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

BLACK VOTERS MATTER CAPACITY BUILDING INSTITUTE, INC., EQUAL GROUND EDUCATION FUND, INC., LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., LEAGUE OF WOMEN VOTERS OF FLORIDA EDUCATION FUND, INC., FLORIDA RISING TOGETHER, PASTOR REGINALD GUNDY, SYLVIA YOUNG, PHYLLIS WILEY, ANDREA HERSHORIN, ANAYDIA CONNOLLY, BRANDON P. NELSON, KATIE YARROWS, CYNTHIA LIPPERT, KISHA LINEBAUGH, BEATRIZ ALONSO, GONZALO ALFREDO PEDROSO, and ILEANA CABAN,

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as Florida Secretary of State, ASHLEY MOODY, in her official capacity as Florida Attorney General, the FLORIDA SENATE, the FLORIDA HOUSE OF REPRESENTATIVES, WILTON SIMPSON, in his official capacity as the President of the Florida Senate, CHRIS SPROWLS, in his official capacity as the Speaker of the Florida House of Representatives, RAY RODRIGUES, in his official capacity as Chair of the Senate Committee on Reapportionment, and TOM LEEK, in his official capacity as Chair of the House Redistricting Committee,

Defendants.

Case No. 2022-CA-000666

ORDER GRANTING MOTION FOR TEMPORARY INJUNCTION

The Court held an evidentiary hearing on the Plaintiffs' Motion for Temporary Injunction on May 11, 2022. The parties stipulated to the admission of all filed exhibits. The Court heard testimony, reviewed the pleadings, sworn affidavits, and other filed exhibits, and considered counsels' arguments. Moreover, it has critically read pertinent cases decided by state and federal courts and the federal and state constitutions. The Court makes the following findings of fact and conclusions of law:

INTRODUCTION

This case is one of fundamental public importance, involving fundamental constitutional rights. If this Court had the luxury of time, it would take longer to render this order. Notwithstanding, because time is of the essence, the Court renders this order now.

This lawsuit challenges the congressional district plan adopted by the Legislature and signed by Governor DeSantis after the 2020 Census (the "Enacted Plan"). Plaintiffs, who include several nonpartisan civic organizations and Florida voters, filed this suit the same day the Enacted Plan was signed. Plaintiffs are waging multiple attacks on the Enacted Plan. However, their motion for temporary injunction is directed to only one issue. The other issues pled remain to be decided another day after discovery and a trial on the merits.

Plaintiffs now move for a temporary injunction enjoining Secretary of State Laurel M. Lee from implementing the Enacted Plan during the 2022 primary and general elections for Congress regarding benchmark Congressional District 5. Plaintiffs base their motion solely on the ground that the Enacted Plan violates the non-diminishment standard of Article III, Section 20(a) of the Florida Constitution because it diminishes the ability of Black voters in North Florida to elect their candidate of choice. Plaintiffs argue that they and other Florida voters will suffer irreparable harm if the violation is not remedied prior to the 2022 elections, and furthermore claim that an injunction will serve the public interest.

After a hearing and consideration of testimony, exhibits, pleadings, legal memoranda, and oral argument, the Court grants Plaintiffs' motion for a temporary injunction. The Court enjoins implementation of the Enacted Plan and orders the implementation of Plaintiffs' Proposed Map A.

BACKGROUND

I. The Fair Districts Amendment

On November 2, 2010, Floridians voted by an overwhelming margin of 62.9% to 37.1% to enact the Fair Districts Amendment to the Florida Constitution. Pls.' Ex. 1-A. The Amendment established new standards to constrain the Legislature's once-in-a-decade exercise of its congressional reapportionment power. The amendment places two tiers of constraints on the Legislature. Article III, Section 20 of the Florida Constitution.

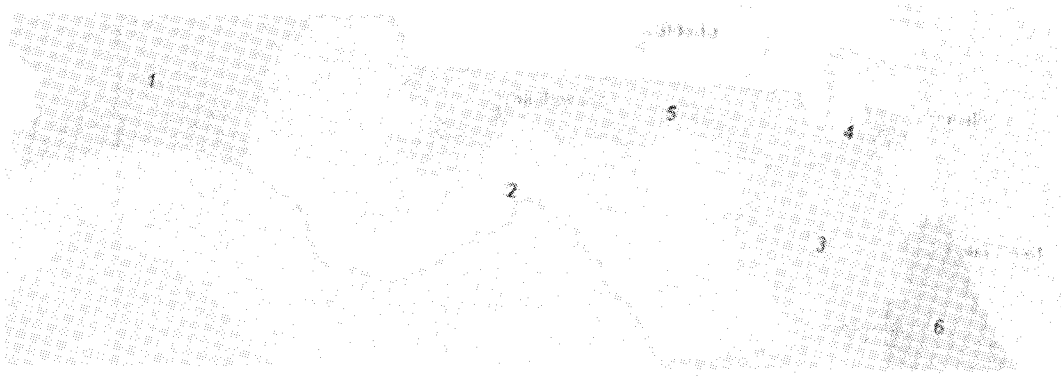
Among the "Tier I" standards is a requirement that "districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process ***or*** *to diminish their ability to elect representatives of their choice*." Fla. Const. Art. III, § 20(a) (emphasis added). The inclusion of this italicized phrase—known as the "non-diminishment standard"—in Tier I "mean[s] that the voters placed this constitutional imperative as a top priority to which the Legislature must conform during the redistricting process." *In re S. J. Res. of Legis. Apportionment*, 83 So. 3d 597, 615, 677 (Fla. 2012).

The Florida Supreme Court has held that the non-diminishment standard prohibits the Legislature from "eliminat[ing] majority-minority districts or weaken[ing] other historically performing minority districts where doing so would actually diminish a minority group's ability to elect its preferred candidates." *Id.* at 625. To evaluate a non-diminishment claim, courts must determine whether minority voting strength has diminished under the new plan when compared to the old plan. *Id.* at 624-25.

II. Benchmark CD-5

In 2015, the Florida Supreme Court invalidated the Legislature's 2012 congressional redistricting plan under the Fair Districts Amendment after finding that partisan intent tainted the entire redistricting process. *See League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015) ("*LWV I*"). The Court provided specific guidance regarding numerous districts, including Congressional District 5 ("CD-5"), in North Florida. Relevant here, the Court rejected arguments that an East-West configuration of CD-5 "cause[d] the redistricting map to become significantly less compact." *Id.* at 405–06. The Court acknowledged that an East-West configuration would result in a "longer" district "with a correspondingly greater perimeter and area," but explained that "length is just one factor to consider in evaluating compactness." *Id.* at 406.

The Court eventually ordered the adoption of a congressional plan, referred to here as the "Benchmark Plan," which was in place during the 2016, 2018, and 2020 congressional election cycles. At the time of its adoption, the Benchmark Plan's version of "CD-5" had a Black voting age population of 45.12%. *Id.* at 404. As of the 2020 Census, the Benchmark Plan's version of CD-5 had a total Black population of 49.1%, a Black voting age population of 45.2% and a minority voting age population of 59.8%. Pls.' Ex. 3 ¶ 32 & tbl.1. Benchmark CD-5 extended from Jacksonville to Tallahassee and included all of Baker, Gadsden, Hamilton, and Madison Counties, as well as portions of Columbia, Duval, Jefferson, and Leon Counties. While both Tallahassee and Jacksonville have substantial Black populations, Black voters also constituted a substantial portion of the lower-density counties that made up the rest of Benchmark CD-5. Gadsden County, for instance, is 55% Black, and Jefferson, Madison, and Hamilton Counties are all more than 30% Black. Pls.' Ex. 1-Y. The Benchmark CD-5 can be seen below:



Benchmark CD-5 united 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 cotton and tobacco plantations. Pls'. Ex. 3 at 8, fig. 1. For much of the state's history, Black voters in these communities—and, indeed, in the state more broadly—have been unable to participate equally in the electoral process. In the wake of Reconstruction, the State commenced a centuries-long policy of disenfranchisement that made it impossible for Black voters to even register to vote. *Id.* at 9–11. These policies had their desired effect: Between 1876 and 1992, Florida did not elect a single Black candidate to Congress. *Id.* at 10. The state's discriminatory voting practices and laws hit the Black residents of North Florida particularly hard. The federal Civil Rights Commission reported that of the 10,930 Black adults living in Gadsden County in 1958, only *seven* were registered to vote. *Id.* at 11. Political discrimination and oppression were felt in every county with a large Black population in North Florida. *Id.* at 12.

The enactment of the federal Voting Rights Act of 1965 increased voter-registration rates in the state's Black communities and provided Black Floridians a means of challenging discriminatory redistricting schemes. *Id.* at 12–17. Through decades of litigation, Black Floridians fought against districting plans that fractured the state's Black populations, particularly in North Florida, eventually obtaining a district that enabled them to elect their candidate of choice. *Id.*

III. The Enacted Plan

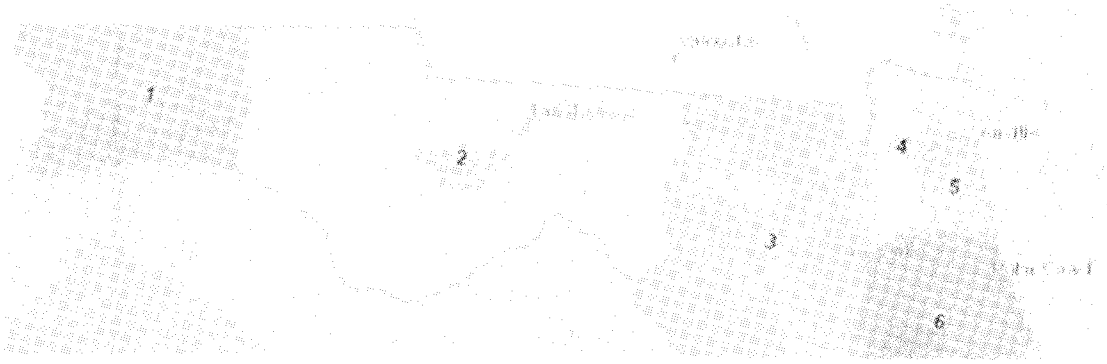
The Legislature commenced the redistricting process in September 2021, after receiving the 2020 census data from the U.S. Census Bureau. Both the Florida Senate and the House Legislature instructed its members that the Florida Constitution's non-diminishment standard prohibits the Legislature from enacting a congressional plan that diminishes a minority group's existing ability to elect their candidate of choice. *See, e.g.*, Pls.' Ex. 1-D at 42 (recognizing that the Florida Constitution parallels federal retrogression standards); Pls.' Ex. 1-E at 15 (same).

Among the districts that both chambers determined were protected from diminishment was CD-5. To that end, the Legislature performed a "functional analysis" on each of its proposed plans to ensure that Black voters in CD-5 maintained the ability to elect their candidates of choice. *See, e.g.*, Pls.' Ex. 1-G at 3–4 (reporting that proposed Senate plans "[d]o not retrogress and maintain the ability . . . for racial and language minorities to participate in the political process and elect candidates of their choice"); Pls.' Ex. 1-H at 54–57, 62–65, 70–73, 78–81 (performing functional analyses of CD-5 for proposed Senate plans). Nearly every congressional plan proposed by the House and Senate redistricting committees maintained the general configuration of CD-5 approved by the Florida Supreme Court and preserved Black voters' ability to elect their candidates of choice in North Florida. *See, e.g.*, Pls.' Exs. 1-G, 1-I, 1-J, 1-K, 1-L.

On March 4, 2022, the Legislature passed a redistricting plan that significantly modified CD-5—but, the Legislature maintained, would avoid diminishing Black voters' ability to elect candidates of their choice in the district. Recognizing the plan's vulnerability under the non-diminishment standard, however, the legislation included an alternative plan—Plan 8015, or the "Backup Map"—that was intended to take effect if courts found that the primary plan diminished Black voting power in violation of the Florida Constitution. Pls.' Ex. 1-Q. The Backup Map retained the East-West configuration of CD-5 approved in *LWV I*.

Ultimately, Governor DeSantis vetoed the Legislature's Plan on March 29 and called a special legislative session. Pls.' Exs. 1-S, 1-T. Governor DeSantis released a congressional plan on April 13 that eliminated any district resembling the Benchmark Plan's CD-5. When asked on the House floor whether the configuration of CD-4 or CD-5 in the Enacted Plan would continue to perform for Black candidates of choice, Representative Leek responded that it would not: "[O]ur [House] staff did a functional analysis and confirm[ed] it does not perform." Pls.' Ex. 1-V at 13. The Legislature nevertheless passed the Enacted Plan on April 21, 2022, and Governor DeSantis signed it into law the next day. Pls.' Ex. 1-W.

The Enacted Plan splits the Benchmark CD-5 into four new districts: new CD-2, CD-3, CD-4, and CD-5. The Enacted Plan disperses over 360,000 voters from the Benchmark CD-5 into each of these new districts. *See* Ansolabehere Rep. ¶ 32, 51. In each of these new districts, minority voters (and Black voters) are now a substantial minority of the voters in the district and are subsumed by that district's white voters. Specifically, Black voters now make up 22.7%, 15.3%, 30.8%, and 12.1% of the voters in those districts, respectively. *Id.* at tbl. 2. The Enacted Plan is shown below:



IV. Procedural History

Plaintiffs include several Black Florida voters who resided in Benchmark CD-5 under the previous congressional plan and now reside in the new CD-2 or CD-4, *see* Pls.' Exs. 4–6 (affidavits

of voter plaintiffs Gundy, Wiley, and Young), and organizations including Black Voters Matter, the League of Women Voters of Florida, Equal Ground, and Florida Rising Together, *see* Pls.' Exs. 7–10 (affidavits of organizational plaintiffs).

Plaintiffs filed this suit on April 22, the day that Governor DeSantis signed the Enacted Plan into law. Plaintiffs allege that the Enacted Plan violates multiple provisions of the Fair Districts Amendment, both at a plan-wide level and with regards to the configuration of specific districts. Plaintiffs filed the present motion for temporary injunction on April 26 on a limited basis, arguing only that the Enacted Plan's configuration of CD-5 violates the non-diminishment standard of Article III, Section 20(a) of the Florida Constitution. Plaintiffs ask this Court to enjoin Secretary of State Laurel M. Lee from administering the 2022 primary and general elections under the Enacted Plan.

LEGAL STANDARD

To obtain a temporary injunction, a movant must demonstrate: "[1] a substantial likelihood of success on the merits; [2] lack of an adequate remedy at law; [3] irreparable harm absent the entry of an injunction; and [4] that injunctive relief will serve the public interest." *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017) (quoting *Reform Party of Fla. v. Black*, 885 So. 2d 303, 305 (Fla. 2004) (per curiam)). "The grant or denial of an injunction is a matter that lies within the sound discretion of the trial court." *Grant v. GHG014, LLC*, 65 So. 3d 1066, 1067 (Fla. 4th DCA 2010).

ANALYSIS

I. Plaintiffs have shown a substantial likelihood of proving that the enacted plan violates the non-diminishment standard of Article III, Section 20.

A. Plaintiffs have demonstrated the Enacted Plan will result in diminishment of Black voters' ability to elect their candidate of choice.

Under the non-diminishment 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." *In re S. J. Res. of Legis. Apportionment*, 83 So. 3d at 625. The non-diminishment standard accordingly calls for a comparative analysis: "The existing plan of a covered jurisdiction serves as the 'benchmark' against which the 'effect' of voting changes is measured." *Id.* at 624. And whether a minority group's voting power has been diminished is determined by a "functional analysis" of "whether a district is likely to perform for minority candidates of choice." *Id.* at 625. This inquiry requires "consideration not only of the minority population in the districts, or even the minority voting-age population in those districts, but of political data and how a minority population group has voted in the past." *Id.* Similarly, a court's review of minority voting power "will involve the review of the following statistical data: (1) voting-age populations; (2) voting-registration data; (3) voting registration of actual voters; and (4) election results history." *Id.* at 627.

Plaintiffs' expert, Dr. Stephen Ansolabehere, conducted such a functional analysis on both the Benchmark and Enacted Plans. As the Florida Supreme Court has instructed, Dr. Ansolabehere's analysis considered "the racial composition of the population and eligible electorate, the racial composition of registered voters, the racial composition of voter participation, and an analysis of election outcomes." Ansolabehere Rep. ¶ 17. After reviewing Dr. Ansolabehere's reports in this matter and considering his live testimony, the Court finds his testimony to be credible.

First, considering the Benchmark Plan, Dr. Ansolabehere found that Benchmark CD-5 was a district in which Black voters had the opportunity to elect their preferred candidates. Relevant to this analysis were the following findings: Benchmark CD-5 has a minority population of 472,361

people, which is 63.1% of the total population of the district. *Id.* ¶ 32. It has a Black population of 367,467, which accounts for 49.1% of the total population. *Id.* Racial minorities are the majority of registered voters in Benchmark CD-5, and Black voters are the largest group of registered voters. Black voters comprise 45.3% of registered voters in Benchmark CD-5. *Id.* ¶ 34. Minority voters cast the majority of votes in the 2016, 2018, and 2020 general elections under Benchmark CD-5. *Id.* ¶ 35. Black voters were by far the largest group of all voters in all of these elections (ranging from 44.4% to 47.2% percent of all voters). *Id.* Black voters were the largest racial group of voters in all of the Democratic primaries under Benchmark CD-5, and a majority of all voters in two of the three primaries. Black voters vote cohesively in elections in Benchmark CD-5. *Id.* ¶ 36. Under Benchmark CD-5, Black voters elected a Black candidate in each of the U.S. House elections held under Benchmark CD-5. In 2016, 2018, and 2020, approximately 90% of Black voters in Benchmark CD-5 chose Congressman Al Lawson to be their Representative in the U.S. House. *Id.* ¶ 39.

From these factual findings, Dr. Ansolabehere concluded that Benchmark CD-5 was a district in which Black voters had the ability to elect their preferred candidates to Congress. *Id.* ¶ 40. The Court finds the same.

Next considering the Enacted Plan, Dr. Ansolabehere found that there was no district in North Florida that would allow Black voters to elect their preferred candidates. *Id.* ¶ 41. Relevant to this analysis were the following findings: The Enacted Plan divides the area and populations that comprise Benchmark CD-5 across newly enacted CD-2, CD-3, CD-4, and CD-5. *Id.* ¶ 42. None of these Enacted CDs in North Florida are majority-minority voting age population districts. *Id.* ¶ 44. None of the Enacted CDs in this area are majority-minority in voter registration. *Id.* ¶ 45. White voters are the majority of registered voters in all four of these districts. In the precincts

incorporated into each of the Enacted CDs in this area, white voters cast the majority of votes in the 2016, 2018, and 2020 general elections and primary elections. *Id.* ¶¶ 46-47. In all four of these districts, white voters cohesively voted for the candidates opposed to the Black-preferred candidates. *Id.* ¶ 48. In all four of these districts, the white-preferred candidates won the majority of votes cast in all eight of the general elections examined. *Id.* ¶ 49.

From these factual findings, Dr. Ansolabehere concluded that none of the new districts in North Florida are districts in which Black voters have the ability to elect their preferred candidates to Congress. *Id.* ¶ 41; *see also id.* ¶¶ 50-51. This conclusion is buttressed by analysis from the Florida Legislature's redistricting staff, which conducted its own functional analysis and found that Black voters would not have the ability to elect their preferred candidates to Congress under the Enacted Map in this area. *See* Pls.' Ex. 1-V at 13 (House Redistricting Chair Leek explaining "our staff did a functional analysis and confirmed that it does not perform [for the Black candidate of choice]"). The Court finds the same.

The Court finds the Enacted Plan would diminish the ability of Black voters to elect their candidate of choice in North Florida. The Secretary offers no credible contrary evidence; her experts neither performed a functional analysis nor contested Dr. Ansolabehere's findings. Plaintiffs have shown a substantial likelihood of proving that the Enacted Plan violates the non-diminishment standard of Article III, Section 20.

B. Application of the Florida Constitution's non-diminishment standard does not violate the Equal Protection Clause of the U.S. Constitution.

The Secretary argues that application of the Florida Constitution's non-diminishment standard violates the Fourteenth Amendment of the U.S. Constitution, insofar as the former results in a configuration of CD-5 that maintains the ability of Black voters in North Florida to elect their candidate of choice. The record before this Court does not support such a finding.

Electoral districting violates the federal Equal Protection clause where "(1) race is the 'dominant and controlling' or 'predominant' consideration in deciding 'to place a significant number of voters within or without a particular district,' and (2) the use of race is not 'narrowly tailored to serve a compelling state interest.'" *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 260-61 (2015) (quoting *Miller v. Johnson*, 515 U.S. 900, 913, 916 (1995), and *Shaw v. Hunt*, 517 U.S. 899, 902 (1996) ("*Shaw II*")).

The Secretary faces a heavy burden to establish that race predominated in the drawing of 8015's CD-5. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (explaining that the burden of proof lies with the party claiming discriminatory intent). Courts must "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race," given the "presumption of good faith that must be accorded legislative enactments" and the "distinction between being aware of racial considerations and being motivated by them." *Miller*, 515 U.S. at 916.

The Secretary has not established that race was the predominant factor, rather than one of several factors, in the drawing of 8015's CD-5. Race neutral reasons exist for Plan 8015's CD-5. The Legislature made minimal changes between the Benchmark CD-5 and 8015's CD-5 that were required to account for population changes, consistent with the "legitimate state objective" of "preserving the cores of prior districts." *Karcher v. Daggett*, 462 U.S. 725, 740 (1983); *see also Tennant v. Jefferson Cnty. Comm'n*, 567 U.S. 758, 764 (2012) ("The desire to minimize population shifts between districts is clearly a valid, neutral state policy"). The record demonstrates the Legislature drew 8015 to comply with the Florida Supreme Court's prior rulings regarding CD-5. *See League of Women Voters of Fla.*, 179 So. 3d at 272 (upholding trial court's adoption of an "East-West" version of CD-5). As the U.S. Supreme Court has explained, a desire to avoid

litigation is specifically one of the race-neutral reasons that may motivate a Legislature to adopt a plan. *See Abbott*, 138 S. Ct. at 2327 (finding race did not predominate where the Legislature chose a plan which would "bring the litigation about the State's districting plans to an end as expeditiously as possible"). Finally, as Dr. Ansolabehere demonstrated, Plan 8015's CD-5 closely followed the newly-enacted State House legislative district lines. This, too, is another reason that could have informed the Legislature's decision to draw a plan like Plan 8015.

Even if the Secretary could show that racial considerations predominated in the drawing of 8015's CD-5, the record indicates that the Legislature's configuration of CD-5 is narrowly tailored to advance compelling state interests. First, compliance with the Fair Districts Amendment's non-diminishment provision is a compelling state interest. While the Fair Districts Amendment is independent from the Voting Rights Act, this provision of the state constitution "follow[s] almost verbatim the requirements embodied in the [Federal] Voting Rights Act." *In re S. J. Res. of Legis. Apportionment*, 83 So. 3d at 619 (citation omitted and second alteration in original); *see also* Pls.' Ex. 1-D at 42 (recognizing that Florida's Constitution parallels federal retrogression standards); Pls.' Ex. 1-E at 15 (same). The U.S. Supreme Court has repeatedly assumed that compliance with the VRA constitutes a compelling state interest. *See, e.g., Wis. Legis. v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1249 (2022) ("We have assumed that complying with the VRA is a compelling interest."); *Abbott*, 138 S. Ct. at 2315; *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 801 (2017) ("[T]he Court assumes, without deciding, that the State's interest in complying with the Voting Rights Act was compelling."). Given the substantive similarity between Section 5 of the VRA and the Fair Districts Amendment's non-diminishment provision, compliance with the latter likewise constitutes a compelling state interest.

Second, addressing the history of voting-related racial discrimination and a lack of representation in North Florida in itself constitutes a compelling state interest for CD-5. *See Miller*, 515 U.S. at 920 (1995) (explaining that there is a "significant state interest in eradicating the effects of past racial discrimination"). Plaintiffs presented evidence that, for much of Florida's history, Black voters in the state have been unable to participate equally in the electoral process, with Black residents of North Florida experiencing particularly severe burdens in access to the franchise. *See* Pls.' Mem. in Supp. of Mot. For Temp. Inj. ("Br.") at 5-6 (Apr. 26, 2022). As a result, between 1876 and 1992, Florida did not elect a single Black candidate to Congress. *Id.* at 6. As Dr. Sharon Austin describes, "[t]his lack of political representation was the result of redistricting practices that split the state's Black population into districts where their votes would be drowned out by overwhelming White majorities." Pls.' Ex. 3 at 13.

Plan 8015's CD-5 is narrowly tailored to address these compelling state interests. The legislative record includes detailed testimony that 8015's configuration of CD-5 is necessary to ensure minority voters' continued ability to elect candidates of their choice. *See, e.g.*, Fla. H.R. Comm. on Redistricting, recording of proceedings, at 19:45-19:54 (Feb. 25, 2022), https://thefloridachannel.org/videos/2-25-22-house-redistricting-committee (last accessed May 10, 2022) (Chair of House Redistricting Committee noting the Committee's aim "to protect the minority group's ability to elect a candidate of their choice"). The Legislature, which conducted a functional analysis on their redistricting plans, *see* Pls.' Ex 1-V at 13, thus "had good reasons to believe that" 8015's configuration of CD-5 "was necessary . . . to avoid diminishing the ability of black voters to elect their preferred candidates." *Bethune-Hill*, 137 S. Ct. at 791. This "strong showing of a pre-enactment analysis with justifiable conclusions," demonstrates a compelling state interest. *Wis. Legis.*, 142 S. Ct. at 1249 (citing *Abbott*, 138 S. Ct. at 2335).

The fact that the Enacted Plan's CD-5 is more compact or contains slightly fewer splits of political boundaries does not change this outcome. The Fair Districts Amendment explicitly categorizes compactness and utilization of political boundaries as "Tier Two" standards that must give way when in conflict with "Tier One" standards, including the non-diminishment principle. *See* Fla. Const. Art. III, § 20; *In re S. J. Res. of Legis. Apportionment*, 83 So. 3d at 615. Moreover, courts have denied racial gerrymandering claims against districts that are even less compact than Plan 8015's CD-5. In particular, the record demonstrates that Plan 8015's CD-5 is more compact than other congressional districts in the United States from the last redistricting cycle that withstood federal racial gerrymandering claims, such as Texas's 35th Congressional District. Finally, while Plan 8015's CD-5 is not the most compact district, the record also demonstrated that it is far from the least compact. Indeed, Plan 8015's CD-5 has a higher Polsby-Popper compactness score, indicating a higher degree of compactness, than 65 congressional districts in the United States.

II. Plaintiffs have no adequate remedy at law.

The Court finds that, absent injunctive relief, no other remedy exists under Florida law to remedy the harm Plaintiffs will suffer if the 2022 primary and general elections proceed under an unconstitutional districting plan. Under settled law, plaintiffs lack an adequate remedy at law where, as here, their injuries result from a violation of a fundamental constitutional right. *See, e.g.*, *Gainesville Woman Care*, 210 So. 3d at 1263–64 ("In light of finding that the [challenged law] is likely unconstitutional, there is no adequate legal remedy at law for the improper enforcement of the [law]."); *see also League of Women Voters of Fla. v. Detzner*, 314 F. Supp. 3d 1205, 1224 (N.D. Fla. 2018) (granting temporary injunction in voting-related case because injury could not

"be undone through monetary remedies" (quoting *Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987))); *Madera v. Detzner*, 325 F. Supp. 3d 1269, 1282 (N.D. Fla. 2018) (same).

III. Plaintiffs and other Florida voters will suffer irreparable harm absent a temporary injunction.

The Court also finds that Plaintiffs have shown they will suffer irreparable harm absent temporary injunctive relief. Florida "law recognizes that a continuing constitutional violation, in and of itself, constitutes irreparable harm." *Bd. of Cnty. Comm'rs v. Home Builders Ass'n of W. Fla., Inc.*, 325 So. 3d 981, 985 (Fla. 1st DCA 2021) (upholding trial court's determination "that irreparable harm was presumed based on the existence of a constitutional violation"); *see also Gainesville Woman Care*, 210 So. 3d at 1263–64 (finding that law that violated constitution would lead to irreparable harm absent injunctive relief). Indeed, "[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014);[1] *see also, e.g.*, *Larios v. Cox*, 305 F. Supp. 2d 1335, 1343–44 (N.D. Ga.) (per curiam) (three-judge court) (holding that stay of court's order finding state legislative plans unconstitutional would result in "irreparable harm to the plaintiffs, and to all voters in Georgia who have had their votes unconstitutionally debased," and that the court had "a responsibility to ensure that future elections will not be conducted under unconstitutional plans"), *aff'd*, 542 U.S. 947 (2004). That is because "once the election occurs, there can be no do-over and no redress" for voters whose rights were violated. *League of Women Voters of N.C.*, 769 F.3d at 247. Plaintiffs demonstrated a clear likelihood that if the 2022 primary and general elections were

[1] In weighing whether an injury cannot be remedied at law and thus constitutes irreparable harm, the Florida Supreme Court has relied on precedent from federal courts. *See, e.g., Gainesville Woman Care*, 210 So. 3d at 1263–64 (noting that U.S. Supreme Court and lower federal courts "have presumed irreparable harm when certain fundamental rights are violated").

conducted under the unlawful Enacted Plan, Plaintiffs' constitutional rights would be violated. Unless the Plaintiffs are provided injunctive relief they will suffer irreparable harm.

IV. Granting Plaintiffs injunctive relief will serve the public interest.

Finally, the Court concludes that granting Plaintiffs' motion serves the public interest. Plaintiffs have shown a clear likelihood that the Enacted Plan violates their fundamental right to vote and "enjoining the enforcement of a law that encroaches on a fundamental constitutional right presumptively 'would serve the public interest.'" *Green v. Alachua Cnty.*, 323 So. 3d 246, 254 (Fla. 1st DCA 2021) (quoting *Gainesville Woman Care*, 210 So. 3d at 1264); *see also Gainesville Woman Care*, 210 So. 3d at 1264 (finding that it "would be specious to require . . . that the trial court make additional factual findings" to determine that enjoining unconstitutional law would be in the public interest).

Nevertheless, citing the U.S. Supreme Court's decision in *Purcell*, the Secretary argues the public would be harmed by granting Plaintiffs relief because imposing a remedial plan this close to the 2022 elections will cause voter confusion. This Court disagrees. *Purcell* is a creature of the *federal* courts, where it was created as a means of restraining federal interference in the administration of state elections on the eve of an election, as demonstrated by all the federal precedent the Secretary cites in support of the principle. It has no bearing on state courts. As New York's highest state court recently explained in enjoining that state's congressional plan after that state's candidate qualifying period had already passed, *Purcell* "does not limit state judicial authority where, as here, a state court must intervene to remedy violations of the State Constitution." *Harkenrider v. Hochul*, 2022 NY Slip Op. 02833, at 28 n.16 (N.Y. Apr. 27, 2022).

The Secretary cites *State ex rel. Haft v. Adams*, 238 So. 2d 843 (Fla. 1970). There, the Florida Supreme Court denied a writ of mandamus prohibiting the Secretary from placing certain candidates' names on the ballot three weeks before the primary election.

The Secretary also cites, *State ex rel. Walker v. Best,* 163 So. 696, 697 (Fla. 1935). There, the Florida Supreme Court refused to order a town clerk to publish a new amendment to the town charter *15 days* before the election.

Neither apply here.

We are not days or weeks from an election. Florida's primary, one of the latest in the nation, is set for August 23, nearly four months away. *See* Pls.' Ex. 11. This is therefore not the typical eve-of-election case in which judicial relief may disrupt an election, and instead more resembles the many other cases in which state courts have enjoined redistricting plans in the months before an election. *See Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022) (invalidating plan on February 14, 2022, about three months before North Carolina's May 17 primary elections); *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (invalidating plan on February 7, 2018, about three months prior to Pennsylvania's May 15 primary elections; plan ordered on February 23); *Rivera v. Schwab*, No. 2022-CV-000089 (Kan. D. Ct. 2022) (invalidating plan on April 25, 2022, about three months prior to Kansas's August 2 primary elections), appeal docketed No. 125092 (Kan.). And, notably, this Court finds that the Plaintiffs moved as quickly as they could have, filing suit the same day the Governor signed the Enacted Plan into law.

Even if *Purcell* did apply to state courts, the Court finds that there is time to adopt a remedial plan without creating the confusion the Secretary predicts. As Dr. Ansolabehere demonstrated through his Proposed Map A, a remedial plan would have minimal impacts on the Enacted Plan. Proposed Map A alters only five congressional districts—CDs-2, 3, 4, 5, and 6—

and, importantly, follows the lines of the state's recently enacted State House districts wherever possible. Ansolabehere Rebuttal Rep. ¶ 4. As a result, Proposed Map A will affect just a handful of counties and can be implemented quickly and without significant administrative difficulties.

In response, the Secretary cites to two affidavits from Supervisor of Elections' Offices that explain a remedial plan would cause their offices administrative burdens. The Columbia County Supervisor states that a remedial plan will create the need to cancel and reschedule a meeting with the Board of County Commissioners, Def's. Ex. 1 ¶ 9, and expend additional funds to implement a constitutional map. A representative of the Duval County Supervisor's Office also explained that a new congressional plan would impose burdens on his office, though he did not say that his office could not implement a remedial plan. Def's. Ex. 2.

This Court appreciates that its order may cause inconvenience, hard work, and expense. Notwithstanding, these concerns do not outweigh Plaintiffs' rights. *See, e.g., Taylor v. Louisiana*, 419 U.S. 522, 535 (1975) (finding that that "administrative convenience" is not a sufficient reason to uphold unconstitutional law).

Moreover, the Secretary's suggestion that a remedial plan would impose insurmountable burdens is belied by Plaintiffs' affidavits from five current and former senior officials of Supervisors of Elections offices across the state who show their offices *can* implement a remedial plan in time for the 2022 elections. Leon County Supervisor of Elections Mark Earley, one of the Supervisors who would be most affected by redrawing of CD-5, as well as his Deputy, Christopher Moore, both stated that their office can implement any remedial plan received by May 27, 2022. Pls.' Exs. 12, 17. Counsel for the Supervisor of Elections of Orange County, who is responsible for a county with over 850,000 voters, swore to the same, Pls.' Ex. 14. And the Polk County Supervisor of Elections Lori Edwards similarly testified by affidavit that her office could

implement a remedial plan imposed by May 27. Pls.' Ex. 16. Plaintiffs also submitted an affidavit by Representative Tracie Davis, who worked at the Duval County Supervisor's Office for 14 years, serving eventually as Deputy Supervisors of Elections, who explained that the Duval Supervisor's Office is capable of managing districting schemes, is practiced in handling precinct splits in congressional plans, and should be able to implement a remedial plan in time for the primary election as long as it is received by the end of May. Pls.' Ex. 15 ¶¶ 5-8.

The remedial plan the Court adopts require narrow changes to a plan already passed by the Legislature, prior to being vetoed. It is not in the public's interest to deny the Plaintiffs' relief.

V. Plaintiffs' Proposed Congressional Map A is an appropriate narrow remedy.

Because this Court has found a violation of the Florida Constitution and that there is time to remedy the violation, this Court must consider what remedy is appropriate. This Court finds that a narrow remedy—one that addresses only the diminishment discussed in this order—is the most appropriate.

Plaintiffs' expert, Dr. Ansolabehere, prepared several possible remedial plans for this Court to consider. After considering the expert reports, the affidavits from election administrators, and live testimony from Dr. Ansolabehere, the Court finds that Proposed Map A is the best remedial option available to Florida's administrators and voters. At its core, Proposed Map A takes the Legislature's version of CD-5 from Plan 8015, and places it within the existing Enacted Map. Proposed Map A is designed to minimize the administrative burden within the counties affected by Proposed CD-5 by following the boundaries of the recently enacted Florida State House map to the greatest extent possible and by minimizing the number of additional precinct splits, while still restoring CD-5 as a district where Black voters have the ability to elect the candidate of their

choice. Proposed Map A will affect only five enacted congressional districts (out of twenty-eight such districts). The districts affected are CD-2, CD-3, CD-4, CD-5, and CD-6. Compared to the Enacted Plan, Plan A will require election administrators to create a de minimis number of new precincts out of more than approximately 650 precincts in North Florida. The Court thus orders implementation of Proposed Map A for this year's congressional elections.[2]

VI. Bond

Finally, in their motion, Plaintiffs requested that the Court set no more than a nominal bond and proposed that Defendants waive entry of a bond. The Secretary did not address the bond issue in her filings or oral argument. The Court sets a bond in the amount of $1,000.

CONCLUSION

The Court grants Plaintiffs' motion for a temporary injunction. The Court orders the Secretary of State to take all necessary steps to implement the final corrected version of Proposed Map A, as submitted to the Court and to counsel for the Secretary of State on May 12, 2022, in time for the 2022 congressional elections, while the rest of this case proceeds to a trial on the merits.

DONE AND ORDERED on May 12, 2022.

J. Layne Smith
Circuit Judge

Copies to counsel of record via e-service

[2] During the temporary injunction hearing, the Secretary's counsel asked Dr. Ansolabehere whether Proposed Map A was contiguous. After the hearing, Dr. Ansolabehere confirmed that Proposed Map A was contiguous. Nonetheless, Dr. Ansolabehere has now assigned a portion of I-95 to CD-6, rather than CD-4, which will make for a more visually pleasing map. This change does not move any persons. Dr. Ansolabehere has prepared a corrected version of Proposed Map A, which is the version of the map this Court now orders to be implemented.