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' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, Plaintiffs Black Voters Matter Capacity Building Institute, et al., respectfully request that the Court grant this motion for summary judgment on their claim that Florida's congressional redistricting plan ("the Enacted Map") violates Article III, Section 20(a) of the Florida Constitution because it diminishes Black voters' ability to elect the candidates of the choice. Am. Compl. at 32-33 (Claim 1).[1] In support of this motion, Plaintiffs have contemporaneously filed a Statement of Undisputed Material Facts ("SUMF") and state as follows:

[1] Plaintiffs seek summary judgment solely on Claim 1 (the Enacted Map *results* in diminishment of Black voters' ability to elect their candidate of choice). Because Claim 2 and Claim 3 are intent-based claims which likely require credibility determinations at trial, Plaintiffs do not seek summary judgment on Claims 2 and 3 at this time.

INTRODUCTION

Just over a year ago, a court concluded that the Enacted Map "would diminish the ability of Black voters to elect their candidate of choice in North Florida" and that "Plaintiffs have shown a substantial likelihood of proving that the Enacted [Map] violates the non-diminishment standard of Article III, Section 20." *Black Voters Matter Capacity Bldg. Inst., Inc. v. Lee*, No. 2022-CA-000666, 2022 WL 1684950, at *5 (Fla. Cir. Ct. May 12, 2022). After the court preliminarily enjoined implementation of the Enacted Map, Defendants appealed, and the court's temporary injunction was stayed. Although a series of procedural rulings prevented implementation of a remedy for this constitutional violation in time for the 2022 election, no appellate court has even addressed, let alone refuted, the merits of the trial court's conclusion.

The merits of that conclusion are the same today: This is a straightforward diminishment case. Under the plan that the Florida Supreme Court adopted during the last decade (the "Benchmark Map"), Congressional District 5 ("Benchmark CD-5") gave Black voters the ability to elect their preferred candidates to Congress. The Enacted Map, however, cracks Black voters from Benchmark CD-5 into four new districts in which they have no ability to elect candidates of their choice to Congress, which is precisely the sort of diminishment in voting power that the Florida Constitution prohibits. Indeed, the prior trial court's conclusion on diminishment is not surprising: it is the same conclusion the Legislature's professional redistricting staff reached on their own during the redistricting cycle.

Now, an entire election cycle has passed, and Plaintiffs have only reaffirmed what was clear on the day the Enacted Map was signed into law. Defendants, for their part, have failed to raise *any* genuine dispute of material fact relevant to the elements of Plaintiffs' diminishment claim. Accordingly, Plaintiffs respectfully submit that summary judgment on their diminishment claim is now warranted.

BACKGROUND

I. The Fair Districts Amendment protects minority voters from redistricting plans that diminish their ability to elect their candidates of choice.

A decade ago, a supermajority of Floridians voted to adopt the Fair Districts Amendments to the Florida Constitution. *See* Plaintiffs' Statement of Undisputed Material Facts ("SUMF") at ¶ 19. The Amendments explicitly constrain the Legislature's exercise of its reapportionment power, as enumerated within two "tiers" in Article III, Sections 20 and 21 of the Florida Constitution.[2] Article III, Section 20(a) prohibits "diminish[ment]" of the ability of racial or language minorities "to elect representatives of their choice." This standard proscribes congressional districting plans that have "the purpose of *or will have the effect of* diminishing the ability of any citizens on account of race or color to elect their preferred candidates of choice." *In re S. J. Res. of Legis. Apportionment 1176* ("*Apportionment I*"), 83 So. 3d 597, 620 (Fla. 2012) (cleaned up) (emphasis added).

This "non-diminishment provision" 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 diminishment claim, courts must determine whether minority voting strength has diminished under the new plan when compared to the previous plan (often referred to as the "Benchmark Map"). *Id.* at 624-25. As the Florida Supreme Court has explained, determining whether "a district is likely to perform for minority candidates of choice" requires one to undertake

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[2] The Fair Districts Amendments provide "identical standards for congressional redistricting" under Article III, Section 20 and state legislative redistricting under Article III, Section 21. *Apportionment I*, 83 So. 3d at 598 n.1 (Fla. 2012). The Florida Supreme Court has indicated that the same substantive standards apply to each section. *See League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 373-74 (Fla. 2015) ("*LWV I*") (applying standards articulated in state legislative redistricting case to congressional redistricting case).

a "functional analysis." *Id.* at 625. A functional analysis should include "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.

The protection of racial and language minorities is a Tier I standard, "meaning that the voters placed this constitutional imperative as a top priority to which the Legislature must conform during the redistricting process." *Id.* at 615. As a result, Florida's non-diminishment requirement takes priority over Florida's Tier II standards for redistricting. *Id.* at 599. As the Florida Supreme Court has explained, "[w]e recognize that in certain situations, compactness and other redistricting criteria, such as those codified in tier two of article III, section 21, of the Florida Constitution, will be compromised in order to avoid retrogression." *Id.* at 626.[3] It is thus incumbent upon a mapmaker to consider "when tier-two requirements must yield in order to avoid conflict with Florida's minority voting protection provision." *Id.* at 656.

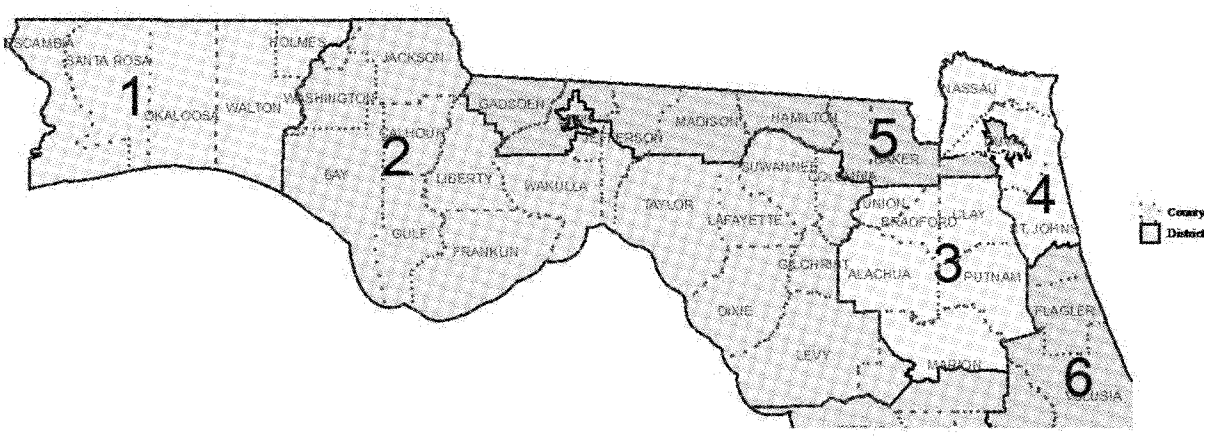
II. The Florida Supreme Court ordered the adoption of Benchmark CD-5 in 2015.

In the last redistricting cycle, the Florida Supreme Court invalidated the state's 2012 congressional redistricting plan after finding that the plan had intentionally favored the Republican Party. *See LWV I*, 172 So. 3d 363 (Fla. 2015).

In *LWV I*, the Florida Supreme Court ordered the new CD-5 to be drawn in an East-West configuration from Tallahassee to Jacksonville across Florida's northern border. *Id.* at 403. At the time of its adoption, this new district (now commonly called Benchmark CD-5) had a Black voting age population of 45.12%. SUMF ¶ 28. As the Florida Supreme Court explained, the predecessor versions of this district had "perform[ed] for the black candidate of choice in every election from

[3] Florida courts use the terms "diminishment" and "retrogression" interchangeably. *See Apportionment I*, 83 So. 3d at 625 ("[B]y including the 'diminish' language of recently amended Section 5, Florida has now adopted the retrogression principle as intended by Congress in the 2006 amendment.").

2000 through the present," including at Black voting age population (BVAP) percentages below 50%. *Id.* at 404; *see also* SUMF ¶ 24. An image of Benchmark CD-5 is shown below. SUMF ¶ 29.



In approving Benchmark CD-5, the Florida Supreme Court specifically found that this configuration would preserve a historically performing Black district. *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 272 (Fla. 2015) ("*LWV II*"). It concluded that, in Benchmark CD-5, "the ability of black voters to elect a candidate of their choice is not diminished." *Id.*

Benchmark CD-5 was in place during the 2016, 2018, and 2020 congressional elections. SUMF ¶ 30. It elected a Black Democrat, Al Lawson, in each of those elections. SUMF ¶¶ 65, 69.

III. While the Legislature originally planned to protect CD-5 from diminishment, the Governor forced through a plan that eliminated a historically performing Black district.

At the beginning of the 2020 redistricting cycle, both the Florida House and Senate affirmed their commitment to complying with Florida's non-diminishment standard. SUMF ¶¶ 76-78. The Florida Senate, for example, explained to the public that while the U.S. Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), "means the preclearance process established by Section 5 of the VRA was no longer in effect," that decision "does not affect the validity of the statewide diminishment standard in the Florida Constitution." SUMF ¶ 76. The House made the same representations. *Id.*

Early in the redistricting cycle, both the Florida House and Senate performed a functional analysis of the Benchmark Map. SUMF ¶¶ 33, 35. Both chambers' functional analyses concluded that the existing Benchmark CD-5 provided Black voters the ability to elect their candidates of choice. SUMF ¶ 38. And during the redistricting committee process, both chambers proposed and voted on congressional redistricting plans which retained the East-West configuration of CD-5. SUMF ¶¶ 77-78. Both chambers ran new functional analyses on their congressional proposals; both concluded an East-West version of CD-5 would continue to allow Black voters the ability to elect the candidates of their choice. *Id.*

On February 1, 2022, Governor Ron DeSantis requested the "[Florida Supreme] Court's opinion on whether Article III, Section 20(a) of the Florida constitution" required a district spanning from Tallahassee to Jacksonville which allowed Black voters to elect the candidates of their choice. SUMF ¶ 79. The Governor's Advisory Request acknowledged that existing precedent from the Florida Supreme Court "suggest[s] that the answer is 'yes.'" SUMF ¶ 80. The Governor's Advisory Request nonetheless asked the Florida Supreme Court to clarify "what the non-diminishment standard does require," including whether it required the retention of an East to West district connecting "minority voters in Jacksonville with minority voters in Leon and Gadsden Counties." SUMF ¶ 81.

On February 10, 2022, the Florida Supreme Court declined the Governor's request to issue an advisory opinion providing new guidance either on the non-diminishment standard generally or on the topic of CD-5 specifically. SUMF ¶ 82. In other words, the Florida Supreme Court did not authorize the Governor to eliminate a historically performing district, as the Governor's Office has now acknowledged. *Id.* Just four days later, however, the Governor's Office submitted a draft congressional redistricting plan (Plan 0094) to the Legislature which eliminated Benchmark CD-

5. SUMF ¶ 83. And the Governor's Office continued to publicly object to the Florida House's planned inclusion of a district "which largely tracks current Congressional District 5." SUMF ¶ 84.

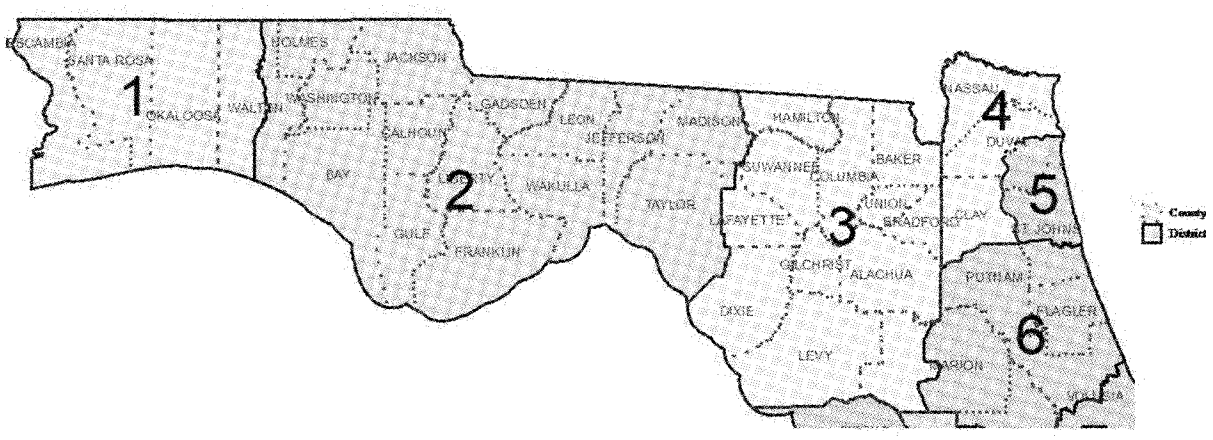
Over the Governor's objections, on February 18, 2022, the Florida House passed a redistricting plan which retained an East-West version of CD-5 that the House concluded would continue to allow Black voters to elect their candidate of choice. SUMF ¶ 85. Apparently undeterred by the Legislature's initial commitment to retaining Benchmark CD-5, the Governor's office reached out to "the vast majority of the Legislature" to convince them to support the Governor's alternative redistricting plan, ultimately having a "couple hundred" meetings with individual legislators on this issue. SUMF ¶ 86.

In March 2022, the Florida Legislature passed a redistricting plan that contained both a "Primary Map" (Plan 8019) and a "Secondary Map" (Plan 8015) with different configurations of Congressional District 5. SUMF ¶ 87. The Primary Map (Plan 8019) contained a configuration of Congressional District 5 including only portions of Jacksonville. SUMF ¶ 88. The Secondary Map (Plan 8015) contained the East-West configuration of District 5 spanning from Tallahassee to Jacksonville. SUMF ¶ 89. The Legislature intended that the Secondary Map would take effect "[i]f Congressional District 5 in the primary map is invalidated" by a court. SUMF ¶ 90. The House and Senate's functional analyses concluded that Congressional District 5 in Plan 8015 would not diminish Black voters' ability to elect their candidate of choice. SUMF ¶¶ 91-92. On March 29, 2022, Governor DeSantis vetoed the Legislature's Primary and Secondary Maps. SUMF ¶ 93.

After the Governor vetoed the Legislature's redistricting plans, the Legislature planned a special session to address congressional redistricting. SUMF ¶ 94. In advance of the special session, House Speaker Chris Sprowls and Senate President Wilton Simpson informed lawmakers

that the Legislature would not draw any new plans and that it would instead take up a forthcoming plan from the Governor's Office that the Governor could support. SUMF ¶ 95.

The Governor's Office released its preferred congressional plan on April 13, 2022 (hereinafter the "Enacted Map"). SUMF ¶ 96. In advance of the special session, the Legislature's professional redistricting staff performed a functional analysis of certain districts in the Enacted Map and confirmed it did not include a district in North Florida which provided Black voters the ability to elect their candidate of choice. SUMF ¶¶ 105-07. The Legislature nonetheless passed the Enacted Map on April 21, 2022, and Governor DeSantis signed it into law on April 22, 2022. SUMF ¶ 98. The Enacted Map does not contain an East-West district resembling Benchmark CD-5, as shown in the image below. SUMF ¶ 97.



The Enacted Map substantially reconfigures the orientation of CDs in North Florida as compared to the Benchmark Map. Namely, it splits Benchmark CD-5 into four new districts: CD-2, CD-3, CD-4, and CD-5. SUMF ¶¶ 101-02. The Enacted Map disperses more than 367,000 Black Floridians from Benchmark CD-5 into these new districts. SUMF ¶¶ 44, 101-02. Whereas Black voters made up 46.2% of the voting age population in Benchmark CD-5, Black voters now make up only 23.1%, 15.9%, 31.7%, and 12.8% of the voters in these new districts, respectively. SUMF ¶¶ 47, 115.

PROCEDURAL HISTORY

On April 22, 2022, the same day that Governor DeSantis signed his plan into law, Plaintiffs filed suit, alleging the plan violated the Florida Constitution. Compl. at 38. Plaintiffs include Black Voters Matter Capacity Building Institute, the League of Women Voters of Florida, Inc., the League of Women Voters of Florida Education Fund, Inc., Equal Ground Education Fund, Florida Rising Together, and individual Florida voters, including Black voters who resided in Benchmark CD-5. Compl. ¶¶ 11-27. While Plaintiffs alleged multiple violations of the Florida Constitution, in May 2022 they sought a temporary injunction against the Enacted Map exclusively on the basis that it resulted in the diminishment of Black voters' ability to elect their candidate of choice in North Florida, in violation of Article III, Section 20(a) of the Florida Constitution. *See generally* Pls.' Mot. for Temporary Injunction.

In May 2022, Judge J. Layne Smith held an evidentiary hearing and heard testimony from Plaintiffs' expert, Dr. Stephen Ansolabehere. *See Black Voters Matter Capacity Bldg. Inst., Inc.,* 2022 WL 1684950. Upon review of Dr. Ansolabehere's functional analysis and live testimony, the trial court found that his conclusions were credible, *id.* at *4, and that they were "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 [North Florida]," *id.* at *5. Judge Smith concluded Plaintiffs had "demonstrated the [Enacted Map] will result in diminishment of Black voters' ability to elect their candidate of choice," *id.* at *4, found that a temporary injunction would be in the public interest, *id.* at *8-9, and ordered a remedial map to go into effect for the 2024 elections, *id.* at *9-10.

Shortly thereafter, Defendants filed a notice of appeal and sought to stay Judge Smith's order, but notably they did not challenge his finding of diminishment in doing so. *See* SUMF **Ex.**

28. The First District Court of Appeal issued a preliminary order staying the trial court's temporary injunction. *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070 (Fla. 1st DCA), *writ denied*, 340 So. 3d 475 (Fla. 2022). It did so not on the merits of Judge Smith's decision, but because the First DCA concluded that Judge Smith erred procedurally in ordering a new redistricting plan in a temporary injunction proceeding. *Id.* at 1073, 1082-83. As the First DCA explained, it "could not reach whether [the Enacted Map] comports with [the Fair Districts Amendment]" because there had been "no final adjudication." *Id.* at 1073. Plaintiffs sought the Florida Supreme Court's intervention, but the Florida Supreme Court declined to issue a constitutional writ, without addressing any of the merits of Plaintiffs' claim. *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, 340 So. 3d 475 (Fla. 2022). The First DCA ultimately vacated the trial court's temporary injunction for the same reasons it had previously stayed it. *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 340 So. 3d 569, 571 (1st DCA 2022).

Plaintiffs now file this motion for summary judgment in an effort to streamline the issues for trial and obtain a final judgment on the same claim on which the only court to consider the merits has already held they are likely to succeed.

LEGAL STANDARD

Florida adopted the federal summary judgment standard in 2021. *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d 72, 74 (Fla. 2021) (adopting amendments to "largely replace the text of existing rule 1.510 with the text of Federal Rule of Civil Procedure 56"); *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 309 So. 3d 192 (Fla. 2020) (adopting the summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317, (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)). In doing so, it sought "to improve the fairness and efficiency of Florida's civil justice system, to relieve parties from the expense and burdens of meritless litigation, and to save the work

of juries [and courts] for cases where there are real factual disputes that need resolution." *Id.* at 194. Under the new standard, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510; *see also id.* ("The function of summary judgment procedure is to supply an efficient procedural device for the prompt disposition of actions, be they legal or equitable, if there be no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." (author's comment)).

Once the moving party has met its initial burden of proving that no genuine issue of material fact exists, the burden shifts to the opposing party to establish otherwise. *Matsushita*, 475 U.S. at 585-86. To avoid summary judgment, the opposing party must "go beyond the pleadings" and designate specific facts establishing a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 324. This requires "more than simply show[ing] that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. Rather, the opposing party "must come forward with significant, probative evidence demonstrating the existence of a triable issue of fact." *Irby v. Bittick*, 44 F.3d 949, 953 (11th Cir. 1995) (quoting *Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472, 1479 (11th Cir. 1991)). "Evidence that is 'merely colorable, or is not significantly probative' of a disputed fact cannot satisfy a party's burden, and a mere scintilla of evidence is likewise insufficient." *Kernel Recs. Oy v. Mosley*, 694 F.3d 1294, 1301 (11th Cir. 2012) (citations omitted) (quoting *Anderson*, 477 U.S. at 249).

ARGUMENT

I. The Enacted Map violates the non-diminishment standard of Article III, Section 20.

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." *Apportionment I*, 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.

To prevail on their non-diminishment claim, Plaintiffs must show that a minority group is "less able" to elect their candidate of choice under the new plan than it was under the old plan. *Id.* at 624-25. In other words, they must establish that (1) the Benchmark district (in this case, Benchmark CD-5) allowed Black voters the ability to elect the candidate of their choice, and (2) the Enacted Map weakens Black voters' ability to elect the candidate of their choice. Plaintiffs have unquestionably done so.

A. There is no genuine dispute that Benchmark CD-5 gave Black voters the ability to elect their candidates of choice.

Every party to this litigation that has conducted a functional analysis of Benchmark CD-5 has reached the same conclusion: Benchmark CD-5 allowed Black voters the ability to elect the candidate of their choice.

Even before this litigation began, during the 2020 redistricting cycle, both the House and Senate conducted functional analyses of Benchmark CD-5 and confirmed that it allowed Black voters to elect candidates of their choice. SUMF ¶¶ 33-36, 38. Specifically, the House concluded "Black voters in Congressional District 5 of the Benchmark Congressional Plan had the ability to elect the candidates of their choice," SUMF ¶ 38, and the Senate confirmed that "in the Benchmark Congressional Plan . . . [B]lack voters had the ability to elect representatives of their choice in district[] 5." *Id.*

Plaintiffs' expert, Dr. Stephen Ansolabehere, also conducted a functional analysis which concluded that Black voters in North Florida were able to elect their candidate of choice under Benchmark CD-5. SUMF ¶¶ 37-38. Using the same methodology that the Florida Supreme Court set forth in *Apportionment I*, 83 So. 3d at 624-26, SUMF ¶ 32, Dr. Ansolabehere found that: Benchmark CD-5 was a majority-minority district by population where Black voters were 46.2% of the voting age population, SUMF ¶ 47; Black voters were similarly the largest group of registered voters in Benchmark CD-5, comprising 46.1% of all registered voters in the district and 68.6% of all registered Democrats, SUMF ¶ 49; and Black voters cast approximately 70% of the votes in the 2016, 2018, and 2020 Democratic primaries, and a plurality of all votes in the 2016 and 2018 general elections, SUMF ¶¶ 51, 57. Given the high political cohesion of Black voters in Benchmark CD-5, SUMF ¶¶ 59-60, Dr. Ansolabehere concluded that Black voters had the ability to elect their preferred candidates in that district—and, indeed, elected Black Democrat Al Lawson to Congress in 2016, 2018, and 2020. SUMF ¶¶ 65-66, 75.

Neither of Defendants' experts—Dr. Owens and Dr. Johnson—performed a functional analysis of Benchmark CD-5. SUMF ¶ 39. And neither contested that Benchmark CD-5 provided Black voters the ability to elect the candidates of their choice. SUMF ¶ 40.

B. There is no genuine dispute that the Enacted Map diminishes the ability of Black voters in North Florida to elect their preferred candidates.

There is similarly no genuine dispute that the Enacted Map, which cracks 367,000 Black Floridians across four new districts, SUMF ¶¶ 44, 99-102, diminishes the ability of Black voters to elect their candidates of choice, SUMF ¶¶ 110-11.

In advance of voting on the Enacted Map, the Florida House's professional staff conducted a functional analysis of Enacted District 4—the district that overlaps most with Benchmark CD-5. SUMF ¶ 100. The House's professional staff found that "[Enacted] Congressional District 4 did

not afford racial or language minorities an ability to elect the representatives of their choice"—a conclusion that House Redistricting Chair Tom Leek confirmed on the House Floor during the special session. SUMF ¶¶ 106-07.[4]

Dr. Ansolabehere conducted his own functional analysis of the Enacted Map and, like the Legislature's professional staff, found that it diminishes Black voters' ability to elect their candidates of choice. SUMF ¶ 110. Specifically, Dr. Ansolabehere found that the Enacted Map divides the area and populations that comprise Benchmark CD-5 across newly enacted CD-2, CD-3, CD-4, and CD-5. SUMF ¶¶ 100-02. In comparison to Benchmark CD-5, in which minority voters were approximately 60 percent of the total voting age population, white voters are the predominant group in each of the newly enacted CDs in North Florida and the significant majority of registered voters in all four of these new districts. SUMF ¶¶ 114, 116. White voters cast the majority of votes in the 2016, 2018, and 2020 primary and general elections in each of the newly enacted districts, based on an aggregate of the election results for the precincts that make up each district. SUMF ¶ 118. In all four of these districts, white voters cohesively voted for the candidates opposed to Black-preferred candidates. SUMF ¶ 121. In all four of these districts, white-preferred candidates won the majority of votes cast in all eight of the recent general elections that Dr. Ansolabehere examined. SUMF ¶ 127. Accordingly, Dr. Ansolabehere found that under the Enacted Map, Black voters would no longer be able to elect their candidate of choice in North Florida. SUMF ¶ 128. This is the very definition of diminishment. *Apportionment I*, 83 So. 3d at 625.

[4] Unlike the House, the Senate did not perform a functional analysis of the districts in North Florida in the Enacted Map during the special session, SUMF ¶ 104, even though the Senate had performed such an analysis on its own plans, SUMF ¶¶ 35, 77—perhaps because it was clear that the Enacted Map resulted in diminishment without even undergoing such an analysis.

Once again, neither of Defendants' experts—Dr. Owens and Dr. Johnson—performed a functional analysis of any of these newly enacted districts. SUMF ¶ 109. And neither contested that Black voters no longer have the ability to elect candidates of their choice in North Florida. SUMF ¶ 111.

II. The Legislature could have preserved a district in North Florida which permitted Black voters to elect the candidate of their choice.

The redistricting process that ensued following the release of 2020 census data makes clear that it is possible to avoid diminishment of Black voters' ability to elect their candidates of choice. The vast majority of the Florida House and Senate's draft congressional proposals, all of which equalized population under 2020 Census numbers, retained the East-West configuration of District 5 as ordered by the Florida Supreme Court in 2015. SUMF ¶ 77. The House and Senate regularly concluded this configuration allowed Black voters the ability to elect the candidates of their choice. SUMF ¶ 78.

To confirm the House and Senate's conclusions in this regard, Dr. Ansolabehere created a Demonstration Map to show that it was possible to create an equal population map in which Black voters in North Florida retain the ability to elect the candidate of their choice. SUMF ¶ 130. Dr. Ansolabehere's Demonstration Map incorporates the version of CD-5 contained in Plan 8015 as drawn and passed the Legislature. SUMF ¶ 132. The Florida House, the Florida Senate, and now Dr. Ansolabehere have conducted their own functional analysis of CD-5 in Plan 8015, and each confirmed that it would permit the district's Black voters to continue electing candidates of their choice. SUMF ¶¶ 133-34, 137. Moreover, CD-5 in Plan 8015 has similar compactness scores to Benchmark CD-5—a district that the Florida Supreme Court itself approved. SUMF ¶ 138. As Speaker Sprowls explained, CD-5 in Plan 8015 is "one the Legislature knows is legally compliant under current law." SUMF ¶ 136. If there were any doubt, even the Governor's Office conceded

that CD-5 in Plan 8015 "complies with the Florida Constitution's non-diminishment provision." SUMF ¶ 135.

Ultimately, the existence of Plan 8015—and other alternative maps prepared by the Legislature—demonstrates that the dissolution of Benchmark CD-5 was unnecessary to equalize population or otherwise comply with Florida law.

CONCLUSION

The Florida Supreme Court has made clear that "[i]t is this Court's duty, given to it by the citizens of Florida, to enforce adherence to the constitutional requirements and to declare a redistricting plan that does not comply with those standards constitutionally invalid." *Apportionment I*, 83 So. 3d at 607. By dismantling a congressional district that enabled Black voters to elect their candidates of choice under the previous plan, the Enacted Map indisputably violates the Florida Constitution, and this Court should (once again) declare it invalid. Plaintiffs respectfully request the Court enter summary judgment on their claim that the Enacted Map results in diminishment in contravention of Article III, Section 20(a) of the Florida Constitution.

Dated: June 23, 2023

Respectfully submitted,

/s/ Christina A. Ford

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 23, 2023, 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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