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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., et al.,

Plaintiffs,

v.

CORD BYRD, in his official capacity as Florida Secretary of State, et al.,

Defendants.

Case No. 2022-ca-000666

PLAINTIFFS' NOTICE OF SUPPLEMENTAL EXHIBIT

Please take notice that Plaintiffs have filed a supplemental exhibit ("Exhibit 9") in support of their Opposition to Third Parties' Motion for Protective Order ("Response"), previously filed October 3, 2022. Exhibit 9 is a news article that was published by ProPublica on October 11, 2022, titled *How Ron DeSantis Blew Up Black-Held Congressional Districts and May Have Broken Florida Law*. This exhibit, which was not available to Plaintiffs at the time of their filing, further illustrates the Executive Office of the Governor's intricate involvement in the creation of Florida's Enacted Plan. Exhibit 9 also reports that the Governor's aides worked behind the scenes with the general counsel to the National Republican Redistricting Trust and other Republican-affiliated consultants as they drew the Enacted Plan.

While Plaintiffs maintain that they do not need to demonstrate evidence of "wrongdoing" before they are entitled to proceed with discovery, the information reported in Exhibit 9, if true, would likely constitute a violation of the Fair Districts Amendments. The existence of Exhibit 9 also demonstrates that the Governor's office has documents responsive to Plaintiffs' request for

communications with third parties outside the Governor's Office, which are not protected by any privilege at all. *See* Response at 17-19.

Exhibit 9 is attached to this notice.

Dated: October1 17, 2022

Respectfully submitted,

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**Admitted pro hac vice*
*** Motion for admission pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 17, 2022 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

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Exhibit 9

PROPUBLICA

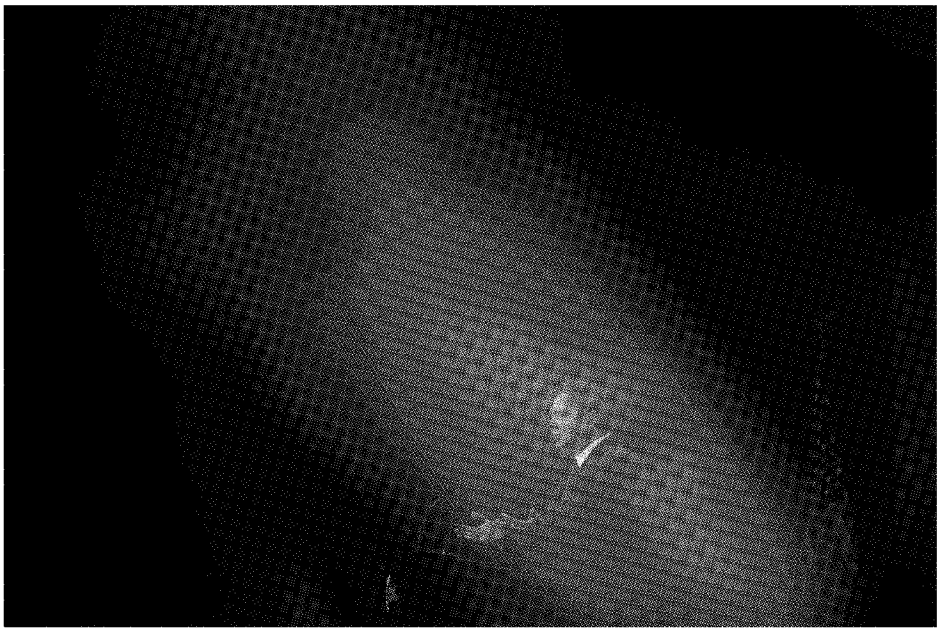
Democracy

How Ron DeSantis Blew Up Black-Held Congressional Districts and May Have Broken Florida Law

by Joshua Kaplan

Oct. 11, 6 a.m. EDT

DeSantis' move, secretly aided by GOP-linked national operatives, came over the objections of the Republican-controlled state legislature.



Florida Gov. Ron DeSantis made Florida's congressional map far more favorable to Republicans. This may have violated the state constitution. Rebecca Noble/The New York Times/Redux

Sign up for ProPublica's User's Guide to Democracy, a series of personalized emails that help you understand the upcoming election, from who's on your ballot to how to cast your vote.

Florida Gov. Ron DeSantis was incensed. Late last year, the state's Republican legislature had drawn congressional maps that largely kept districts intact, leaving the GOP with only a modest electoral advantage.

DeSantis threw out the legislature's work and redrew Florida's congressional districts, making them far more favorable to Republicans. The plan was so aggressive that the Republican-controlled legislature balked and fought DeSantis for months. The governor overruled lawmakers and pushed his map through.

DeSantis' office has publicly stressed that partisan considerations played no role and that partisan operatives were not involved in the new map.

A ProPublica examination of how that map was drawn — and who helped decide its new boundaries — reveals a much different origin story. The

new details show that the governor's office appears to have misled the public and the state legislature and may also have violated Florida law.

DeSantis aides worked behind the scenes with an attorney who serves as the national GOP's top redistricting lawyer and other consultants tied to the national party apparatus, according to records and interviews.

Florida's constitution was amended in 2010 to prohibit partisan-driven redistricting, a landmark effort in the growing movement to end gerrymandering as an inescapable feature of American politics.

Barbara Pariente, a former chief justice of the state Supreme Court who retired in 2019, told ProPublica that DeSantis' collaboration with people connected to the national GOP would constitute "significant evidence of a violation of the constitutional amendment."

"If that evidence was offered in a trial, the fact that DeSantis was getting input from someone working with the Republican Party and who's also working in other states — that would be very powerful," said Pariente, who was appointed to the Supreme Court by Democrat Lawton Chiles.

A meeting invite obtained by ProPublica shows that on Jan. 5, top DeSantis aides had a "Florida Redistricting Kick-off Call" with out-of-state operatives. Those outsiders had also been working with states across the country to help the Republican Party create a favorable election map. In the days after the call, the key GOP law firm working for DeSantis logged dozens of hours on the effort, invoices show. The firm has since billed the state more than $450,000 for its work on redistricting.

A week and a half after the call, DeSantis unveiled his new map. No Florida governor had ever pushed their own district lines before. His plan wiped away half of the state's Black-dominated congressional districts, dramatically curtailing Black voting power in America's largest swing state.

One of the districts, held by Democrat Al Lawson, had been created by the Florida Supreme Court just seven years before. Stretching along a swath of north Florida once dominated by tobacco and cotton plantations, it had drawn together Black communities largely populated by the descendants of sharecroppers and slaves. DeSantis shattered it, breaking the district into four pieces. He then tucked each fragment away in a majority-white, heavily Republican district.

DeSantis' strong-arming of his Republican allies was covered extensively by the Florida press. But until now, little has emerged about how the governor crafted his bold move and who his office worked with. To reconstruct DeSantis' groundbreaking undertaking, ProPublica interviewed dozens of consultants, legislators and political operatives and reviewed thousands of pages of documents obtained through public records requests and from the nonpartisan watchdog group American Oversight.

DeSantis' office did not respond to detailed questions for this story.

"Florida's Governor fought for a legal map — unlike the gerrymandered plan the Governor rightly vetoed," Adam Kincaid, executive director of the National Republican Redistricting Trust, whose top lawyer was hired by

DeSantis' office, said in an email to ProPublica. "If Governor DeSantis retained some of the best redistricting lawyers and experts in the country to advise him then that speaks to the good judgment of the Governor, not some alleged partisan motive."

In four years as governor, DeSantis has championed an array of controversial policies and repeatedly used his power to punish his political opponents. A presumptive candidate for the Republican presidential nomination in 2024, he has often made moves that seemed tailored to attract headlines, such as his recent stunt sending migrants to Martha's Vineyard. But it's the governor's less flashy commandeering of the redistricting process that may ultimately have the most long-lasting consequences.

Analysts predict that DeSantis' map will give the GOP four more members of Congress from Florida, the largest gain by either party in any state. If the forecasts hold, Republicans will win 20 of Florida's 28 seats in the upcoming midterms — meaning that Republicans would control more than 70% of the House delegation in a state where Trump won just over half of the vote.

The reverberations of DeSantis' effort could go beyond Florida in another way. His erasure of Lawson's seat broke long-held norms and invited racial discrimination lawsuits, experts said. Six political scientists and law professors who study voting rights told ProPublica it's the first instance they're aware of where a state so thoroughly dismantled a Black-dominated district. If the governor prevails against suits challenging his map, he will have forged a path for Republicans all over the country to take aim at Black-held districts.

"To the extent that this is successful, it's going to be replicated in other states. There's no question," said Michael Latner, a political science professor at California Polytechnic State University who studies redistricting. "The repercussions are so broad that it's kind of terrifying."

Rep. Al Lawson had his district broken into four pieces by DeSantis, reducing the share of the Black population in each. Bill Clark/CQ Roll Call/AP Images

Al Lawson's district, now wiped away by DeSantis, had been created in response to an earlier episode of surreptitious gerrymandering in Florida.

Twelve years ago, Florida became one of the first states to outlaw partisan gerrymandering. Through a ballot initiative that passed with 63% of the vote, Florida citizens enshrined the so-called Fair Districts amendment in the state constitution. The amendment prohibited drawing maps with "the intent to favor or disfavor a political party." It also created new protections for minority communities, in a state that's 17% Black, forming a backstop as the U.S. Supreme Court chipped away at the federal Voting Rights Act.

Florida elected its first Black member of Congress, a former slave named Josiah Walls, in 1870, shortly after the end of the Civil War. But Florida rapidly enacted new voter suppression laws, and Walls soon lost his office as Reconstruction gave way to the era of Jim Crow.

Josiah Walls was elected to the U.S. House of Representatives from Florida in 1870. Buyenlarge/Getty Images

Thanks to distorted maps, Florida did not elect a second Black representative to Congress until 1992. That year, a federal court created three plurality-Black districts in Florida — and then three Black politicians won seats in the U.S. House.

After the Fair Districts amendment became law in 2010, state legislators promised to conduct what one called "the most transparent, open, and interactive redistricting process in America." Policymakers went on tour

across the state, hosting public hearings where their constituents could learn about the legislature's decision-making and voice their concerns.

The hearings also served a more nefarious purpose, a judge would later rule. They were instrumental in what state circuit judge Terry Lewis described as "a conspiracy to influence and manipulate the Legislature into a violation of its constitutional duty."

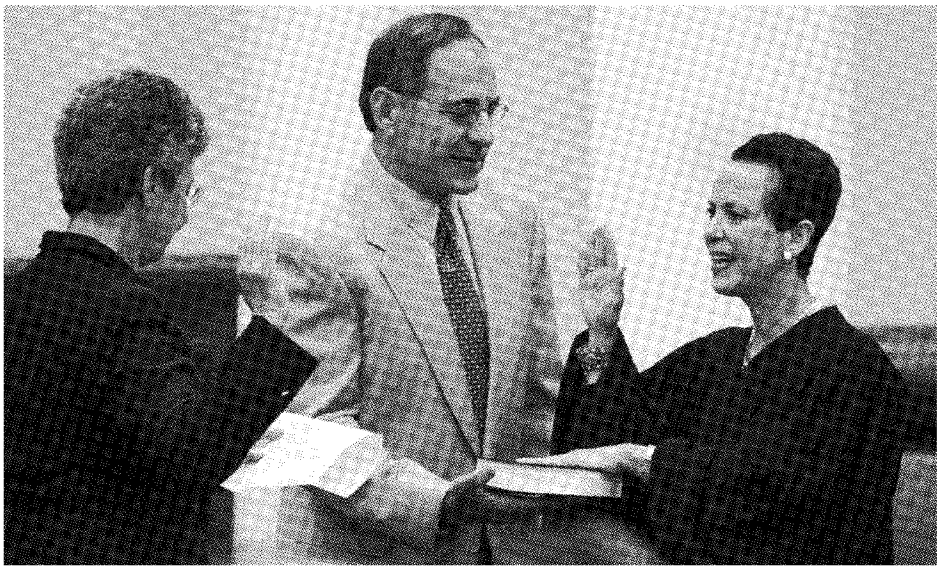
For months, a team of state-level Republican operatives worked in secret to craft maps that favored the GOP, coordinating with both statehouse leadership and the Republican National Committee. Then they recruited civilians to attend the hearings and submit the maps as their own.

An email detailed the advice the operatives gave their recruits. "Do NOT identify oneself orally or in writing," it read, "as a part of the Republican party. It is more than OK to represent oneself as just a citizen."

It took years of litigation for the details of the scheme to come to light. But in 2015, the Florida Supreme Court responded with force. In a series of rulings that ultimately rejected the Republicans' efforts, the court laid out the stringent new requirements under Fair Districts, making clear that partisan "practices that have been acceptable in the past" were now illegal in the state of Florida.

After ruling that the legislature's process was unconstitutional, the court threw out the Republicans' congressional district lines and imposed a map of their own. That is how Lawson's district came to be.

"It was important," Pariente, who authored the key opinions, told ProPublica, "to make sure the amendment had teeth and was enforceable."



Former Florida Supreme Court Chief Justice Barbara Pariente, right, said DeSantis' collaboration with people connected to the national GOP would constitute "significant evidence of a violation" of Florida's constitution. Phil Coale/AP

The amendment took on even greater significance in 2019, when the U.S. Supreme Court issued a landmark ruling on redistricting.

The court's decision in Rucho v. Common Cause barred federal court challenges to partisan gerrymanders. Writing for the 5-4 majority, Chief Justice John Roberts said it was not an issue for the federal judiciary to

decide, but emphasized the ruling did not "condemn complaints about districting to echo into a void."

In fact, the issue was being actively addressed at the state level, Roberts wrote. He cited Florida's amendment and one of Pariente's opinions. Responding to liberal justices who wanted to reject Rucho's map as an unconstitutional gerrymander, Roberts wrote they could not because "there is no 'Fair Districts Amendment' to the Federal Constitution."

In 2021, state legislative leaders were more careful.

The senate instructed its members to "insulate themselves from partisan-funded organizations" and others who might harbor partisan motivations, reminding legislators that a court could see conversations with outsiders as evidence of unconstitutional intent. The legislature imposed stringent transparency requirements, like publishing emails that it received from constituents. And they ordered their staff to base their decisions exclusively on the criteria "adopted by the citizens of Florida."

The Senate leadership "explained to us at the beginning of the session that because of what happened last cycle, everything had to go through the process," Sen. Joe Gruters, who is also chairman of the Florida Republican Party, told ProPublica.

In November, the state senate proposed maps that largely stuck to the status quo. Analysts predicted they would give Republicans 16 seats in Congress and Democrats 12.

"Were they the fairest maps you could draw? No," said Ellen Freidin, leader of the anti-gerrymandering advocacy group FairDistricts Now. "But they weren't bad Republican gerrymanders."

DeSantis was incensed after the Republican-controlled legislature put forward its redistricting proposal.
Scott McIntyre/The New York Times/Redux

DeSantis wasn't satisfied. "The governor's office was very pissed off about the map. They thought it was weak," said a well-connected Florida Republican, who spoke on the condition of anonymity so he could be candid. "They thought it was ridiculous to not even try to make it as advantageous as possible."

In early January, DeSantis' deputy chief of staff, Alex Kelly, was quietly assigned to oversee a small team that would devise an alternative proposal, according to Kelly's later testimony.

State employees often spend years preparing for the redistricting process — time that DeSantis did not have. As Kelly and his colleagues set to work, they brought in critical help from the D.C. suburbs: Jason Torchinsky, a Republican election attorney and one of the leading GOP strategists for redistricting nationwide.

On Jan. 5, Kelly and two other top DeSantis aides had the redistricting "kick-off call," according to the meeting invite, which was provided to ProPublica by American Oversight. The invitation included Torchinsky and another guest from out of state: Thomas Bryan, a redistricting specialist.

In an interview with ProPublica, Bryan explained the connection between the national Republican Party and his work with DeSantis. "There's a core group of attorneys that works with the party and then they work with specific states," he said. "It's not a coincidence that I worked on Texas, Florida, Virginia, Kansas, Michigan, Alabama."

He added that the main lawyer he works with is Torchinsky: "Jason will say, 'I want you to work on this state.'"

Jason Torchinsky, center, logged more than 100 hours working on the redistricting for DeSantis. Joe Raedle/Getty Images

A top partner at a conservative law firm, Torchinsky has represented the RNC, the Republican Party of Florida and many of America's most influential right-wing groups, such as the Koch network's Americans for Prosperity.

He also occupies a central role in the Republican Party's efforts to swing Congress in its favor in 2022. Torchinsky is the general counsel and senior advisor to the National Republican Redistricting Trust, the entity the Republican National Committee helped set up to manage the party's redistricting operations.

The NRRT boasts millions of dollars in funding and a roster of prominent advisors that includes Mike Pompeo and Karl Rove. Earlier this year, Kincaid, the trust's executive director, summarized its objective bluntly: "Take vulnerable incumbents off the board, go on offense and create an opportunity to take and hold the House for the decade."

In a statement to ProPublica, Kincaid said that the trust is one of Torchinsky's many clients and that the lawyer's work in Florida was separate: "When I would ask Jason what was happening in Florida, he would tell me his conversations were privileged." Kincaid added that he personally did not speak with anyone in the DeSantis administration "during this redistricting cycle."

Torchinsky's involvement in the creation of DeSantis' map has not been previously reported. His role in the process appears to have been intimate and extensive, though the specifics of his contributions are largely unclear. He spent more than 100 hours working for the DeSantis administration on redistricting, according to invoices sent to the Florida Department of State.

RE : Florida Department of State - Florida Redistricting, Gov and SOS - 1844.05

Fees

Date	Staff	Description	Hours	Amount
1/5/2022	Jason Torchinsky	Call with Mo; Call [redacted] Call with Gov team; Confer with Tom.	2.25	$900.00
1/6/2022	Jason Torchinsky	Correspondence and calls re: [redacted] Review and [redacted].	1.75	$700.00
1/7/2022	Jason Torchinsky	Review [redacted] Call with team; Correspondence.	2.00	$800.00
1/7/2022	Mo Jazil	Prepare for and participate in discussion with team concerning redistricting issues.	1.00	$400.00
1/7/2022	Zackary Bennington	Conduct initial file maintenance. Research and download relevant information from government websites. Email same to JT and MJ.	2.00	$300.00
1/9/2022	Jason Torchinsky	Confer with [redacted] re: [redacted].	0.75	$300.00
1/10/2022	Jason Torchinsky	Confer and correspondence and calls re: [redacted].	2.25	$900.00
1/11/2022	Jason Torchinsky	Conference calls and correspondence re: [redacted].	3.25	$1,300.00

Redacted invoice from Jason Torchinsky's firm for its work on Florida redistricting Screenshot by ProPublica

Torchinsky held repeated meetings with DeSantis' team as the group crafted maps and navigated the ensuing political battles, according to documents obtained by ProPublica. And he brought in other operatives who'd worked around the country in priority states for the national GOP.

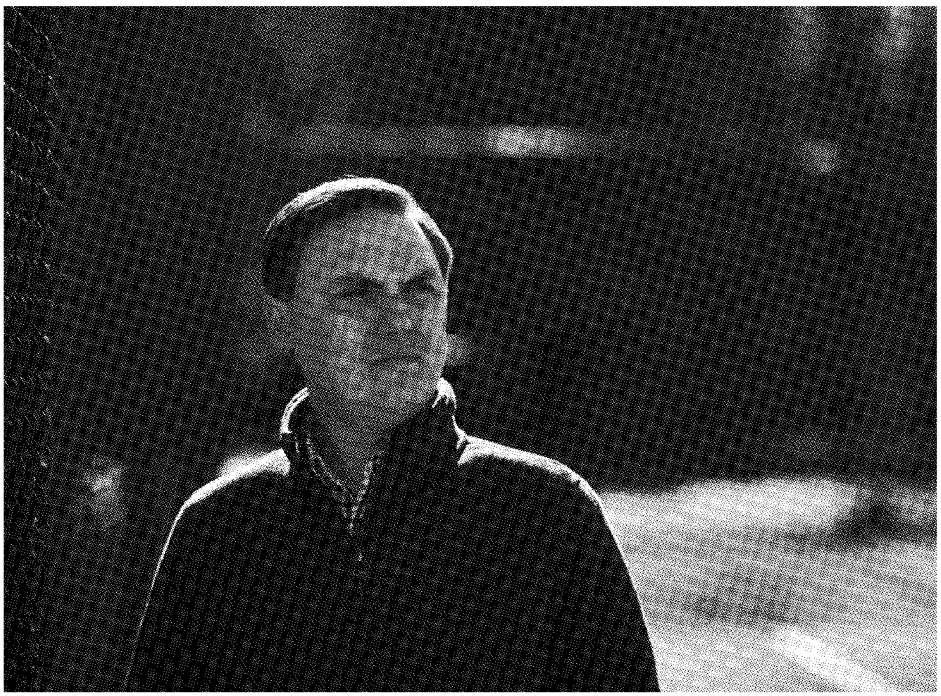
A week after the kickoff meeting, Torchinsky scheduled a Zoom call between Kelly, Bryan and a second consultant, Adam Foltz.

Foltz and Bryan arrived in Florida just as they were becoming go-to mapmakers for the GOP. They appeared together in multiple states where the NRRT was directly involved last year, generating controversy in their wake.

In Texas, Foltz, Bryan and the NRRT's leader, Kincaid, all worked behind the scenes helping draw maps, court records show. After they finished, the

U.S. Department of Justice filed a lawsuit against the state of Texas, contending that the map violated the Voting Rights Act and illegally diluted Black and Latino votes. The case is still pending.

Last fall in Virginia, each party submitted three candidates to the state supreme court to guide the state's redistricting process. The Democrats put forward three professors. Republicans submitted Bryan, Foltz and Kincaid. The court's conservative majority rejected all three Republican nominees, citing conflicts of interest and "concerns about the ability" of the men to carry out the job neutrally.



Adam Kincaid, executive director of the National Republican Redistricting Trust, whose top lawyer helped DeSantis with his congressional maps. T.J. Kirkpatrick/The New York Times/Redux

In a statement, Kincaid said Foltz and Bryan are not partisan operatives and "the Virginia Supreme Court erred" in rejecting them. He also downplayed his own relationship to the consultants, saying they are not "employees or retained consultants" for his group.

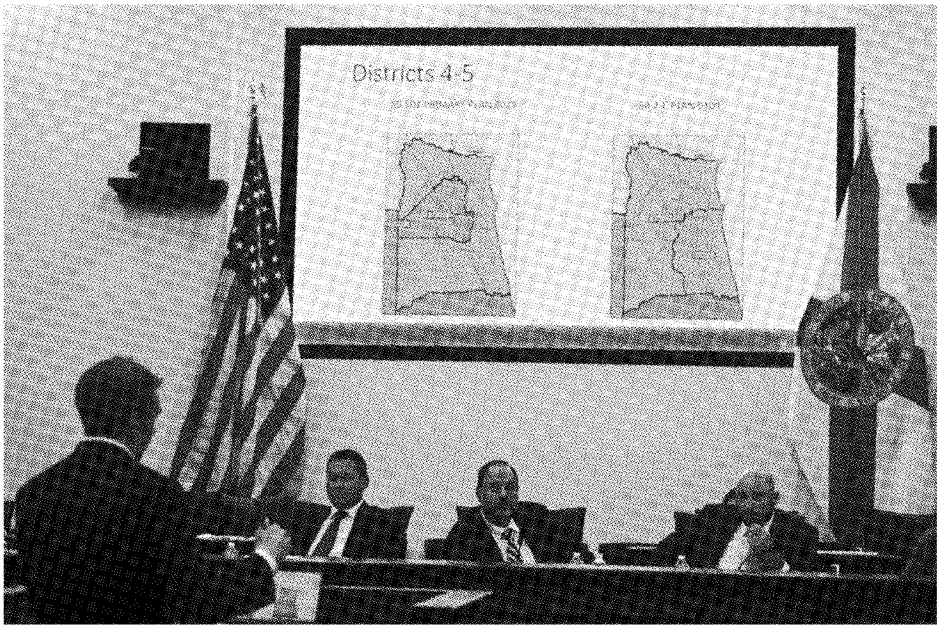
"Adam and Tom are two of the best political demographers in the country," Kincaid wrote. "It would only make sense that states looking for redistricting experts would retain them."

Until last year, Foltz had spent his entire career working in Wisconsin politics, on state GOP campaigns and for Republican state legislators, according to court records. He was introduced to redistricting a decade ago when he spent months helping craft maps that became notoriously effective Republican gerrymanders. When he testified under oath that partisanship played no role in the Wisconsin process, a three-judge panel dismissed his claim as "almost laughable."

Bryan was also a new figure on the national stage. Before 2020, he was a "bit player" in the redistricting industry, he said, running a small consulting company based in Virginia. He'd drawn maps for school districts and for local elections, but never for Congress, and he held a second job in consumer analytics at a large tobacco conglomerate.

"In 2020, my phone started going off the hook, with states either asking to retain me as an expert or to actually draw the lines," Bryan told ProPublica. "I get phone calls from random places, and I'm on the phone with a governor." While he mostly worked with Republicans, he was also retained by Illinois Democrats this cycle, according to court records.

Foltz and Bryan's rapid ascension culminated in Florida. On Jan. 14, Torchinsky set up a third call with Foltz and Kelly. Then two days later, DeSantis released his map.



At left, Alex Kelly, deputy chief of staff for Gov. DeSantis, answers questions about the new district lines his office developed, during a Committee on Reapportionment meeting in April at the state capitol in Tallahassee. Phil Sears/AP

According to Kelly's subsequent testimony, Foltz drew the map himself.

"I was completely blindsided," said Rep. Geraldine Thompson, a Democrat on the House redistricting committee. "That is the purview of the legislature."

Foltz declined an interview when reached by phone and did not respond to subsequent requests for comment. Kelly and Torchinsky, who went on to defend DeSantis in a lawsuit against the redistricting, did not respond to repeated requests for comment.

The House redistricting subcommittee later brought Kelly in to answer questions about DeSantis' proposals. Before the deputy chief of staff testified, the Democrats' ranking member moved to place him under oath. Republican legislators blocked the committee from swearing Kelly in.

In his opening statement, Kelly took pains to emphasize that the governor's office colored within the lines of the Florida constitution.

"I can confirm that I've had no discussions with any political consultant," he testified. "No partisan operative. No political party official."

This appears to have been misleading. By the time he testified, Kelly had been personally invited to at least five calls to discuss redistricting with Torchinsky, Bryan or Foltz, records show.

Kelly mentioned Foltz only briefly in his testimony. Torchinsky and Bryan's names didn't come up.

DeSantis holds as much sway in Tallahassee as any governor in recent memory. But even after he publicly weighed in with a map of his own, Republicans in the legislature didn't bow down. The state Senate refused to even consider the governor's version. In late January, they passed their original plan.

DeSantis' aides argued that Lawson's district was an "unconstitutional gerrymander," extending recent precedent that limits states' ability to deliberately protect Black voting power.

Florida Republicans were skeptical. House Speaker Chris Sprowls told reporters that DeSantis was relying on a "novel legal argument" that lawmakers were unlikely to adopt.

"In the absence of legal precedent," Sprowls said, "we are going to follow the law."

Florida House Speaker Chris Sprowls and fellow Republicans initially objected to DeSantis' aggressive redistricting plan. AP Photo/Rebecca Blackwell

On Feb. 11, DeSantis ratcheted up the pressure. He held a press conference reiterating his opposition to Lawson's district. He vowed to veto any map that left it intact. But he still needed to win over Republican policymakers. Again, DeSantis' top aides turned to Torchinsky.

In February, Torchinsky helped DeSantis' staff pick out an expert witness to sell the governor's vision to the legislature, according to emails provided to ProPublica by American Oversight. Once the group chose an expert, Torchinsky had a call with him in advance of his appearance.

With a deadline to prepare for the November midterms looming, the legislature moved toward compromise. In early March, it passed a new bill that was much closer to DeSantis' version — but still kept a Democrat-leaning district with a large Black population in North Florida.

The governor's attempts at persuasion were over.

On Mar. 28, Foltz and Kelly had another call, along with a partner at Torchinsky's law firm. The next day, DeSantis vetoed the compromise plan.

Democrats were outraged; many Republicans were shocked. "A veto of a bill as significant as that was definitely surprising," Gruters, the state senator and chair of the Florida GOP, told ProPublica.

Kelly soon submitted a slightly modified version of Foltz's map to the legislature. This time, the legislature took DeSantis' proposal and ran with it.

On Apr. 20, Rep. Thomas Leek, the Republican chair of the House redistricting committee, formally presented DeSantis' plan before the general assembly. When his colleagues asked him who the governor's staff consulted while drawing the map, Leek told them that he didn't know.

"I can't speak to the governor's entire process," Leek said. "I can only tell you what Mr. Kelly said."

Florida Rep. Thomas Leek during a Florida House of Representatives Redistricting Committee hearing on Jan. 13. Phelan M. Ebenhack/AP

The legislature had required everyone submitting a map to file a disclosure form listing the "name of every person(s), group(s), or organization(s) you collaborated with." Kelly left the form blank.

The legislature voted on party lines and passed DeSantis' proposal the next day. Anticipating litigation, they also allocated $1 million to defend the map in court.

Before DeSantis even signed the bill into law, a coalition of advocacy groups filed a lawsuit challenging the map in state court.

They soon scored a major victory. Circuit Court Judge J. Layne Smith, a DeSantis appointee, imposed a temporary injunction that would keep Lawson's district intact through the midterm elections.

"This case is one of fundamental public importance, involving fundamental constitutional rights," Smith wrote. His ruling cited the

lengthy history of Black voter suppression in North Florida and across the state.

That victory was short-lived. Torchinsky's firm quickly filed an appeal on DeSantis' behalf. Then, in a unanimous decision in late May, the appellate court allowed DeSantis' map to move ahead.

The higher court's opinion was authored by Adam Tanenbaum, a familiar face in Tallahassee. Until DeSantis appointed him to the court in 2019, Tanenbaum was the Florida House's general counsel, and before that he was general counsel to the Florida Department of State — both of which were parties to the case.

The very day Tanenbaum issued the opinion, he completed an application to fill a vacancy on the Florida Supreme Court, records show. In Florida, Supreme Court justices are appointed by the governor, in this case DeSantis.

Tanenbaum was not chosen for the position. He didn't respond to requests for comment.

The broader case is still pending and is expected to eventually be decided by the state supreme court. Every justice on Florida's supreme court was appointed by Republicans. The majority of them were chosen by DeSantis.

The deeply conservative body has already demonstrated its willingness to overturn precedent that's only a few years old. DeSantis' senior aides have indicated they hope it will do so here.

During his public testimony, Kelly was asked how Lawson's district could be unconstitutional when it was recently created by Florida's highest court.

Kelly responded tersely: "The court got it wrong."

Do you know about how the redistricting industry is evolving nationwide or about partisan efforts to influence the process? Contact Josh Kaplan by email at joshua.kaplan@propublica.org or securely on Signal at 734-834-9383.

Filed under —
Democracy

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