional plan

This schedule provides for simultaneous exchange of maps and responses to those maps. A simultaneous exchange of proposed plans puts all parties on an equal playing field; courts adjudicating impasse disputes this redistricting cycle have required simultaneous exchanges precisely for this reason. *See, e.g., Ex. 3; Ex. 4* (Pennsylvania Supreme Court ordering simultaneous exchange of proposed plans in impasse dispute). The proposed schedule also provides a brief window for expert depositions, a hearing, and sufficient time for this Court to render a decision.

CONCLUSION

For the reasons stated above, the Court should deny the Motion to Stay and adopt the schedule set out above. Alternatively, if the Court stays this case until the

special session is over, it should order a briefing and hearing schedule that would take effect immediately after a special session fails to produce a congressional plan.

LOCAL RULE 7.1(F) CERTIFICATION

Undersigned counsel certifies that this memorandum contains 2,549 words, excluding the case style and certifications.

Dated: April 6, 2022

/s/ Frederick S. Wermuth

Frederick S. Wermuth
Florida Bar No. 0184111
Thomas A. Zehnder
Florida Bar No. 0063274
**KING, BLACKWELL, ZEHNDER
& WERMUTH, P.A.**
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwerthem@kbzwlaw.com
tzezhnder@kbzwlaw.com

John M. Devaney*
PERKINS COIE LLP
700 Thirteenth Street N.W., Suite 600
Washington, D.C. 20005
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
jdevaney@perkinscoie.com

Respectfully submitted,

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

Christina A. Ford
Florida Bar No. 1011634
Joseph N. Posimato*
Graham W. White*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
cford@elias.law
jposimato@elias.law
gwhite@elias.law

Counsel for Plaintiffs

*Admitted *Pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 6, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Frederick S. Wermuth

Frederick S. Wermuth

Florida Bar No. 0184111

Exhibit 1

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

MICHAEL ARTEAGA, et al.,

Plaintiffs,

v.

Case No. 2022 CA 000398

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

Defendants.

_____ /

**SECRETARY OF STATE LAUREL LEE’S
ANSWER AND AFFIRMATIVE DEFENSE**

Defendant Secretary of State Laurel Lee answers and asserts an affirmative defense to the Plaintiffs’ complaint for injunctive and declaratory relief. Unless specifically admitted, the Secretary denies each and every allegation in the complaint. The Secretary responds to the allegations in each numbered paragraphs of the complaint as follows:

Nature of the Action

1. Admit that Florida’s congressional districts are currently malapportioned. Deny that the Florida Legislature and Governor DeSantis will not reach a consensus concerning new congressional district maps; although Governor DeSantis has vetoed the Florida Legislature’s redistricting legislation, he called a special session to address redistricting. If the Florida Legislature and Governor DeSantis do not reach a consensus, admit that this court should declare the current maps malapportioned and implement new congressional district maps.

2. Admit.

3. Admit.

4. Admit.

5. Deny that the Florida Legislature and Governor DeSantis are unlikely to reach a consensus following the special session. Deny that Governor DeSantis's concerns regarding Congressional District 5 are "baseless." Admit that Governor DeSantis petitioned the Florida Supreme Court for an advisory opinion. The Secretary denies any other factual and legal allegations in this paragraph.

6. Admit that Governor DeSantis has commented on and vetoed the Florida Legislature's redistricting legislation. The Secretary denies any other factual and legal allegations in this paragraph.

7. Deny that the Florida Legislature and Governor DeSantis are unlikely to reach a consensus during the Florida Legislature's special session. The Secretary denies any other factual and legal allegations in this paragraph.

8. Deny that there is a high likelihood of an impasse. But admit that this Court should establish a schedule in the unlikely event that the Florida Legislature and Governor DeSantis cannot reach a consensus during the Florida Legislature's special session. The Secretary denies any other factual and legal allegations in this paragraph.

Jurisdiction, Parties, and Venue

9. Admit.

10. The Secretary is without knowledge of the allegations in this paragraph; therefore, she denies the allegations in this paragraph.

11. Admit.

12. Admit.

13. Admit that the Attorney General is Ashely Moody and that she is the chief legal officer of the State. The Secretary denies any other factual and legal allegations in this paragraph.

Factual Allegations

I.

14. Admit.

15. Admit.

16. Admit.

II.

17. Admit.

18. Admit.

19. Admit.

20. Admit.

21. Admit that the current congressional districts are malapportioned. The Secretary otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations; therefore, she denies them.

22. Admit.

23. Admit.

24. Admit.

25. Admit.

III.

26. Although Governor DeSantis has vetoed the Florida Legislature's redistricting legislation, he has called a special session to address redistricting. The Secretary denies any other factual and legal allegations in this paragraph.

27. Although Governor DeSantis has commented on and vetoed the Florida Legislature's redistricting legislation, he has called a special session to address redistricting. The Secretary denies any other factual and legal allegations in this paragraph.

28. Deny that Governor DeSantis's request for a Florida Supreme Court advisory opinion was an attempt to "derail" the redistricting process. Admit that Governor DeSantis proposed congressional district maps to the Florida Legislature and that the redistricting subcommittee received public testimony. The Secretary denies any other factual and legal allegations in this paragraph.

29. Although Governor DeSantis has vetoed the Florida Legislature's redistricting legislation, he has called a special session to address redistricting. The Secretary denies any other factual and legal allegations in this paragraph.

30. Although Governor DeSantis has vetoed the Florida Legislature's redistricting legislation, he has called a special session to address redistricting. The Secretary denies any other factual and legal allegations in this paragraph.

31. Although Governor DeSantis has vetoed the Florida Legislature's redistricting legislation, he has called a special session to address redistricting. Deny that the Florida Legislature and Governor DeSantis are unlikely to reach a consensus during the special session. The Secretary denies any other factual and legal allegations in this paragraph.

IV.

32. Admit that there is a need for a new congressional district map. But deny the assumption that the political branches of the Florida government will not agree on a new map. The Secretary denies any other factual and legal allegations in this paragraph.

33. Admit that there is a need for a new congressional district map. But deny the assumption that the political branches of the Florida government will not agree on a new map. The Secretary denies any other factual and legal allegations in this paragraph.

34. Admit that there is a need for a new congressional district map. But deny the assumption that the political branches of the Florida government will not agree on a new map. The Secretary denies any other factual and legal allegations in this paragraph.

35. Deny that a political deadlock is a near certainty. Admit that state court intervention is necessary if the Florida Legislature and Governor DeSantis reach an impasse after the special session. The Secretary denies any other factual and legal allegations in this paragraph.

Claims for Relief

Count I

36. The Secretary realleges and reincorporates by reference paragraphs 1 to 35.

37. The referenced constitutional provision and cases speak for themselves. Any remaining allegations are denied.

38. The referenced constitutional provision and cases speak for themselves. Any remaining allegations are denied.

39. Admit.

40. Admit.

41. Admit that the current congressional districts are malapportioned. The Secretary otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations; therefore, she denies them.

a. Admit if the Florida Legislature and Governor DeSantis reach an impasse after the special session; otherwise deny.

b. Admit if the Florida Legislature and Governor DeSantis reach an impasse after the special session; otherwise deny.

c. Admit if the Florida Legislature and Governor DeSantis reach an impasse after the special session; otherwise deny.

d. Admit if the Florida Legislature and Governor DeSantis reach an impasse after the special session; otherwise deny.

Count II

42. The Secretary realleges and reincorporates by reference paragraphs 1 to 35.

43. The referenced statute speaks for itself. Any remaining allegations are denied.

44. Admit.

45. Admit that the current congressional districts are malapportioned. The Secretary otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations; therefore, she denies them.

a. Admit if the Florida Legislature and Governor DeSantis reach an impasse after the special session; otherwise deny.

b. Admit if the Florida Legislature and Governor DeSantis reach an impasse after the special session; otherwise deny.

c. Admit if the Florida Legislature and Governor DeSantis reach an impasse after the special session; otherwise deny.

d. Admit if the Florida Legislature and Governor DeSantis reach an impasse after the special session; otherwise deny.

Affirmative Defense: Ripeness

1. The complaint is not ripe for adjudication because the political branches are not yet at an impasse.

2. On March 29, 2022, Governor DeSantis vetoed the congressional map presented to him.

3. On March 29, 2022, Governor DeSantis called for a special session of the Florida Legislature for the sole purpose of enacting another congressional map.¹

4. The special session will convene from April 19, 2022 to April 22, 2022.

5. The leaders of the Florida House of Representatives and Florida Senate have stated that “[o]ur goal is for Florida to have a new congressional map passed by the Legislature, signed by the Governor, and upheld by the court if challenged. Therefore, it is incumbent upon us to exhaust every effort in pursuit of a legislative solution. We look forward to working with our colleagues and Governor DeSantis during the upcoming special session on a congressional map that will earn the support of the legislature and the governor and fulfill our constitutional obligation for the 2022 redistricting process.”²

6. Unless and until the political branches reach an impasse, the matter is not ripe for adjudication.

¹ Proclamation, Fla. Exec. Office of the Gov. (Mar. 29, 2022), <https://www.flgov.com/wp-content/uploads/2022/03/SLA-BIZHUB22032913200.pdf>.

² Joint Statement: Florida Senate President Wilton Simpson, House Speaker Chris Sprowls on 2022 Redistricting, Fla. Leg. (Mar. 29, 2022), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?DocumentType=Press%20Release&FileName=823>.

DATED this 1st day of April, 2022.

Bradley R. McVay (FBN 79034)
brad.mcvay@dos.myflorida.com
Ashley Davis (FBN 48032)
ashley.davis@dos.myflorida.com
stephanie.buse@dos.myflorida.com
FLORIDA DEPARTMENT OF STATE
R.A. Gray Building
500 S. Bronough St.
Tallahassee, FL 32399
(850) 245-6536

/s/ Mohammad O. Jazil
Mohammad O. Jazil (FBN 72556)
mjazil@holtzmanvogel.com
Gary V. Perko (FBN 855898)
gperko@holtzmanvogel.com
Michael Beato (FBN 1017715)
mbeato@holtzmanvogel.com
zbennington@holtzmanvogel.com
HOLTZMAN VOGEL BARAN TORCHINSKY &
JOSEFIAK
119 S. Monroe St. Suite 500
Tallahassee, FL 32301
(850) 270-5938

Counsel for the Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all parties of record through the Florida Courts E-Filing Portal, on this 1st day of April, 2022.

/s/ Mohammad O. Jazil
Mohammad O. Jazil (FBN 72556)

Exhibit 2

2022 Candidate Petition Handbook

Florida Department of State
Division of Elections
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, FL 32399-0250
850.245.6280



Table of Contents

Chapter 1: Introduction	1
Chapter 2: Forms	2
Chapter 3: Collecting Signatures	4
Chapter 4: Verifying Petitions	8
Chapter 5: Fees and Undue Burden Oath.....	15
Chapter 6: Certification to the Division of Elections	17
Appendix A: Table - 2022 Petition Signatures Required for Circuit Court Judge, State Attorney and Public Defender	21
Appendix B: DS-DE 9 Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates.....	22
Appendix C: DS-DE 19A Affidavit of Undue Burden - Candidate	23
Appendix D: DS-DE 104 Candidate Petition Form	24
Appendix E: Legal References and Rules Cited	25

Chapter 1: Introduction

This handbook explains the process for collecting signatures to qualify as a candidate by petition method. Information herein applies only to candidate petitions. It does not apply to initiative petitions.

The information contained in this publication serves only as a reference guide. To the extent that this handbook covers material beyond that contained in law or rule, the Division of Elections offers such material to candidates merely as guidelines. This publication is not a substitute for the Florida Election Code or applicable constitutional and rule provisions, the text of which controls.

The following statutes and rules should be reviewed in their entirety:

- Section 99.095, Florida Statutes
- Section 99.09651, Florida Statutes
- Section 99.097, Florida Statutes
- Rule 1S-2.045, Florida Administrative Code

(See Appendix E)

All applicable forms and publications are publicly available on the Division of Elections' website at: dos.myflorida.com/elections/forms-publications.

Please direct questions to the Bureau of Election Records help desk at **850.245.6280**.

Chapter 2: Forms

What petition form should be used to obtain signatures from registered voters?

All candidates¹, except Presidential candidates, must use **Form DS-DE 104, Candidate Petition Form**.

The most current versions of petition forms are available on the Division of Elections' website.

Petitions on previous versions of Form DS-DE 104 are not valid.

A separate petition is required for each candidate.

Who is responsible for reproducing the petition form?

Candidates are responsible for reproducing the petition form.

Can the petition form be altered?

Form DS-DE 104 must be reproduced as is without any change to text or format with the following limited exceptions:

- **Form DS-DE 104** may be reduced or enlarged proportionally in size as a whole document. However, the form cannot be less than 3 inches by 5 inches and no larger than 8 1/2 inches by 11 inches.
- **Form DS-DE 104** may be included within a larger advertisement, provided the form is clearly defined by a solid or broken border.
- Candidates may use color highlights, circles, X's, arrows, or similar markings that draw attention to items on the form, as well as using cross-outs, line-throughs, or similar markings on items on the form that are not applicable to their candidacy.
- Candidates may translate petition forms into a minority language at their own expense. Petition forms may be two-sided with English on one side and a minority language on the other. However, the double-sided petition may be signed by only one person. If both sides of the form are completed, the Supervisor of Elections will check only the English side of the form for signature verification.

¹ Municipal candidates may use a different form if provided for by city charter or ordinance.

Is a disclaimer required on a petition?

No. A petition is not a political advertisement as defined in Section 106.011, Florida Statutes. However, if the petition is included as a part of a larger advertisement that is a political advertisement, the political advertisement will need a disclaimer. A missing disclaimer on such an advertisement does not invalidate an otherwise properly executed petition but does constitute a violation of Chapter 106, Florida Statutes.

Chapter 3: Collecting Signatures

How many signatures are needed?

The requisite number of signatures for qualifying by petition method for specified offices in a year of apportionment such as 2022 is different than other years. See s. 99.09651, F.S., for formula for candidates for U.S. House of Representatives, State Senate, and State House of Representatives. Petition signatures for these offices may be obtained from any registered voter in Florida regardless of party affiliation or district boundaries. See s. 99.095(1)(d), F.S., for formula for candidates for county and district offices. The requisite number of signatures for these offices may be obtained from any registered voter in the respective county, regardless of district boundaries.

- United States Senator – 144,419 signatures
- Representative in Congress – 2,568 signatures
- Governor – 144,419 signatures
- Attorney General – 144,419 signatures
- Chief Financial Officer – 144,419 signatures
- Commissioner of Agriculture – 144,419 signatures
- State Senator – 1,798
- State Representative – 599
- Circuit Court Judge, State Attorney (6th and 20th Circuits) and Public Defender (20th Circuit) – (see [Appendix A](#))
- Special District Candidate – 25 signatures

Note: 2022 is a year of apportionment, which occurs every ten years. In election years other than a year of apportionment, the general requirement is to obtain signatures equal to 1% of the registered voters in the geographical area for the last general election, with the exception of special district candidates.

When can a candidate start collecting signatures on petitions?

A candidate can collect signatures as soon as a completed **Form DS-DE 9**, Appointment of Campaign Treasurer and Designation of Campaign Depository, is filed with the filing officer (see [Appendix B](#)). Petitions signed prior to the date Form **DS-DE 9** is filed with the filing officer are **not** valid.

- **Exception:** Special district candidates are **not** required to file Form **DS-DE 9** if they do not collect contributions or make expenditures other than the filing fee or signature verification fee.
- **Exception:** Federal candidates do **not** file Form **DS-DE 9**.

How long are signed petitions valid?

Signatures for all candidates are valid only for the next general election qualifying period for that office immediately following the filing of the **DS-DE 9**.

Example:

Candidate A is a 2024 State Representative candidate. The candidate may not begin collecting signatures until after the 2022 qualifying period.

Example:

Candidate B is a 2022 State Representative candidate. In the year of apportionment, petitions can be collected from any Florida voter regardless of district boundaries. In September 2021, a special election is called for this office with qualifying set in 2021. Candidate B wants to change to the special election. Candidate B may transfer only those petitions signed by voters within the district for the special election.

Candidate Petition Handbook

Example:

Candidate C is a 2022 State Representative candidate. In September of 2021, a special election is called for this office. Candidate C wants to qualify for the special election but does not want to transfer the petitions already signed to the special election. Candidate C may accomplish this by filing a new Form DS-DE 9 and opening an entirely separate campaign depository for the special election. Candidate C must start anew with contributions and petition gathering for the special election while maintaining the former campaign account for the general election. Petitions for the special election must be signed by voters within the district only. Candidate C may not use the funds or petitions previously collected for the special election. Candidate C may not use the funds or petitions gathered in the special election for the subsequent general election.

Example:

Candidate D is a 2024 County Commission candidate. The incumbent for that office resigns to run for another office. The office will now appear on the 2022 ballot for a term to end in 2024. Candidate D may choose the following options:

1. Remain a candidate for the 2024 County Commission and keep petitions.
2. Change elections from 2024 to 2022 and transfer petitions to the 2022 election.
3. Both - Remain a 2024 candidate and retain petitions. File a separate DS-DE 9 and separate campaign account for the 2022 candidate. (See page 4 regarding petitions during the year of apportionment.)

Where can candidates collect signatures on petitions?

The Election Code does not govern where signatures can be collected. The candidate should check with the property owner.

Can a candidate pay someone to collect petitions?

Yes. Nothing in the Election Code prohibits a candidate from paying any person to collect petitions. See Chapter 5: Fees and Undue Burden Oath for information on what happens when an undue burden oath is filed.

May a voter revoke their signature on a petition after receipt of the petition by the Supervisor of Elections?

No authority exists for a voter who has signed a petition to revoke their signature after it has been received by the Supervisor of Elections. (See Rule 1S-2.045(4)(d), *Florida Administrative Code*.)

Chapter 4: Verifying Petitions

Where are petitions submitted?

Signed petition forms are submitted for verification to the Supervisor of Elections in the county in which the voter is registered.

It is the responsibility of the candidate to ensure that the signed petition form is properly filed with the Supervisor of Elections of the county in which the signer is a registered voter. In the case of a misfiled petition, the filing date of the petition is the date such petition is filed with the proper county. If the Supervisor of Elections determines that the signer of a petition is not registered in their county, the supervisor shall notify the candidate that the petition has been misfiled, and shall return the petition to the candidate so that it can be refilled.

When is the deadline for submitting petitions to the Supervisor of Elections?

No later than noon on:

- **March 28, 2022** – Circuit Court Judge, State Attorney (6th and 20th Judicial Circuits), and Public Defender (20th Judicial Circuit)
- **May 16, 2022** – U.S. Senator, Representative in Congress, Governor, Attorney General, Chief Financial Officer, Commissioner of Agriculture, State Senate, State Representative, County, School Board, and Special District

Is this petition valid?

... if the petition is signed and dated before the filing date of Form DS-DE 9?

A petition signed and dated before the filing date of Form DS-DE 9 is invalid (except for federal candidates and special district candidates who have not collected contributions and whose only expense is the signature verification fee or filing fee). Form DS-DE 9 is not valid until filed (received) by the qualifying officer.

... if the petition is missing a required group, seat or district designation?

In the year of apportionment, any candidate for *county or district* office seeking ballot position by the petition process may obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries. (Section

Candidate Petition Handbook

99.095(2)(d), Florida Statutes) - Incorrect or lack of district designation on the petition will not invalidate the petition during year of apportionment. (*Exception – Judicial Candidate petition requirements do not change.*)

Note: Petitions collected for elections outside of the year of apportionment for an office that requires a group, seat or district designation, must contain the designation or it is invalid.

... if a candidate changes the office that they are running for?

In the year of apportionment, incorrect or lack of district designation on the petition will not invalidate the petition for any candidate for *county or district* office seeking ballot position by the petition process. (*Exception – Judicial Candidate petition requirements do not change.*)

Note: For petitions collected for elections outside of the year of apportionment, if a candidate changes the office that they are running for, any previously submitted petitions are not valid for the new office. This includes changing seats, groups, or districts.

Example:

Changing from County Commissioner, Seat 1 to County Commissioner, Seat 5 in the year of apportionment will not invalidate all previously verified petitions.

Example:

Changing from Circuit Court Judge, 17th Judicial Circuit, Group 1, to 17th Judicial Circuit, Group 5, will invalidate all previously verified petitions.

... if a candidate changes election years?

If a candidate changes from the 2022 election to the 2024 election, the petitions verified for the 2022 qualifying period will not be valid for the 2024 election.

... if a candidate changes to an intervening special election?

If a candidate changes from a regularly scheduled election to an earlier, intervening special election being held for that office, the petitions verified for the regular election that are from voters *within the county or district* are valid for the special election.

. . . if a candidate elects not to participate in an intervening special election?

If there is an earlier, intervening special election and the candidate decides not to participate in the special election, any petitions verified prior to the special election will remain valid for the regularly scheduled election.

. . . if a candidate's party affiliation on the petition is not the same as the party affiliation listed on the candidate's Form DS-DE 9?

The party affiliation listed on the petition must match the party affiliation listed on Form DS-DE 9, or if NPA is listed on the petition, the DS-DE 9 must indicate NPA. If they do not match, the petition is invalid.

ATTENTION: Recent law (s. 11 of Chapter 2021-11, Laws of Florida) requires a person seeking nomination as a candidate of a political party to be a member of that political party for the 365 days BEFORE the beginning of the applicable qualifying period. Additionally, the law requires a person seeking to qualify for office as a candidate with no party affiliation to not be a member of any political party for the 365 days BEFORE the beginning of the applicable qualifying period.

The candidate's party affiliation as indicated in their registration records is irrelevant and has no bearing on the validity of the petitions. The candidate's voter registration party affiliation does not become an issue until such time as they file qualifying documents during the qualifying period.

Example 1 – Invalid Petition:

Candidate A files Form DS-DE 9 indicating that they are running as a Republican candidate. Their petition forms also indicate that they are running as a Republican candidate. After submitting a number of petitions for verification, Candidate A submits a new DS-DE 9 indicating that they are running as a Democratic candidate. All previously verified petitions will not be eligible for qualifying as a Democratic candidate.

Candidate Petition Handbook

Example 2 – Valid Petition:

Candidate B files Form DS-DE 9 indicating that they are running as a Republican candidate. Their petition forms also indicate that they are running as a Republican candidate. Candidate B's voter registration party affiliation is Democrat. After submitting a number of petitions for verification, Candidate B changes their voter registration party affiliation to Republican. All petitions verified prior to Candidate B's change in voter registration remain valid. (See Party Affiliation on page 10 – Attention: Recent Law.)

Example 3 – Valid Petition:

Candidate C circulates petitions as an NPA candidate and is registered as a voter with party affiliation. As long as Form DS-DE 9 indicates that the candidate is running with no party affiliation, the petitions are valid. (See Party Affiliation on page 10 – Attention: Recent Law.)

Example 4 – Invalid Petition:

Candidate D files Form DS-DE 9 indicating that they are running as a Republican candidate. After they have begun collecting signatures, the candidate files a new DS-DE 9 changing from a Republican candidate to an NPA candidate. The petitions indicating that the candidate is a Republican candidate are no longer valid and do not count towards the total amount needed to qualify as a petition candidate. (See Party Affiliation on page 10 – Attention: Recent Law.)

Example 5 – Valid Petition:

Candidate E circulates petitions for a nonpartisan office but is registered as a voter with party affiliation. As long as the petition indicates that the candidate is running for a nonpartisan office, the petitions are valid.

Example 6 – Valid Petition:

Candidate F changes party affiliation on their voter registration record while running for a nonpartisan office. If the candidate is running for a nonpartisan office, changing their voter registration party affiliation will have no effect on previously verified petitions.

. . . if a candidate puts their party affiliation on a petition for a nonpartisan office?

A candidate for a nonpartisan office must check the block that indicates “Nonpartisan” on the petition when collecting petitions for a nonpartisan office. While the candidate may be a member of a party and still run in a nonpartisan race, they must collect petitions as a nonpartisan candidate and indicate this on the petition. If a nonpartisan candidate indicates that they are running as a party affiliated candidate, it will invalidate the petitions.

Note: If the petition indicates conflicting or incorrect information regarding the candidate’s status as a nonpartisan, no party affiliated, or party affiliated candidate, the petition is invalid.

. . . if the petition is signed by a voter who is not registered in the geographical area represented at the time of signing or verification?

In the year of apportionment, any candidate for *county or district* office seeking ballot position by the petition process may obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries. (Section 99.095(2)(d), Florida Statutes) - Incorrect or lack of district designation on the petition will not invalidate the petition during year of apportionment. (*Exception – Judicial Candidate petition requirements do not change.*)

If a petition is signed by a voter who is not registered in the geographical area represented, it is not valid for that county. Form DS-DE 104 requires the person to attest that they are a registered voter in said “county and state” at the time a person signs the petition. Thus, at the time of signing, the person must have been a registered voter in the county. Additionally, Rule 1S-2.045, Florida Administrative Code, states a petition is invalid if the “petition is signed by a voter who is not a registered voter in the county, district, or other geographical area represented by the office sought unless otherwise specified in Sections 99.095 and 99.09651, Florida Statutes, at both the time of signing and verification of the petition.”

. . . if the voter signs more than one petition for the same candidate?

Only one candidate petition per voter per candidate may be verified as valid.

When a supervisor is confronted with a situation where the same voter signs two or more candidate petitions for the same candidate for the same office, only one petition may be validated. For example, if the first petition submitted by the voter is valid, it remains valid even if a second petition by the same voter is submitted contrary to the above statute; however, the second petition may not be validated. The supervisor must ensure that only one petition per voter per candidate is counted as valid. Under Section 104.185, Florida Statutes, a person who knowingly signs a candidate petition more than one time for a

Candidate Petition Handbook

candidate commits a misdemeanor of the first degree. If the supervisor believes the voter or candidate violated the above statute by the submission of more than one petition per voter per candidate, the supervisor may file an elections fraud complaint with the Division of Elections or refer the matter to the local state attorney.

A voter may sign petitions for different candidates in the same race. There is nothing in the Election Code that prohibits a voter from signing petitions for more than one candidate in the same race or election.

. . . if the petition form is signed by an inactive voter?

A petition signed by an inactive voter is valid as long as it meets all other requirements. A voter's active or inactive status is immaterial.

. . . if the petition form is incomplete?

See Rule 1S-2.045(5)(f), Florida Administrative Code, for details on what information must be on the petition.

. . . if the petition is prefilled by the candidate?

The only entries that must be filled in by the voter are the signature and the date. Therefore, a candidate or petition gatherer is allowed to prefill all other information.

. . . if the petition is dated after the date the candidate submits the petition to the supervisor?

Rule 1S-2.045(5)(f), Florida Administrative Code, requires that the petition form contain "the date the voter signed the petition as recorded by the voter." If the date has not occurred, or occurred after the date the supervisor receives the petition, the voter obviously could not have signed the petition on that date, and it should not be counted as valid.

. . . if the voter with a public records exemption signs the petition?

No special processes apply when voters with public records exemptions sign petition forms. Like any other voter, if the voter with a protected address wants to sign the petition, the voter may elect to place a business address or some other address. If the voter lists an address other than the legal residence where the voter is registered, the supervisor must treat the petition as if the voter had listed the address where the voter is registered.

. . . if the petition does not have a disclaimer?

A petition does not meet the definition of a political advertisement as defined in Section 106.011, Florida Statutes (as it does not expressly advocate the election of a candidate). Thus, on its own, a petition need not contain a disclaimer. However, if the petition is included as a part of a larger advertisement that does meet the definition of a political advertisement, the political advertisement would need a disclaimer. A missing disclaimer on such an advertisement does not invalidate an otherwise properly executed petition but does constitute a violation of Chapter 106, Florida Statutes.

. . . if the petition does not have the voter's original signature?

Rule 1S-2.045(5)(f)4., Florida Administrative Code, provides that the Supervisor of Elections shall not verify a signature on a petition unless it contains the voter's original signature. Thus, copies of petitions, electronic submission (such as email), or petitions with electronic signatures are not valid.

. . . if a candidate is not registered to vote in the geographical area represented by the office sought?

Only the voter's registration status affects the validity of the petition. The candidate's eligibility for office has no bearing on the validity of the petitions.

. . . if the petition contains a shortened version of a political party's name in the block that asks for the name of the political party?

If the supervisor can determine with certainty to which party the shortened version refers, the petition should be verified.

Example:

Form DS-DE 9 indicates that the candidate is running as a Republican candidate. The petition has the acronym RPOF in the name of political party block. This would be acceptable as there is only one party commonly known as RPOF, i.e., Republican Party of Florida.

Chapter 5: Fees and Undue Burden Oath

What is the verification fee?

There is a fee of 10 cents per signature or the actual cost of checking such signatures, whichever is less, to be paid to the Supervisor of Elections for the cost of verifying the signature.

The fees must be paid in advance of verifying the petitions.

Who is responsible for the verification fee?

Section 99.097(4), Florida Statutes, provides that the Supervisor of Elections shall be paid in advance by the candidate. Thus, there are three ways to pay for the verification fees.

- The verification fee is paid with a campaign check or the campaign's petty cash.
- The candidate pays the verification fee with personal funds and reports it as an in-kind contribution or is reimbursed by the campaign.
- Someone else pays the verification fees and is reimbursed by the campaign.

Because the statute specifically states that the candidate shall pay the verification fee, ultimately, the candidate is responsible for paying the fee. If someone else pays the verification fee, it is the candidate's responsibility to ensure that the person is reimbursed by the campaign.

What is an undue burden oath?

If a candidate cannot pay the signature verification fee without imposing an undue burden on the candidate's resources, the candidate may file an undue burden oath (*see Appendix C*). Candidates must file an undue burden oath with each Supervisor of Elections' office where petitions will be submitted. The undue burden oath filed in each county must be properly notarized.

If any person is paid to solicit signatures on a petition, a candidate may not subsequently file an undue burden oath.

If an undue burden oath has been filed and payment is subsequently made to any person to

Candidate Petition Handbook

solicit signatures on a petition, the oath is no longer valid and a fee for all signatures previously submitted to the Supervisor of Elections and any that are submitted thereafter shall be paid by the candidate who submitted the oath.

If a candidate receives monetary contributions, as defined in Section 106.011, Florida Statutes, after the candidate has filed an undue burden oath and subsequently paid a signature gatherer, the monetary contributions must first be used to reimburse the Supervisor of Elections for any signature verifications fees that were not paid because of the filing of the oath.

Chapter 6: Certification to the Division of Elections

Which candidate petitions must be certified to the State?

Supervisors of Elections must certify the number of verified petitions for the following offices to the Division of Elections:

- U.S. Senate
- Representative in Congress
- Governor
- Attorney General
- Chief Financial Officer
- Commissioner of Agriculture
- State Senator
- State Representative
- Circuit Court Judge
- State Attorney
- Public Defender
- Multi-county Special District

Who determines whether the candidate's name is placed on the ballot?

After receipt of the certifications from the Supervisor of Elections, the Division of Elections will determine whether the required number of signatures has been obtained in order for the name of the candidate to be placed on the ballot and will notify the candidate and the supervisor. **(NOTE:** This certification only excuses you from paying the qualifying fee and any party assessment when seeking to qualify for this office. The certification does not excuse you from submitting other qualifying papers required by the Florida Election Code.)

Candidate Petition Handbook

How do I confirm the number of signatures certified to the Division of Elections?

To check the number of signatures certified to the Division of Elections, search for the candidate's name on the Candidate Tracking System.

Select an **Election** and click **View List**.

Candidates and Races

Candidate Tracking System

The Florida Department of State's Candidate Tracking System tracks candidates throughout the elections process presenting candidate status, campaign finance activity, personal photos and contact information. This information is updated regularly as candidates update their information.

The Division of Elections offers this tracking system as an unofficial reference of candidates for federal, state, and multicounty offices. Although federal candidates are required to register with the Federal Election Commission once they receive contributions or make expenditures in excess of \$5000, federal candidates who may or may not have reached this threshold but have notified the Division that they wish to have their name and information placed on the Division's website prior to qualifying for office are listed as a courtesy to the candidate and voters. For information on county or municipal candidates, please contact your local Supervisor of Elections.

General Election: 2022 Election

Special Election: 2022 Special: US House 20

Florida Division of Elections, Room 316, R.A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399-0260, 850.245.6200

Then click on the candidate's name.

Candidate Listing for 2022 General Election

Group: ALL Status: ALL (except WIT/DNQ)

Office: State Representative County: ALL

Last Name Like: Order by: Name

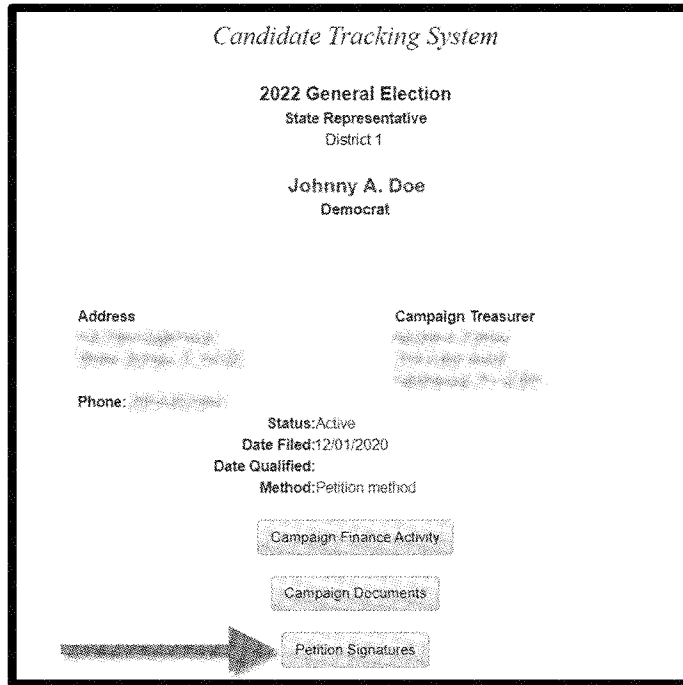
- You can narrow your search results for candidates by county. A search by county will provide a list of candidates running for offices in which all or a portion of the geographical area represented by the office is located in that county. For information on county or municipal candidates, please contact your local Supervisor of Elections.

State Representative

District	Candidate	Status	Primary	General
1	Doe, Johnny A. (DEM)	Active		

Candidate Petition Handbook

Click **Petition Signatures** at the bottom of the screen.



The Petition Signatures button will **not** appear on a candidate’s page if no petitions have been received and processed by the Supervisor of Elections.

The page will display the total required signatures, total verified, and the last date petitions were verified from a county to the Division of Elections.

Candidate's Petition Signatures

2022 General Election
State Representative
District 1

Johnny A. Doe
Democrat

Total Required	Total Verified
599	800

County	Last Verified Date	Total Verified Number
Escambia	07/30/2021	200
Okaloosa	07/10/2021	600

What do I do if I believe the totals are incorrect?

You will need to contact the Supervisor of Elections for the county in question.

What is the deadline for Supervisor of Elections to certify signatures to the Division of Elections?

No later than 5:00 p.m. on:

- **April 18, 2022** – Circuit Court Judge, State Attorney (6th and 20th Judicial Circuits), and Public Defender (20th Judicial Circuit)
- **June 6, 2022** – U. S. Senator, Representative in Congress, Governor, Attorney General, Chief Financial Officer, Commissioner of Agriculture, State Senate, State Representative, and Multi-county Special District

Certifications received from the Supervisor of Elections after the deadline will not be accepted.

Appendix A**2022 Petition Signatures Required for Circuit Court Judge, State Attorney (6th and 20th) and Public Defender (20th)**

Judicial Circuit	Signatures Required
1	5,868
2	2,949
3	1,198
4	9,012
5	8,990
6	11,049
7	7,512
8	2,755
9	11,055
10	5,507
11	15,643
12	6,314
13	9,344
14	2,028
15	10,203
16	570
17	12,670
18	7,876
19	4,891
20	8,993

Candidate Petition Handbook

Appendix C: DS-DE 19A Affidavit of Undue Burden – Candidate

AFFIDAVIT OF UNDUE BURDEN
 (Section 99.097(4), Florida Statutes)

IMPORTANT—(1) Paying signature gatherers will preclude or invalidate the filing of an undue burden oath. Section 99.097(8), Florida Statutes, provides: (a) If any person is paid to solicit signatures on a petition, an undue burden oath may not subsequently be filed in lieu of paying the fee to have signatures verified for that petition. (b) If an undue burden oath has been filed and payment is subsequently made to any person to solicit signatures on a petition, the undue burden oath is no longer valid and a fee for all signatures previously submitted to the supervisor of elections and any submitted thereafter shall be paid by the candidate, person, or organization that submitted the undue burden oath. If contributions as defined in s. 108.011 are received, any monetary contributions must first be used to reimburse the supervisor of elections for any signature verification fees that were not paid because of the filing of the undue burden oath. [Note: The second sentence in (b) applies only when payment is made to a signature gatherer after an undue burden oath had been filed.]

(2) Upon a candidate terminating the campaign, any candidate who qualified by the petition process and who has surplus funds, must first apply the surplus funds to the reimbursement of the signature verification fee (if applicable). See s. 108.141(7), Florida Statutes.

 I certify under oath that I intend to qualify as a candidate for the office of _____

_____ and that I am unable to pay the fee for verification of petition signatures for that office without imposing an undue burden on my personal resources or on resources otherwise available to me.

X

 Signature of Candidate

SAMPLE

 Print Candidate's Name

 Address

 City

()

 State

 Zip

 Telephone Number

STATE OF FLORIDA

COUNTY OF _____

 Signature of Notary Public

Print, Type or Stamp Commissioned Name of Notary Public below:

Sworn to (or affirmed) and subscribed before me by means of

online notarization OR physical presence

this _____ day of _____, 20_____.

Personally Known OR Produced identification

Type of Identification Produced: _____

DS-DE 19A (11/2/2021)

Candidate Petition Handbook

Appendix D: DS-DE 104 Candidate Petition Form

CANDIDATE PETITION			
<p><i>Notes:</i> - All information on this form becomes a public record upon receipt by the Supervisor of Elections. - It is a crime to knowingly sign more than one petition for a candidate. [Section 104.185, Florida Statutes] - If all requested information on this form is not completed, the form will not be valid as a Candidate Petition form.</p>			
I, _____		the undersigned, a registered voter	
(print name as it appears on your voter information card)			
in said state and county, petition to have the name of _____			
placed on the Primary/General Election Ballot as a: [check/complete box, as applicable]			
<input type="checkbox"/> Nonpartisan		<input type="checkbox"/> No party affiliation	
<input type="checkbox"/> _____		Party candidate for the office of	
<div style="font-size: 2em; opacity: 0.5; transform: rotate(-2deg); font-weight: bold; letter-spacing: 0.5em;">SAMPLE</div> _____ (insert the office and include district, circuit, group, seat number, if applicable)			
Date of Birth or Voter Registration Number (MM/DD/YY)		Address	
City	County	State	Zip Code
Signature of Voter		Date Signed (MM/DD/YY) <i>[to be completed by Voter]</i>	
Rule 15-2.045, F.A.C.		DS-DE 104 (EFF. 09/11)	

Appendix E: Legal References and Rules Cited

Florida Statutes

- [99.095](#) Petition process in lieu of a qualifying fee and party assessment.
- [99.09651](#) Signature requirements for ballot position in year of apportionment.
- [99.097](#) Verification of signatures on petitions.
- [100.371](#) Initiatives; procedure for placement on ballot.
- [104.31](#) Political activities of state, county, and municipal officers and employees.
- [104.185](#) Petitions; knowingly signing more than once; signing another person's name or a fictitious name.
- [106.011](#) Definitions.
- [106.15](#) Certain acts prohibited.

Florida Election Code

- [Chapters 97 – 106, Florida Statutes](#)

Florida Administrative Code

- [Rule 15-2.045](#) Candidate Petition Process

Forms

- [DS-DE 9](#) Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates
- [DS-DE 19A](#) Affidavit of Undue Burden - Candidate
- [DS-DE 104](#) Candidate Petition Form

Candidate Tracking System – Division of Elections

- dos.elections.myflorida.com/candidates

Exhibit 3

OFFICE OF THE CLERK



Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: www.wicourts.gov

November 17, 2021

To:

Richard M. Esenberg
Anthony LoCoco
Lucas Thomas Vebber
Wisconsin Institute for Law & Liberty
330 East Kilbourn Avenue, Suite 725
Milwaukee, WI 53202-3141

Karla Z. Keckhaver
Steven Killpatrick
Thomas C. Bellavia
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Charles G. Curtis
Perkins Coie LLP
33 E. Main St., Ste. 201
Madison, WI 53703-5411

Anthony D. Russomanno
Brian P. Keenan
Assistant Attorneys General
P.O. Box 7857
Madison, WI 53707

*Address list continued on page 4.

You are hereby notified that the Court has entered the following order:

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

Pending before the court is an original action filed by petitioners Billie Johnson, et al. This order provides scheduling expectations for the parties in the event new maps are not enacted into law, and it becomes necessary for this court to award judicial relief.

The court intends to issue an opinion on or about November 30, 2021, answering the first three questions posed in this court's order dated October 14, 2021, and briefed by the parties and amici, namely: (1) Under the relevant state and federal laws, what factors should we consider in evaluating or creating new maps? (2) The petitioners ask us to modify existing maps using a "least-change" approach. Should we do so, and if not, what approach should we use? and (3) Is the partisan makeup of districts a valid factor for us to consider in evaluating or creating new maps?

Page 2

November 17, 2021

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

Upon issuance of the court's decision on the first three questions, the parties are encouraged to review discovery and record development needs and are advised that the following deadlines will apply:

IT IS ORDERED that by 4:00 p.m. on December 3, 2021, if parties desire discovery, they shall submit a joint proposed discovery plan that details from whom and how discovery will be sought, with all discovery to be completed on or before December 23, 2021;

IT IS FURTHER ORDERED that on or before 12:00 noon on December 15, 2021, each party (including all intervenors) may file a proposed map (for state assembly, state senate, and congress), complying with the parameters set forth in the court's forthcoming decision, a supporting brief, and an expert report; or, a party may file a letter-brief stating the party supports a map proposed by another party. Any brief filed in support of a proposed map shall not exceed 50 pages if a monospaced font is used or 11,000 words if a proportional serif font is used. A letter-brief filed in support of another party's proposed map shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

IT IS FURTHER ORDERED that any expert report filed in support of a proposed map and accompanying its supporting brief shall strive for brevity and shall contain an executive summary not to exceed five pages if a monospaced font is used or 1,100 words if a proportional serif font is used;

IT IS FURTHER ORDERED that on or before 12:00 noon on December 30, 2021, each party may file a responsive brief which shall not exceed 25 pages if a monospaced font is used or 5,500 words if a proportional serif font is used. A party that elects to support another party's proposed map may file a letter-brief that shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

IT IS FURTHER ORDERED that any non-party that wishes to file a non-party brief amicus curiae in support of or in opposition to a proposed map must file a motion for leave of the court to file a non-party brief. Wis. Stat. § (Rule) 809.19 (7). Non-parties should consult this court's Internal Operating Procedure III.B.6.c., concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it and shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used. Any motion for leave with the proposed non-party brief attached shall be filed no later than 12:00 noon on January 4, 2022. Any proposed non-party brief for which this court does not grant leave will not be considered by the court;

IT IS FURTHER ORDERED that on or before 12:00 noon on January 4, 2022, each party may file a reply brief, which shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used. A party that elects to support another party's proposed map may file a letter-brief that shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional serif font is used;

Page 3

November 17, 2021

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

IT IS FURTHER ORDERED that the form, pagination, appendix, and certification requirements shall be the same as those governing standard appellate briefing in this court for a brief-in chief, response, and reply;

IT IS FURTHER ORDERED that any party that filed a proposed map and subsequently determines that it merits a correction or modification, may file a motion seeking the court's leave to amend the proposed map. Such motion shall include a description of the amendments, the reasons for them, a proposed amended map, and shall state whether the motion is unopposed by other the parties. The court may request responses from the other parties; unsolicited responses to such a motion will be disfavored;

IT IS FURTHER ORDERED that the parties are advised that the court may elect to conduct a hearing and/or oral argument on one or more of four consecutive days beginning January 18, 2022; and

IT IS FURTHER ORDERED that all filings in this matter shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.70, 809.80 and 809.81. A paper original and 10 copies of each filed document must be received by the clerk of this court by 12:00 noon of the business day following submission by email, with the document bearing the following notation on the top of the first page: "This document was previously filed via email."

Sheila T. Reiff
Clerk of Supreme Court

Page 4

November 17, 2021

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

Address list continued:

Jeffrey A. Mandell

Richard Manthe

Douglas M. Poland

Carly Gerads

Rachel E. Snyder

Stafford Rosenbaum LLP

P.O. Box 1784

222 West Washington Ave., Suite 900

Madison, WI 53701-1784

Kevin M. St. John

Bell Giftos St. John LLC

Suite 2200

5325 Wall Street

Madison, WI 53718

Daniel R. Suhr

Attorney at Law

220 Madero Drive

Thiensville, WI 53092

Misha Tseytlin

Kevin M. LeRoy

Troutman Pepper Hamilton Sanders LLP

Suite 3900

227 W. Monroe St.

Chicago, IL 60606

Mel Barnes

Law Forward, Inc.

P.O. Box 326

Madison, WI 53703

Aria C. Branch

Daniel C. Osher

Jacob D. Shelly

Christina A. Ford

William K. Hancock

Elias Law Group LLP

10 G Street, NE, Suite 600

Washington, D.C. 20002

Annabelle E. Harless

Campaign Legal Center

55 W. Monroe St., Ste. 1925

Chicago, IL 60603

Mark P. Gaber

Christopher Lamar

Campaign Legal Center

1101 14th St. NW, Ste. 400

Washington, D.C. 20005

Adam K. Mortara

Lawfair LLC

125 S. Wacker Drive, Suite 300

Chicago, IL 60606

Michael P. May

Sarah A. Zylstra

Tanner G. Jean-Louis

Boardman & Clark, LLP

P.O. Box 927

Madison, WI 53701-0927

Tamara B. Packard

Aaron G. Dumas

Pines Bach, LLP

122 West Washington Ave., Ste. 900

Madison, WI 53703

David J. Bradford

Jenner & Block, LLP

353 North Clark St.

Chicago, IL 60654

Jeffrey M. Harris

Taylor A.R. Meehan

James P. McGlone

Consovy McCarthy, PLLC

1600 Wilson Blvd., Ste. 700

Arlington, VA 22209

Page 5

November 17, 2021

No. 2021AP1450-OA Johnson v. Wisconsin Elections Commission

Jakob E. Feltham
Hawks Quindel, S.C.
P.O. Box 2155
Madison, WI 53703-2155

Ruth M. Greenwood
Mary F. Brown
Mark R. Haidar
Meredith A. Manda
Sarah A. Sadlier
Corey M. Stewart
The Election Law Clinic
Harvard Law School
6 Everett Street
Cambridge, MA 02138

Elizabeth Edmondson
Olivia Hoffman
Jenner & Block LLP
919 Third Avenue
New York, NY 10022-3902

Jessica R. Amunson
Rebecca Fate
Sam Hirsch
Jenner & Block
1099 New York Ave. NW
Washington, DC 20001-4412

Exhibit 4

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter, Monica Parrilla, : **CASES CONSOLIDATED**
Rebecca Poyourow, William Tung, :
Roseanne Milazzo, Burt Siegel, :
Susan Cassanelli, Lee Cassanelli, :
Lynn Wachman, Michael Guttman, :
Maya Fonkeu, Brady Hill, Mary Ellen :
Balchunis, Tom DeWall, :
Stephanie McNulty and Janet Temin, :
Petitioners :

v. : No. 464 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania Bureau :
of Election Services and Notaries, :
Respondents :

Philip T. Gressman; Ron Y. Donagi; :
Kristopher R. Tapp; Pamela Gorkin; :
David P. Marsh; James L. Rosenberger; :
Amy Myers; Eugene Boman; :
Gary Gordon; Liz McMahan; :
Timothy G. Feeman; and Garth Isaak, :
Petitioners :

v. : No. 465 M.D. 2021

Veronica Degraffenreid, in her official :
capacity as the Acting Secretary of the :
Commonwealth of Pennsylvania; :
Jessica Mathis, in her official capacity :
as Director for the Pennsylvania Bureau :
of Election Services and Notaries, :
Respondents :

PER CURIAM

ORDER

AND NOW, this 20th day of December, 2021, in consideration of the petitions for review filed in the above-consolidated actions, which are addressed to this Court's original jurisdiction, and consistent with the process established in *Mellow v. Mitchell*, 607 A.2d 204 (Pa. 1992), it is hereby ORDERED:

1. Any applications to intervene, *see* Pa. R.A.P. 1531(b), shall be filed by December 31, 2021. Answers thereto shall be due within four (4) days of the date the application to intervene is filed.

2. Any party to this proceeding who wishes to submit to the Court for its consideration a proposed 17-district congressional reapportionment plan consistent with the results of the 2020 Census shall file the proposed plan by January 28, 2022.

3. If the General Assembly and the Governor fail to enact a congressional reapportionment plan by January 30, 2022, the Court will select a plan from those plans timely filed by the parties.

4. In the event the Court must select a congressional reapportionment plan, the Court will hold a final hearing beginning on January 31, 2022, to receive evidence and consider all timely filed proposed plans. The Court will also consider revisions to the 2022 election schedule/calendar as part of the hearing. The hearing will begin at 9:30 a.m. in Courtroom 3001 of the Pennsylvania Judicial Center, Harrisburg, PA. It shall be the responsibility of Petitioners to secure the services of a court reporter(s) throughout the duration of the hearing.

5. Consistent with the authority granted to the General Assembly under the Elections Clause of the United States Constitution, art. I, § 4, cl. 1, Petitioners are hereby directed to serve immediately a copy of this Order on the Pennsylvania Senate Majority and Democratic Leaders and on the Pennsylvania House of Representatives Majority and Democratic Leaders and file proof of service with this Court.

EXHIBIT 6

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

Nos. 22-11133; 22-11143; 22-11144; 22-11145

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

Plaintiffs-Appellees,

versus

FLORIDA SECRETARY OF STATE, et al.,

Defendants-Appellants,

Appeal from the United States District Court
for the Northern District of Florida

D.C. Docket Nos. 4:21-cv-00242-MW-MAF; 4:21-cv-00186-MW-
MAF; 4:21-cv-00187-MW-MAF; 4:21-cv-00201-MW-MJF

Before NEWSOM, LAGOA, and BRASHER, Circuit Judges

PER CURIAM:

The district court here permanently enjoined three provisions of Florida law governing elections in that state. It also subjected Florida to a “preclearance” regime whereby the state—for the next decade—must seek and receive the district court’s permission before it can enact or amend certain election laws. The state now asks us to stay that decision pending appeal. After careful consideration, we grant the state’s motion.¹

I

Florida’s governor signed Senate Bill 90 into law on May 6, 2021. Plaintiffs sued, challenging four of SB90’s provisions, three of which are relevant here: (1) a provision regulating the use of drop boxes for collecting ballots (the “Drop-Box Provision”), Fla. Stat. § 101.69(2)–(3); (2) a provision requiring third-party voter-registration organizations to deliver voter-registration applications to the county where an applicant resides within a proscribed period of time (the “Registration-Delivery Provision”) and specifying

¹ We note that we write only for the parties’ benefit. Because an “order[] concerning [a] stay[is] not a final adjudication of the merits of the appeal, the tentative and preliminary nature of a stay-panel opinion precludes the opinion from having an effect outside that case.” *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1280 n.1 (11th Cir. 2020) (quotation marks omitted).

22-11143

Order of the Court

3

information that third-party voter-registration organizations must provide to would-be registrants (the “Registration-Disclaimer Provision”), Fla. Stat. § 97.0575(3)(a); and (3) a provision prohibiting the solicitation of voters within 150 feet of a drop box or polling place (the “Solicitation Provision”), Fla. Stat. § 102.031(4)(a)–(b).²

Plaintiffs³ challenged those provisions, as relevant here, on several grounds. First, they asserted that the provisions discriminated on the basis of race in violation of the Fourteenth and Fifteenth Amendments and Section 2 of the Voting Rights Act. Second, they contended that the Solicitation Provision was unconstitutionally vague or overbroad in violation of the First and Fourteenth Amendments. And finally, they argued that the Registration-Disclaimer Provision compelled speech in violation of the First Amendment.

² Plaintiffs also challenged a provision governing mail-in voting, Fla. Stat. § 101.62(1), but the district court rejected plaintiffs’ contentions regarding that provision and refused to enjoin it. Accordingly, that provision is not relevant to the state’s motion for a stay pending appeal.

³ On appeal, we consolidated four separate cases. Each set of plaintiffs has brought slightly different claims: The Harriet Tubman Freedom Fighters challenge only the Registration-Disclaimer Provision; The League of Women Voters challenge only the Registration-Disclaimer and Solicitation Provisions; and Florida NAACP and Florida Rising Together challenge all four provisions. For simplicity’s sake—and because plaintiffs’ claims are all interwoven—we will address each claim generally rather than specifying which plaintiff goes with which claim.

The district court largely agreed with plaintiffs that “SB 90 runs roughshod over the right to vote, unnecessarily making voting harder for all eligible Floridians, unduly burdening disabled voters, and intentionally targeting minority voters.” Specifically, the court held that all of the above-mentioned provisions were intentionally discriminatory, violating the Fourteenth and Fifteenth Amendments and Section 2 of the Voting Rights Act. Moreover, the court held that the Solicitation Provision violated the First and Fourteenth Amendments because it was unconstitutionally vague and overbroad. And it held that the Registration-Disclaimer Provision violated the First Amendment because it impermissibly compelled speech.

Accordingly, the district court permanently enjoined those provisions of SB90. It then sua sponte considered whether it would stay the injunction pending appeal and refused to do so. Finally, based on its determination that the Florida legislature had intentionally discriminated against black voters, the court subjected Florida to “preclearance” under Section 3 of the VRA: For the next decade, it held, “Florida may enact no law or regulation governing [third-party voter-registration organizations], drop boxes, or line-warming activities without submitting such law or regulation” to the district court for its advance approval. The state now moves this Court to stay the district court’s decision pending appeal.

22-11143

Order of the Court

5

II**A**

Under the “‘traditional’ standard for a stay,” we “consider[] four factors: ‘(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’” *Nken v. Holder*, 556 U.S. 418, 425–26 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). But of course, that “traditional” four-factor standard does not always apply. For example, in some circumstances—namely, “when the balance of equities . . . weighs heavily in favor of granting the stay”—we relax the likely-to-succeed-on-the-merits requirement. *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986) (quotation marks omitted). In that scenario, the stay may be “granted upon a lesser showing of a ‘substantial case on the merits.’” *Id.* (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. Unit A June 26, 1981)).

Under what has come to be called the “*Purcell* principle,” see *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), the “traditional test for a stay” likewise “does not apply” in the particular circumstance that this case presents—namely, “when a lower court has issued an injunction of a state’s election law in the period close to an election,” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022)

(Kavanaugh, J., concurring).⁴ In such a case, an appellate court considering a stay pending appeal is “required to weigh . . . considerations specific to election cases.” *Purcell*, 549 U.S. at 4–5. For instance, the reviewing court must be cognizant that “orders affecting elections . . . can themselves result in voter confusion.” *Id.* at 4–5. And that risk only increases as an election draws closer. *Id.* at 5. For that reason, the *Purcell* principle teaches that “federal district courts ordinarily should not enjoin state election laws in the period close to an election.” *Milligan*, 142 S. Ct. at 879 (Kavanaugh, J., concurring). And if a district court violates that principle, the appellate court “should stay [the] injunction[],” *id.*, often (as it could not do under the “traditional” test) while “express[ing] no opinion” on the merits. *Purcell*, 549 U.S. at 5.

So, an important question: When is an election sufficiently “close at hand” that the *Purcell* principle applies? *Milligan*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). As the district court noted, the Supreme Court has never specified precisely what it means to

⁴ We note plaintiffs’ contention that the state has “waived” any argument that the *Purcell* principle applies because it “never raised *Purcell* below as a basis for denying injunctive relief.” We disagree. We are doubtful that the *Purcell* principle is subject to the ordinary rules of waiver (or perhaps more accurately here, forfeiture, see *United States v. Campbell*, 26 F.4th 860, 872 (11th Cir. 2022) (en banc)). As when considering jurisdictional limitations, we have an independent obligation to “weigh . . . considerations specific to election cases.” *Purcell*, 549 U.S. at 4. When we are “[f]aced with an application to enjoin” voting laws close to an election—or, as here, a request to stay such an injunction—we are “required to weigh” the injunction’s impact for an upcoming election. *Id.* (emphasis added).

22-11143

Order of the Court

7

be “on the eve of an election” for *Purcell* purposes. *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam). In *Purcell* itself, the Court stayed an injunction that a lower court had issued “just weeks before the election.” *Purcell*, 549 U.S. at 4. In *Milligan*, by contrast, the Court granted a stay even though the primary election was still “about four months” away. *Milligan*, 142 S. Ct. at 888 (Kagan, J., dissenting).⁵

Whatever *Purcell*’s outer bounds, we think that this case fits within them.⁶ When the district court here issued its injunction, voting in the next statewide election was set to begin in *less* than four months (and local elections were ongoing). Moreover, the district court’s injunction implicates voter registration—which is currently underway—and purports to require the state to take action now, such as re-training poll workers. And although the district court satisfied itself that its injunction—including the requirement that the state preclear new voting rules—was not too draconian, we are reminded that “[e]ven seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with

⁵ See also *Thompson v. Dewine*, 959 F.3d 804, 813 (6th Cir.) (per curiam) (noting that a stay was warranted in light of *Purcell* notwithstanding its observation that the election was “months away”), *motion to vacate stay denied*, No. 19A1054, 2020 WL 3456705 (U.S. 2020).

⁶ It may be, in marginal cases, that “[h]ow close to an election is too close” will depend on a number of factors. *Milligan*, 142 S. Ct. at 881 n.1 (Kavanaugh, J., concurring). But because we determine that this case easily falls within the time period that triggered *Purcell* in *Milligan*, we need not endeavor to articulate *Purcell*’s precise boundaries.

administration of an election and cause unanticipated consequences.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring).

Because the election to which the district court’s injunction applies is close at hand and the state “has a compelling interest in preserving the integrity of its election process,” *Purcell* controls our analysis. *Purcell*, 549 U.S. at 4 (quotation marks omitted).

B

Of course, even under *Purcell*, a state’s interest in proceeding under challenged election procedures is not “absolute.” *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). Instead, we agree with Justice Kavanaugh that *Purcell* only (but significantly) “heightens” the standard that a plaintiff must meet to obtain injunctive relief that will upset a state’s interest in running its elections without judicial interference. *Id.*⁷ In Justice Kavanaugh’s view, the plaintiff must demonstrate, among other things, that its position on the merits is “entirely clearcut.” *Id.* Whatever the precise standard, we think it clear that, for cases controlled by *Purcell*’s analysis, the party seeking injunctive relief has a “heightened” burden.

⁷ To put it slightly differently, *Purcell* stands for the proposition that when an election is close at hand, it is “ordinarily” improper to issue an injunction. *Milligan*, 142 S. Ct. at 879 (Kavanaugh, J., concurring). That leaves room for the “extraordinary” case where an injunction—despite its issuance on the eve of the election—might be proper.

22-11143

Order of the Court

9

Here, of course, we have the converse of that situation. The plaintiffs in this case have already obtained injunctive relief upsetting the previously applicable state election procedures, and the question before us is whether the state is entitled to a stay pending appellate review of the district court's injunction. In that posture, it seems to us, *Purcell* effectively serves to *lower* the state's bar to obtain the stay it seeks. The state need not show, for instance—as a plaintiff would to obtain a “late-breaking injunction” in the first place—that its position is “entirely clearcut,” *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurral). Rather, it need only show that plaintiffs' position is *not*.⁸

Accounting for *Purcell*, we hold that the state is entitled to a stay of the district court's order enjoining the operation of SB90's Drop-Box, Registration-Delivery, and Solicitation Provisions and subjecting Florida to preclearance. The district court's determination regarding the legislature's intentional discrimination suffers from at least two flaws, either of which justifies a stay. And, although we think it presents a closer question, we hold that the district court's determination that the Solicitation Provision is

⁸ We are of course aware that Justice Kavanaugh provided three additional factors—all of which must be satisfied to justify an injunction under *Purcell*. See *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurral). But because we determine that the underlying merits of the district court's order in this case are vulnerable on several grounds, we need not go any further.

unconstitutionally vague and overbroad is sufficiently vulnerable to warrant a stay.⁹

i

The first two flaws come from the district court’s determination that SB90 is the product of intentional race discrimination. That inquiry is guided by an eight-factor test—the first five of which come from the Supreme Court’s opinion in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), and the remaining three from our ensuing caselaw. We have summarized the *Arlington Heights* factors as follows: “(1) the impact of the challenged law; (2) the historical background; (3) the specific sequence of events leading up to its passage; (4) procedural and substantive departures; and (5) the contemporary statements and actions of key legislators.” *Greater Birmingham Ministries v. Sec’y of State for Al.*, 992 F.3d 1299, 1322 (11th Cir. 2021) (“*GBM*”); *see also Arlington Heights*, 429 U.S. at 266–68. And we have added the following considerations: “(6) the foreseeability of the disparate impact; (7) knowledge of that impact[;] and (8) the availability of less discriminatory alternatives.” *GBM*, 992 F.3d at 1322.

⁹ We decline to weigh in on the merits of the Registration-Disclaimer Provision. That provision has been repealed by a newly enacted statute, which Florida’s Governor has already signed. That law will go into effect—thereby mooting any challenge to the Registration-Disclaimer Provision—as soon as the district-court-ordered preclearance regime ceases to operate. And that regime will cease to operate upon the issuance of this opinion.

22-11143

Order of the Court

11

First, we find the district court’s historical-background analysis to be problematic. We have been clear that “old, outdated intentions of previous generations” should not “taint [a state’s] legislative action forevermore on certain topics.” *Id.* at 1325. To that end, *Arlington Heights*’s “historical background” factor should be “focus[ed] . . . on the ‘specific sequence of events leading up to the challenged decision’” rather than “providing an unlimited look-back to past discrimination.” *Id.* (quoting *Arlington Heights*, 429 U.S. at 267); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2325 (2018) (“The ‘historical background’ of a *legislative enactment* is ‘one evidentiary source’ relevant to the question of intent.” (emphasis added) (quoting *Arlington Heights*, 429 U.S. at 267)).

In its assessment of SB90’s historical background, the district court led with the observation that “Florida has a grotesque history of racial discrimination.” It began its survey of that history beginning immediately after the Civil War and marched through past acts of “terrorism” and “racial violence” that occurred during the early and mid-1900s. And it concluded by seeming to chide the Supreme Court for suggesting that “[o]ur country has changed” since the Voting Rights Act was enacted in 1965. *Shelby County v. Holder*, 570 U.S. 529, 557 (2013). At least on our preliminary review, the district court’s inquiry does not seem appropriately “focus[ed]” or “[l]imited,” as *GBM* requires. 992 F.3d at 1325.

Second, the district court failed to properly account for what might be called the presumption of legislative good faith. The Supreme Court has instructed that when a court assesses whether a

duly enacted statute is tainted by discriminatory intent, “the good faith of the state legislature must be presumed.” *Perez*, 138 S. Ct. at 2324 (cleaned up).

For starters, in its 288-page opinion, the district court never once mentioned the presumption. And while we do not require courts to incant magic words, it does not appear to us that the district court here meaningfully accounted for the presumption at all. For instance, the court imputed discriminatory intent to SB90 based in part on one legislator’s observation, when asked about the law’s potentially disparate impact, that based on “the patterns of use” some voters “may have to go about it a little different way” once SB90 becomes law. Applying the presumption of good faith—as a court must—that statement by a single legislator is not fairly read to demonstrate discriminatory intent by the state legislature. Moreover—even if we do not presume good faith—that statement at worst demonstrates an “awareness of consequences,” which is insufficient to establish discriminatory purpose. *Cf. Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (“‘Discriminatory purpose’ . . . implies that the decisionmaker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part ‘because of,’ and not merely ‘in spite of,’ its adverse effects upon an identifiable group.”).

ii

Separate and apart from its intentional-discrimination finding, the district court determined that the Solicitation Provision was unconstitutionally overbroad and vague. Although we think

22-11143

Order of the Court

13

that issue presents a closer call than the intentional-discrimination finding, the state has met its burden to obtain a stay.

The Solicitation Provision precludes any “person, political committee, or other group or organization” from “solicit[ing] voters inside the polling place” or within 150 feet thereof. Fla. Stat. § 102.031(4)(a). And it defines “solicit” as follows:

[S]eeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except as specified in this paragraph; seeking or attempting to seek a signature on any petition; selling or attempting to sell any item; and engaging in any activity with the intent to influence or effect of influencing a voter.

Id. § 102.031(4)(b).

The district court held that the language “engaging in any activity with the intent to influence or effect of influencing a voter” was impermissibly vague because it “fails to put Floridians of ordinary intelligence on notice of what acts it criminalizes” and because it “encourages arbitrary and discriminatory enforcement.” And it determined it was also unconstitutionally overbroad because it “prohibits a substantial amount of activity protected by the First Amendment relative to the amount of unprotected activity it prohibits.”

The state has a substantial argument that the statute passes constitutional muster. First, as to vagueness, the state correctly points out that the panel that ultimately decides the merits of its appeal might determine that the language the district court found problematic is limited by the surrounding examples of prohibited conduct. *See United States v. Williams*, 553 U.S. 285, 294 (2008) (“[A] word is given more precise content by the neighboring words with which it is associated.”).

Turning to overbreadth, we note that “succeeding on a claim of substantial overbreadth is not easy to do.” *Cheshire Bridge Holdings, LLC v. City of Atlanta*, 15 F.4th 1362, 1371 (11th Cir. 2021) (quotation omitted). And the district court below failed to contend with any of the “plainly legitimate” applications of the Solicitation Provision, and thereby arguably failed to balance its legitimate applications against its potentially unconstitutional applications. *See Williams*, 553 U.S. at 292 (“[W]e have vigorously enforced the requirement that a statute’s overbreadth be substantial, not only in an absolute sense, but also relative to the statute’s plainly legitimate sweep.” (emphasis omitted)).

Therefore, the underlying merits of the vagueness and overbreadth challenges to the Solicitation Provision, at the very least, aren’t “entirely clearcut.” *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

22-11143

Order of the Court

15

★ ★ ★

In the circumstances of this case, and accounting for the fact that our review is governed by *Purcell*, we conclude that the state is entitled to a stay pending appeal. The motion for a stay pending appeal is **GRANTED**.

EXHIBIT 7



RON DESANTIS
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-717-9418

MEMORANDUM

2022 MAR 29 AM 11:17
OFFICE OF THE GOVERNOR
TALLAHASSEE, FLORIDA

To: Ron DeSantis, Governor of Florida

From: Ryan Newman, General Counsel, Executive Office of the Governor **RDN**

Date: March 29, 2022

Re: Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State

Congressional District 5 in both the primary and secondary maps enacted by the Legislature violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it assigns voters primarily on the basis of race but is not narrowly tailored to achieve a compelling state interest.

“Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools,” the U.S. Supreme Court has made clear that the State also “may not separate its citizens into different voting districts on the basis of race.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (internal citations omitted). “When the State assigns voters on the basis of race,” the Court explained, “it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, ‘think alike, share the same political interests, and will prefer the same candidates at the polls.’” *Id.* at 911-12 (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)).

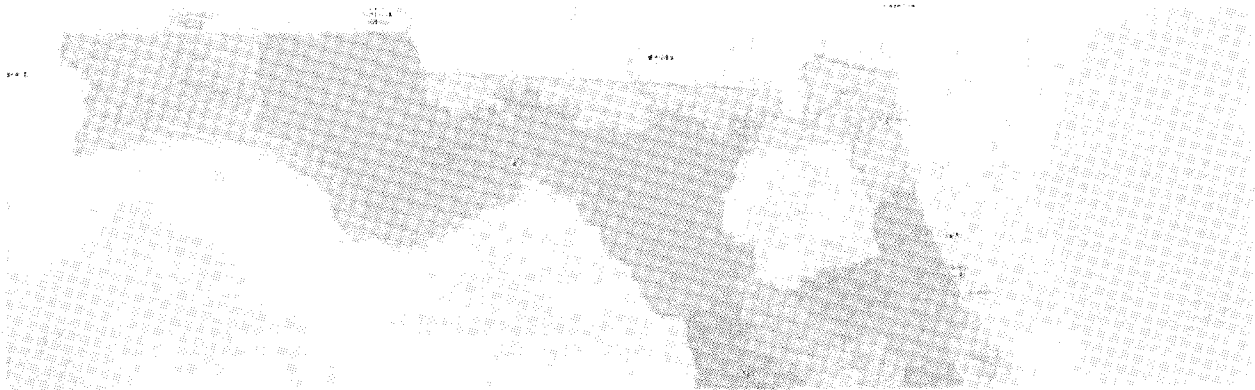
For these reasons, the Court has interpreted the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution to prohibit state legislatures from using race as the “predominant factor motivating [their] decision to place a significant number of voters within or without a particular district,” *id.* at 916, unless they can prove that their “race-based sorting of voters serves a ‘compelling interest’ and is ‘narrowly tailored’ to that end,” *Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017) (citation omitted). That race was the predominant factor motivating a legislature’s line-drawing decision can be shown “either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose.” *Miller*, 515 U.S. at 916.

Although non-adherence to traditional districting principles, which results in a non-compact, unusually shaped district, is relevant evidence that race was the predominant motivation of a legislature, such evidence is not required to establish a constitutional violation. “Race may predominate even when a reapportionment plan respects traditional principles, . . . if ‘[r]ace was the criterion that, in the State’s view, could not be compromised,’ and race-neutral considerations ‘came into play only after the race-based decision had been made.’” *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 798 (2017) (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (alteration in original)). “The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not.” *Id.* at 799. A legislature “could construct a plethora of potential maps that look consistent with traditional, race-neutral principles,” but “if race for its own sake is the overriding reason for choosing one map over others, race still may predominate.” *Id.* It is the “racial purpose of state action, not its stark manifestation,” that offends the Equal Protection Clause. *Miller*, 515 U.S. at 913.

In light of these well-established constitutional principles, the congressional redistricting bill enacted by the Legislature violates the U.S. Constitution. The bill contains a primary map and secondary map that include a racially gerrymandered district – Congressional District 5 – that is not narrowly tailored to achieve a compelling state interest. *See generally* Fla. H.R. Comm. on Redist., recording of proceedings, at 0:00-2:55:19 (Feb. 25, 2022), <https://thefloridachannel.org/videos/2-25-22-house-redistricting-committee/> (committee presentation and discussion of the maps later passed by the Legislature).

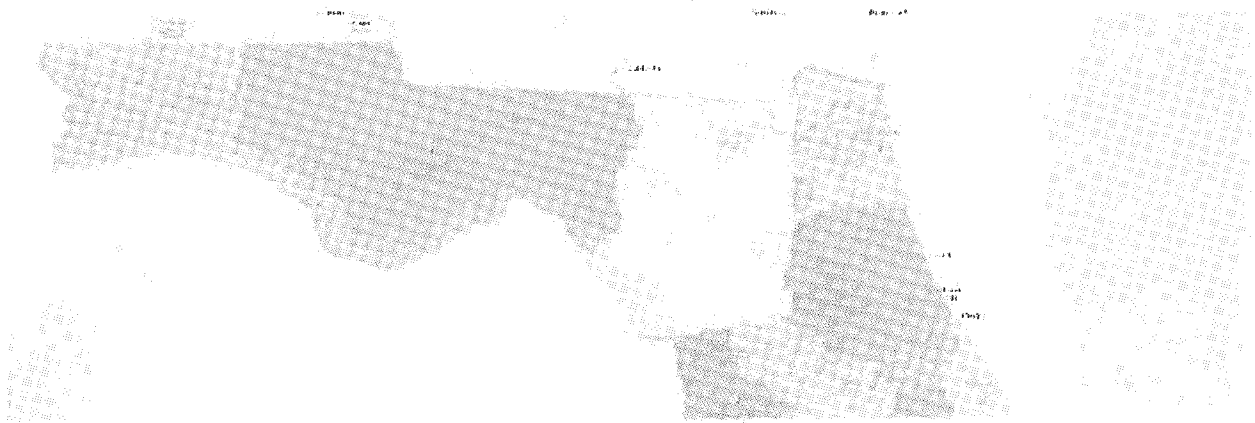
In the secondary map, which was the original map reported out of the House Congressional Redistricting Subcommittee, District 5 is a sprawling district that stretches approximately 200 miles from East to West and cuts across eight counties to connect a minority population in Jacksonville with a separate and distinct minority population in Leon and Gadsden Counties. The district is not compact, does not conform to usual political or geographic boundaries, and is bizarrely shaped to include minority populations in western Leon County and Gadsden County while excluding non-minority populations in eastern Leon County. Because this version of District 5 plainly subordinates traditional districting criteria to avoid diminishment of minority voting age population, there is no question that race was “the predominant factor motivating the legislature’s decision” to draw this district. *Miller*, 515 U.S. at 916.

District 5 in the Secondary Map (Purple)



In response to federal constitutional concerns about the unusual shape of District 5 as it was originally drawn, and which is now reflected in the secondary map, the House Redistricting Committee drew a new version of District 5, which is reflected in the primary map. This configuration of the district is more compact but has caused the adjacent district—District 4—to take on a bizarre doughnut shape that almost completely surrounds District 5. The reason for this unusual configuration is the Legislature’s desire to maximize the black voting age population in District 5. The Chair of the House Redistricting Committee confirmed this motivation when he explained that the new District 5 was drawn to “protect[] a black minority seat in north Florida.” Fla. H.R. Comm. on Redist., recording of proceedings, at 19:15-19:26 (Feb. 25, 2022).

District 5 in the Primary Map (Purple)



Despite the Legislature’s attempt to address the federal constitutional concerns by drawing a more compact district, the constitutional defect nevertheless persists. Where “race was the criterion that, in the State’s view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made,” it follows that race was the predominant factor, even though the district

otherwise respects traditional districting principles. *Bethune-Hill*, 137 S. Ct. at 798 (cleaned up).

Such was the case here. Even for the more compact district, the Legislature believed (albeit incorrectly) that the Florida Constitution required it to ensure “a black minority seat in north Florida.” Fla. H.R. Comm. on Redist., recording of proceedings, at 19:15-19:26 (Feb. 25, 2022). Specifically, according to the House Redistricting Chair, the primary map’s version of District 5 is the House’s “attempt at continuing to protect the minority group’s ability to elect a candidate of their choice.” *Id.* at 19:45-19:54. The Legislature thus used “an express racial target” for District 5 of a black voting age population sufficiently large to elect a candidate of its choice. *Bethune-Hill*, 137 S. Ct. at 800.

Because racial considerations predominated even in drawing the new District 5, the Legislature must satisfy strict scrutiny, the U.S. Supreme Court’s “most rigorous and exacting standard of constitutional review.” *Miller*, 515 U.S. at 920. And to satisfy strict scrutiny, the Legislature “must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.” *Id.* That, the Legislature cannot do.

There is no good reason to believe that District 5 needed to be drawn as a minority-performing district to comply with Section 2 of the Voting Rights Act (VRA), because the relevant minority group is not sufficiently large to constitute a majority in a geographically compact area. In the primary map, the black voting age population of District 5 is 35.32%, and even in the secondary map, with the racially gerrymandered, non-compact version of District 5, the black voting age population increases only to 43.48%. Compare Fla. Redist. 2022, H000C8019, <https://bit.ly/3uczOXb> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022), with Fla. Redist. 2022, H000C8015, <https://bit.ly/36hFRBB> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022). “When a minority group is not sufficiently large to make up a majority in a reasonably shaped district, § 2 simply does not apply.” *Cooper*, 137 S. Ct. at 1472 (citing *Bartlett v. Strickland*, 556 U.S. 1, 18-20 (2009) (plurality opinion)); see also *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (explaining that one of the threshold conditions for proving vote dilution under Section 2 is that the minority group is “sufficiently large and geographically compact to constitute a majority”).

Nor is there good reason to believe that District 5 is required to be drawn to comply with Section 5 of the VRA. Section 5 is no longer operative now that the U.S. Supreme Court invalidated the VRA’s formula for determining which jurisdictions are subject to Section 5. See *Shelby Cnty. v. Holder*, 570 U.S. 529, 553-57 (2013); see also *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 279 (2015) (suggesting that continued compliance with Section 5 may not remain a compelling interest in light of *Shelby County*). In any event, even before the coverage formula was invalidated, the State of

Florida was not a covered jurisdiction subject to Section 5. *See In re Senate Joint Resolution of Legislative Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 624 (Fla. 2012). Only five counties in Florida were covered – Collier, Hardee, Hendry, Hillsborough, and Monroe— and none of them are in northern Florida where District 5 is located. *See id.*

The only justification left for drawing a race-based district is compliance with Article III, Section 20(a) of the Florida Constitution. But District 5 does not comply with this provision. Article III, Section 20(a) provides that “districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.” The Florida Supreme Court has noted that these “dual constitutional imperatives follow almost verbatim the requirements embodied in the Federal Voting Rights Act.” *Id.* at 619 (cleaned up). The first imperative, which prohibits districts that deny or abridge the equal opportunity of minority groups to participate in the political process, is modeled after Section 2 of the VRA, and the second imperative, which prohibits districts that diminish the ability of minority groups to elect representatives of their choice, is modeled after Section 5. *Id.* at 619-20.

Like the VRA, these provisions of the Florida Constitution “aim[] at safeguarding the voting strength of minority groups against both impermissible dilution and retrogression.” *Id.* at 620. Although judicial interpretation of the VRA is relevant to understanding the Florida Constitution’s non-dilution and non-diminishment provisions, the Florida Supreme Court nonetheless recognizes its “independent constitutional obligation” to interpret these provisions. *Id.* at 621.

Relevant here is the Florida Constitution’s non-diminishment requirement. Unlike Section 5 of the VRA, this requirement “applies to the entire state.” *Id.* at 620. Under this standard, the Legislature “cannot eliminate majority-minority districts or weaken other historically performing minority districts where doing so would actually diminish a minority group’s ability to elect its preferred candidates.” *Id.* at 625. The existing districts “serve[] as the ‘benchmark’ against which the ‘effect’ of voting changes is measured.” *Id.* at 624 (cleaned up). Where a voting change leaves a minority group “less able to elect a preferred candidate of choice” than the benchmark, that change violates the non-diminishment standard. *Id.* at 625 (internal quotation marks omitted); *see also id.* at 702 (Canady, C.J., concurring in part and dissenting in part) (noting that the dictionary definition of “diminish” means “to make less or cause to appear less” (citation omitted)).

The Florida Supreme Court has acknowledged that “a slight change in percentage of the minority group’s population in a given district does not necessarily have a cognizable effect on a minority group’s ability to elect its preferred candidate of choice.” *Id.* at 625. The minority population percentage in each district need not be

“fixed” in perpetuity. *Id.* at 627. But where the reduction in minority population in a given district is more than “slight,” such that the ability of the minority population to elect a candidate of choice has been reduced (even if not eliminated), the Legislature has violated the Florida Constitution’s non-diminishment requirement as interpreted by the Florida Supreme Court.

Given these principles, there is no good reason to believe that District 5, as presented in the primary map, complies with the Florida Constitution’s non-diminishment requirement. The benchmark district contains a black voting age population of 46.20%, whereas the black voting age population of District 5 in the primary map is only 35.32%.¹ Compare Fla. Redist. 2022, FLCD2016, <https://bit.ly/3Iv6FeW> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022), with Fla. Redist. 2022, H000C8019, <https://bit.ly/3uczOXb> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022). This nearly eleven percentage point drop is more than slight, and while the House Redistricting Chair represented that the black population of the district could still elect a candidate of choice, *see* Fla. H.R. Comm. on Redist., recording of proceedings, at 59:44-1:00:17 (Feb. 25, 2022), there appears to be little dispute that the ability of the black population to elect such a candidate had nevertheless been reduced, *see id.* at 1:00:18-1:00:58 (noting that the benchmark district performed for the minority candidate of choice in 14 of 14 previous elections and that the new district would not perform for the minority candidate of choice in one-third of the same elections).

Moreover, the House Redistricting Chair claimed that the only criterion that mattered was whether the new district still performed at all. *See id.* at 1:06:09-1:06:30 (“It is not a diminishment unless the district does not perform.”); *see also id.* at 1:05:05-1:05:13 (“Is it less likely to perform? Honestly, I don’t know.”). But that view is plainly inconsistent with the Florida Supreme Court precedent described above, which prohibits any voting change that leaves a minority group “less able to elect a preferred candidate of choice.” *Apportionment I*, 83 So. 3d at 625 (internal quotation marks omitted). In sum, because the reduction of black voting age population is more than slight and because such reduction appears to have diminished the ability of black voters to elect a candidate of their choice, District 5 does not comply with the non-diminishment requirement of Article III, Section 20(a) of the Florida Constitution. Therefore, compliance with the Florida Constitution cannot supply the compelling reason to justify the Legislature’s use of race in drawing District 5 in the primary map.

¹ The benchmark district itself is a sprawling, non-compact racial gerrymander that connects minority communities from two distinct regions of the State; however, for purposes of this point, I assume that the district can be used as a valid benchmark against which to judge the new maps.

In the secondary map, by contrast, District 5 complies with the Florida Constitution's non-diminishment requirement, but in doing so, it violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The U.S. Supreme Court has warned that a "reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid." *Shaw*, 509 U.S. at 647. As described earlier, District 5 in the secondary map does precisely this.

That the district is believed to be necessary to comply with the Florida Constitution's non-diminishment requirement does not alone suffice to justify the use of race in drawing bizarre, non-compact district boundaries for the sole purpose of cobbling together disparate minority populations from across northern Florida to form a minority-performing district. Mere compliance with a state constitutional requirement to engage in race-based districting is not, without more, a compelling interest sufficient to satisfy strict scrutiny. The Fourteenth and Fifteenth Amendments to the U.S. Constitution and the VRA, which enforces the Fifteenth Amendment, exist to *prevent* states from engaging in racially discriminatory electoral practices. Indeed, one such weapon that states long used, and that the VRA was designed to combat, "was the racial gerrymander – the deliberate and arbitrary distortion of district boundaries for racial purposes." *Id.* at 640 (cleaned up).

Here, the Florida Constitution's non-diminishment standard would be satisfied only by a sprawling, non-compact district that spans 200 miles and repeatedly violates traditional political boundaries to join minority communities from disparate geographic areas. Such a district is not narrowly tailored to achieve the compelling interest of protecting the voting rights of a minority community in a reasonably cohesive geographic area. As applied to District 5 in the secondary map, therefore, the Florida Constitution's non-diminishment standard cannot survive strict scrutiny and clearly violates the U.S. Constitution.

For the foregoing reasons, Congressional District 5 in both maps is unlawful.

EXHIBIT 8

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Plaintiffs,

v.

Case No: 2022 CA 0666

LAUREL M. LEE, in her official capacity
as Florida Secretary of State, et al.,

Defendants.

_____ /

DECLARATION OF DR. DOUGLAS JOHNSON

1. I am over the age of eighteen (18) and am competent to testify to the matters set forth herein. The following is true of my own personal knowledge and I otherwise believe it to be true.

2. I am the President of National Demographics corporation and have consulted on redistricting nationally. A copy of my CV is attached.

3. I was hired by the Florida Secretary of State on April 22, 2022, to serve as an expert witness and to testify regarding my analysis of northern Congressional Districts 2 through 5 in the enacted, the 2016, and the plaintiff's proposed Congressional maps for:

- a. The number of County and City splits;
- b. The compactness of the districts;

4. I was also asked to review the discussion of the "Slave Population by Florida County" map on pages 5 and 6 of "Plaintiff's Memorandum of Law"

OPINIONS

5. Districts 2 through 5 of the enacted Congressional District map divide fewer counties than either the 2016 or the plaintiff's preferred map.
6. Districts 2 through 5 of the enacted Congressional District map divide fewer cities, towns and villages than either the 2016 or the plaintiff's preferred map.
7. Districts 2 through 5 of the enacted Congressional District map are significantly more compact than either the 2016 or the plaintiff's preferred map.
8. District 5 in both the 2016 and plaintiff's preferred map is not drawn to follow the claimed community of interest of "Slave Population" counties as alleged in "Plaintiff's Memorandum of Law."

COUNTY SPLITS ANALYSIS

9. Districts 2 through 5 of the enacted Congressional District map include five county splits, compared to eight (60 % more) in plaintiff's preferred map (H000C8015 used for this report, and S035C8060 is very similar) and the 2016 map.
10. Duval County has a 2020 Census population of 995,567, which is significantly higher than the 769,221 population of each Congressional District, so every map has to split Duval County. Not counting Duval County, the number of county splits are four in the enacted map, seven in the plaintiff's preferred map and in the 2016 map (75% higher).
11. Here is a listing of the five counties each split once in the enacted map:

Walton	CD 1 / CD 2
Lafayette	CD 2 / CD 3
Duval	CD 4 / CD 5
Marion	CD 3 / CD 6
St Johns	CD 5 / CD 6

12. Here is a listing of the seven counties split a total of eight times in the 2016 map:

Holmes	CD 1 / CD 2
Leon	CD 2 / CD 5
Jefferson	CD 2 / CD 5
Columbia	CD 2 / CD 6
Duval	CD 4 / CD 5
St Johns	CD 5 / CD 6
Marion	Two splits, resulting in three parts: CD 2 / CD 3 and CD 3 / CD 6

13. Here is a listing of the seven counties split a total of eight times in the plaintiff's preferred map:

Walton	CD 1 / CD 2
Leon	There are two splits of Leon County, resulting in three parts. Both splits are CD 2 / CD 5.
Jefferson	CD 2 / CD 5
Columbia	CD 2 / CD 5
Duval	CD 4 / CD 5
Marion	CD 3 / CD 6 (I have not counted the other Marion County split, involving CDs 6 and 11, because it does not involve any of CDs 2 through 5)
St Johns	CD 4 / CD 6

CITY, TOWN AND VILLAGE SPLITS ANALYSIS

14. Districts 2 through 5 of the enacted Congressional District map split only one city, town or village. That split is Jacksonville. Jacksonville's 2020 Census population is 949,611. Since that is significantly larger than the Congressional District population of 769,221, Jacksonville must be divided. No city, town or village that is small enough to fit within one Congressional District is divided in the enacted map.

15. Districts 2 through 5 of the 2016 Congressional District map split Jacksonville, Tallahassee, Lake City, and Ocala. The split of Ocala is a zero-population split, and the split of Jacksonville is required due to its size while three cities, towns, or villages that are small enough to fit within one Congressional District are divided in the 2016 map.
16. Districts 2 through 5 of the plaintiff's preferred Congressional District map split Jacksonville and Tallahassee. The split of Jacksonville is required due to its size. Thus, the populations of one city, town, or village that is small enough to fit within one Congressional District is divided in the plaintiff's preferred map.

COMPACTNESS ANALYSIS

17. Districts 2 through 5 of the enacted Congressional District map are significantly more compact than the same districts in the 2016 and in plaintiff's preferred map.
18. At 0.46 the average Polsby-Popper compactness score for the enacted map's districts 2, 3, 4 and 5 is nearly twice the average of the 2016 (0.25) or plaintiff's preferred map (0.27).
19. Congressional District 3 has a nearly identical Polsby-Popper score in all three maps (0.5 in the enacted, 0.53 in the 2016, and 0.54 in the plaintiff's preferred map). Among the three other Congressional Districts (2, 4 and 5), the **least**-compact District in the enacted map (CD 4, at 0.32) is significantly **more** compact than the **most**-compact districts in the 2016 (CD 1 at 0.21) and the plaintiff's preferred map (CD 1 at 0.25).
20. In the 2001/2022 redistricting cycle, the bi-partisan Arizona Independent Redistricting Commission (AZIRC) enacted a definition of compactness¹ that declared that a Polsby-

¹ The Arizona Constitution states "To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals," and one such other goal is "Districts shall be geographically compact and contiguous to the extent practicable." At one point in the legal back and forth over Arizona's 2001 map, a Judge ordered the Commission to formally adopt definitions of the various criteria and what constitutes a "significant detriment," leading to adoption of the 0.17 standard after review of sample districts

Popper score of less than 0.17 is a "significant detriment" to compactness.² The AZIRC is comprised of two Democrats, two Republicans, and an independent jointly selected by the other four Commissioners. Under the AZIRC's bi-partisan definition, in both the Florida 2016 map and the plaintiff's preferred map, Congressional District 3 barely escapes that category (at 0.17 in the 2016 map and 0.18 in plaintiff's preferred map). And Congressional District 4 falls well short of even that very low benchmark (0.10 in the 2016 map and 0.11 in plaintiff's preferred map).

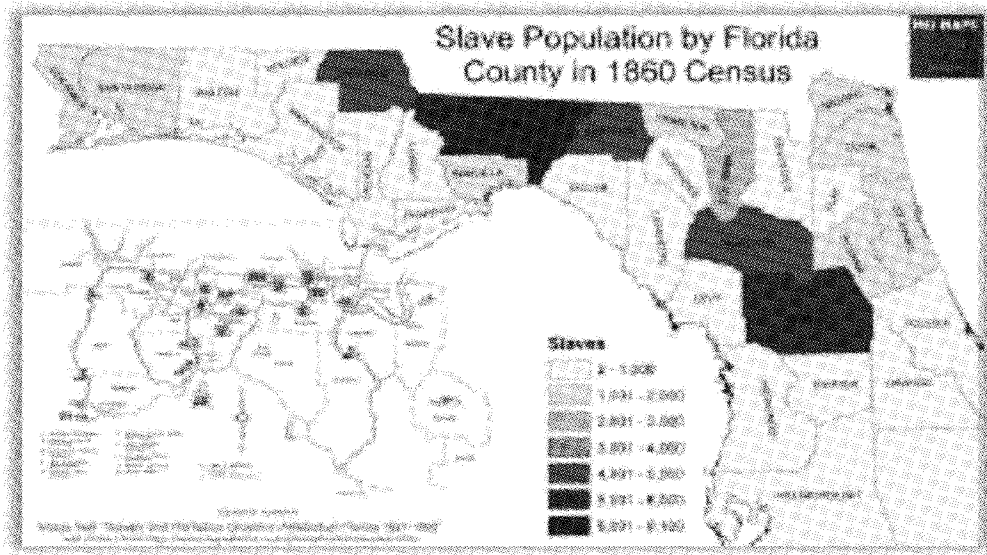
SLAVE COUNTY MAP COMMUNITY OF INTEREST ANALYSIS

21. "Plaintiff's Memorandum of Law" includes on Page 6 a map of "Slave Populations by Florida County in the 1860 Census. The Memorandum on page 5 states "Benchmark CD-5 unites historic Black communities in North Florida that pre-date the Civil War and arose from the slave and sharecropping communities that worked the state's abundant cotton and tobacco plantations, as shown below."
22. A comparison of the geography and the demographics of Congressional District 5 show the inaccuracy of this claim. First, three of the six counties with the largest slave

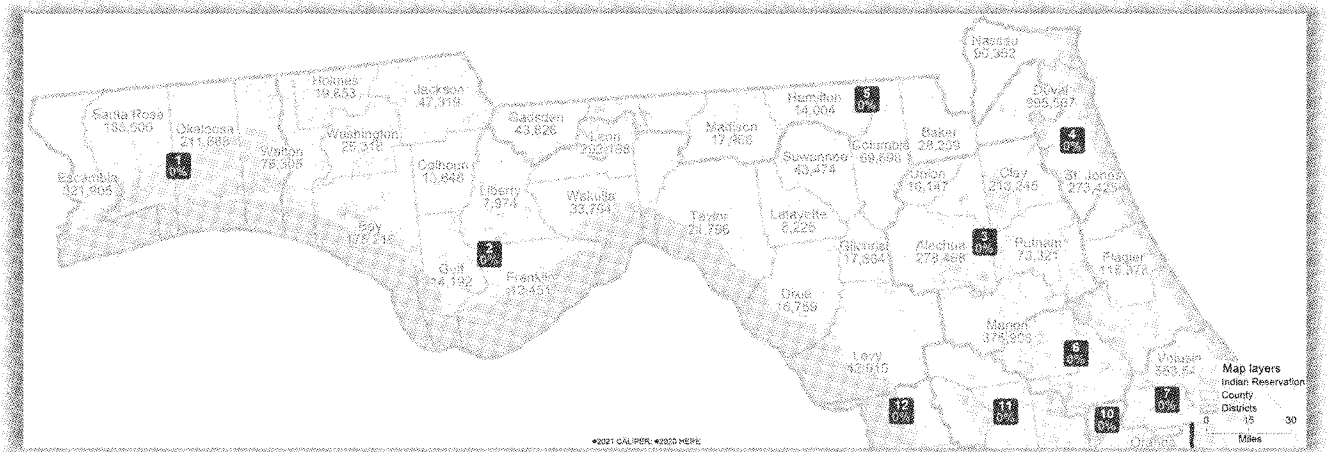
reflecting a range of compactness scores. [I was the lead technical consultant to the Commission at the time and put together and presented the materials used in the Commission's decision on this issue.]

² <https://azredistricting.org/2001/Definitions.asp>

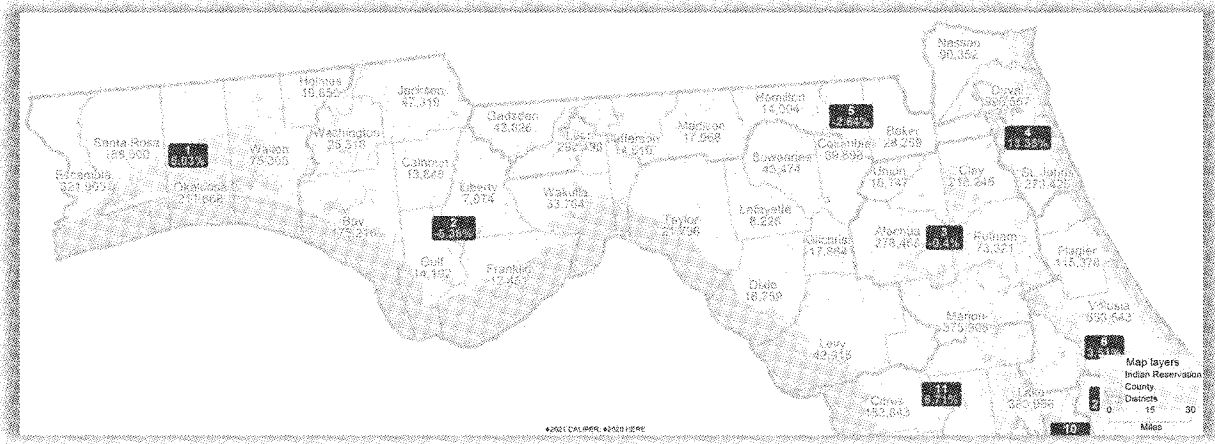
populations in the 1860 are **excluded** from "Benchmark CD5"



Plaintiff's Preferred Map



2016 Map



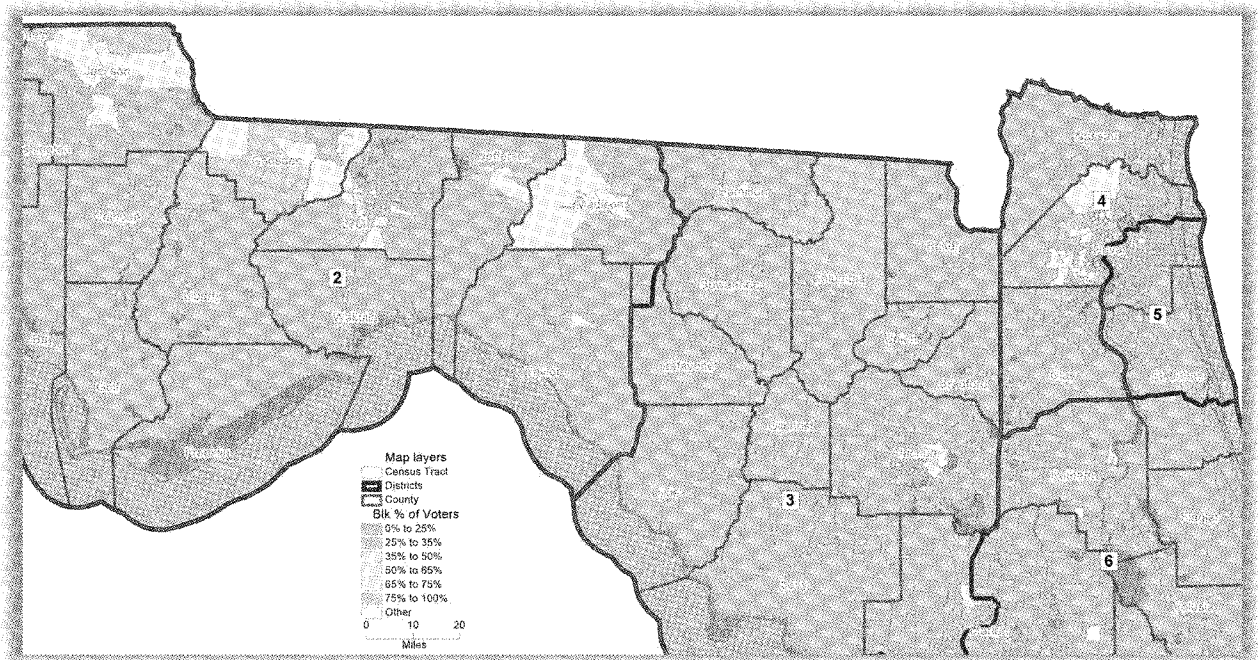
23. The counties of Jackson, Alachua and Marion are clearly shown in the darker-purple colors indicating a large number of slaves in the 1860 census. But none of these counties are included in Congressional District 5 in either the 2016 map nor the plaintiff's preferred map.

24. Demographically, the claims that benchmark CD5 somehow reflect the 1860 Census numbers are also rebutted by the simple math of the 2020 Census: in the 2020 Census data for both the 2016 map's CD5 and for the plaintiff's preferred map's CD5, over half of the Congressional District's total Black or African-American population is in Duval county. And Duval County, at 31.9% Black or African-American, is just slightly **more** Black or African-American than the combined total of the other counties that CD5 traverses in the 2016 map and in the plaintiff's preferred map:

County	2020 Total Population	2020 Black or African-American	Percent Black or African-American
Baker	28,259	4,108	14.5%
Hamilton	14,004	4,674	33.4%
Jefferson	14,510	4,776	32.9%
Madison	17,968	6,555	36.5%
Columbia	69,698	12,772	18.3%
Gadsden	43,826	24,018	54.8%
Leon	292,198	94,754	32.4%
Duval	995,567	317,860	31.9%

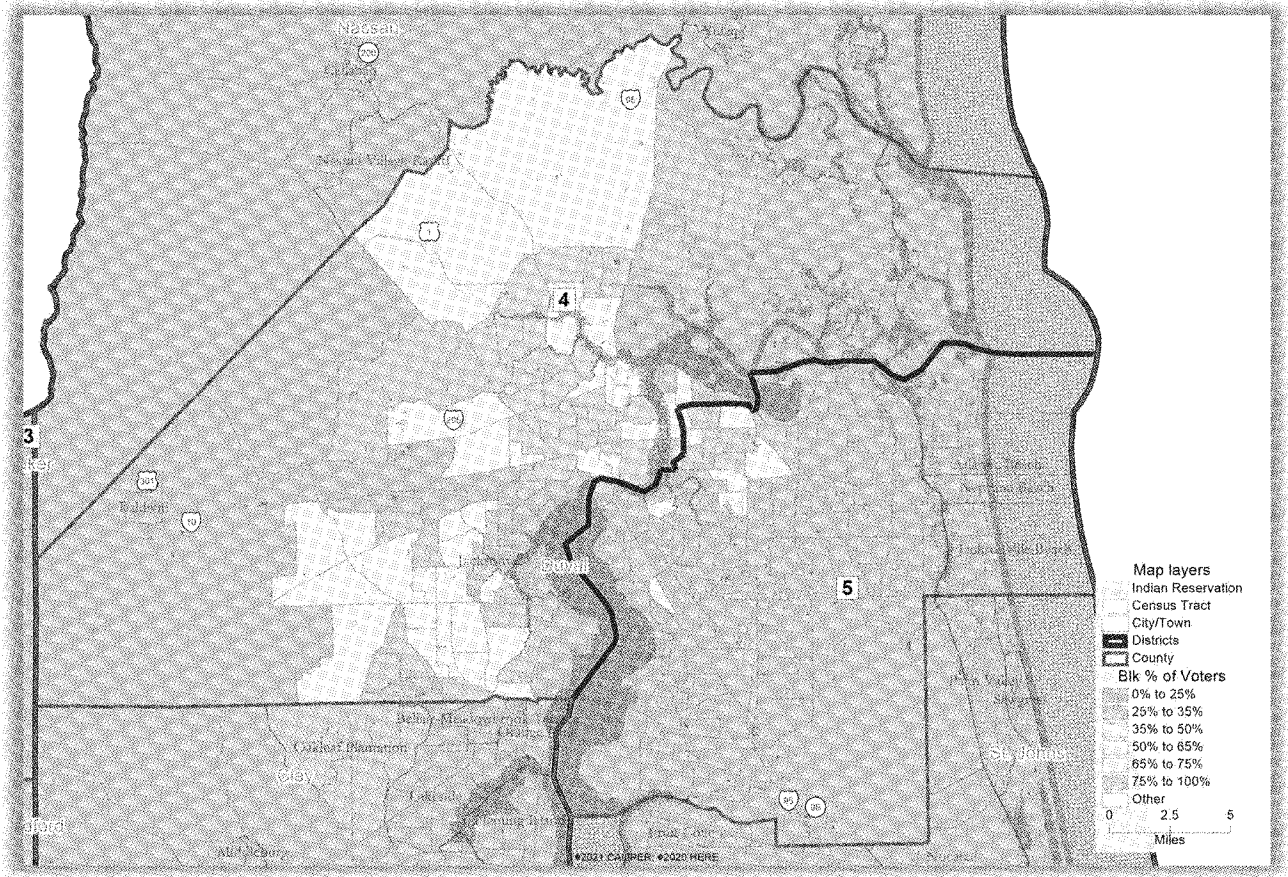
7-Co. total (excl. Duval)	480,463	151,657	31.6%
8-Co. total	1,476,030	469,517	31.8%
Duval Co. % of CD	67%	68%	

25. Clearly the demographics of the region have shifted significantly in the 160 years since that Census occurred. A map showing the Black or African-American percentage of the 2020 General Election voters shows both the concentration of Black or African-American voters in the cities and the resulting significant change from the "Sharecropper Counties" pattern shown in the 1860 map:

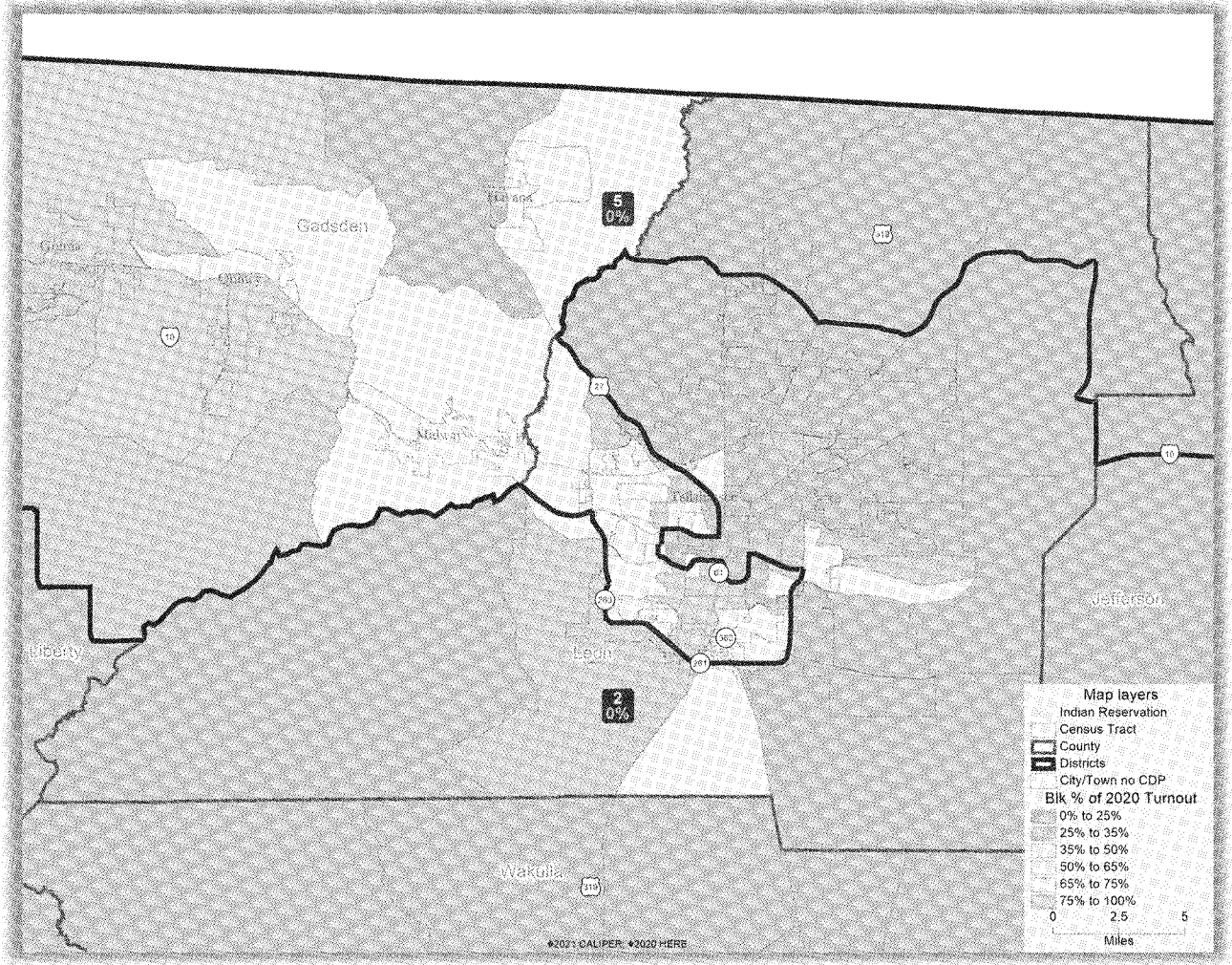


26. While the enacted map declines to split Tallahassee and link the geographically distant pockets of Black or African-American voters, the map does keep the individual communities together. District 2 unites Jackson, Gadsden, Leon, Jefferson and Madison counties. And in Duval County, which is larger in population than a Congressional District and thus must be divided, the enacted map's division of the county keeps all of

the county's majority-Black Census Tracts united in CD4 while almost perfectly following the St. Johns River as the clear geographic and Congressional District boundary through the county:



27. But the enacted map does not do what the plaintiff's preferred map does: split Leon County and the City of Tallahassee into three separate parts, assigning two parts to District 5 and the third to District 2. As shown in the image below, in both maps Congressional District 5 comes across northern Leon County to Gadsden County before curling back into Leon County to pick up the most-heavily-Black or African-American Census Tracts inside Tallahassee:



This the 7th day of May, 2022.

By:


Dr. Douglas Johnson

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of LOS ANGELES)

On 5-7-2022 before me, SEAN M. TRIBBLE ^{NOTARY} _{PUBLIC}
(insert name and title of the officer)

personally appeared DOUGLAS MARK JOHNSON
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



EXHIBIT 9

Robert D. Popper
Senior Attorney
Director, Voting Integrity
Judicial Watch, Inc.

February 18, 2022

My name is Robert D. Popper. I am a Senior Attorney and Director of voting integrity efforts at Judicial Watch, Inc. Judicial Watch is a Washington, D.C.-based public interest nonprofit dedicated to promoting transparency, accountability, and integrity in government, politics, and the law.

I was admitted to the Bar in New York in 1990, and I have been practicing as a litigator for 32 years. I have special knowledge and expertise in the area of voting law and have written both popular and scholarly articles on the subject.¹ I have particular expertise in the areas of racial and political gerrymandering. In 1991, with Professor Daniel Polsby, I wrote an article describing a mathematical way to measure the geographic compactness of congressional districts.² This standard is now known as the “Polsby/Popper” criterion and is one of the most widely used tests of district compactness. In 1997, I brought a lawsuit that ultimately led to New York’s 12th Congressional District being enjoined as an unconstitutional racial

¹ See, e.g., *How H.R.1 Intends to Overturn Supreme Court Rulings on Elections*, THE HILL, March 21, 2021; *The Voter Suppression Myth Takes Another Hit*, WALL ST. J., December 28, 2014; *Florida Gets Another Chance to Appeal for the Right to Clean Voter Rolls, They Should Take It*, THE DAILY CALLER, December 11, 2014; *Political Fraud About Voter Fraud*, WALL ST. J., April 27, 2014; *Little-Noticed Provision Would Dramatically Expand DOJ’s Authority at the Polls*, THE DAILY CALLER, March 28, 2014; and, with Professor Daniel D. Polsby, *Guinier’s Theory of Political Market Failure*, 77 SOC. SCI. Q. 14 (1996); *Racial Lines*, NAT. REV. 53, February 20, 1995; *Ugly: An Inquiry into the Problem of Racial Gerrymandering Under the Voting Rights Act*, 92 MICH. L. REV. 652 (1993); *Gerrymandering: Harms and a New Solution*, Heartland Institute Monograph (1990).

² Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 YALE L. & POL’Y REV. 301 (1991).

gerrymander.³

In 2005, I joined the Voting Section of the Civil Rights Division of the U.S. Department of Justice, where I worked for eight years. In 2008, I received a Special Commendation Award for my efforts in enforcing Section 7 of the National Voter Registration Act of 1993 (“NVRA”), which requires state offices providing public assistance to offer those receiving it the opportunity to register to vote. That same year, I was promoted to Deputy Chief of the Voting Section. In my time at DOJ, I managed voting rights investigations, litigations, consent decrees, and settlements in dozens of states. I helped to enforce all the statutes the Department is charged with enforcing, including the NVRA, the Help America Vote Act of 2002, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, and the Military and Overseas Voter Empowerment Act of 2009. I managed lawsuits enforcing the Voting Rights Act of 1965, as amended, including the minority language provisions of Section 203; the preclearance provisions of Section 5; the anti-intimidation provisions of Section 11; and both vote denial and vote dilution claims under Section 2.

In 2013, I joined Judicial Watch. In my time there, I have filed voting rights lawsuits in federal and state courts alleging claims under the First, Fourteenth, and Fifteenth Amendments, Section 2 of the Voting Rights Act, the NVRA, and a number of state constitutional provisions. Among other things, I am currently representing plaintiffs pursuing gerrymandering claims in Maryland State court.

In preparation for my testimony, I looked at Florida’s proposed congressional districts in maps drawn by the Florida House Redistricting Committee (*see* H000C8011, dated

³ *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997) (three-judge court), *aff’d mem.*, 521 U.S. 801 (1997).

2/10/2022; H000C8003, dated 11/29/2021; H000C8001, 11/29/2021, available at <https://redistrictingplans.flsenate.gov/>). In sum, my testimony is that proposed Congressional District 3 is highly vulnerable to being enjoined in a lawsuit that could be filed in federal court on the basis of principles embodied in the landmark ruling of *Shaw v. Reno*, 509 U.S. 630 (1993) and its progeny.

In *Shaw*, the Supreme Court first held that “redistricting legislation that is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling justification” states a federal, constitutional claim “under the Equal Protection Clause.” 509 U.S. at 642. Two years later in *Miller v. Johnson*, 515 U.S. 900 (1995), the Supreme Court upheld a lower court ruling invalidating a Georgia district on the basis of *Shaw*. The Court explained that “the essence of the equal protection claim recognized in *Shaw* is that the State has used race as a basis for separating voters into districts.” 515 U.S. at 911. Assigning voters on that basis “embod[ies] stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution.” *Id.* at 912.

The racial intent behind the district challenged in *Miller* was apparent “when its shape is considered in conjunction with its racial and population densities.” *Id.* at 917. Because “[r]ace was ... the predominant, overriding factor” in its design, the district could not be “upheld unless it satisfies strict scrutiny, our most rigorous and exacting standard of constitutional review.” *Id.* at 920. “To satisfy strict scrutiny, the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.” *Id.* The Court noted in particular that “creating a third majority-black district to satisfy the Justice

Department’s preclearance demands” under Section 5 of the Voting Rights Act was not enough under the circumstances to justify the challenged district:

As we suggested in *Shaw*, compliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws. ... The congressional plan challenged here was not required by the Voting Rights Act under a correct reading of the statute.

Id. at 921.

More recently, in *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 797-98 (2017), the Court made clear that a plaintiff challenging a district under *Shaw* was *not* required to “establish, as a prerequisite to showing racial predominance, an actual conflict between the enacted plan and traditional redistricting principles.” The Court recognized that “the ‘constitutional violation’ in racial gerrymandering cases stems from the ‘racial purpose of state action, not its stark manifestation.’” *Id.* at 798 (citation omitted). *Bethune-Hill* is also noteworthy in that the Court, under a deferential review for “clear error,” did not overturn the district court’s finding that a district with 55% BVAP was necessary to avoid liability under Section 5 of the Voting Rights Act. But the Court in another case summarized *Bethune-Hill*’s findings as follows:

[W]here we have accepted a State’s “good reasons” for using race in drawing district lines, the State made *a strong showing of a pre-enactment analysis with justifiable conclusions*. In *Bethune-Hill*, the State established that the primary mapdrawer “discussed the district with incumbents from other majority-minority districts[,] ... considered turnout rates, the results of the recent contested primary and general elections,” and the district’s large prison population. ... The State established that it had performed a “functional analysis,” and acted to achieve an “informed bipartisan consensus.”

Abbott v. Perez, 138 S. Ct. 2305, 2335 (2018) (emphasis added). Significantly, the Court in *Abbott* rejected a proposed justification for a race-based district where the State of Texas

argued that it was necessary to comply with Section 2 of the Voting Rights Act, but had not made the required strong showing. *Id.* at 2334. Similarly, in *Cooper v. Harris*, 137 S. Ct. 1455, 1470 (2017), the Court rejected a claim that a race-based district was necessary to comply with Section 2 when the State of North Carolina could not show the preconditions required to make such a claim.

Turning to Congressional District 3 in the proposed plan, I believe it will be vulnerable to a serious—and probably a winning—*Shaw*-type claim under the Fourteenth Amendment. I understand that there will be little dispute that the district was drawn with its racial characteristics as the predominant consideration. I also understand that the shape of the district will be well-explained by the effort to include African-American populations around Tallahassee and Jacksonville. Moreover, the district clearly violates traditional districting criteria. Its Popper-Polsby score is 10%, and its Reock score is 11%. These are very low compactness scores for any U.S. congressional district, and in both cases these are the lowest compactness scores in the State of Florida.⁴

I also believe that the defenders of District 3 will be unable to justify the district so as to satisfy their burden of strict scrutiny. To begin with, I am unaware of the existence of any sort of “a strong showing of a pre-enactment analysis with justifiable conclusions.” *Abbott*, 138 S. Ct. at 2335. But further, even if the race-based character of the districts could be justified under federal or Florida law, the district’s noncompactness will compel the legal conclusion that it is not “narrowly tailored” to achieve its goals, as it must be to satisfy strict

⁴ District 3 also has the third worst Area/Convex Hull score in the State. However, I do not consider the Area/Convex Hull test to be a reliable compactness measure. There are too many district indentations and distortions it simply cannot “see.” Accordingly, it is too forgiving.

scrutiny. *See Miller*, 515 U.S. at 921 (“The congressional plan challenged here was not required by the Voting Rights Act under a correct reading of the statute.”).

As a final point, the fact that the BVAP in District 3 is at around 44% according to the House Committee’s online information (or 42% according to the Princeton Gerrymandering Project) will defeat the State’s ability to justify the district. The Supreme Court has held that no Section 2 claim is possible where the minority VAP is less than 50%. *Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009) (“It remains the rule ... that a party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent.”). The Supreme Court has at least suggested that the same rule applies in the context of Section 5. *Perry v. Perez*, 565 U.S. 388, 398-99 (2012) (“The court’s order suggests that it may have intentionally drawn ... a ‘minority coalition opportunity district’ in which the court expected two different minority groups to band together to form an electoral majority”; and, if so, “it had no basis for doing so. *Cf. Bartlett ...*”). *See also In re Senate Joint Resolution of Legislative Apportionment* 1176, 83 So. 3d 597, 625 (2012) (“Just as Section 2 jurisprudence guides the Court in analyzing the state vote dilution claims, when we interpret our state provision prohibiting the diminishment of racial or language minorities’ ability to elect representatives of choice, we are guided by any jurisprudence interpreting Section 5.”).

In sum, if I were asked by a client whether Congressional District 3 complies with the federal constitution, my answer would be an emphatic no.

R. D. P.

EXHIBIT 10

SB 2-C Congressional Plan 0109

J. ALEX KELLY
EXECUTIVE OFFICE
OF THE GOVERNOR
4.19.22



Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

DISTRICTS IDENTICAL IN PLANS 8019 & 0109

10 Districts Identical:

- 1-2 (Panhandle)
- 20-25 (Southeast)
- 27-28 (Southeast)

IMPROVEMENTS IN PLAN 8019

18 Districts Improved:

- 3-19
- 26 (Southwestern portions)

Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

- Starting with the Legislature's Primary Plan 8019:
 - Maintained the same number of performing majority-minority districts.
 - Maintained the Legislature's Panhandle districts.
 - Maintained the Legislature's Southeast districts.
 - Addressed federal constitutional concerns by using the EOG's Northeast districts (w/ minor improvements).
 - Tier 2 improvements through a compromise (hybrid of the Legislature's and EOG's plans) for Gulf Coast counties, stretching from Citrus to Lee counties and impacting some inland counties.
 - Tier 2 improvements by returning to concepts from the House Congressional Redistricting Subcommittee's Central Florida in Plan 8011, with inclusion of one concept from the Senate's Plan 8060.
 - Tier 2 improvements to boundaries by eliminating EOG's adherence to Census Designated Places and adopting the Legislature's Tier 2 focus on use of roadways and waterways.

Tier 2 Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

SB 102 PRIMARY PLAN 8019

SB 2-C PLAN 0109

Counties Kept Whole: 49

18 counties split 48 ways

Differences:

Where there are differences in county splits, 7 counties split 17 ways (Citrus, Collier, Hillsborough, Marion, Polk, Sarasota, Volusia)

FL's 7 largest counties split 24 ways (Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas)

Counties Kept Whole: 50

17 counties split 46 ways

Differences:

Where there are differences in county splits, 7 counties split 16 ways (Citrus, Collier, Hillsborough, Marion, Polk, Sarasota, Volusia)

FL's 7 largest counties split 23 ways (Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas)

Tier 2 Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

SB 102 PRIMARY PLAN 8019

- Boundaries: 87.50% use of Tier 2 boundaries
- Therefore: 12.50% Non-Geo/Pol boundary lines

SB 2-C PLAN 0109

- Boundaries: 88.50% use of Tier 2 boundaries
- Therefore: 11.50% Non-Geo/Pol boundary lines

Tier 2 Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

SB 102 PRIMARY PLAN 8019

- Compactness:
- Reock: 0.48
- Area/Convex Hull: 0.82
- Polsby Popper: 0.42
- Least mathematically compact CD 4's Polsby Popper is 0.17 (below 0.20)

SB 2-C PLAN 0109

- Compactness:
- Reock: 0.47
- Area/Convex Hull: 0.81
- Polsby Popper: 0.43
- Only Plan w/ all CDs > 0.20 Reock & Polsby Popper
- Improved visual compactness for several CDs

Tier 2 Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

SB 102 PRIMARY PLAN 8019

City Splits: 16

Differences:

- Cape Coral (Lee) – split in 2 CDs
- Plant City (Hillsborough) – split in 2 CDs
- Port Orange (Volusia) – split in 2 CDs
- Lakeland (Polk) – whole
- Longboat Key (Manatee & Sarasota) – whole
- St. Petersburg (Pinellas) – whole

SB 2-C PLAN 0109

City Splits: 16

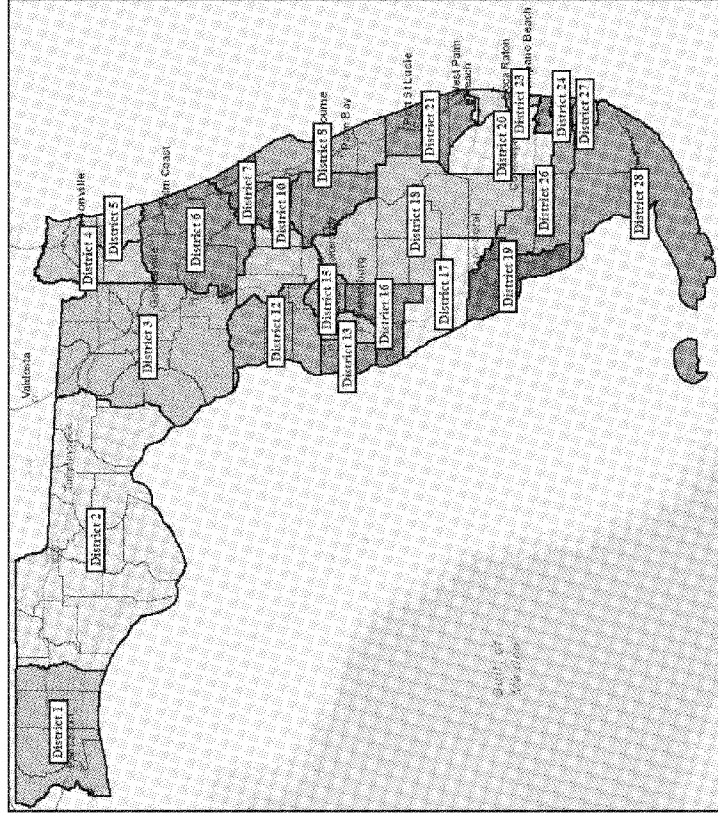
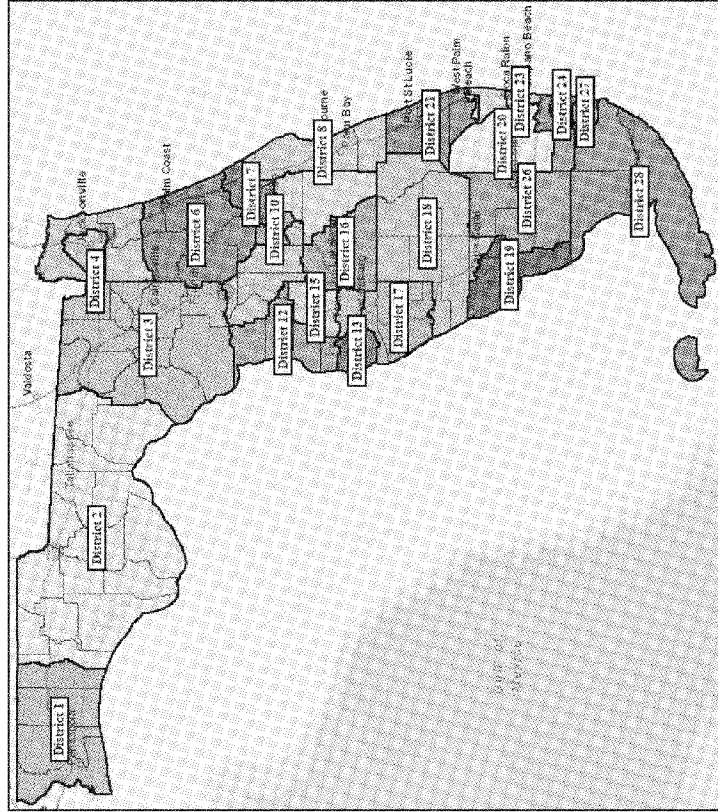
Differences:

- Cape Coral (Lee) – whole
- Plant City (Hillsborough) – whole
- Port Orange (Volusia) – whole
- Lakeland (Polk) – split in 2 CDs
- Longboat Key (Manatee & Sarasota) – split in 2 CDs (due to keeping Sarasota County whole)
- St. Petersburg (Pinellas) – split in 2 CDs

Statewide

SB 102 PRIMARY PLAN 8019

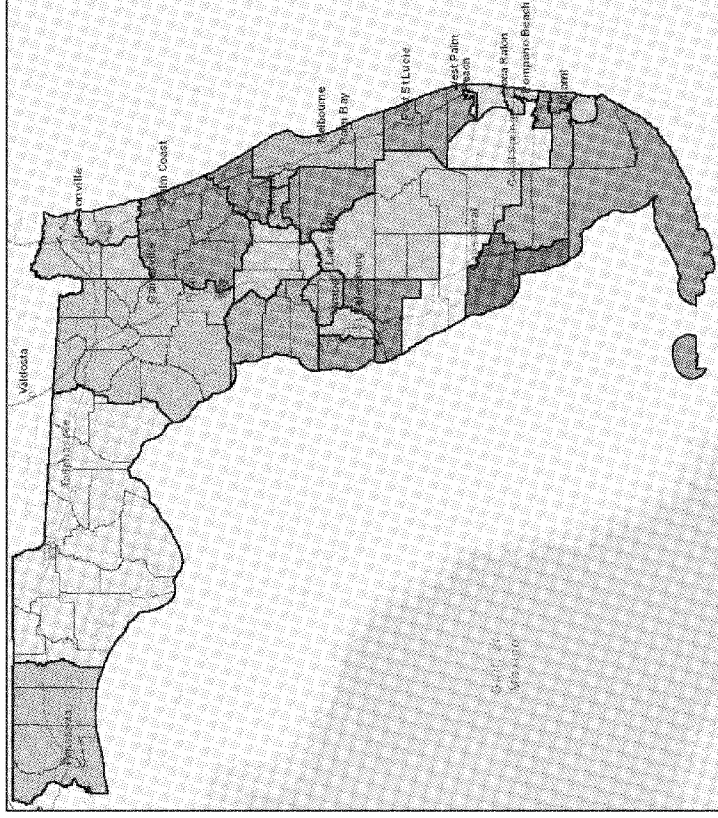
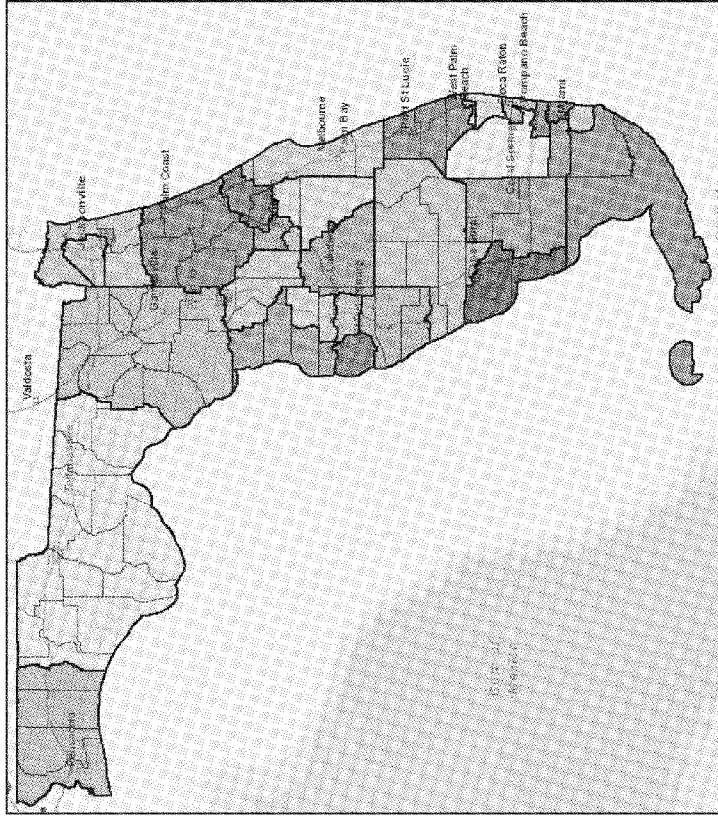
SB 2-C PLAN 0109



Statewide Without District Labels

SB 102 PRIMARY PLAN 8019

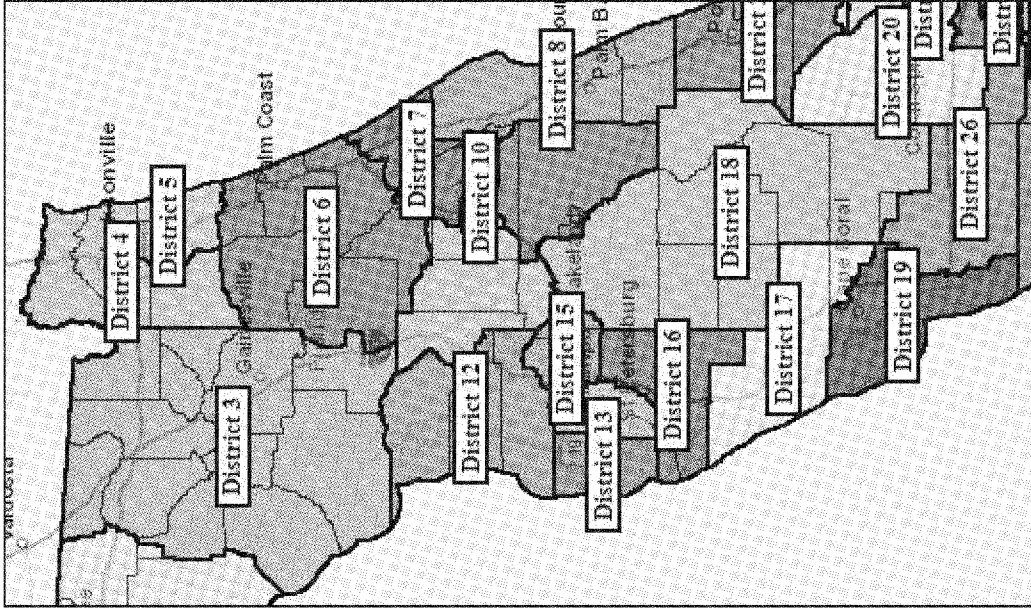
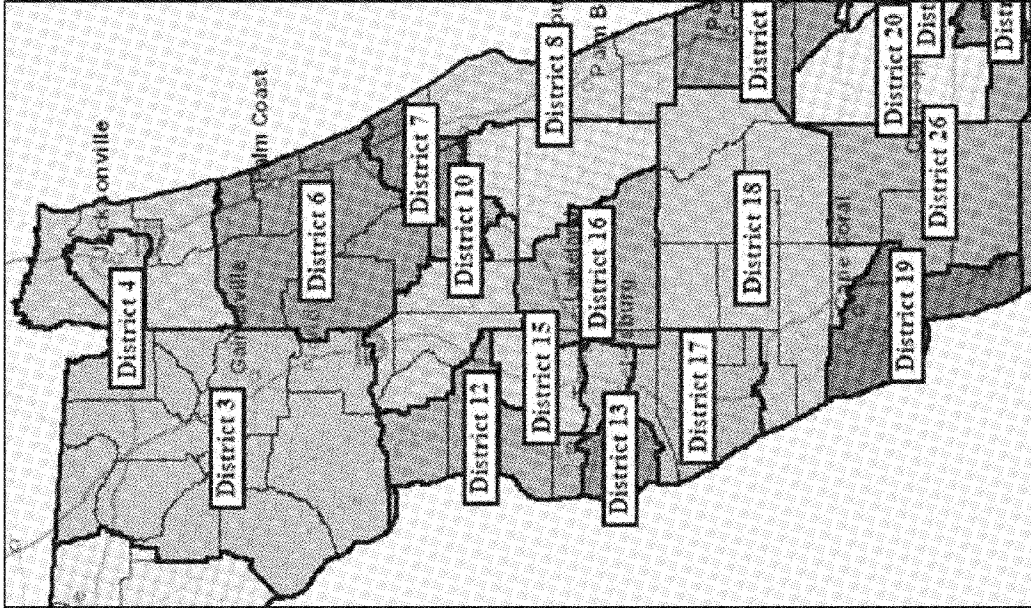
SB 2-C PLAN 0109



Focusing on the 18 Districts with Changes

SB 102 Primary Plan 8019

SB 2-C Plan 0109

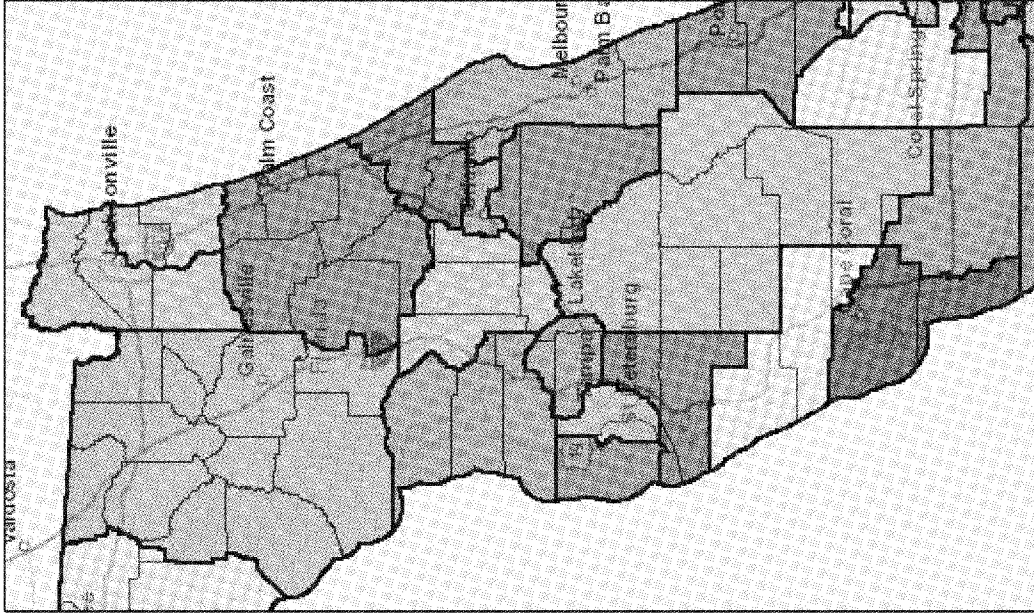
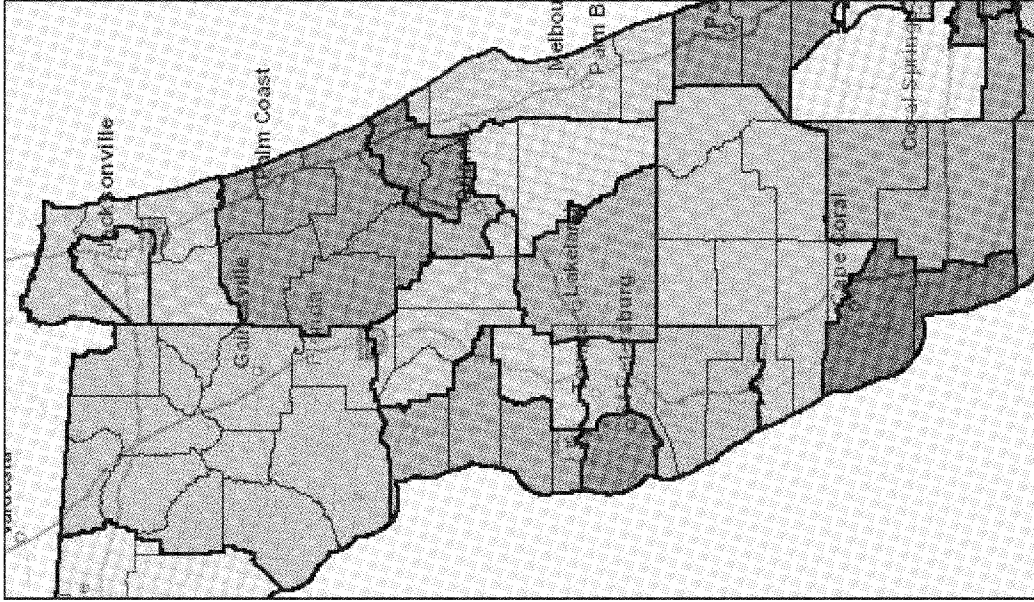


Focusing on the 18 Districts with Changes

Without District Labels

SB 102 Primary Plan 8019

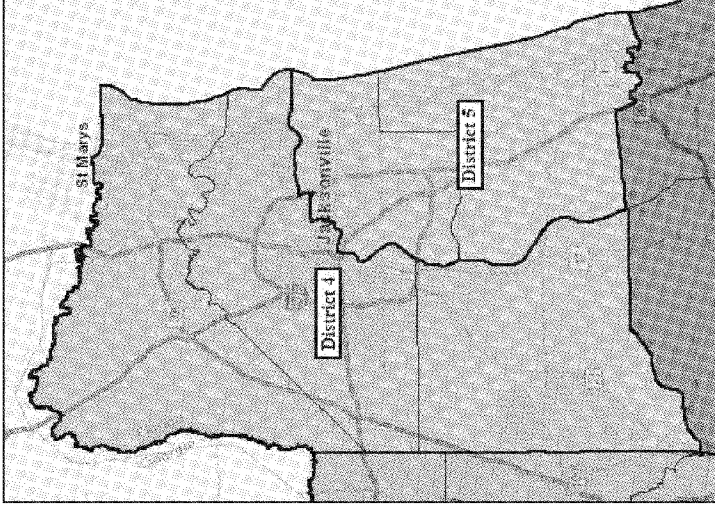
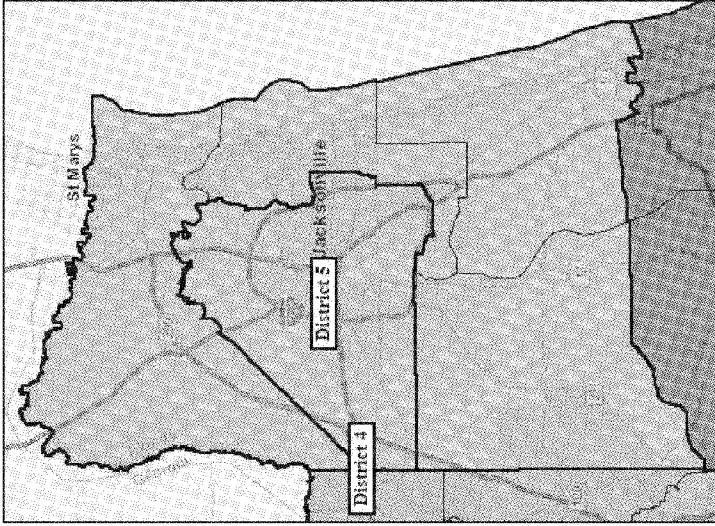
SB 2-C Plan 0109



Districts 4-5

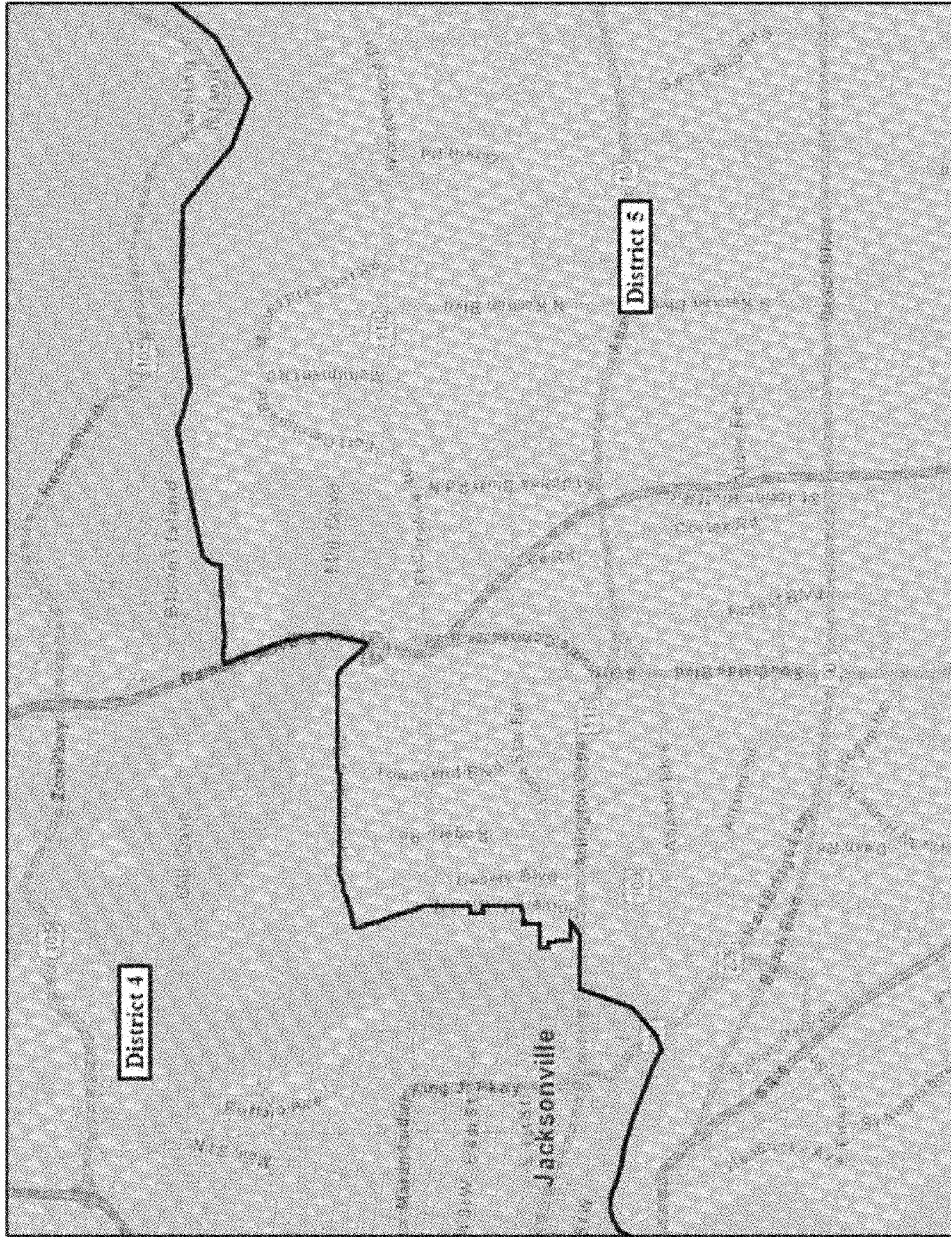
SB 102 PRIMARY PLAN 8019

SB 2-C PLAN 0109



SB 2-C Plan 0109

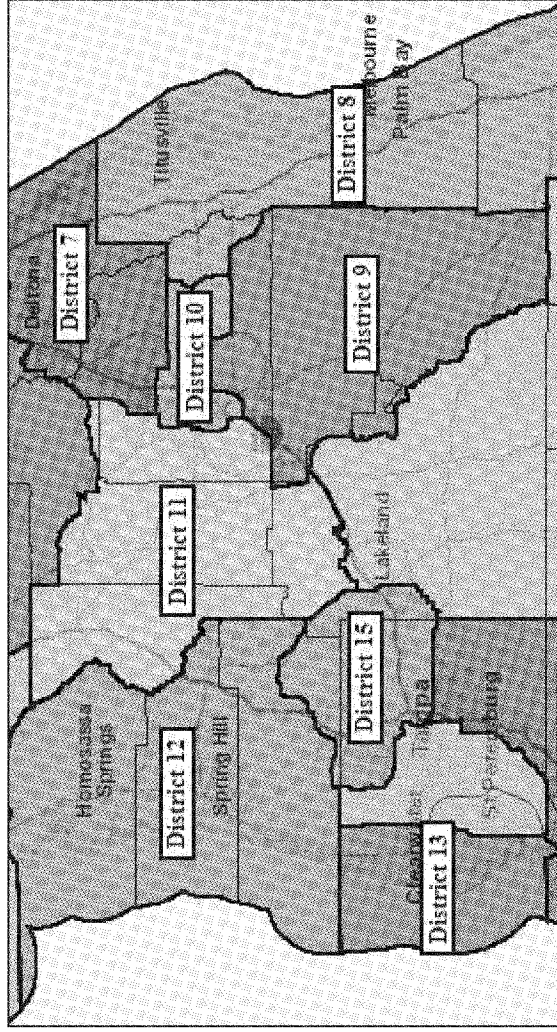
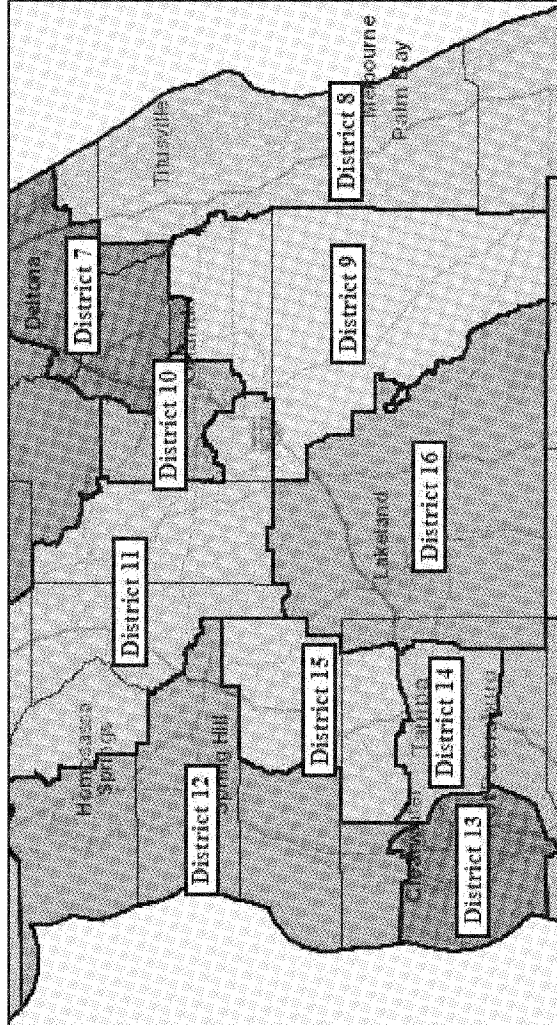
Districts 4-5



The I-4 Corridor and Tier 2 Improvements

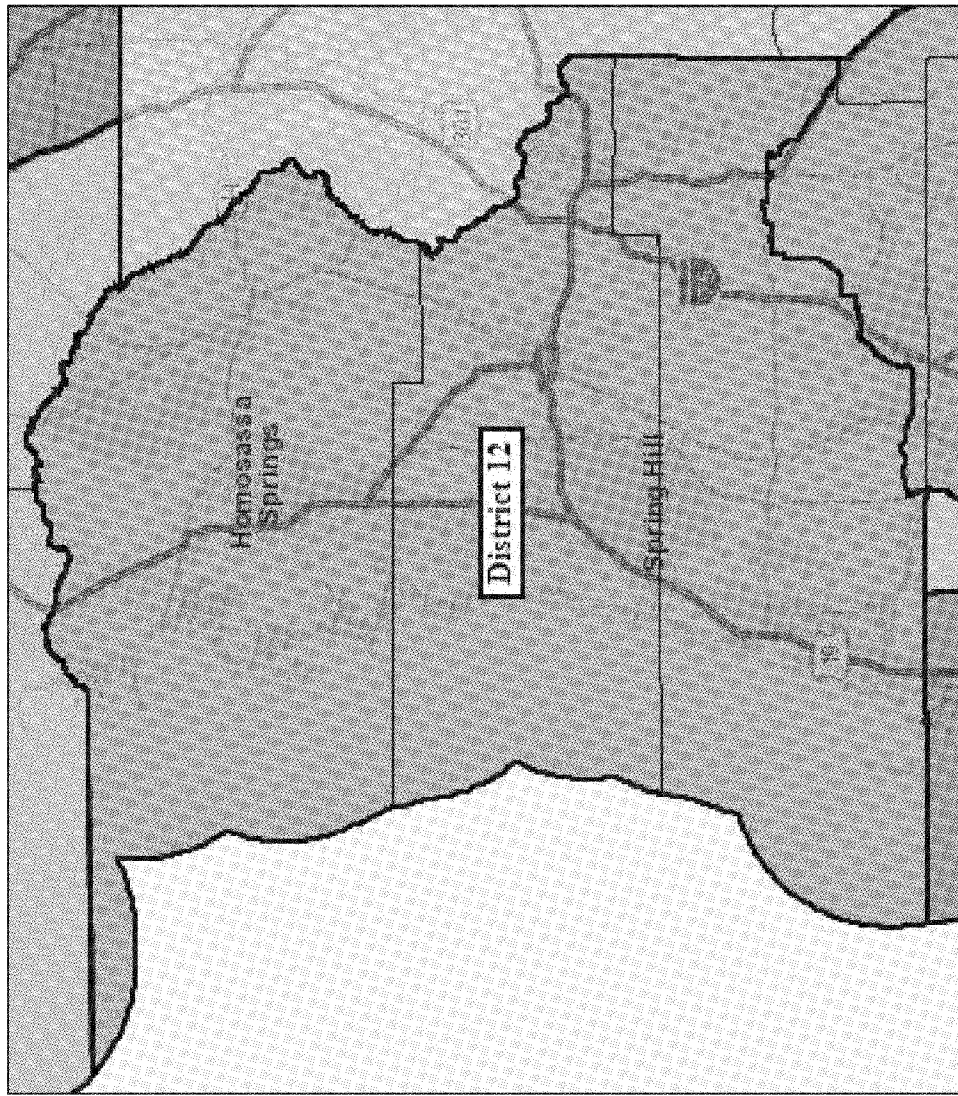
SB 102 PRIMARY PLAN 8019

SB 2-C PLAN 0109



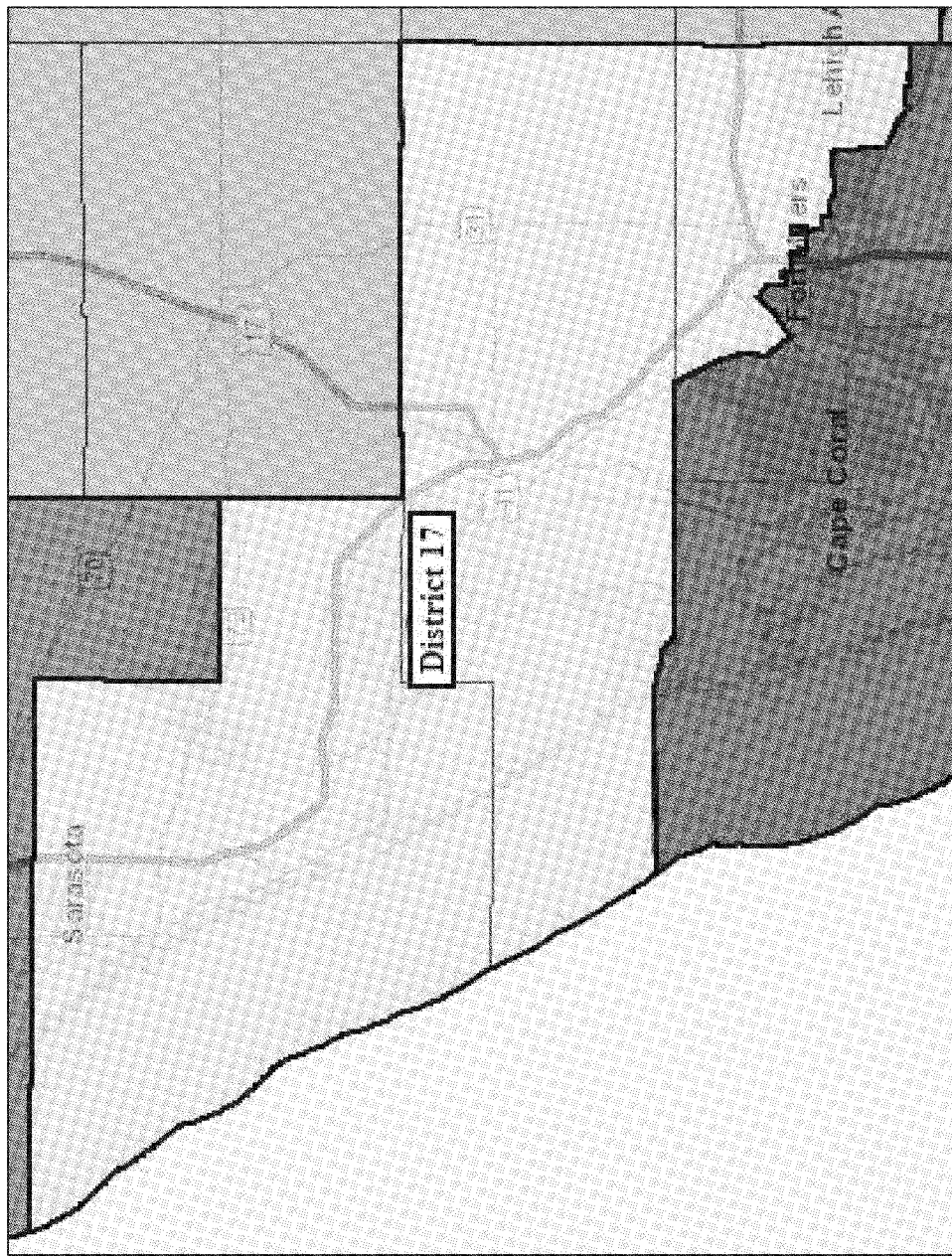
SB 2-C Plan 0109

District 12



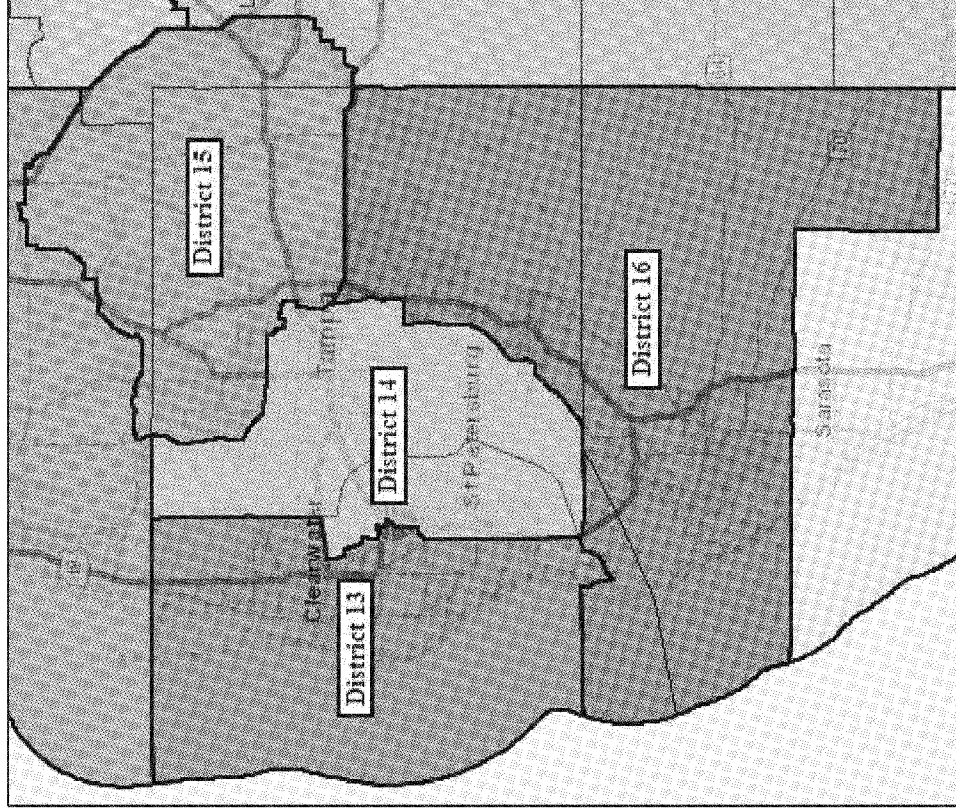
SB 2-C Plan 0109

District 17



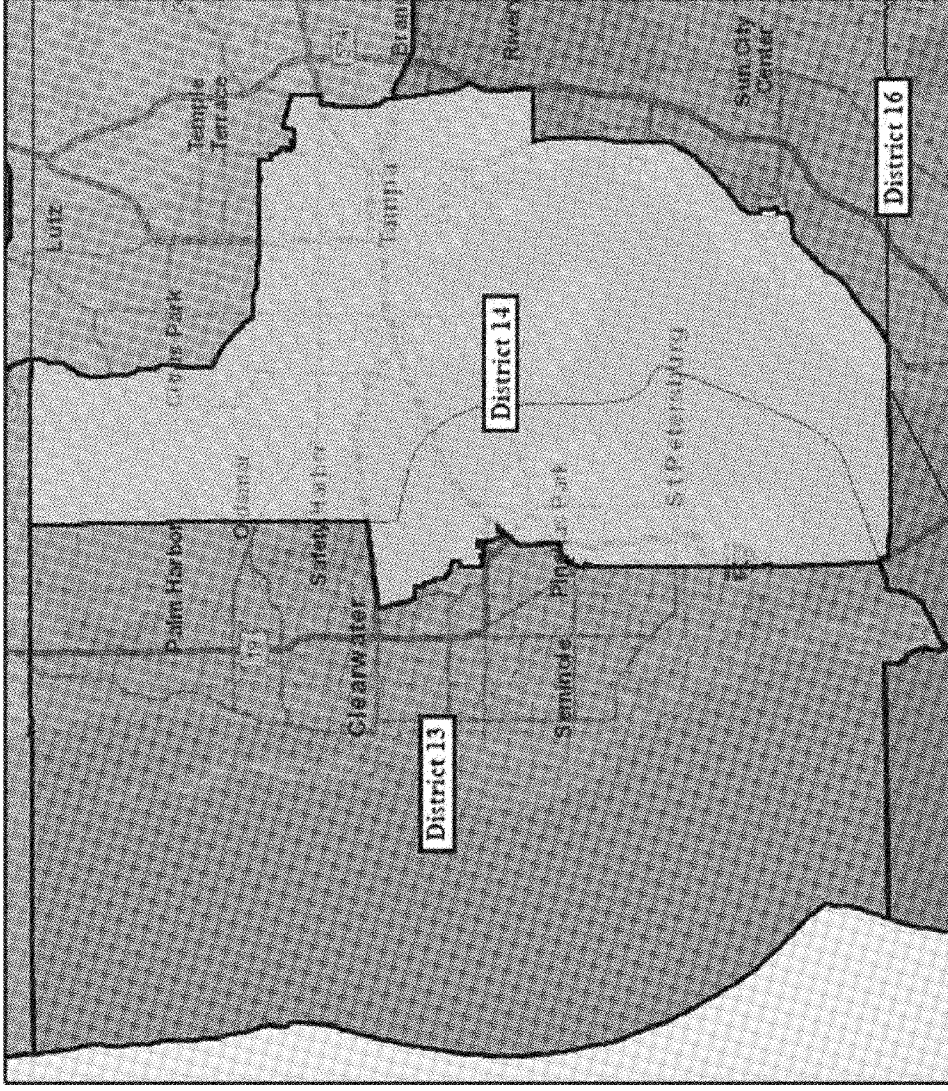
SB 2-C Plan 0109

Districts 13-16



SB 2-C Plan 0109

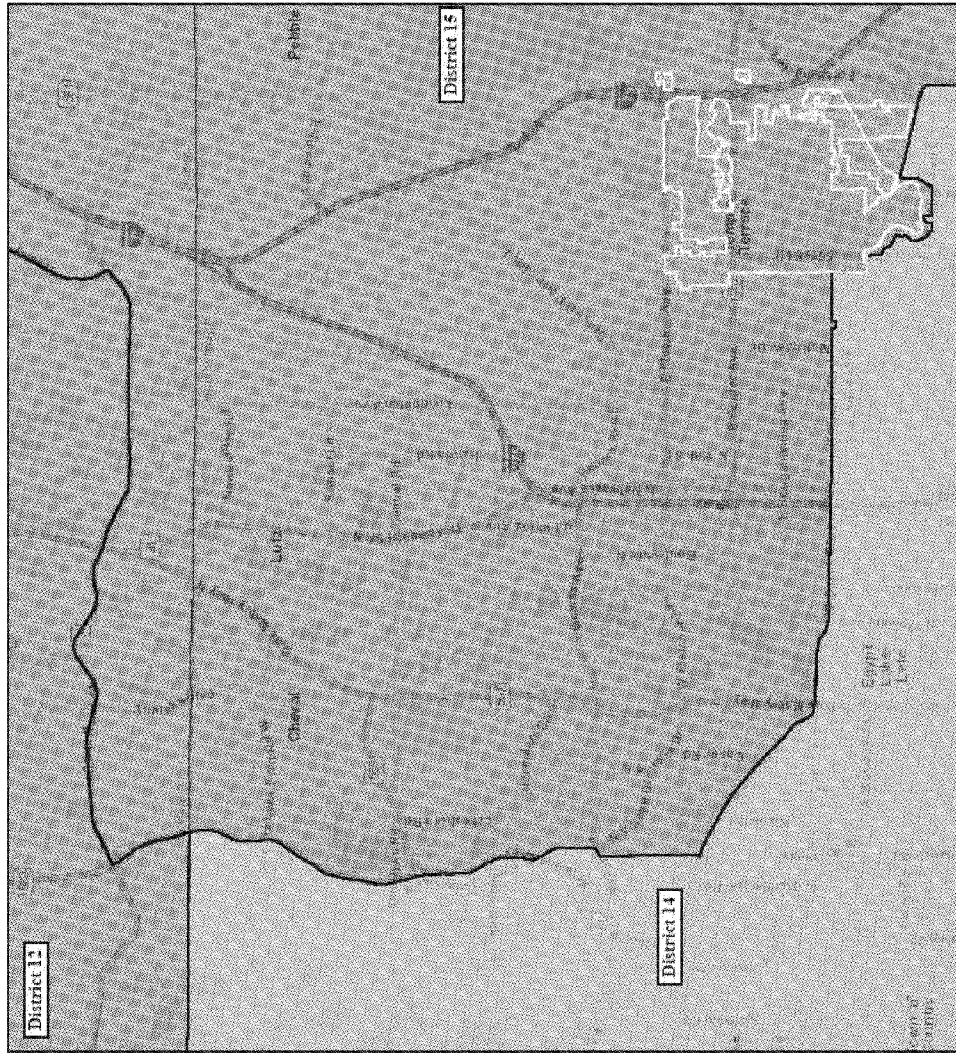
Districts 13-16



SB 2-C Plan 0109

Districts 12, 14-15

Temple Terrace is highlighted



SB 2-C Plan 0109

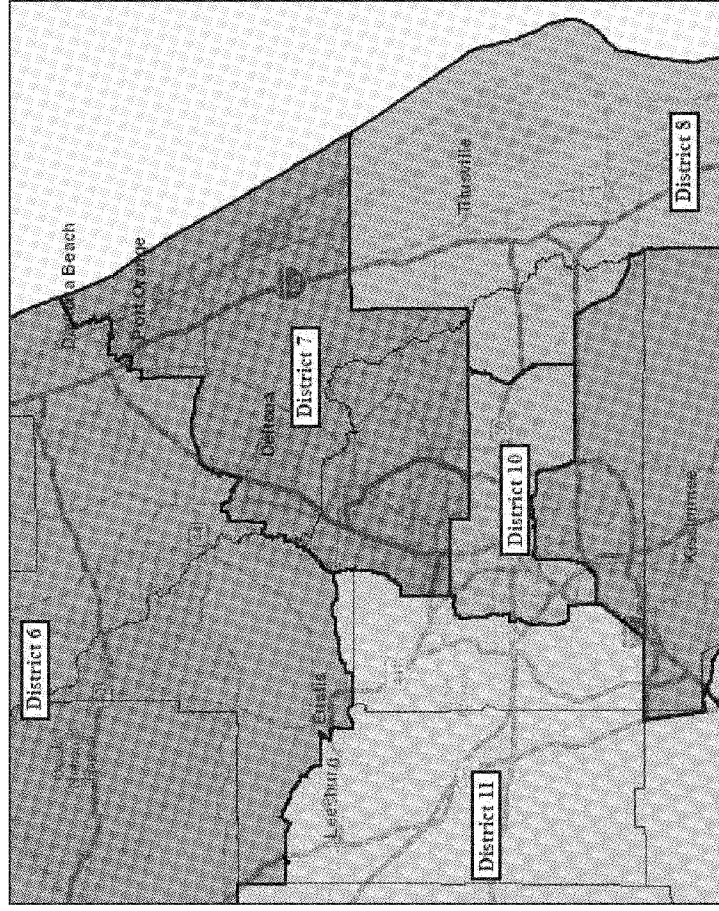
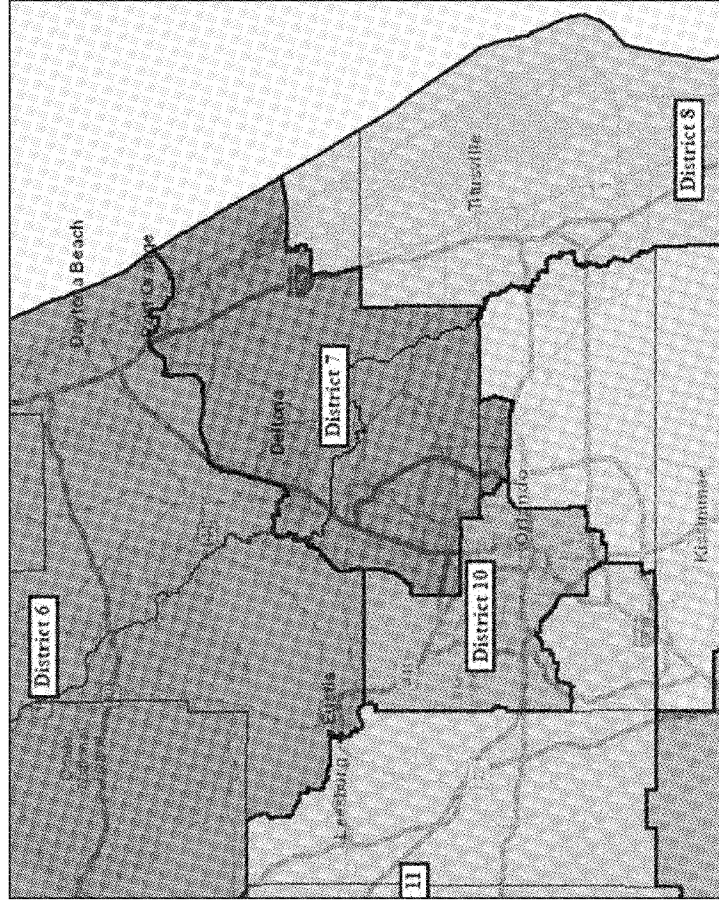
Districts 14-16



Districts 6-11

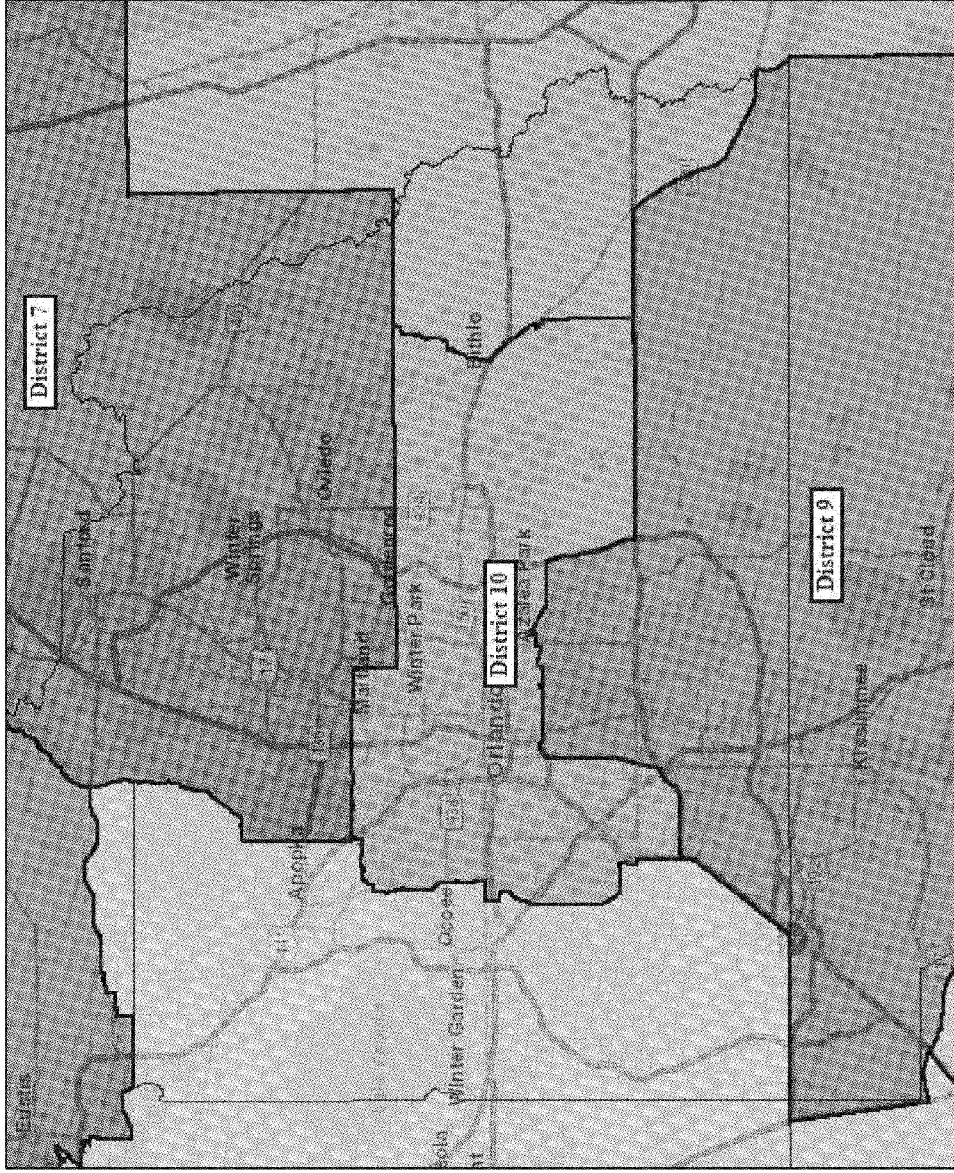
SB 102 PRIMARY PLAN 8019

SB 2-C PLAN 0109



SB 2-C Plan 0109

Districts 7-11



SB 2-C Plan 0109

Districts 7-11

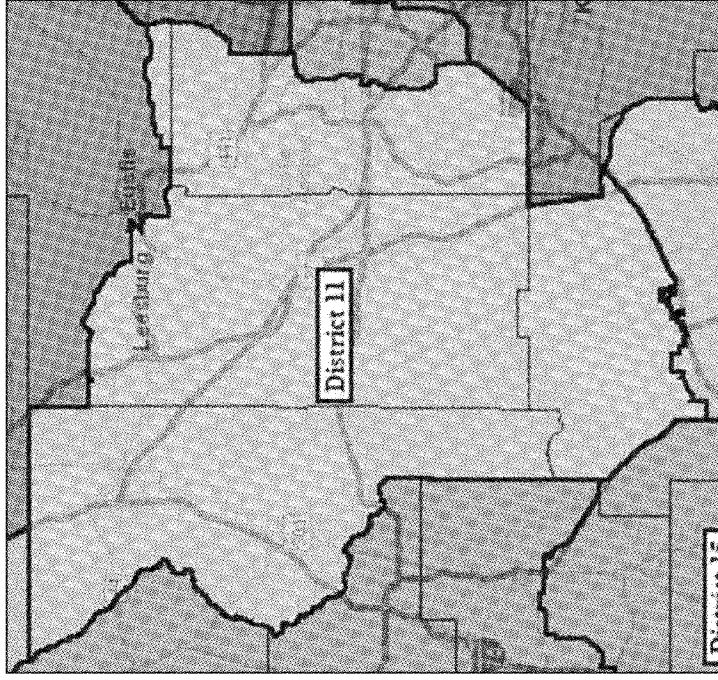
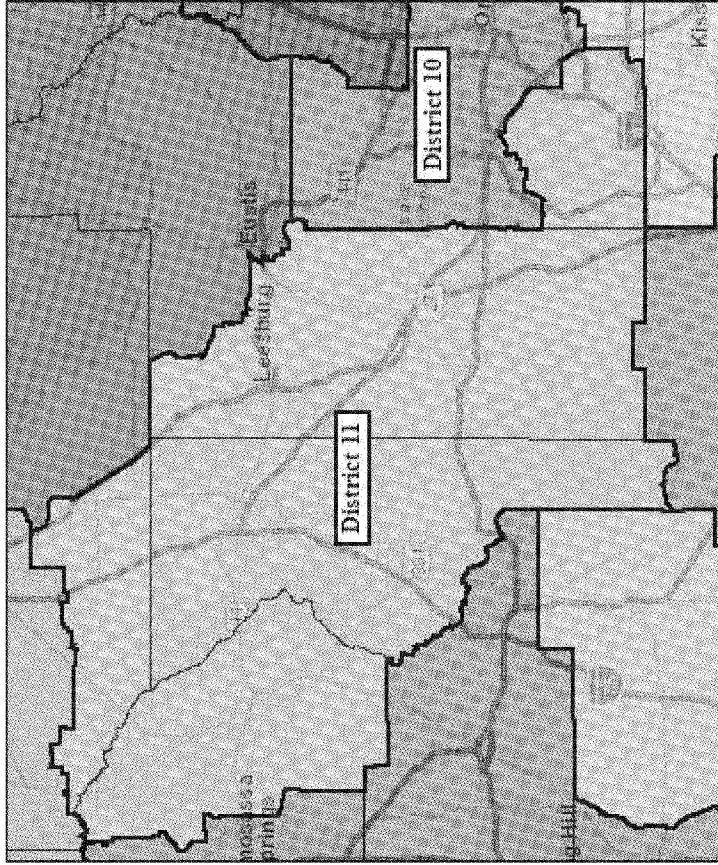
Edgewood is highlighted



Districts 6, 10-12

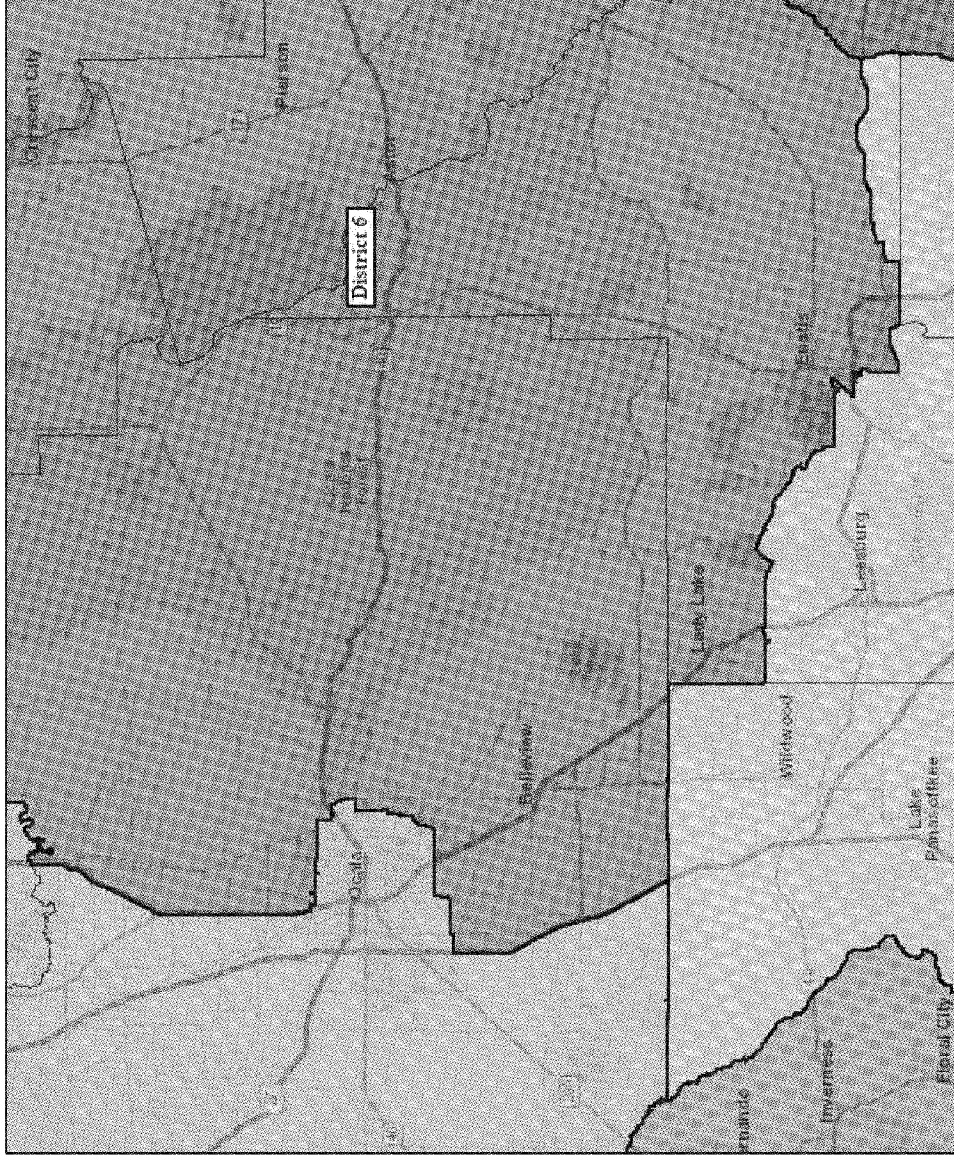
SB 102 PRIMARY PLAN 8019

SB 2-C PLAN 0109



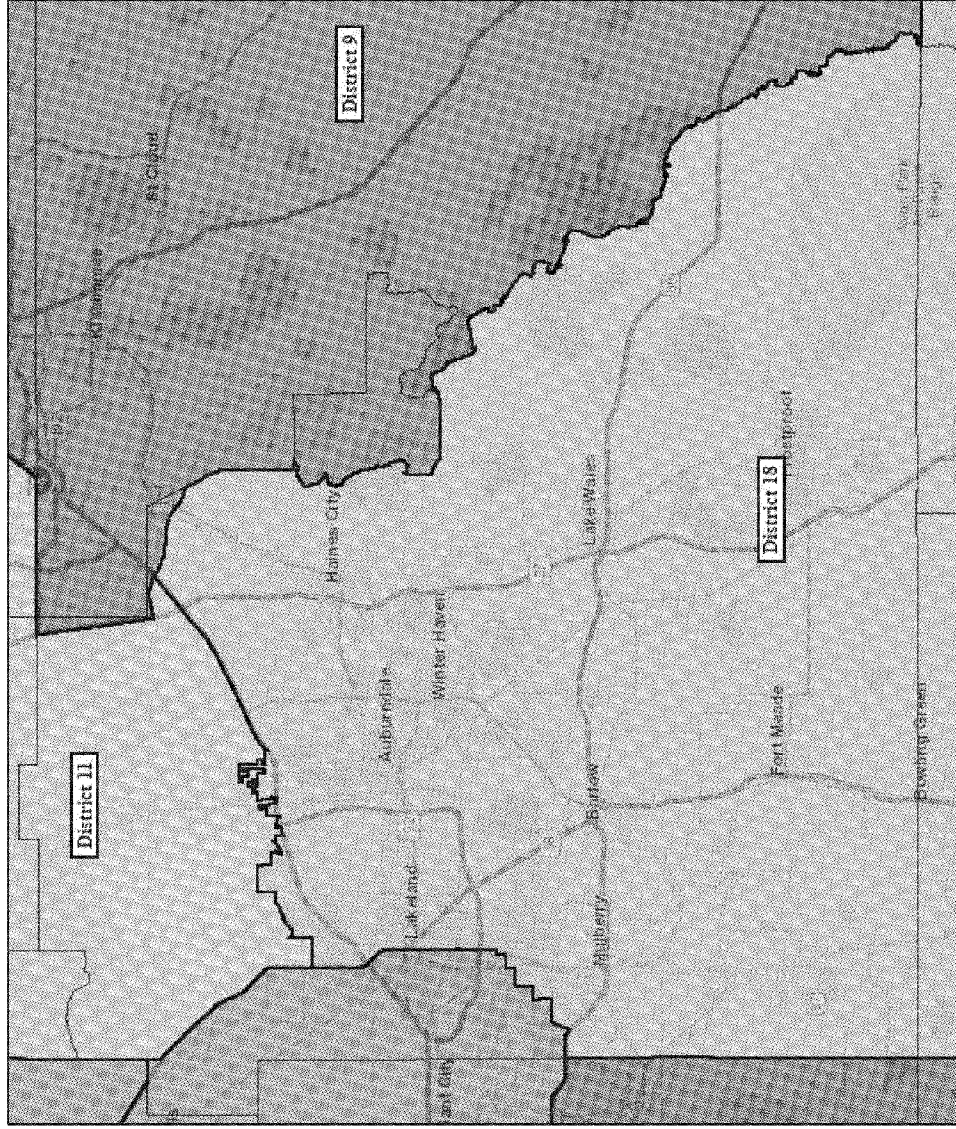
SB 2-C Plan 0109

Districts 3, 6, 11



SB 2-C Plan 0109

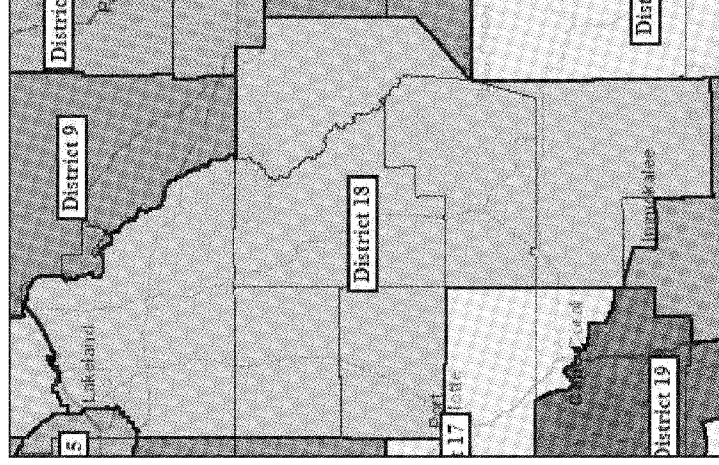
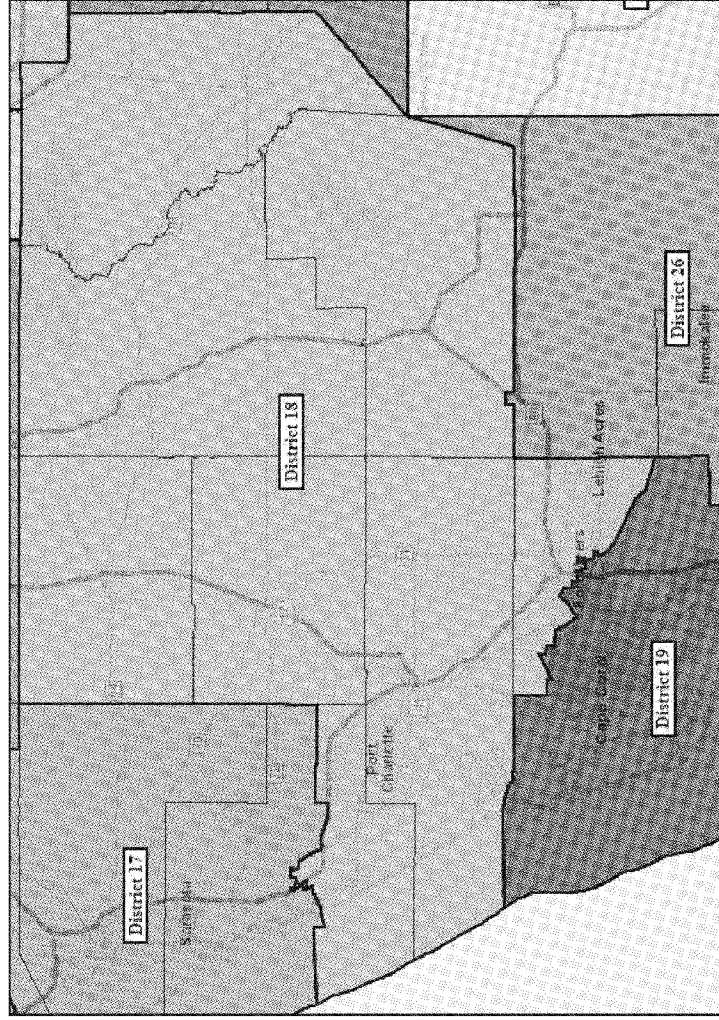
Districts 9, 11, 15, 18



Districts 17-19, 26

SB 102 PRIMARY PLAN 8019

SB 2-C PLAN 0109



SB 2-C Plan 0109

Districts 17-19, 26

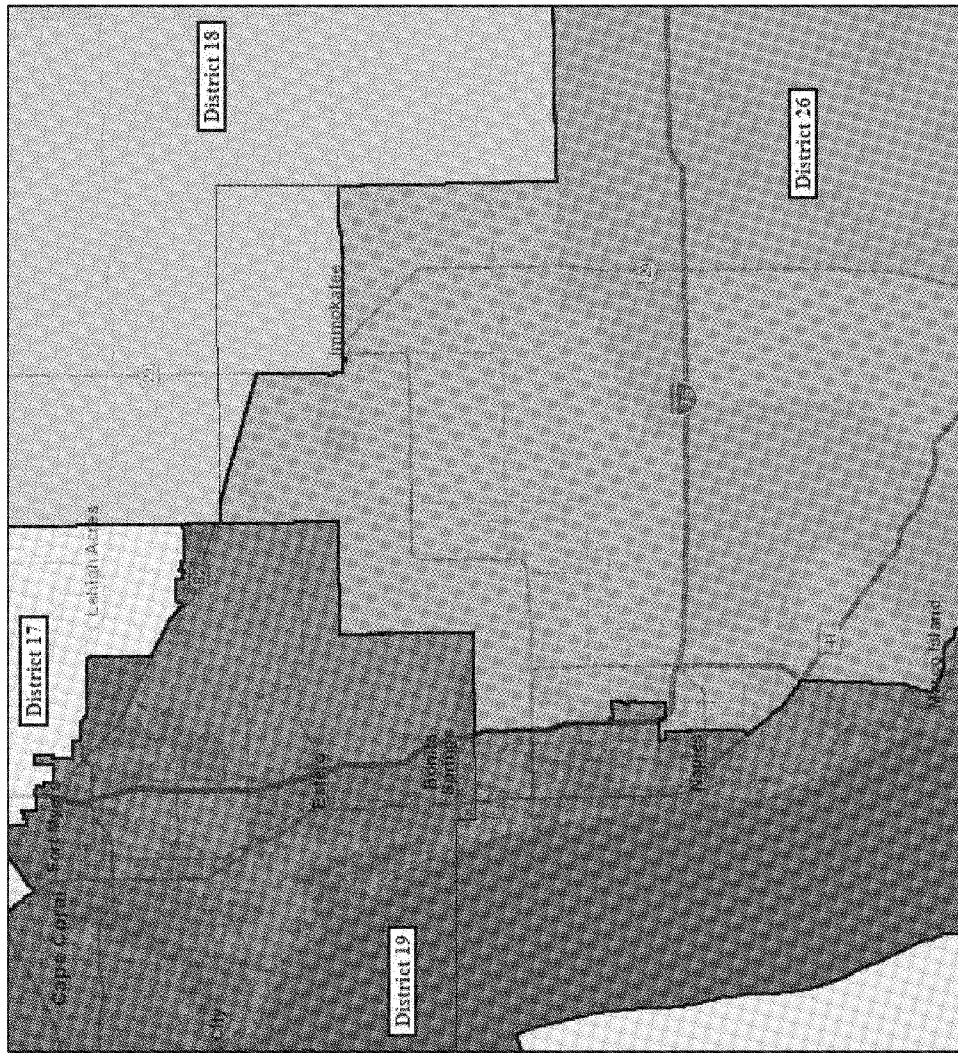


EXHIBIT 11

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Plaintiffs,

v.

Case No: 2022 CA 0666

LAUREL M. LEE, in her official capacity
as Florida Secretary of State, et al.,

Defendants.

DECLARATION OF DR. MARK OWENS

STATE OF Texas
COUNTY OF Smith

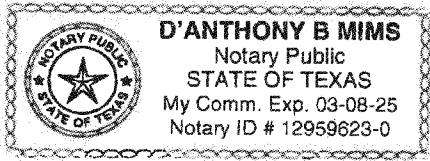
Before me, the undersigned authority, personally appeared Mark Owens, who, after first being duly sworn, deposes and says:

1. I was retained by Defendant Secretary of State in *Black Voters Matter Capacity Building Inst. et al. v. Lee et al.*
2. I prepared an expert report in support of the Secretary's response in opposition to the Plaintiffs' motion for a temporary injunction. The expert report is true and correct to the best of my knowledge.
3. If called to testify under oath, my testimony would be consistent with my report.

FURTHER DECLARANT SAYETH NOT.

By: Mark Owens
Dr. Mark Owens

Sworn to and subscribed before me this 9 day of May 2022, by Mark Owens
who (check one) [] is personally known to me, produced a driver's license (issued by a state
of the United States within the last five (5) years) as identification, or [] produced other
identification, to wit:



D'Anthony B Mims

Print Name: D'Anthony B Mims

Notary Public

Commission No.: 12959623-0

My Commission Expires: 3/8/2025

Executive Summary

I have been asked by Defendant's counsel to evaluate the U.S. Congressional District map enacted by the State of Florida. Specifically, to analyze the expert report of Dr. Stephen Ansolabehere on behalf of the Plaintiff in the case *Black Voters Matter Capacity Building Institute, Inc., et al., v. Lee et al.* (Case No. 2022-ca-000666). This analysis entails replicating Ecological Inference results for all statewide elections to compare how the candidate preference of non-Hispanic Black voters varies under the Enacted, Benchmark, Senate, and Backup maps to better understand representation of this group.

This report focuses its attention to a comparison of Florida's Fourth Congressional District in the Enacted Map to Florida's Fifth Congressional District in the other district plans studied. The scope of the racially polarized voting analysis I provide is centered on this comparison, because it draws the most attention in the functional analysis report submitted on behalf of the Plaintiff by Dr. Stephen Ansolabehere.

This study confirms Dr. Ansolabehere's findings from Table 11 that show that Black voters in any composition of the district are supportive of the Democratic candidate. My extension of Dr. Ansolabehere's analysis to all elections offers a comprehensive view of how consistently the preferred candidate of Black voters in the past decade has been a Democratic candidate, regardless of a candidate's race. My report offers detailed evidence of the consistency of this trend across the district plans being compared and the history of elections within those District plans. The findings do not show evidence that Black voters are any more or less supportive a Democratic candidate based on the race of a candidate. The absence of significant variation in candidate preference among candidates from the same party offers no statistical evidence of any diminishment in the ability of minority voters to elect representatives of their choice on the basis of race (Art. III, § 21(a)).

Qualifications and Expertise

I am a tenured associate professor of Political science at The University of Texas at Tyler. In the seven years I have taught at UT Tyler, I have taught courses on Congress, voting behavior, state politics,

and research methods at the undergraduate and graduate level. I have authored numerous journal articles on legislative politics and social behavior, which can be found in in *American Political Research*, *Legislative Studies Quarterly*, *Social Sciences Quarterly*, and other academic journals.

In the past year, I assisted a non-profit organization prepare districting plans of state and federal legislative offices for public submission in the state of Oklahoma. My compensation to prepare and write this report is \$350 per hour.

Data

The data used for this report comes solely from the bce.csv file provided from the expert report for the Plaintiff and the Census block file (“Block20_PL.txt”) at floridaredistricting.gov. I joined the two datasets together to make one comprehensive dataset titled “fledist” to ensure the process of generating the estimates would remain consistent with what was previously submitted by Dr. Ansolabehere.

Election analysis

The analysis of Florida’s Fourth U.S. Congressional District (Enacted Map) and the prior U.S. Congressional District 5 that I provide replicates the results of the Ecological Inference (EI) analysis provided by Dr. Stephen Ansolabehere in this case. The replication relies on the data produced for the initial submission and the redistricting resources provided as part of the Public Law and available at <https://www.floridaredistricting.gov/pages/resources>. The replication results used the same methods and code to generate the estimates provided by Dr. Ansolabehere. I have done this because I have no disagreement with how the prior analysis was conducted. This report offers additional Ecological Inference estimates for each plan, by election, to illustrate the consistency of voting patterns across time and to measure if there are statistically significant and meaningful differences in how the enacted 4th U.S. Congressional District in Florida compares to Florida’s 5th U.S. Congressional District from the 2020 election.

The entirety of this report can be directly compared to the EI results that were presented in Table 11 of the report from Dr. Ansolabehere. The initial estimate generated by averaging eight statewide

elections that occurred in 2016, 2018, and 2020 will be compared to estimates from all of the 14 individual statewide contests between 2012 and 2020. Reporting the EI results in this way shows how estimates of candidate preference of specific communities of interest vary across elections over time (or in this case how little variation there is) and how those estimates compare to the other compositions of the district.

Florida's Elections: 2012 to 2020

In Table 1, I report the results of the fourteen individual elections where data was provided at the Census block level by the Florida State House and Florida State Senate at floridaredistricting.gov. Each row indicates the voting preference among Non-Hispanic Black voters for a Democratic candidate. Columns 1 through 3 tell the year and office of the election before identifying the race and ethnicity of the candidates seeking that office, with the race of the Democratic nominee listed first. The next four columns identify the name of the Democratic candidate and the estimated percentage of the two-party vote they received in the areas that comprise the Enacted CD-4, Benchmark CD-5, and Senate Plan CD-5.

The best way to understand these results is to remember that these EI results are estimated at the Census bloc level, using population information from the Census and precinct election results that were disaggregated to the Census block level by the state. This allows the statistical approach to estimate preferences at a granular level and then sum the totals, based on how the Census blocs are assigned to districts in the Block Equivalency file for each District plan.

A comparison of all Democratic candidates for statewide and federal office from 2012 to 2020 shows that the support for a Black Democratic candidate among Black voters is not statistically higher than support for a White Democrat running for a separate office on the same ballot. Additionally, the support for the Democratic candidate among Black voters is consistent across almost all elections. In the Enacted district, Black voters show the most cohesiveness in their support of the nominee for Governor, Andrew Gillum (92%, [90.6, 93.2]) in a single election. As an anecdote, the estimate calls for rigorous analysis to compare the 2018 governor election to other statewide elections in 2018 and other elections

with high turnout. In each district plan the EI results show Andrew Gillum (Governor 2018) received the highest support of Black voters and Tim Murphy (Senate 2016) received the lowest. Looking at the elections separately show how the context of each election has varied in the last decade.

Table 1: Ecological Regression Estimates of the Percent of Non-Hispanic Black Voters Voting Democratic in Each Election under the Enacted, Benchmark, and Senate maps

(Confidence Interval in Parentheses to indicate Margin of Error)

Year	Office	Candidate Race/Ethnicity	Democratic Candidate	Enacted CD-4	Benchmark CD-5	Senate CD-5	Backup CD-5
2012	U.S. Senator	W – W	Nelson	89% (88.3, 90.6)	91% (89.6, 92.2)	91% (89.7, 92.3)	92% (90.5, 93.0)
2012	U.S. President	B/W – W/W	Obama	88% (87.0, 89.5)	91% (89.4, 92.5)	91% (89.3, 92.4)	92% (90.3, 93.2)
2014	CFO	W – W	Rankin	79% (77.7, 80.0)	84% (82.6, 85.7)	84% (82.4, 85.5)	85% (83.6, 86.5)
2014	Agriculture Com.	B – W	Hamilton	82% (81.1, 83.5)	87% (85.8, 88.9)	87% (85.5, 88.6)	88% (86.7, 89.6)
2014	Attorney General	W – W	Sheldon	78% (76.6, 78.9)	84% (82.2, 85.4)	83% (81.9, 85.0)	85% (83.1, 86.0)
2014	Governor	W – W	Crist	81% (80.0, 82.1)	88% (86.2, 89.5)	88% (85.9, 89.1)	89% (87.2, 90.2)
2016	U.S. Senator	W – H	Murphy	77% (76.0, 78.1)	82% (80.1, 83.1)	82% (80.2, 83.0)	82% (81.0, 83.8)
2016	U.S. President	W/W – W/W	Clinton	88% (86.5, 89.1)	90% (88.6, 91.8)	90% (88.4, 91.4)	91% (89.6, 92.6)
2018	CFO	W – W	Ring	89% (88.0, 90.6)	90% (88.5, 91.5)	90% (88.5, 91.6)	91% (89.4, 92.3)
2018	Agriculture Com.	W – W	Fried	89% (88.0, 90.7)	90% (88.7, 91.8)	90% (88.5, 91.6)	91% (89.7, 92.6)
2018	Attorney General	B – W	Shaw	90% (88.4, 91.0)	90% (88.5, 91.6)	90% (88.4, 91.4)	91% (89.4, 92.3)
2018	Governor	B – W	Gillum	92% (90.6, 93.2)	93% (91.2, 94.3)	93% (91.0, 94.1)	94% (92.1, 95.1)
2018	U.S. Senator	W – W	Nelson	89% (88.0, 90.5)	90% (88.6, 91.6)	90% (88.5, 91.5)	91% (89.5, 92.3)
2020	U.S. President	W/B – W/W	Biden	89% (87.3, 89.9)	90% (88.0, 91.1)	89% (88.0, 91.0)	90% (88.9, 91.7)

Table 1 shows the margins of error for an estimate of the preference of Black voters for Andrew Gillum, a Black Democratic Nominee, overlap with the estimated candidate preference for other White Democratic nominees for state office on the same ballot; Nikki Fried (89%, [88.0, 90.7]) and Jeremy Ring (89%, [88.0, 90.6]). A scan of all estimates also shows the 2018 Governor election as the highwater mark in each of the district plans included in Dr. Ansolabehere’s report, however, it is not statistically different

from other elections in the column. Each district plan also shows that estimates of the preference of Black voters for incumbent Senator Bill Nelson in 2012 and Andrew Gillum in 2018 are not statistically different, presenting a consistent trend in the preference for a Democratic candidate among this group of voters regardless of the candidate’s race and a null finding for the expected pattern. The expected pattern, in this comparison across the decade, is rejected in the Enacted, Benchmark, Senate, and Backup plans.

Federal Office

Table 1A subsets the original table by the elections for federal office to compare similar elections. This also makes it easier to compare the different district plans across the rows. The EI results to estimate the candidate preference of Black voters are similar across all three maps and there is clear overlap with the confidence intervals that estimate the margin of error. The lone exception is the 2016 Senate election where the estimates show that the incumbent Senator Marco Rubio, a Hispanic Republican, received a larger share of the two-party vote from Black voters than other Republican nominees.

Table 1A: Ecological Regression Estimates of the Percent of Non-Hispanic Black Voters Voting for the Democratic Nominee for Federal Office

Year	Office	Candidate Race/Ethnicity	Democratic Candidate	Enacted CD-4	Benchmark CD-5	Senate CD-5	Backup CD-5
				89%	91%	91%	92%
2012	U.S. Senator	W – W	Nelson	(88.3, 90.6)	(89.6, 92.2)	(89.7, 92.3)	(90.5, 93.0)
				88%	91%	91%	92%
2012	U.S. President	B/W – W/W	Obama	(87.0, 89.5)	(89.4, 92.5)	(89.3, 92.4)	(90.3, 93.2)
				77%	82%	82%	82%
2016	U.S. Senator	W – H	Murphy	(76.0, 78.1)	(80.1, 83.1)	(80.2, 83.0)	(81.0, 83.8)
				88%	90%	90%	91%
2016	U.S. President	W/W – W/W	Clinton	(86.5, 89.1)	(88.6, 91.8)	(88.4, 91.4)	(89.6, 92.6)
				89%	90%	90%	91%
2018	U.S. Senator	W – W	Nelson	(88.0, 90.5)	(88.6, 91.6)	(88.5, 91.5)	(89.5, 92.3)
				89%	90%	89%	90%
2020	U.S. President	W/B – W/W	Biden	(87.3, 89.9)	(88.0, 91.1)	(88.0, 91.0)	(88.9, 91.7)

Florida’s 2016 Senate election is the lowest estimate of Black voter support for a Democratic candidate in all four district plans compared in the expert reports. What is striking about this deviation is that it occurred at the same time as Florida’s 2016 presidential election in an all-White candidate contest of Hillary Clinton and Donald Trump. Clinton received the same level of support from Black voters as

President Barack Obama four years before and one percent less than Joe Biden and Kamala Harris four years later (an insignificant difference in the estimates). The support for Senator Bill Nelson among Black voters in the 2012 presidential election year and 2018 midterm year indicates a long-term consistency of partisan preference that is visible across time, office type, and the race of a Democratic nominee.

Governor and State Cabinet Elections

A comparison of the elections for state office in Florida in 2014 and 2018 indicates similarly consistent support for the Democratic nominee in the Enacted district compared to the previous district or alternative. In this case, we see voter behavior in these two elections was consistent down the ballot but different between elections. The EI results for the 2014 election estimate Black voter support in the areas that are now part of the Enacted CD-4 district was higher for Black Democratic nominee for Agriculture Commissioner, Thad Hamilton, than William Rankin for Chief Financial Officer and George Sheldon for Attorney General – but not significantly more than Governor Charlie Crist. While Black voters in the Enacted district were less likely to vote for a Democratic nominee in 2014 than 2018 and other configurations of the district, the behavior was consistent across all elections on the ballot.

Table 1B: Ecological Regression Estimates of the Percent of Non-Hispanic Black Voters Voting for the Democratic Nominee for State Office

Year	Office	Candidate Race/Ethnicity	Democratic Candidate	Enacted CD-4	Benchmark CD-5	Senate CD-5	Backup CD-5
				79%	84%	84%	85%
2014	CFO	W – W	Rankin	(77.7, 80.0)	(82.6, 85.7)	(82.4, 85.5)	(83.1, 86.0)
				82%	87%	87%	88%
2014	Agriculture Com.	B – W	Hamilton	(81.1, 83.5)	(85.8, 88.9)	(85.5, 88.6)	(86.7, 89.6)
				78%	84%	83%	85%
2014	Attorney General	W – W	Sheldon	(76.6, 78.9)	(82.2, 85.4)	(81.9, 85.0)	(83.1, 86.0)
				81%	88%	88%	89%
2014	Governor	W – W	Crist	(80.0, 82.1)	(86.2, 89.5)	(85.9, 89.1)	(87.2, 90.2)
				89%	90%	90%	91%
2018	CFO	W – W	Ring	(88.0, 90.6)	(88.5, 91.5)	(88.5, 91.6)	(89.6, 92.6)
				89%	90%	90%	91%
2018	Agriculture Com.	W – W	Fried	(88.0, 90.7)	(88.7, 91.8)	(88.5, 91.6)	(89.7, 92.6)
				90%	90%	90%	91%
2018	Attorney General	B – W	Shaw	(88.4, 91.0)	(88.5, 91.6)	(88.4, 91.4)	(89.4, 92.3)
				92%	93%	93%	94%
2018	Governor	B – W	Gillum	(90.6, 93.2)	(91.2, 94.3)	(91.0, 94.1)	(92.1, 95.1)

The 2018 estimates show that in these state office elections, the Enacted map is again consistent with the voting behavior we would expect from the Benchmark map, and that the voting preferences of Black voters seem more aligned with political party than the race of the candidates.

Conclusion

The report above focuses on whether Black Democratic candidates draw more support from Black voters than White Democratic candidates do and finds that this is not the case. Black voters in the geographic regions considered for the Florida's 4th U.S. Congressional District in the Enacted Map and Florida's 5th U.S. Congressional District from the Benchmark Map shows strong cohesion in support of one political party regardless of the race and ethnicity of the candidate who wins the political party's nomination. A candidate's race cannot be identified as the cause of polarized voting because the election outcome of a contest between a Black Democratic nominee and a White Republican nominee closely mirrors concurrent elections that have no difference in the race of candidates for the two major parties.

May 9, 2022

A handwritten signature in cursive script that reads "Mark Owens". The signature is written in black ink and is positioned above a thin horizontal line.

Mark E. Owens, Ph.D.

Mark Owens

Curriculum Vitae

Department of Political Science
University of Texas at Tyler
3900 University Blvd
Tyler, Texas 75799

Office: CAS 123
<http://www.markowens.org>
mowens@uttyler.edu
(903) 566-6281

EDUCATION

University of Georgia - Ph.D. in Political Science	2014
University of Oxford - Visiting Doctoral Student in the Department of Politics	2013
Johns Hopkins University - M.A. in Government	2008
University of Florida - B.A. in Political Science, <i>magna cum laude</i>	2006

ACADEMIC POSITIONS

University of Texas at Tyler	
Associate Professor & Honors Faculty	2020 - present
Assistant Professor	2015 - 2020
Reinhardt University - Adjunct Professor of Public Administration	May 2014 & May 2017
Bates College - Visiting Assistant Professor	2014 - 2015

PROFESSIONAL EXPERIENCE

APSA Congressional Fellow, <i>Office of the President Pro Tempore</i> , United States Senate.	2015 - 2016
Legislative Assistant, two former U.S. Representatives. Washington, D.C.	2007 - 2009

BOOKS

Owens, Mark, Ken Wink, and Kenneth Bryant, Jr. 2022. *Battle for the Heart of Texas: Political Change in the Electorate*. Norman, OK: University of Oklahoma Press.

Bryant, Jr., Kenneth, Eric Lopez, and Mark Owens. 2020. *Game of Politics: Conflict, Power, & Representation*. Tyler, TX: The University of Texas at Tyler Press (Open Source Textbook).

ARTICLES & PEER REVIEWED CHAPTERS

- 12 Howard, Nicholas O. and Mark Owens. 2022. "Organizing Staff in the U.S. Senate: The Priority of Individualism in Resource Allocation." *Congress & the Presidency*. **Forthcoming**.
- 11 Johnson, Renee M. Cassandra Crifasi, Erin M. Anderson Goodell, Arkadiusz Wiśniowski, Joseph W. Sakshaug, Johannes Thrul, and Mark Owens. 2021. "Differences in beliefs about COVID-19 by gun ownership: A cross-sectional survey of Texas adults." *BMJ Open* 11(11): 1-7.
- 10 Goldmann, Emily, Daniel Hagen, Estelle El Khoury, Mark Owens, Supriya Misra, and Johannes Thrul. 2021. "An examination of racial/ethnic differences in mental health during COVID-19 pandemic in the U.S. South." *Journal of Affective Disorders* 295(1): 471-478.

- 9 Owens, Mark. 2021. "Changes in Attitudes, Nothing Remains Quite the Same: Absentee Voting and Public Health." *Social Science Quarterly* 102(4): 1349-1360.
- 8 Johnson, Renee M. and Mark Owens 2020. "Emergency Response, Public Behavior, and the Effectiveness of Texas Counties in a Pandemic." *Journal of Political Institutions & Political Economy* 1(4): 615-630.
- 7 Howard, Nicholas O. and Mark Owens. 2020. "Circumventing Legislative Committees: Use of Rule XIV in the U.S. Senate." *Legislative Studies Quarterly* 45(3): 495-526.
- 6 McWhorter, Rochell, Mark Owens, Jessie Rueter, Joanna Neel, and Gina Doepker. 2020. "Examining Adult Learning of 'Giving Back' Initiatives." In *Handbook of Research on Adult Learning in Higher Education*. Hershey, PA: IGI Publishers. With Rochell McWhorter, Jessie Rueter, Joanna Neel, and Gina Doepker.
Reprinted in 2021 by Information Resources Management Association (Ed.), in *Research Anthology on Adult Education and the Development of Lifelong Learners* (pp. 1039-1066). IGI Global.
- 5 Madonna, Anthony J., Michael Lynch, Mark Owens and Ryan Williamson. 2018. "The Vice President in the U.S. Senate: Examining the Consequences of Institutional Design." *Congress & The Presidency* 45(2): 145-165.
- 4 Owens, Mark. 2018. "Changing Senate Norms: Judicial Confirmations in a Nuclear Age." *PS: Political Science and Politics* 51(1): 119-123.
- 3 Carson, Jamie L., Anthony J. Madonna, and Mark Owens 2016. "Regulating the Floor: Tabling Motions in the U.S. Senate, 1865-1946." *American Politics Research* 44(1): 56-80.
- 2 Carson, Jamie L. and Mark Owens. 2015. "Lawmaking." In Robert A. Scott and Stephen M. Kosslyn, eds. *Emerging Trends in the Social and Behavioral Sciences*. New York: Wiley.
- 1 Carson, Jamie L., Anthony J. Madonna, and Mark Owens 2013. "Partisan Efficiency in an Open-Rule Setting: The Amending Process in the U.S. Senate, 1865-1945." *Congress & The Presidency* 40(2): 105-128.

BOOK REVIEWS

Owens, Mark. 2021. "Lewallen, Johnathan. Committees and the Decline of Lawmaking in Congress." *Congress & the Presidency* 48(3): 404-406.

AWARDS

Burns "Bud" Roper Fellow, American Association of Public Opinion Researchers.	2021
Prestige Impact Award, Dean of the College of Arts & Sciences at UT Tyler.	2019
Outstanding Faculty Mentor Award, UT Tyler Office of the Provost.	2019
Certificate in Effective Teaching Practices, American College and University Educators.	2019
Teaching and Learning Award, UT Tyler Center for Excellence in Teaching and Learning.	2018
Community Engaged Learning Award, Harvard Center at Bates College.	2015
Outstanding Teaching Assistant Award, University of Georgia Provost.	2013
Charles S. Bullock, III Scholar, UGA School of Public and International Affairs.	2009

GRANT & CONTRACT SUPPORT

10. Texas Vaccine Hesitancy Survey, (Co-Investigator). 2022. \$2.6 million
PI's: Paul McGaha (UT Tyler HSC) & Paula Cuccaro (UT SPH-Houston)
Scope of Survey: Statewide survey of hard to reach respondents (Feb. to Nov).
Funded by: Texas State Department of Health and Human Service.
 - Included a \$1.1 million sub-award directly to UT Tyler.

9. El Paso County Social Survey, (Investigator). 2022. \$38,100
PI's: Gregory Schober, UTEP
Scope of Survey: Countywide survey, oversampling low-income households (April-May)
Funded by: University of Texas at El Paso (UTEP).

8. Southern Cities Survey, (Co-PI). 2020. \$12,000
PI's: Emily Goldmann (NYU) & Mark Owens
Scope of Survey: Sample of 5 major Southern Metropolitan areas in May.
Funded by: UT Tyler & New York University School of Global Health.

7. Small Grant, Center for Effective Lawmaking (Co-PI). 2020. \$2,300
PI's: Mark Owens & Nicholas Howard (Auburn-Montgomery)
Scope of Work: Content Analysis of all Senate committee reports, 1985-2020.
Funded by: UVA & Vanderbilt.

6. Texas Mental Health Survey, (Co-PI). 2020 \$45,000
PI's: Renee Johnson (JHU) & Mark Owens
Scope of Survey: Three wave statewide panel (April, May, & June)
Funded by: UT Tyler & Johns Hopkins Bloomberg School of Public Health

5. East Texas Surveys on Education & Property Tax Reform, (Co-PI). 2019 \$10,000
PI's: Kyle Gullings (UT Tyler) & Mark Owens
Scope of Work: Regional sample to compare East Texas to DFW and Houston.
Funded by: UT Tyler

4. Faculty Undergraduate Research Grant, (PI) Studying Vote Centers in Texas. 2018. \$3,000
Scope of Work: Mentor undergraduates to gather data and submit FOIA requests.
Funded by: UT Tyler Office of Research and Scholarship.

3. Congressional Research Grant, (PI) Bicameralism's Effect on Appropriations. 2015. \$3,133
Scope of Work: Archival visits to Concord, Tempe, and Washington, D.C.
Funded by: The Dirksen Congressional Center.

2. Faculty Development Grant, (PI) Majority Party Power in a Bicameral Congress. 2015. \$2,575
Scope of Work: Mentor undergraduate researchers to analyze archived documents.
Funded by: Office of the Dean of Faculty at Bates College.

1. Richard Baker Award, (PI) Majority Party Power in a Bicameral Congress. 2011. \$1,000
Scope of Work: Archival visits to Austin, TX and Washington, D.C..
Funded by: Association of Centers for the Study of Congress.

COMMENTARY

Owens, Mark. "Why our poll got it wrong on Biden but right on so much more." *Dallas Morning News*. Sunday November 15, 2020. Page, 5P.

Howard, Nicholas O. and Mark Owens. "Are Amendment Strategies Learned Through Experience or Contingent on the Institution?" *LegBranch*. May 27, 2019.

Bryant, Jr. Kenneth, Ken Wink, and Mark Owens. "Conflicting Attitudes of Texans on Wall and Border Policies." *Austin American-Statesman*. March 11, 2019.

Owens, Mark. "Are Courtesy Meetings Nuked?" *LegBranch*. July 10, 2018.

Owens, Mark. "East Texans support Trump, but at lower levels than 2012." *Tribtalk: Texas Tribune*. November 8, 2016.

INVITED TALKS

Texas A&M San Antonio	"Public Attitudes on Equity and Inclusivity."	2022
Delta Sigma Theta Sorority, Tyler Alumnae	"Social Action & Election Education"	2022
League of Women Voters Tyler/Smith County	"Your options under TX's new Election Law"	2022
Texas Associated Press Managing Editors	"Texas Politics Panel."	2021
League of Women Voters Oklahoma	"All about Redistricting."	2021
League of Women Voters Tyler/Smith County	"Essential Conversation on Voting in Texas."	2021
League of Women Voters Oklahoma	"Representation & Redistricting."	2021
Kilgore College	"Why We Poll Texans."	2020
Smith County Republican Women Club	"Understanding the 2020 Election Polls"	2020
League of Women Voters Tyler/Smith County	"Processes of the Electoral College."	2020
Kilgore College	"What Primary Voters in Texas Care About."	2019
League of Women Voters Tyler/Smith County	"Census & Redistricting Forum."	2019
Tyler Area Chamber of Commerce	"Public Input on Transportation."	2019
League of Women Voters Tyler/Smith County	"Representation & Redistricting."	2018
Bates College, Martin Luther King, Jr Day	"Legacy of the Voting Rights Act of 1965."	2015
Rothemere American Institute, Oxford, UK	"Effect of Bicameralism on Policy."	2013

CONFERENCE PRESENTATIONS

The Citadel Symposium on Southern Politics	2014 - 2022
Congress & History Conference	2012, 2016, 2018
Election Science, Reform, and Administration Conference	2020
American Association of Public Opinion Researchers Meeting	2020, 2021
American Political Science Association Meeting	2011 - 2016, 2020
Midwest Political Science Association Meeting	2011 - 2018
Southern Political Science Association Meeting	2011 - 2014, 2017 - 2022
Southwest Social Science Association Annual Meeting	2017, 2021

PROFESSIONAL SERVICE

Co-Chair. Election Sciences Conference within a Conference at SPSA, San Antonio, TX.	2022
Speaker: AAPOR Send-a-Speaker Program.	2020 - 2021
Field of Study Advisory Committee. <i>Texas Higher Education Coordinating Board</i> .	2018 - 2021
Co-Editor. <i>PEP Report</i> for the APSA Presidency and Executive Politics Section.	2018 - 2019

Grant Reviewer. Hurricane Resilience Research Institute (HURRI), University of Houston. 2018
 Grant Reviewer. Administration on Children, Youth, and Families, US Dept. of HHS. 2007

TEACHING EXPERIENCE

Graduate Course	Institution	Recent Evaluation	Years Taught
Scope & Methods	UT Tyler	4.6	2017 - 2021
Seminar on American Politics	UT Tyler	4.4	2015 - 2022
Budgeting & Public Finance	UT Tyler; Reinhardt	5	2014 - 2017
Program Evaluation	UT Tyler	4.7	2018
Advanced Quantitative Research	UT Tyler	3.8	2018
Undergraduate Course			
Campaigns & Elections	UT Tyler; Bates; UGA	4.6	2013 - 2020
Congress & Legislation	UT Tyler; UGA	4.3	2013 - 2021
Research Methods	UT Tyler	4.4	2016 - 2022
Southern Politics	UT Tyler	4.6	2018 - 2021
U.S. Presidency	UT Tyler; Bates	3.9	2014 - 2017
Intro. to Texas Government (Honors)	UT Tyler	4.1	2020 - 2021
Intro. to American Government	UT Tyler; Bates; UGA	3.8	2013 - 2019

CURRENT COMMUNITY INVOLVEMENT

KVUT 99.7FM UT Tyler Radio (NPR), Advisory Board Member. 2021 - 2023
 Secretary (2022-23)

League of Women Voters - Tyler/Smith County, TX, Nominating Committee. 2020 - 2022
 Chair of Nominating Committee (2021-22)