

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

EQUAL GROUND EDUCATION FUND,
INC., MARCOS VILAR, BRANDON
NELSON, LISA BARIKA, KISHA
LINEBAUGH, ROCHELLE REBACK,
ELIZABETH WELLS, SUSAN WILSON,
ANDREA DAVNIE HILL, EMMA KURTZ,
LYNNELLE MAYS, STEVEN LICARI,
ANNE BLANFORD, SHARON LASCOLA,
JANET WECHTER, KERRY MARIE,
LINDA ROSENTHAL, DANIELLA
PIERRE, and PHILIP FORTMAN,

Plaintiffs,

v.

CORD BYRD, in his official capacity as
Florida Secretary of State, the FLORIDA
SENATE, and the FLORIDA HOUSE OF
REPRESENTATIVES,

Defendants.

Case No. 2026 CA 000914

**PLAINTIFFS’ NOTICE OF FILING EXHIBITS IN SUPPORT OF
PLAINTIFFS’ REPLY MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR TEMPORARY INJUNCTION – VOLUME 4**

Plaintiffs file this **Notice of Filing of Exhibits 73 through 75** to Plaintiffs’ Reply
Memorandum of Law in Support of Motion for Temporary Injunction, as follows:

Exhibits – VOLUME 4	
Exhibit 73	May 14, 2026 Rebuttal Report of Dr. Jonathan Rodden
Exhibit 74	May 14, 2026 Rebuttal Report of Dr. Jowei Chen
Exhibit 75	Florida Legislature’s Trial Brief in <i>Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec’y</i> , No. 2022-ca-000666 (Fla. 2d Cir. Ct. Aug. 16, 2023).

Dated: May 14, 2026

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2026 I electronically filed the foregoing **Notice of Filing Exhibits 73 through 75** using the State of Florida ePortal Filing System, which will serve an electronic copy to all counsel of record and counsel in the Service List below.

/s/ Frederick S. Wermuth

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Exhibit 73

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
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EQUAL GROUND EDUCATION FUND,
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Plaintiffs,

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REPRESENTATIVES,

Defendants.

Case No. 2026 CA 914

AFFIDAVIT OF DR. JONATHAN RODDEN

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

BEFORE ME, the undersigned authority, personally appeared Jonathan Rodden, who, after
first being duly sworn, deposes and says:

1. I was retained by Plaintiffs in *Equal Ground Education Fund, Inc., et al. v. Byrd, et al.*
2. I prepared the attached rebuttal expert report in support of Plaintiffs' motion for a
temporary injunction. The expert report is true and correct to the best of my knowledge.
3. If called to testify under oath, my testimony would be consistent with this report.

FURTHER AFFIANT SAYETH NOT.

Jonathan Rodden

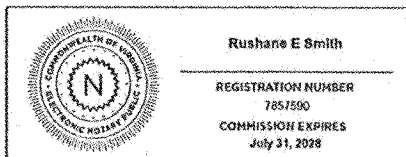
Jonathan Rodden

Virginia

Newport News

Virginia

Newport News



Rushane E Smith

07/31/2028

05/14/2026

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Case No. 2026 CA 000914

MAY 14, 2026 REBUTTAL REPORT OF DR. JONATHAN RODDEN

I submitted an initial expert report on this case on May 5, 2026. On the morning of May 13, 2026, I received the expert report of Dr. Sean Trende, which briefly discussed my report. I have been asked to provide a reply to the most salient parts of Dr. Trende's discussion. First, I document the findings from my initial report that Dr. Trende does not dispute. Second, I address Dr. Trende's concern about the renumbering of districts in South Florida. Third, I implement Dr. Trende's preferred approach to mapping.

I. NON-DISPUTED FINDINGS

Dr. Trende's report does not take issue with the main body of evidence in my report. He does not dispute the ways in which the 2026 Plan was drawn to achieve political goals. He does not dispute that comfortable Republican districts were left unaltered, while Democratic-leaning districts were redrawn in ways that violated traditional redistricting principles. He does not dispute that Tampa and St. Petersburg were split into sprawling exurban and rural-oriented districts to eliminate a seat that has elected Democrats since the 1960s. He does not dispute that Orlando-area Democrats were packed into a single district and then scattered across five additional districts with almost identical comfortable Republican majorities. Nor does he dispute my characterization that Democrats were carefully packed into three Southeast Florida districts, while the surrounding districts were drawn in contravention of traditional redistricting principles to produce Republican majorities.

Dr. Trende's response is limited to the following: "What Dr. Rodden seems to want is for Democrats in Tampa to be packed, and for Democrats in Miami to be cracked. Without some type of metric in place, which Dr. Rodden does not appear to provide, to determine when we are supposed to crack Democrats versus when we're supposed to pack Democrats, it is an unmanageable suggestion." My report does not express a normative claim or suggestion about if

or where Democrats *should* be cracked or packed. Rather, it merely described how the 2026 Plan contravenes traditional redistricting principles in ways that indeed “crack” Democrats in some locations, while “packing” them in others, always with the effect of minimizing the number of seats they might conceivably win without any justification from—and in most cases contrary to—traditional districting principles. In the context of a case where a constitutional provision prohibits districts from being drawn with partisan intent, it is noteworthy that Dr. Trende does not dispute that partisan “packing” and “cracking” have taken place.

II. DISTRICT NUMBERING

Dr. Trende does not dispute my characterization of changes to the partisan makeup of the districts in Southeast Florida, or my description of the specific maneuvers that led to those changes. Instead, he points out that for a couple of districts in Southeast Florida, the numbering scheme in the 2026 Plan is different than that of the 2022 Plan, such that the district with the largest overlapping population had different numbers in the two plans. I pointed this out in my initial report, but for simplicity and ease of exposition, I compared districts with the same numbers to provide my descriptive account of the way the districts had changed. *See* Pls.’ Ex. 2 at 33–34 & Tbl. 5.

An alternative approach—evidently favored by Dr. Trende—is to compare each 2022 district with the 2026 district that has the most overlapping population with it, even if that district has a different 2026 number. An awkward aspect of this approach is that Districts 25 and 26 in the 2022 Plan *both* had the most overlap with District 26 in the 2026 Plan. And there is no district in the 2022 Plan that ended up with the largest share of its territory in the 2026 district numbered 22, so a one-to-one comparison is not possible. Because of these complexities, my initial report stuck with the simpler “one to one” comparison approach.

In any event, the table below replicates the analysis in Table 5 from my initial report, now using Dr. Trende’s preferred approach.

Table 1: Changes to Partisanship of Miami-Fort Lauderdale-Pompano Beach Congressional Districts, 2022 to 2026 Plans, Comparing Districts with Most Overlapping Population

2022 Plan District	D20	D21	D22	D23	D24	D25	D26	D27	D28
2026 Plan District	D20	D21	D23	D25	D24	D26	D26	D27	D28
Share of core retained	65.9%	95.4%	80.0%	46.3%	69.6%	38.6%	61.4%	98.4%	98.4%
Dem share of district core	75.7%	68.0%	55.8%	45.8%	78.9%	55.6%	31.6%	44.2%	39.3%
Dem share area moved into district	62.0%	57.4%	71.5%	49.1%	60.4%	31.6%	55.6%	35.3%	34.2%
Dem share area moved out of district	64.1%	49.5%	47.5%	58.5%	49.7%	54.3%	34.7%	34.2%	35.3%
Dem share in minus out	-2.1%	7.9%	24.0%	-9.4%	10.7%	-22.7%	20.9%	1.1%	-1.1%
2022 Dem share	72.0%	40.8%	53.8%	52.0%	69.1%	54.9%	33.0%	44.0%	39.2%
2026 Dem share	70.5%	41.0%	58.2%	47.4%	73.6%	42.8%	42.8%	44.1%	39.2%
Partisan Change	-1.5%	0.2%	4.3%	-4.7%	4.5%	-12.1%	9.8%	0.0%	0.0%

The key conclusions remain the same. One district, numbered 23 in the 2022 Plan and 25 in the 2026 Plan, became substantially *less* Democratic, going from 52 percent Democratic to 47 percent. This was achieved by choosing a relatively Republican core and moving Republican-leaning areas into the district and strongly Democratic areas out of the district. Another district, numbered 25 in the 2022 Plan and 26 in the 2026 Plan, also became dramatically less Democratic, going from 55 percent Democratic to 43 percent. This was achieved by moving extremely Republican areas into the district and extracting very Democratic areas: the partisan difference between the areas moved in and those moved out was 23 percentage points. As in my initial report, looking at the line in Table 1 called “share of core retained,” one can see that by far the most altered districts—the only two districts from 2022 with less than half of their core retained—were the two districts experiencing large reductions in Democratic vote share: Districts 23 and 25.

III. MAP COLORING

When making colored maps to depict precinct-level partisanship, I use a very common data clustering method called “Jenks Natural Breaks,” which is perhaps the most used approach to determine how to group data when making a color-based map. Dr. Trende is critical of this approach, evidently because he finds it more intuitive to group electoral data by equal intervals, with a clear breakpoint at 50 percent, even if some intervals contain very few observations. Below, I replicate the maps from my original report with Dr. Trende’s recommended approach. He also expresses concern about how I treat unpopulated precincts. Some of what he calls “water precincts” are in fact populated, but some have extremely low numbers of reported votes. In the maps below, I filter the data so that any precinct with fewer than five total reported votes is not assigned a color. This includes some precincts that are primarily composed of water, but also some that contain parks or nature or hunting preserves.

None of the inferences drawn from the maps in my initial report are changed by this alternative classification and coloring scheme. If anything, the correspondence between district boundaries and partisanship is even clearer, especially in Southeast Florida.

Figure 1: Tampa-St. Petersburg Closeup

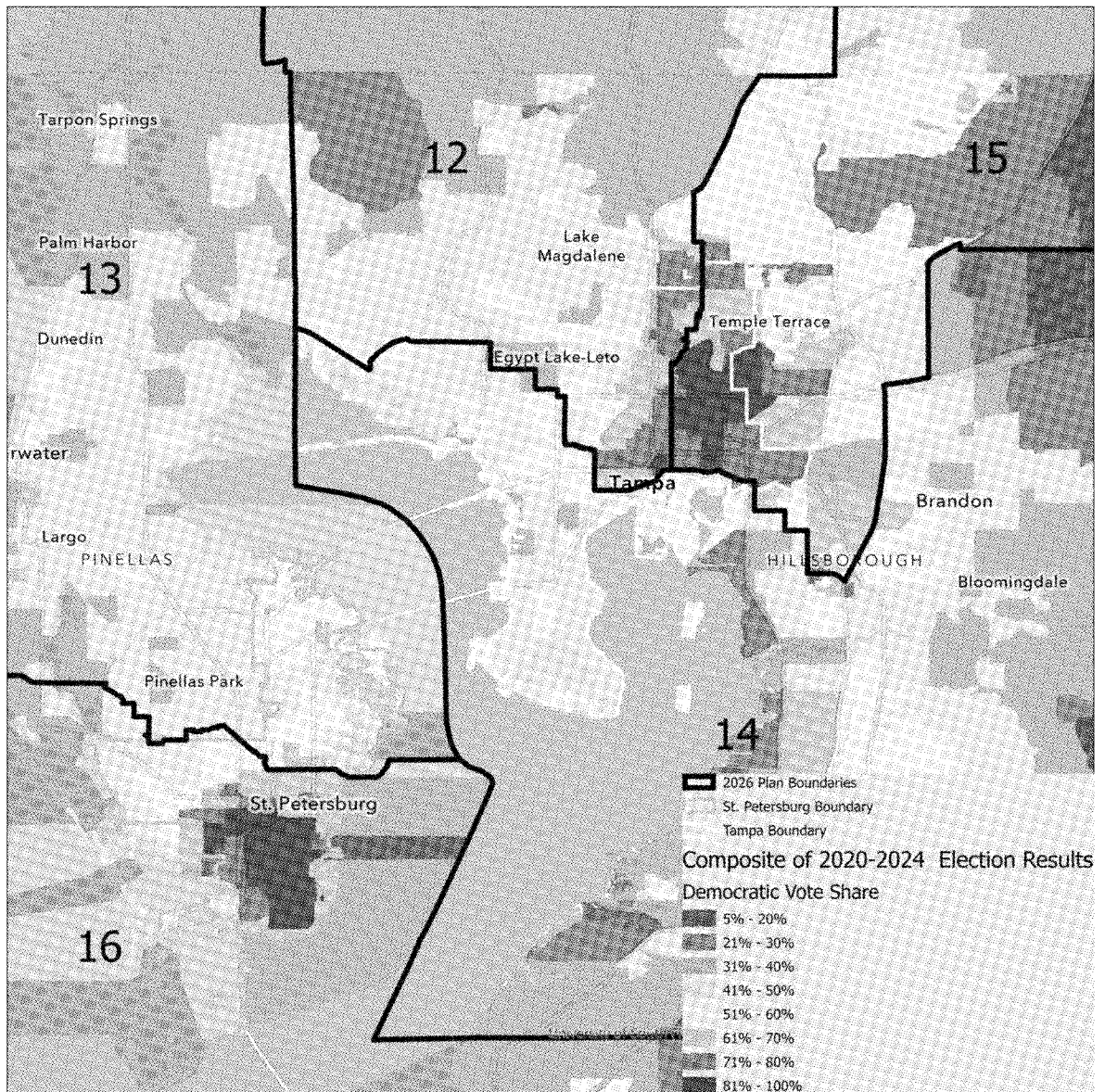


Figure 2: Tampa-St. Petersburg Region

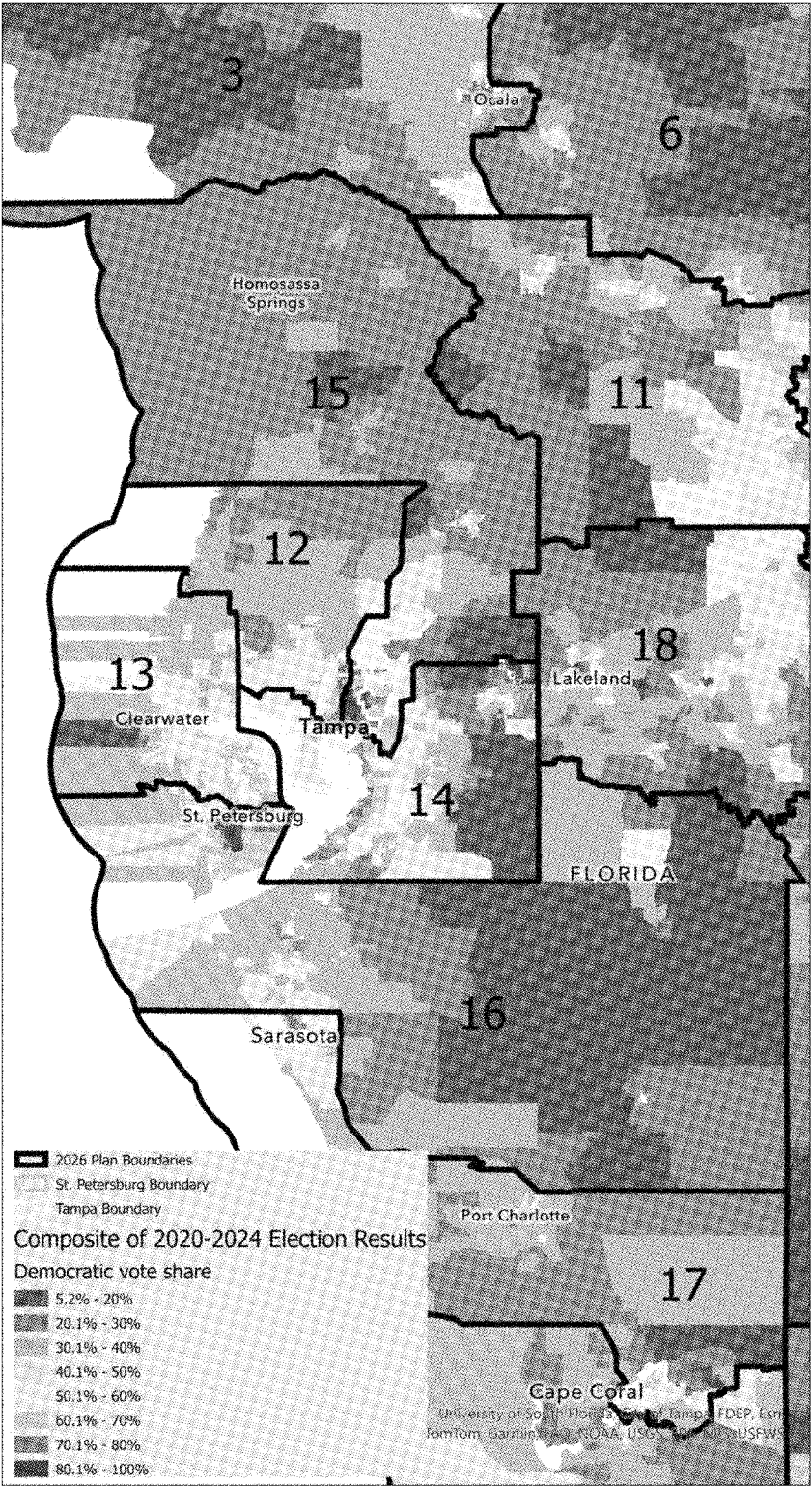


Figure 3: Orlando Closeup

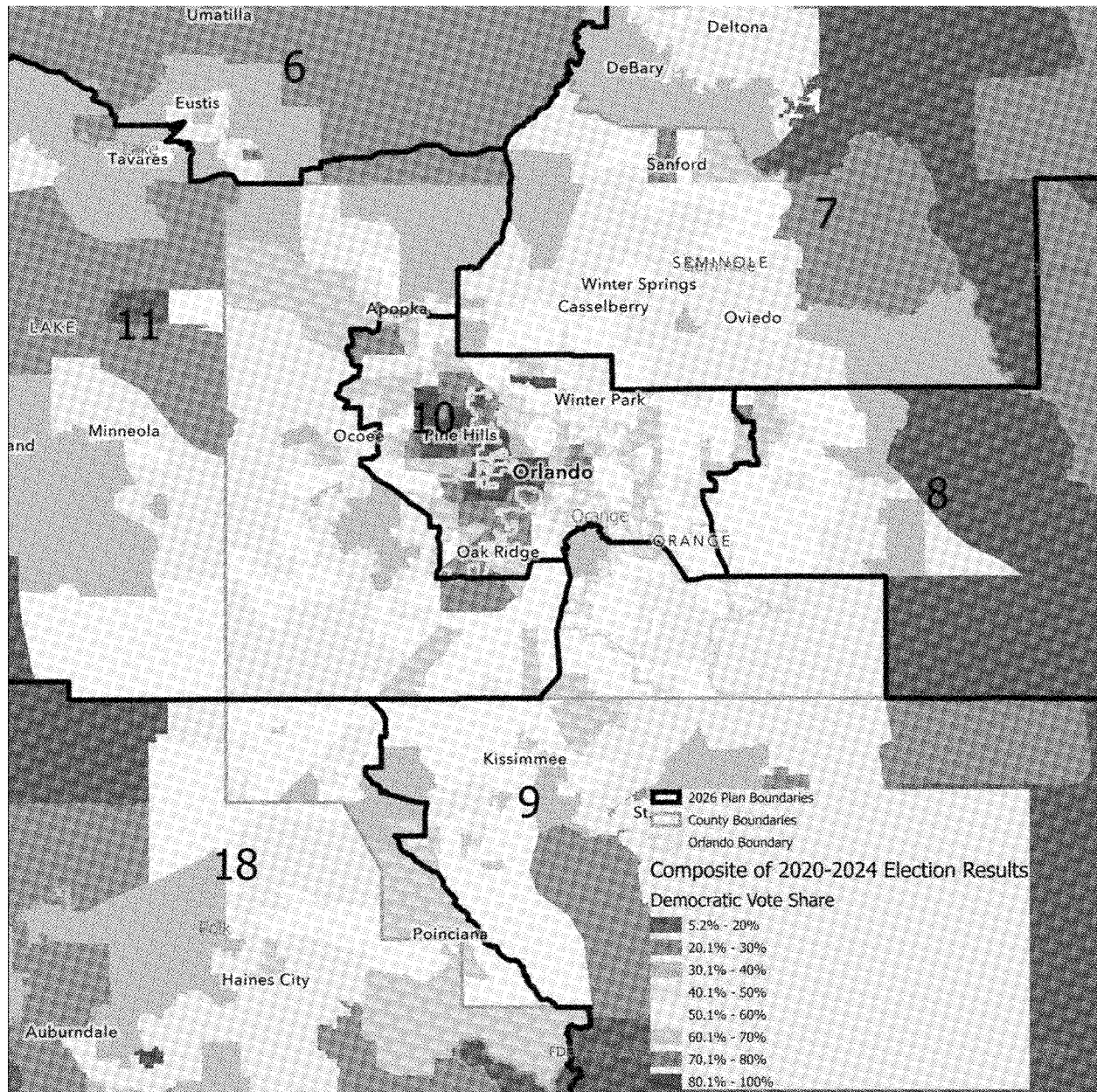


Figure 4: Orlando Region

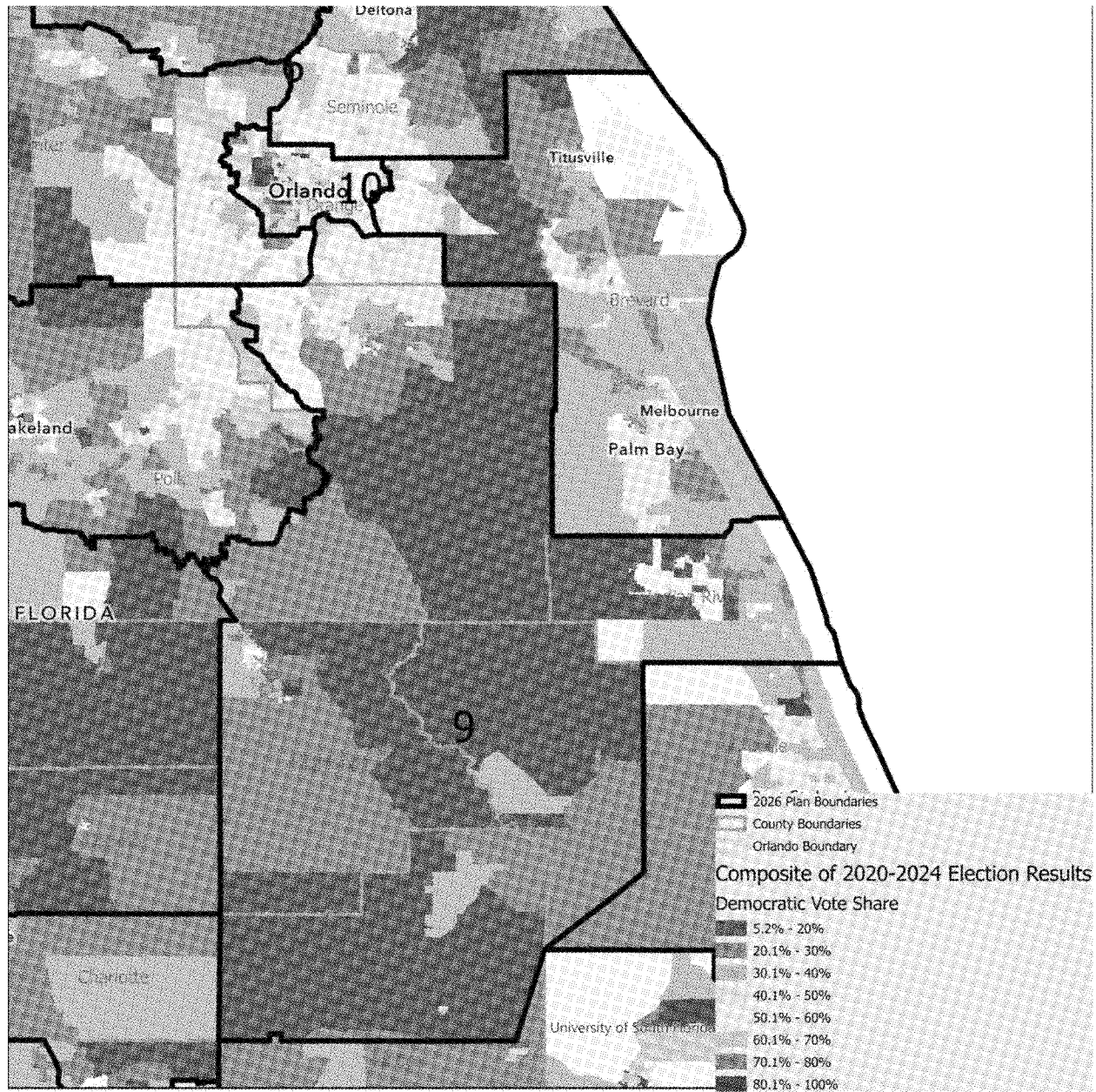


Figure 5: Southeast Florida

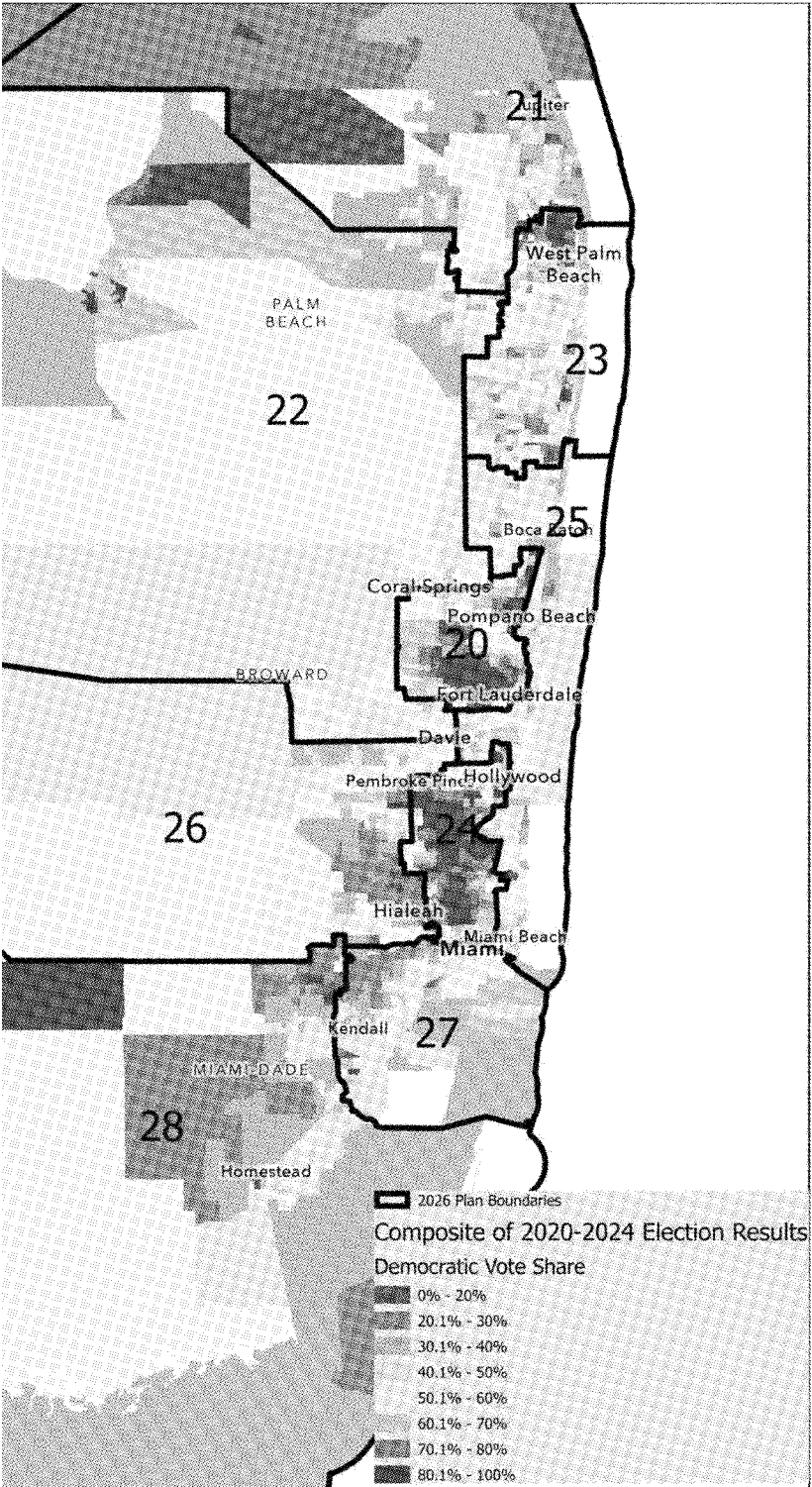


Figure 6: Southeast Florida, Districts 20 and 24

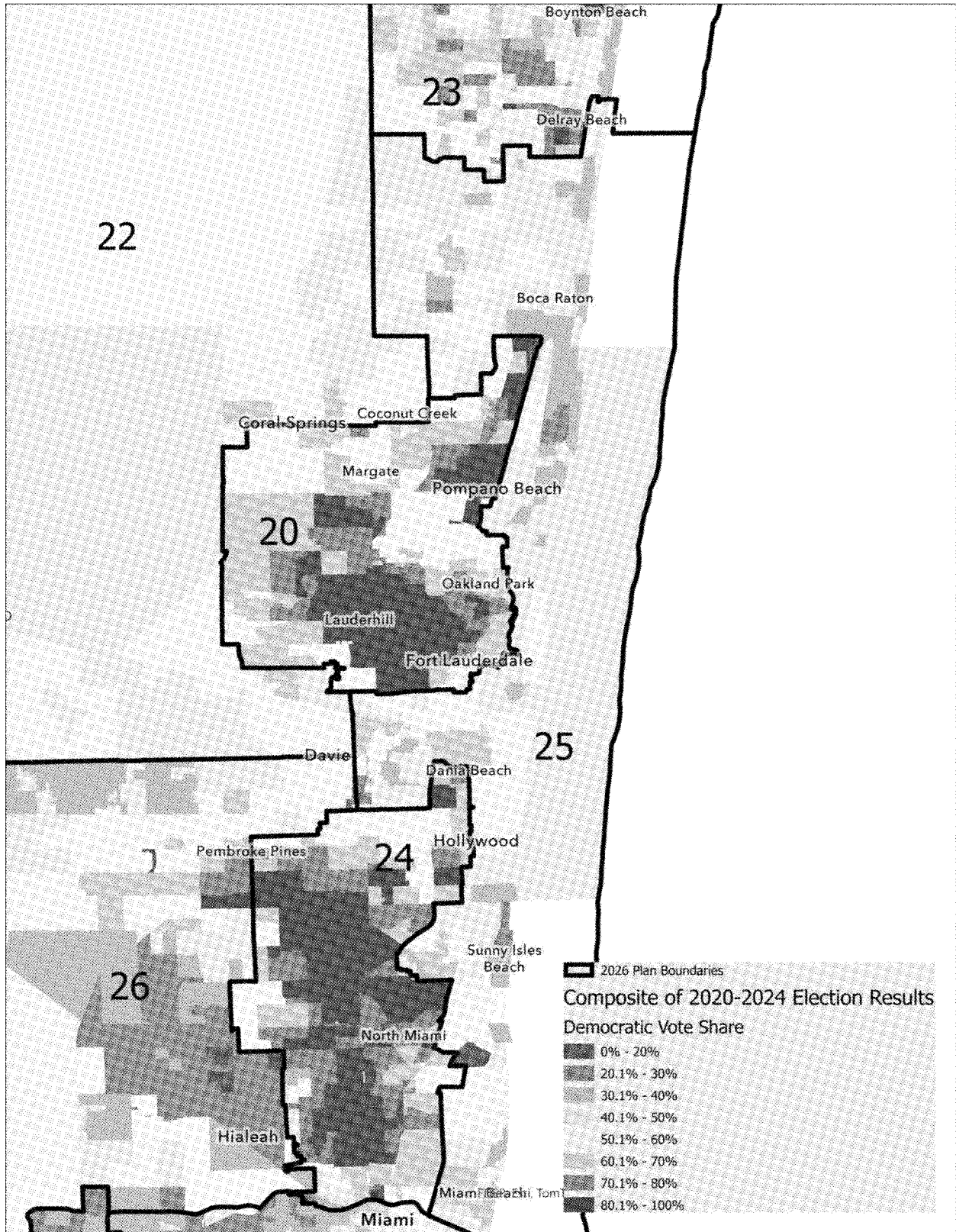


Exhibit 74

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
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EQUAL GROUND EDUCATION FUND,
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Defendants.

Case No. 2026 CA 914

AFFIDAVIT OF DR. JOWEI CHEN

STATE OF MICHIGAN
COUNTY OF WASHTENAW

BEFORE ME, the undersigned authority, personally appeared Jowei Chen, who, after
first being duly sworn, deposes and says:

1. I was retained by Plaintiffs in *Equal Ground Education Fund, Inc., et al. v. Byrd, et al.*
2. I prepared the attached rebuttal expert report in support of Plaintiffs' motion for a
temporary injunction. The expert report is true and correct to the best of my knowledge.
3. If called to testify under oath, my testimony would be consistent with this report.

FURTHER AFFIANT SAYETH NOT.

Jowei Chen

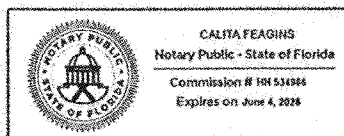
State of Florida
County of Pasco

Jowei Chen

Sworn to (or affirmed) and subscribed before me by means of online notarization,
this 05/14/2026 by Jowei Chen.

Calita Feagins

Calita Feagins



Type of Identification Produced DRIVER LICENSE

 Personally Known OR ☒ Produced Identification

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Defendants.

Case No. 2026 CA 914

MAY 14, 2026 REBUTTAL REPORT OF DR. JOWEI CHEN

1. In this report, I respond to the May 12, 2026 report of Dr. D. Stephen Voss. Notably, Dr. Voss does not address or dispute the main conclusions of my May 6, 2026 initial report regarding the pro-Republican partisan bias of the 2026 Plan. In my initial report, I found that the 2026 Plan creates a significant pro-Republican electoral bias compared to 5,000 computer-simulated plans produced by a race-blind and partisan-blind algorithm adhering to the traditional redistricting criteria set out by the Fair Districts Amendment. On every measure I analyzed in the initial report, the 2026 Plan is more Republican-favorable than all 5,000 of the computer-simulated plans. Dr. Voss does not attempt to dispute this main conclusion.

2. Dr. Voss's primary critique of my simulations appears to be that he is not able to analyze them to offer any substantive critiques. That does not surprise me given his background. Although Dr. Voss is a political scientist, Dr. Voss does not claim to have any experience in the field of creating or analyzing redistricting simulation algorithms, nor does he list any publications that would suggest he has ever studied the kind of simulations I have employed

here. Dr. Voss's lack of experience with these kind of algorithms might explain why he was unable to analyze the simulations or the underlying algorithm used to create them.

3. Although Dr. Voss could not understand how to read my code, I routinely provide the same materials to other experts in litigation in which I produce simulations (including both the underlying simulations and code used to run them), and those experts have no difficulty analyzing my simulations or how they work. Indeed, the State's other expert in this case, Dr. Sean Trende, has analyzed my simulations and code in redistricting litigation before. Dr. Trende, however, offers no analysis or opinions on my simulations in this case.

4. In any event, even if Dr. Voss could not understand how my simulations work, my methods and simulations have been rigorously tested in other litigation, and courts have routinely found them reliable. *See, e.g., League of Women Voters of Utah v. Utah State Legis.*, No. 220901712, 2025 WL 3145894, at *3, *13–14 (Utah Dist. Ct. Nov. 10, 2025) (recognizing Dr. Chen as “one of the preeminent scholars in the field of using computer simulations in redistricting,” and noting that Dr. Chen “provided his algorithms to the other experts,” but “those algorithms were not challenged and he was not cross-examined about any identified errors,” and finding my algorithms reliable); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 770–81 (Pa. 2018) (relying on my simulations to find evidence of partisan intent); *Adams v. DeWine*, 195 N.E.3d 74, 99 (Ohio 2022) (same). A full list of the cases in which I have used similar methods to the ones employed here was included with my initial report.

5. Below, I respond to the limited claims Dr. Voss makes in his May 12 report:

6. ***Dr. Voss's Claims Regarding the Role of Florida's Political Geography.*** Dr. Voss argues that “Florida's political geography favors the Republican Party,” and that my initial report “does not systematically isolate the effect of political geography from the effect of the

newly adopted lines.” Dr. Voss is incorrect: The fundamental premise of this type of simulation analysis is to fully account for any Florida-specific features by programming a computer algorithm that draws districting plans using Florida’s geography, Florida’s census population data, and Florida’s political subdivision boundaries. I can then compare the range of partisan characteristics among the 5,000 Florida-specific simulated maps to the partisan characteristics of the 2026 Plan to measure the extent to which any partisan bias results from a map drawer’s choices relative to any baseline partisan bias that would naturally result from Florida’s unique political geography. That is exactly what the simulation analysis accomplishes.

7. ***Dr. Voss’s Criticism Regarding “Other Boundaries that a Legislature Rightly Might Consider”***: Dr. Voss criticizes my redistricting simulation algorithm for considering “the preservation of counties,” rather than using “other boundaries that a legislature rightly might consider.” Dr. Voss does not show that consideration of other boundaries would change any of my findings. Dr. Voss’s critique is also at odds with the 2026 Plan itself, which does not appear to have attempted to prioritize keeping cities whole.

8. In response to Dr. Voss’ criticism, however, I produced a second set of 5,000 computer-simulated congressional plans, which I refer to as Simulation Set B, to additionally account for Florida’s municipal boundaries. To produce Simulation Set B, I began with the same algorithm I used to produce the 5,000 simulated plans in my initial report. I then added an additional requirement to this original simulation algorithm regarding split municipalities. Specifically, I programmed the algorithm to avoid municipal splits and to guarantee that each simulated congressional plan splits no more than 30 municipalities, which is the number of municipalities split by the 2026 Plan.

9. **Table 1** describes the characteristics of the 2026 Plan and the Simulation Set B plans. As Table 1 reports, all of the simulated plans split between 21 to 30 municipalities—thus, no more than the 2026 Plan, and in many cases, far less. All of the simulated plans also split fewer counties than the 2026 Plan and are, on average, more geographically compact than the 2026 Plan, as measured by their Reock, Polsby-Popper, and Convex Hull scores.

10. My results for Simulation Set B are virtually identical to my results for the simulations in my initial report. **Appendix A** contains 12 main figures from my initial report, except these new figures compare the 2026 Plan to the 5,000 Simulation Set B plans. These figures confirm exactly the same partisan conclusions regarding the 2026 Plan as I described in my initial report: The 2026 Plan creates a significant pro-Republican electoral bias compared to the 5,000 computer-simulated plans produced by a race-blind and partisan-blind algorithm that adheres to the traditional redistricting criteria set out by the Fair Districts Amendment. On every measure of partisanship I analyze in Appendix A, the 2026 Plan creates more Republican-favoring districts than all 5,000 of the computer-simulated plans in Set B. The Figures in Appendix A confirm that this pro-Republican partisan bias in the 2026 Plan is not the result of a race-neutral plan, by an attempt to prioritize the traditional redistricting criteria in the Fair Districts Amendment, or by Florida’s political geography.

Table 1:
Characteristics of the 2026 Enacted Plan and Simulation Set B:

	Simulation Set B:	2026 Enacted Plan
District Contiguity:	All districts are contiguous	All districts are contiguous
Population of Districts:	769,220 or 769,221	769,220 or 769,221
Average Reock Score:	0.52	0.45
Average Polsby-Popper Score:	0.43	0.41
Average Convex Hull Score:	0.84	0.81
Number of Split Counties:	15 split counties (0.1% of simulated plans) 16 split counties (5.34% of simulated plans) 17 split counties (94.6% of simulated plans)	19 split counties
Number of Split Municipalities:	21 split municipalities (0.2% of simulated plans) 23 split municipalities (0.12% of simulated plans) 24 split municipalities (0.56% of simulated plans) 25 split municipalities (2.06% of simulated plans) 26 split municipalities (8.36% of simulated plans) 27 split municipalities (18.4% of simulated plans) 28 split municipalities (24.5% of simulated plans) 29 split municipalities (24.8% of simulated plans) 30 split municipalities (21.2% of simulated plans)	30 split municipalities

11. ***Dr. Voss’s Miscalculation of the County Splits in the 2022 Plan.*** Next, Dr. Voss states that he is “not certain that Dr. Chen” counted the correct number of county splits in the 2022 Enacted Plan. Dr. Voss suggests that, based on a number reported by “Dave’s Redistricting App (DRA),” a third-party website not affiliated with the Florida Legislature, he believes the 2022 Plan may have only 29 county splits, as opposed to the 31 county splits that I reported.

12. As part of its 2022 congressional redistricting process, the Florida Senate released online its own analysis of the geographic characteristics of the 2022 Plan on April 13, 2022.¹ The Senate’s “Assigned District Splits” report lists the 31 county splits in the 2022 Plan.² It is unclear why Dr. Voss referred to a third-party website to review the Plan’s features rather than an official Florida government website.

13. I also examined the “Dave’s Redistricting App” analysis of the 2022 Plan that Dr. Voss relied upon for his claim that the 2022 Plan contains only 29 county splits.³ It is apparent that Dave’s Redistricting App failed to count one of the Marion County splits (CD-3, 6, and 12) and one of the Orange County splits (CD-7, 8, 9, 10, and 11).

14. ***Dr. Voss’s Criticism that my Simulation Algorithm Avoids Excessive County Splits.*** More generally, Dr. Voss criticizes my simulation algorithm for seeking to avoid splitting counties an excessive number of times, and Dr. Voss speculates that this redistricting criterion might bias the partisanship of the simulated maps (“Dr. Chen also requires that, when a county does need to be split, it must be split as little as possible.... I suspect that this rule favors the Democratic Party.”).

¹ Available at: <https://redistrictingplans.flsenate.gov/plandetails/155>

² Available at: <https://redistrictingplans.flsenate.gov/download?planId=155&fileName=AssignedDistrictSplits.pdf>

³ Available at: <https://davesredistricting.org/maps#ratings::3a6791b9-a186-4691-a95c-5d51dbb3be1c>

15. I programmed the computer simulation algorithm to avoid excessive splits of counties for three reasons: First, avoiding unnecessary county splits is a traditional districting consideration that redistricting mapdrawers across the US routinely seek to follow when drawing congressional districts. Second, the Fair Districts Amendment's Tier II criteria mandate that district lines "shall, where feasible, utilize existing political and geographical boundaries," which I understand to include county boundaries. Third, as noted earlier, the Florida Senate's April 13, 2022 analysis of the 2022 Plan reveal that the Legislature also focused on counting and analyzing *the total number of county splits*, in addition to simply counting the total number of *counties* that were split by the 2022 Plan. My simulation algorithm therefore did the same.

16. ***Dr. Voss's Opinions Regarding the Compactness of the 2026 Plan.*** Dr. Voss does not dispute that virtually all of the simulations are more compact than the 2026 Plan on every compactness measure. Dr. Voss nonetheless attempts to defend the geographic compactness of the 2026 Plan by pointing out that "some of Dr. Chen's simulations have a worse Polsby-Popper score than the 2026 maps, which would seem to make the 2026 maps 'reasonably possible.'" Dr. Voss's opinion regarding the reasonableness of the 2026 Plan's geographic compactness fails to account for the overwhelming evidence of how poorly the 2026 Plan performs on compactness compared to the simulated plans.

17. As detailed in my initial report, I found that the 2026 Plan has a worse Reock score than 100% of the 5,000 simulated plans. I also found that the 2026 Plan has a worse Convex Hull score than 100% of the simulated plans. Finally, the 2026 Plan has a worse Polsby-Popper score than over 98% (4,907 out of 5,000) of the simulated plans. Dr. Voss' attempt to focus on the small fraction of simulated plans with a slightly lower Polsby-Popper score (but a

higher Reock score and a higher Convex Hull score) than the 2026 Plan does not detract from these broader conclusions in my initial report.

18. Additionally, Dr. Voss criticizes my initial report for summing together the Reock, Convex Hull and Polsby-Popper scores when comparing the 2026 Plan to the 5,000 simulated plans. Dr. Voss argues that these three scores “measure three different features of map compactness” and should therefore not be summed together.

19. Fortunately, my initial report uses both approaches, arriving at the same conclusion under either approach: **Figure 1** in my initial report compares the 2026 Plan to the simulated plans using only their Reock scores, **Figure 2** in my initial report compares them using only their Convex Hull scores, and **Figure 3** in my initial report compares them using only their Polsby-Popper scores. Finally, **Figure 4** in my initial report compares the maps using the combined sum of all three of the compactness scores. Either of these approaches results in the same conclusion that the 2026 Plan does not reflect a reasonable attempt to draw compact districts.

20. ***Dr. Voss’s Opinions Regarding the Partisanship Calculations of the 2026 Plan.*** Dr. Voss attempts to mischaracterize my calculation of the district-level partisanship of the 2026 Plan and of the simulated plans as “a complicated inferential method: guessing the partisan makeup of Census blocks...” Calculating the partisanship of a congressional plan’s districts using past election results, as I did in my initial report, is a straightforward, standard procedure that is very commonly performed in academic research on congressional redistricting in the United States. When calculating past election results at the level of congressional districts, this procedure always requires disaggregating precinct-level election results down to the Census block level, and doing so is commonly accepted among academic scholars of redistricting.

21. In fact, the Florida Senate routinely performed such district-level calculations for congressional plans. For example, when evaluating the 2002 Congressional Plan, the Florida Senate calculated district-level election results from several recent past statewide election contests.⁴ The Senate performed similar district-level breakdowns of past election results for the 1996 Congressional Plan⁵ and for the 1992 Congressional Plan.⁶ My approach is no different from theirs.

22. ***Dr. Voss's Claims Regarding Variation Between the Simulated Maps.*** Dr. Voss claims that I did not “provide diagnostics for the simulations,” which caused him to assert the possibility that the “simulated maps emerging from a restrictive set of rules may not differ much from each other, and instead of providing thousands of real variations in what’s possible.”

23. Dr. Voss’ assertions indicate he did not examine the simulations I provided. For each of the 5,000 simulated plans my computer generated, I turned over a block assignment file and a shapefile of the map; these are the same file formats in which the Florida Senate released the 2026 Plan to the public. Therefore, Dr. Voss could have evaluated any or all of my 5,000 simulated maps to determine whether they were different from one another. In any event, after reading Dr. Voss’ assertion that the simulated maps “may not differ much from each other,” I re-evaluated the 5,000 simulated maps that I turned over in connection with my initial report. I confirmed that the 5,000 maps are, in fact, all different from one another.

24. ***Dr. Voss's Objections to Evaluating Competitive Districts in the 2026 Plan.*** Dr. Voss finally criticizes my initial report for comparing the number of electorally competitive

⁴ Available at: https://www.flsenate.gov/usercontent/RedistrictingMigration/DistrictData/CD/CD_Stats.pdf

⁵ Available at: https://www.flsenate.gov/UserContent/Session/Redistricting/MapsAndStats/Congressional/FLCD1996/Statistics/FLCD1996_District_Statistics.pdf

⁶ Available at: https://www.flsenate.gov/UserContent/Session/Redistricting/MapsAndStats/Congressional/FLCD1992/Statistics/FLCD1992_District_Statistics.pdf

districts in the 2026 Plan and the 5,000 simulated plans by claiming: “That’s not a standard, or particularly reliable, way to judge the partisan tilt of legislative maps.” Dr. Voss claims that the mere lack of competitive districts does not, by itself, prove that a congressional map exhibits partisan bias in favor of one political party.

25. Dr. Voss apparently ignored the overwhelming evidence in my initial report that the 2026 Plan exhibits an extreme level of pro-Republican partisan bias that is never observed in any of the 5,000 computer-simulated maps beyond the number of competitive districts present in the 2026 Plan. For example, in my initial report, **Figure 9** shows that the 2026 Plan creates more Republican-favoring districts (with over 50% Republican vote share) than all 5,000 simulated maps. **Figure 10** shows that the 2026 Plan creates more safe Republican districts (with over 55% Republican vote share) than all 5,000 simulated maps. **Figure 14** illustrates that at the district level, 19 of the 28 districts in the 2026 Plan are partisan outliers when compared to the simulated plans’ districts, collectively serving to maximize the number of safe Republican districts created by the 2026 Plan. **Figure 16** shows that the 2026 Plan creates a more extreme, pro-Republican efficiency gap than all 5,000 simulated maps. **Figure 18** shows that the 2026 Plan creates a more pro-Republican Lopsided Margins measure than all 5,000 simulated maps. **Figure 19** shows that the 2026 Plan is more favorable to the Republicans on the partisan symmetry measure than all 5,000 simulated maps. Dr. Voss does not address any of this evidence of the pro-Republican bias of the 2026 Plan.

26. In sum, Dr. Voss’s various critiques appear to reflect his inexperience in this field. Dr. Voss’s critiques or observations are either incorrect or otherwise addressed in this rebuttal and thus do not change the fundamental conclusions I reached in my initial report.

Figure 1B: Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B) on Geographic Compactness Using Reock, Polsby-Popper, and Convex Hull Measures

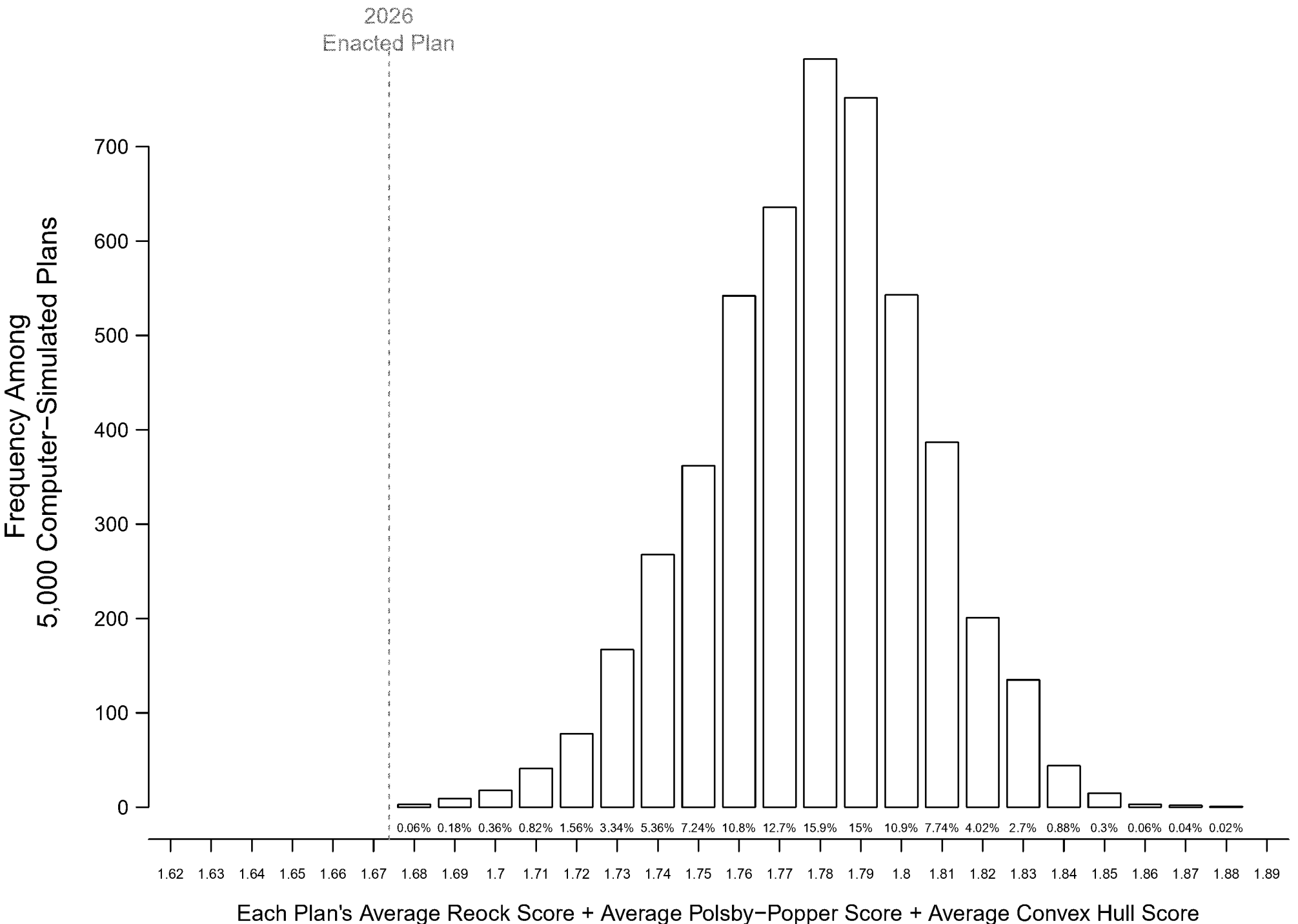
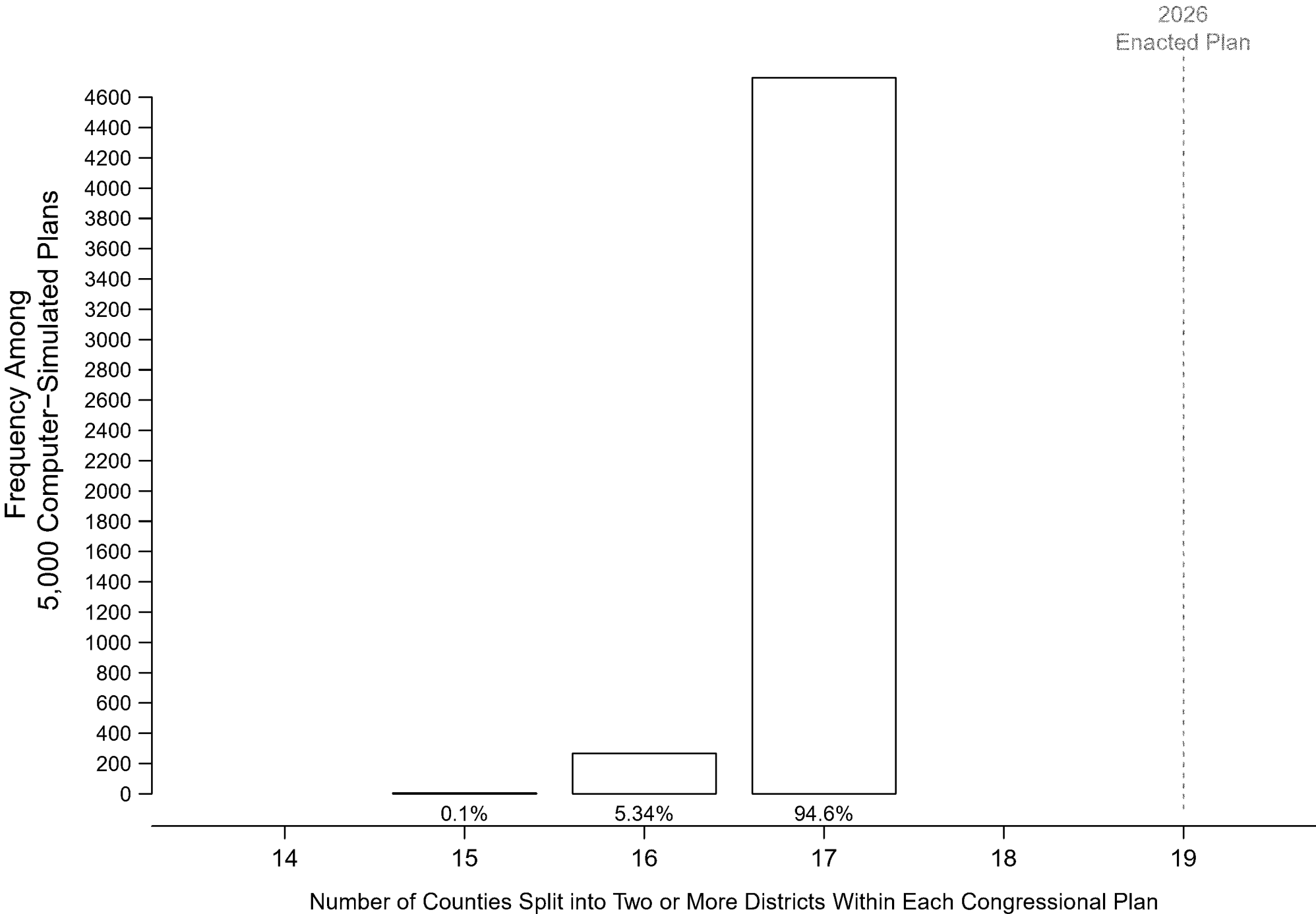
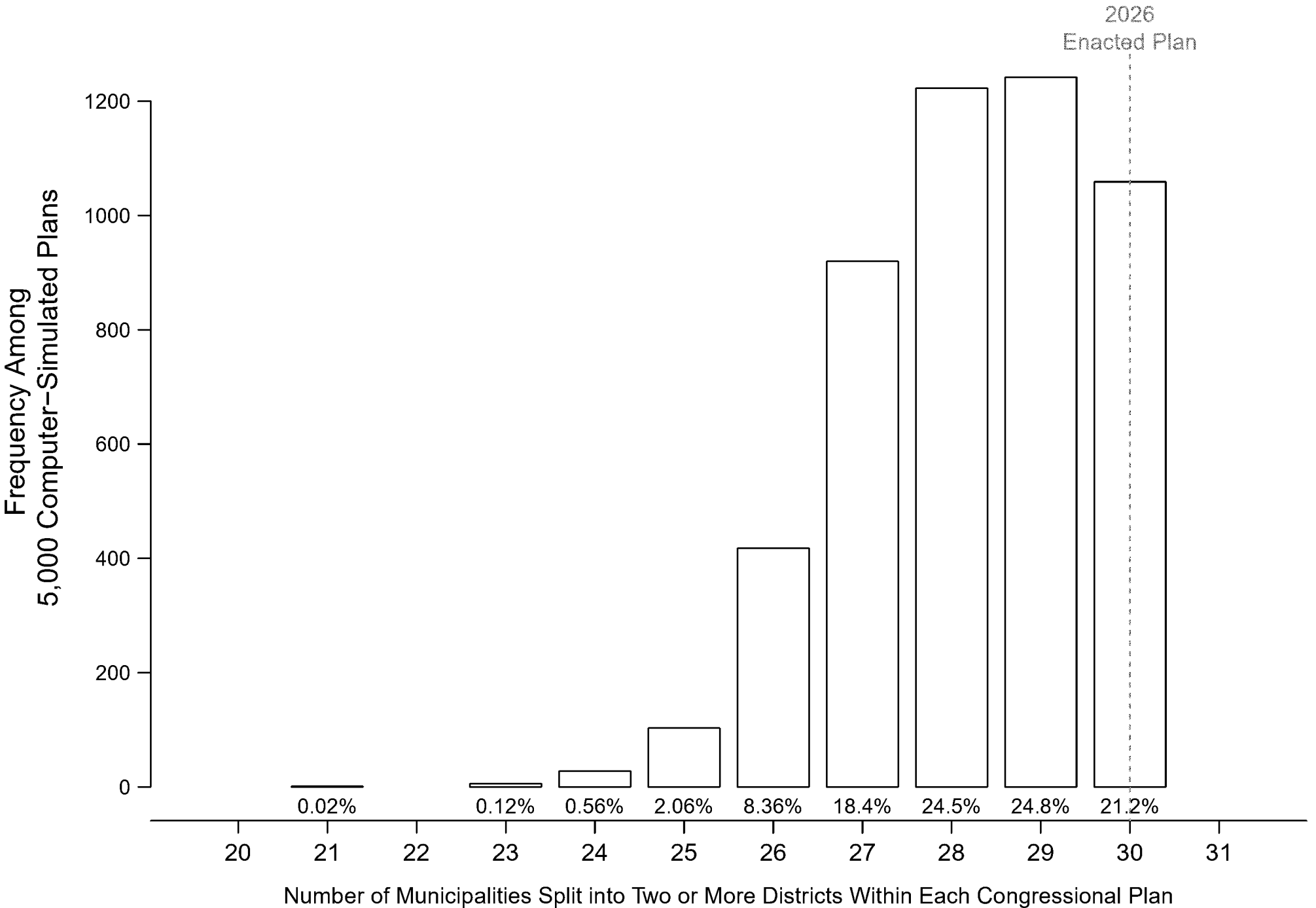


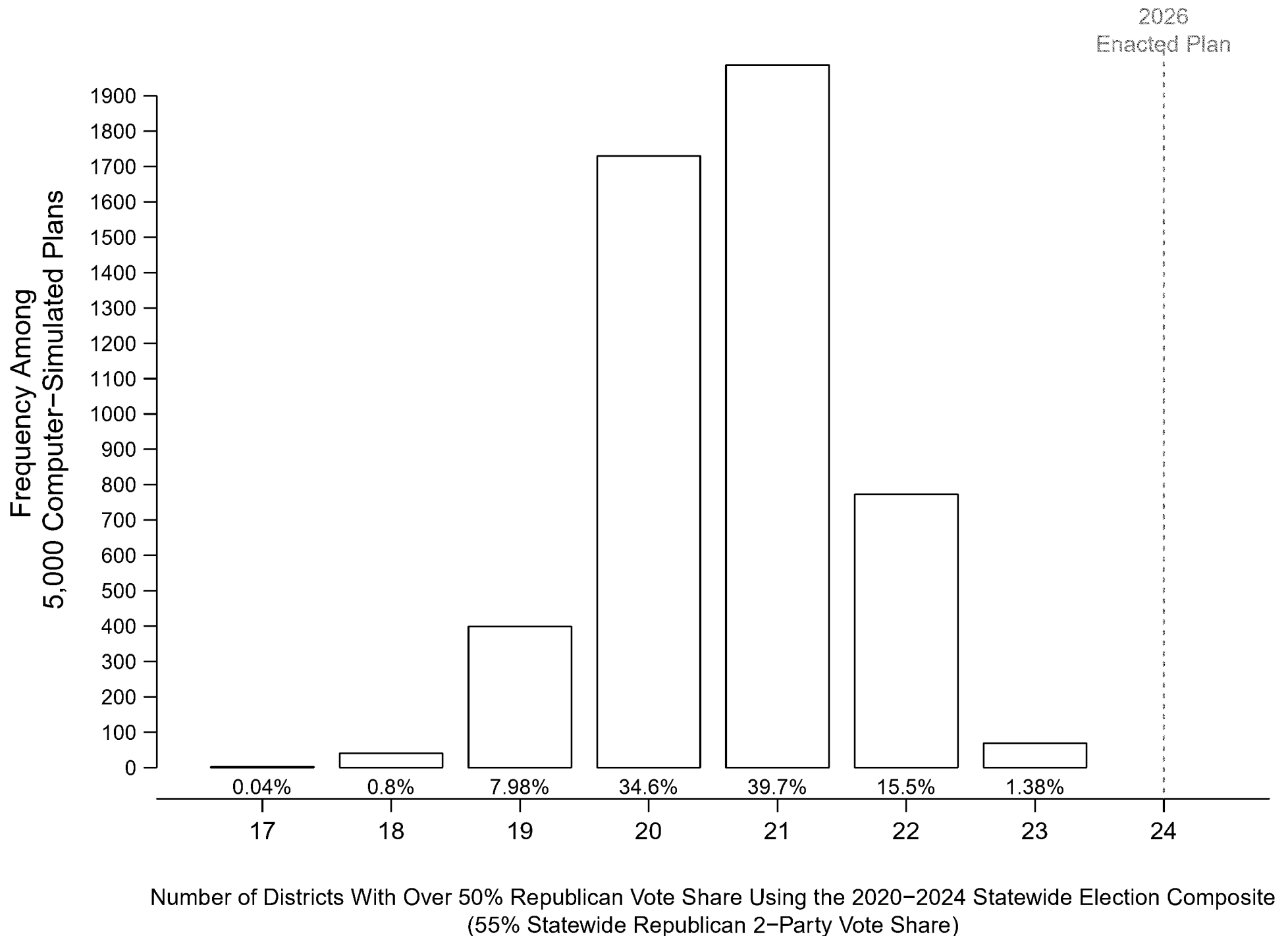
Figure 2B: Number of Split Counties
in the 2026 Enacted Plan and the Computer-Simulated Plans (Simulation Set B)



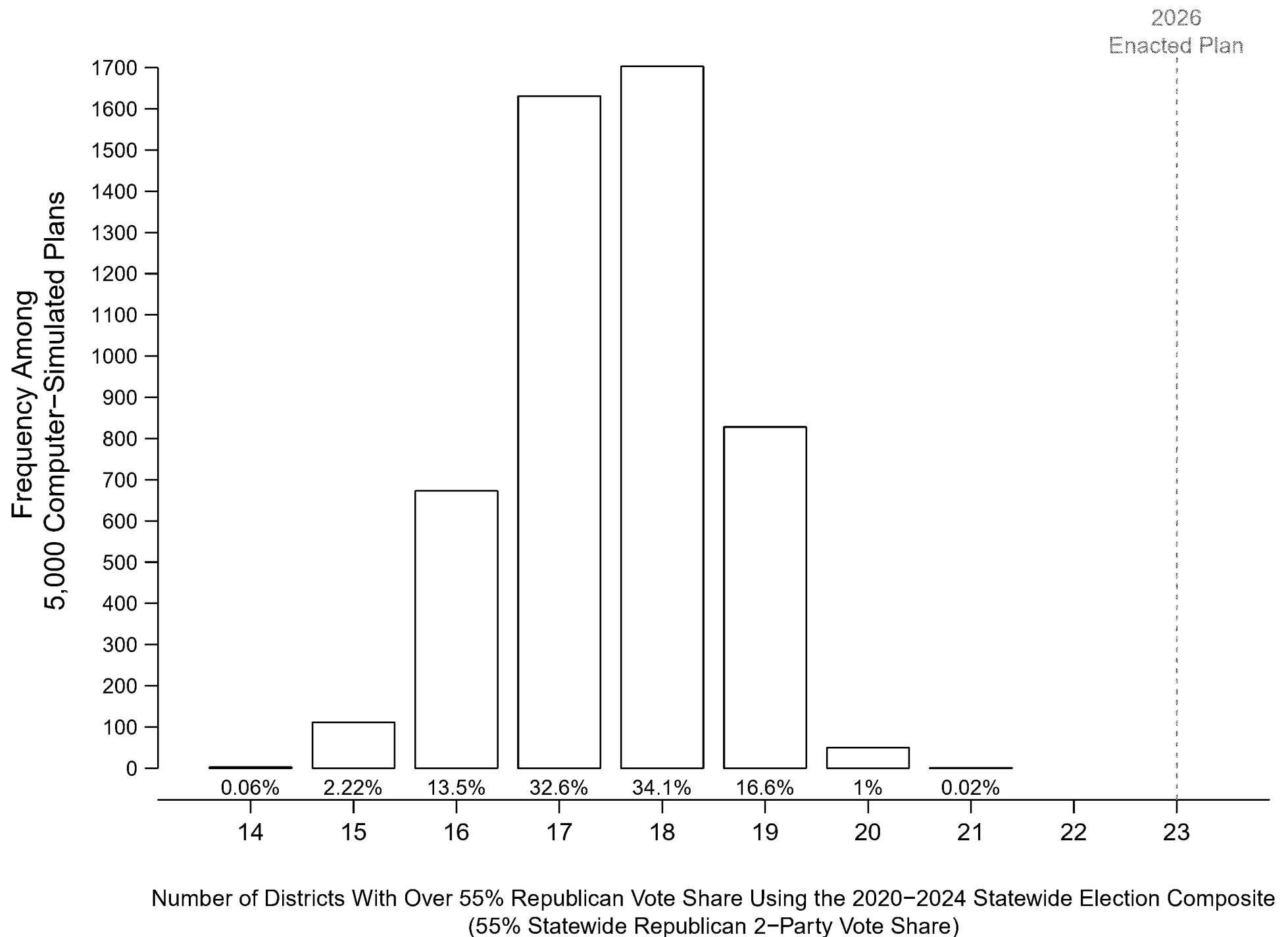
**Figure 3B: Number of Split Municipalities
in the 2026 Enacted Plan and the Computer-Simulated Plans (Simulation Set B)**



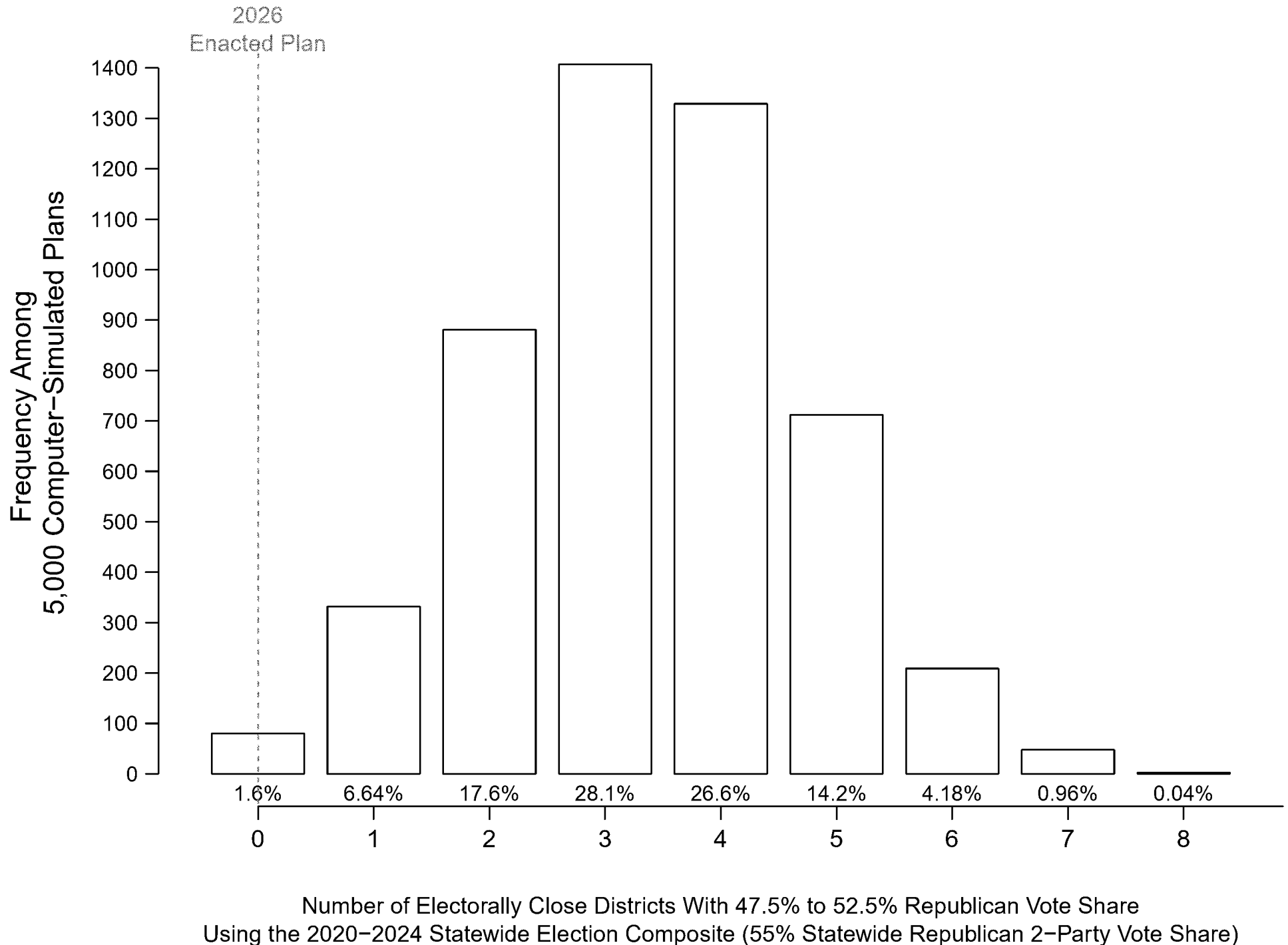
**Figure 4B: Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Number of Republican-Favoring Districts**



**Figure 5B: Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Number of Safe Republican Districts**



**Figure 6B: Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Number of Electorally Close Districts**



**Figure 7B: Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Number of Electorally Competitive Districts**

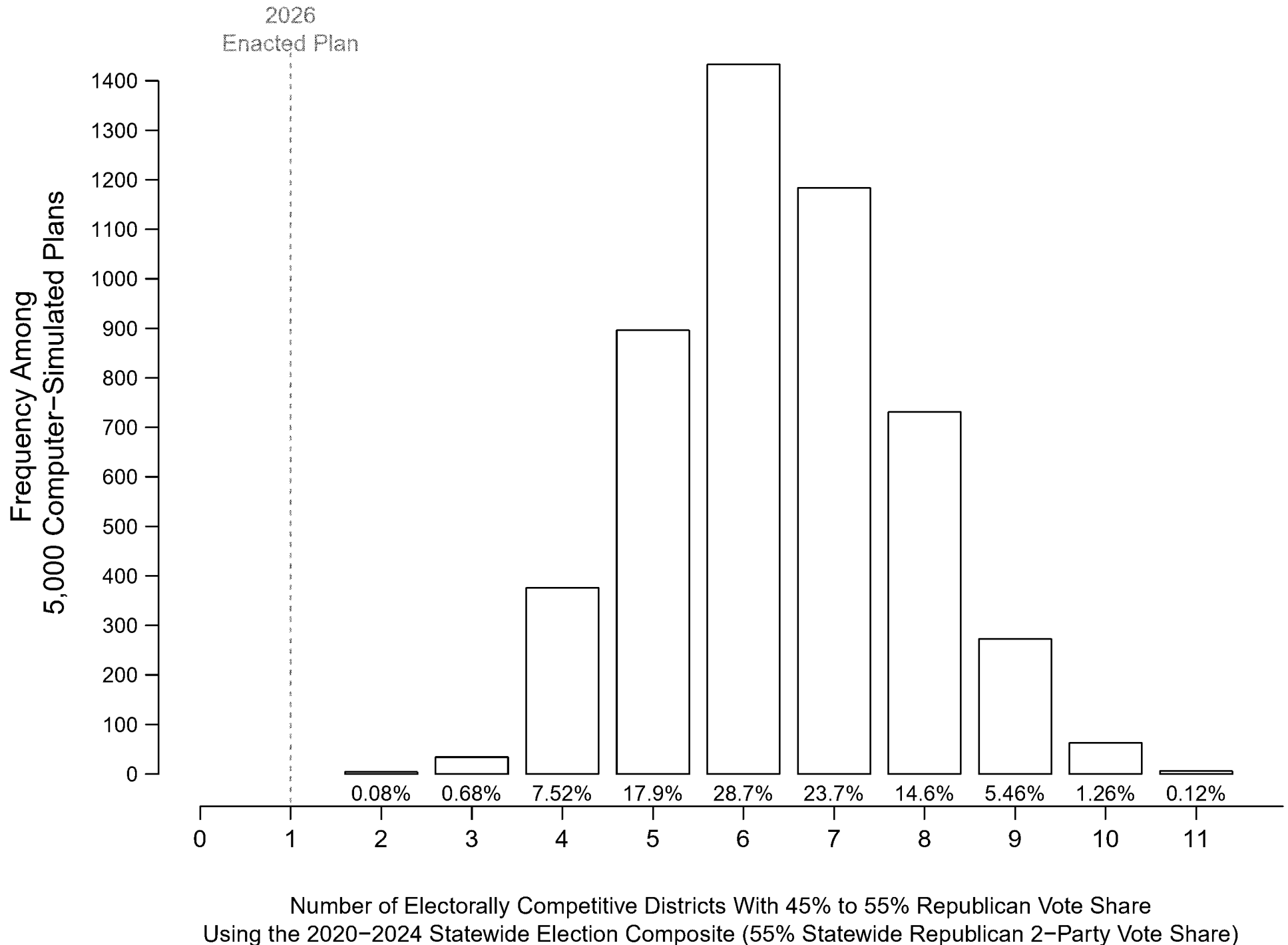
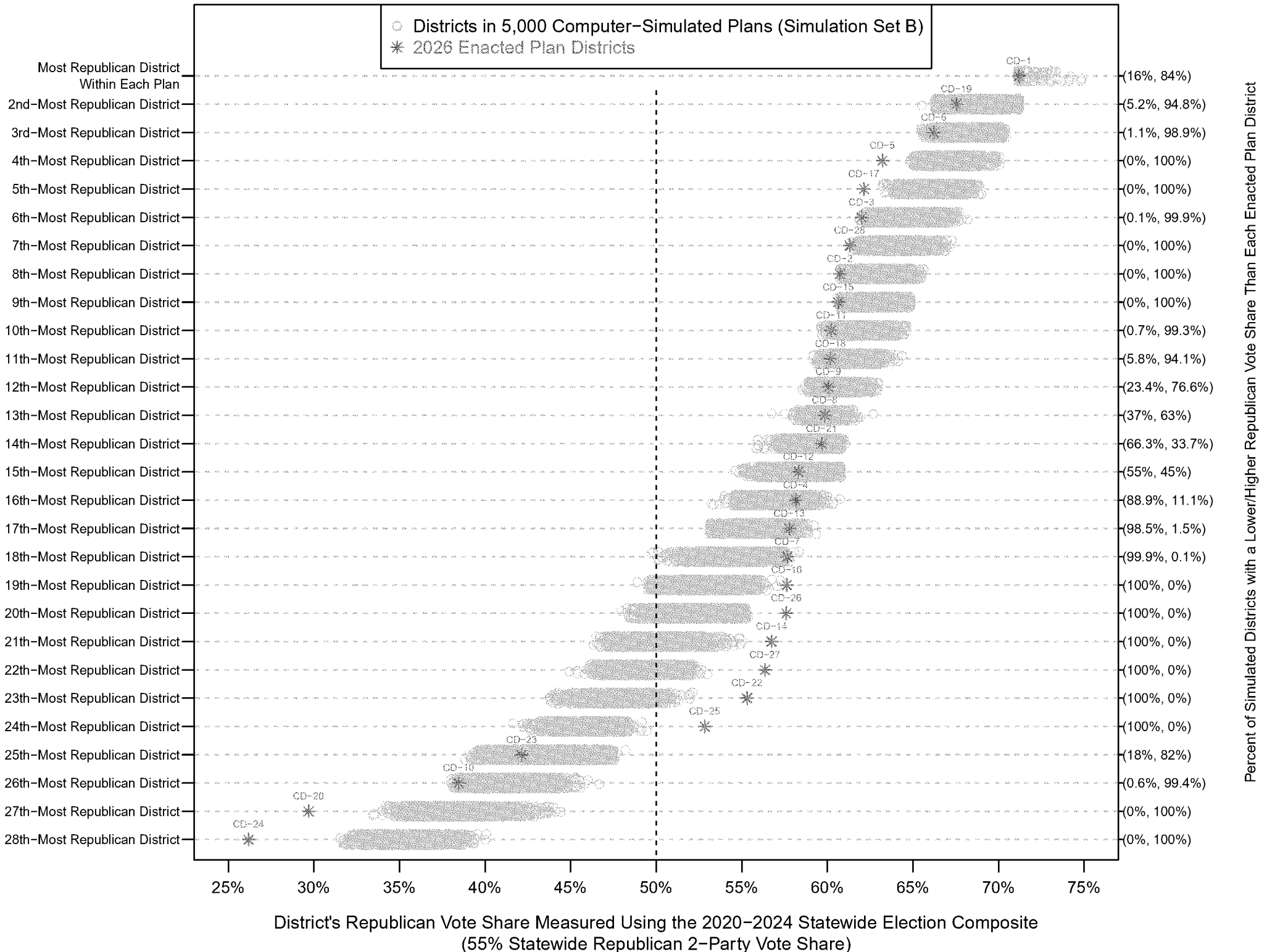


Figure 8B:
Comparisons of 2026 Enacted Plan Districts to 5,000 Computer-Simulated Plans' Districts



**Figure 9B: Efficiency Gap:
Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)**

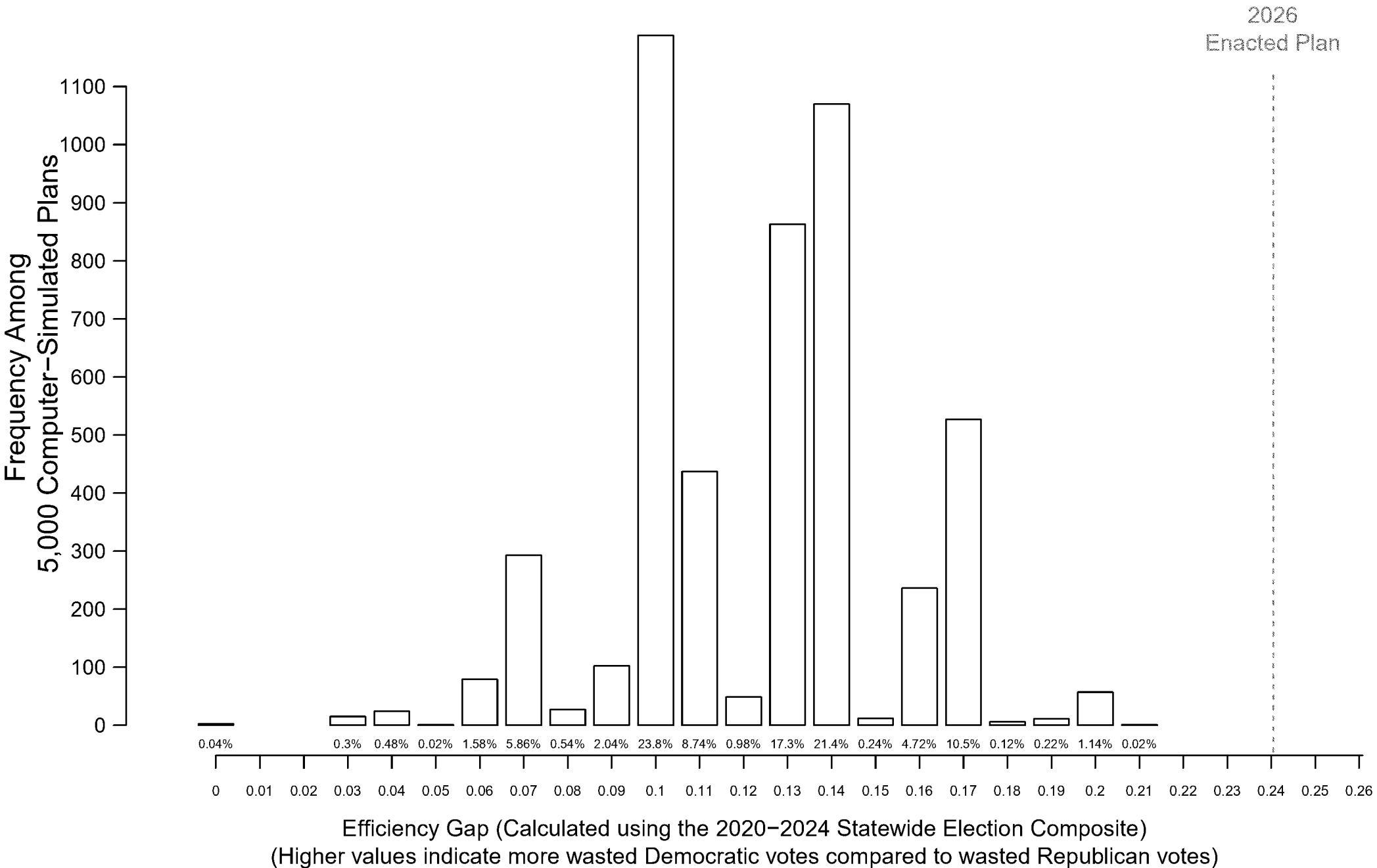


Figure 10B:
Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Vote Margins in Democratic versus Republican-Favoring Districts

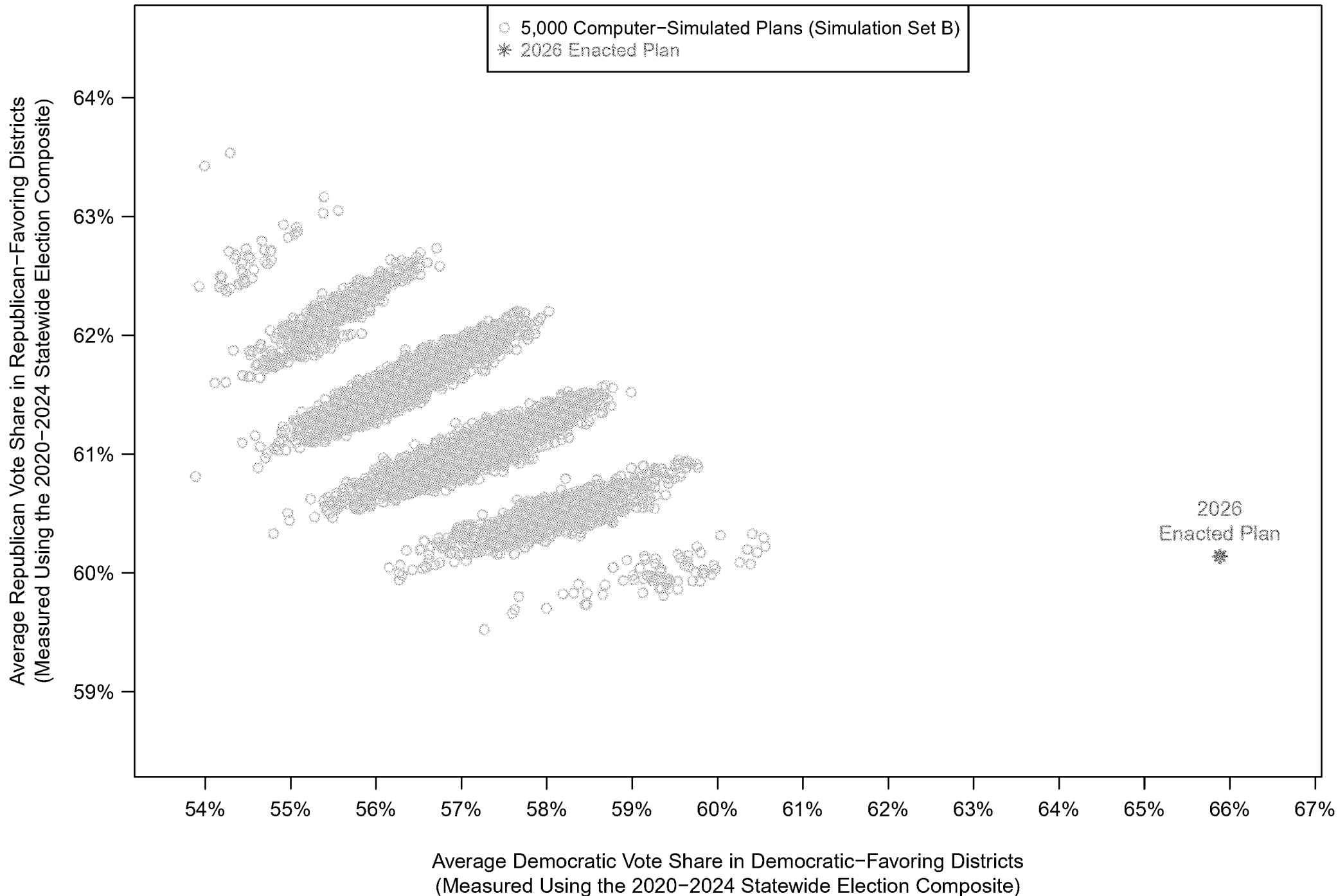


Figure 11B:
Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Lopsided Margins Measure and Compactness

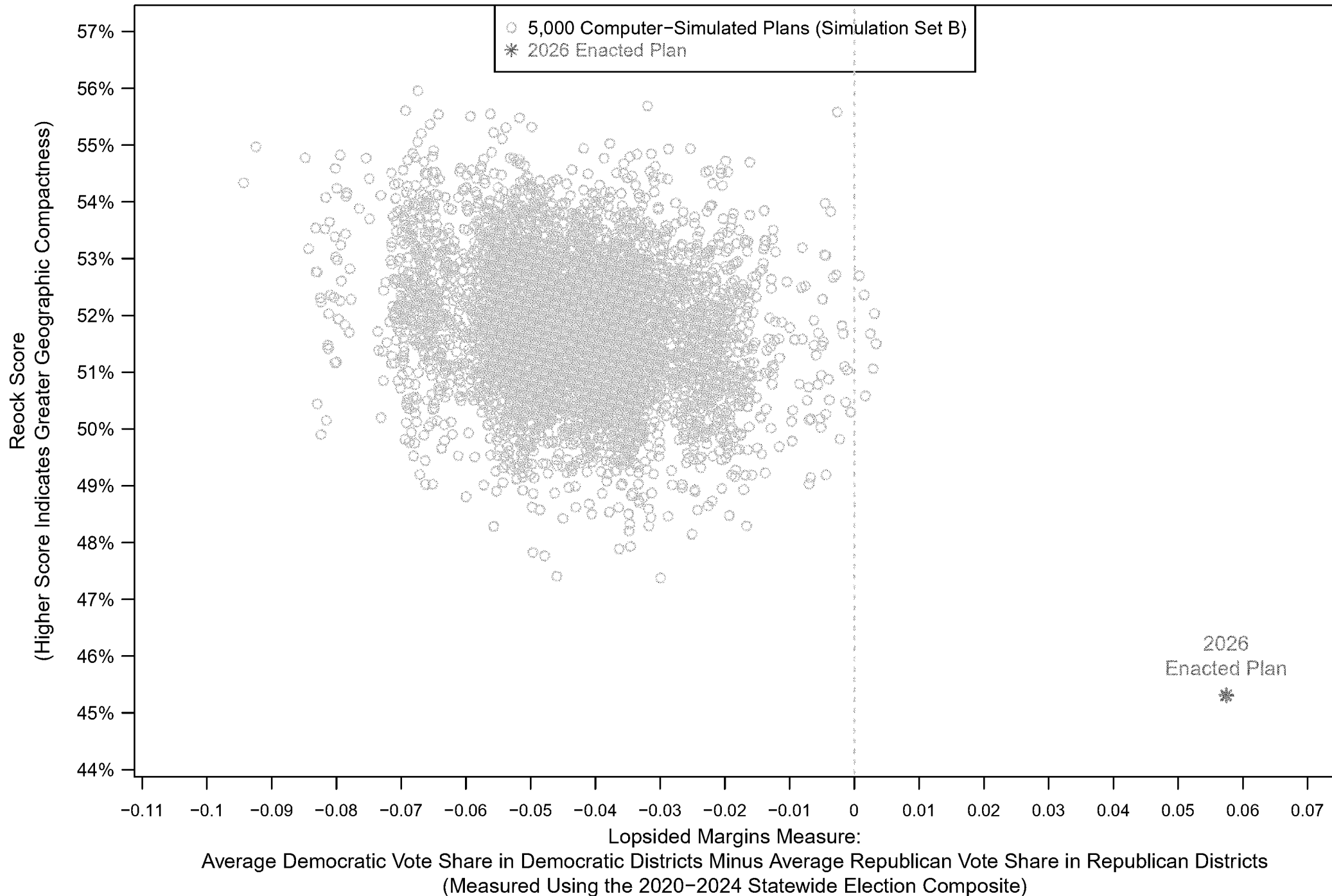


Figure 12B:
Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
On Partisan Symmetry Based on Uniform Swing

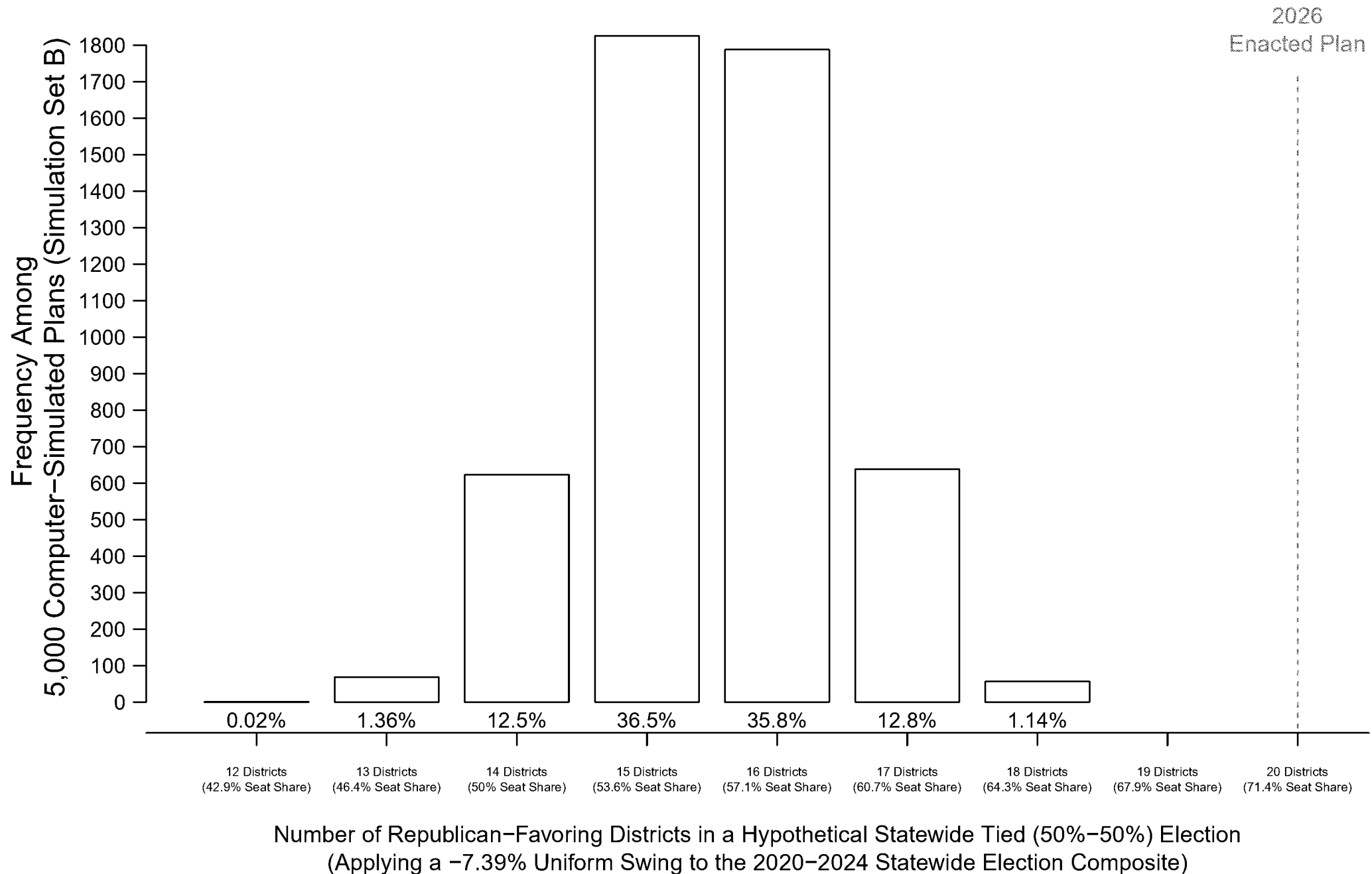


Exhibit 75

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

Black Voters Matter Capacity
Building Institute, Inc., *et al.*,

Plaintiffs,

Case No. 2022-ca-000666

v.

Cord Byrd, in his official capacity as
Florida's Secretary of State, *et al.*,

Defendants.

FLORIDA LEGISLATURE'S TRIAL BRIEF

The Florida House of Representatives and the Florida Senate (collectively, the “Legislature”) oppose the Plaintiffs’ contention that Congressional District 4 in the Enacted Map should be declared unconstitutional and replaced with a sprawling district spanning more than 200 miles from Duval County to Gadsden and Leon Counties. This Court should reject Plaintiffs’ challenge in its entirety. The Enacted Map is lawful and should be upheld.

The Legislature writes separately to address the specific legal basis for upholding the Enacted Map raised in the House’s Fifth Affirmative Defense: given the unique geography and population demographics in North Florida, any application of the non-diminishment provision to Benchmark Congressional District 5 would violate the Equal Protection Clause of the United States Constitution.

Background

The 2020 decennial census revealed that the population of Florida had grown significantly, and the State was apportioned an additional seat in the United States House of Representatives. To accommodate this new allocation and the population changes shown by the census, the State of Florida commenced its redistricting process in the fall of 2021 with legislative committee and subcommittee meetings.

Relatively early in the 2022 legislative session, it became apparent that the status of Benchmark Congressional District 5 presented significant legal questions not present elsewhere in the map. The district's configuration resulted from two Florida Supreme Court decisions in 2015 that ordered the creation of an "East-West" district with a sufficient Black voting-age population so as not to diminish the ability of Black voters to elect their candidates of choice as compared to the 2002 benchmark district. *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 402–06 (Fla. 2015) (“*Apportionment VII*”); *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 271–73 (Fla. 2015) (“*Apportionment VIII*”).

The “East-West” configuration adopted by the Florida Supreme Court arose from its conclusion that the “North-South” orientation adopted by the Legislature in 2012 was intended to favor the Republican Party and incumbent Congresswoman Corrine Brown. *Apportionment VII*, 172 So. 3d at 403. Because the plaintiffs in *League of Women Voters of Florida v. Detzner* had asserted *political* gerrymandering claims against the 2012 congressional map, the Florida Supreme Court had no occasion to consider

whether Benchmark Congressional District 5 complied with the Equal Protection Clause’s prohibition against *racial* gerrymandering.

On February 1, 2022, Governor DeSantis requested an advisory opinion from the Florida Supreme Court regarding whether the Florida Constitution “requires the retention of a district in northern Florida that connects the minority population in Jacksonville with distant and distinct minority populations (either in Leon and Gadsden Counties or outside of Orlando) to ensure sufficient voting strength, even if not a majority, to elect a candidate of their choice.” *Adv. Op. to Gov. re Whether Article III, Section 20(a) of Fla. Const. Requires Retention of a Dist. in N. Fla.*, 333 So. 3d 1106, 1107–08 (Fla. 2022). The Governor’s request cited intervening precedent from the United States Supreme Court interpreting the Equal Protection Clause and affirming that where “racial considerations predominate[] over others, the design of the district must withstand strict scrutiny.” Letter from Ron DeSantis to the Chief Justice and Justices of the Florida Supreme Court at 5 (Feb. 1, 2022) (quoting *Cooper v. Harris*, 581 U.S. 285, 292 (2017)).

The Legislature filed a brief requesting that the Court accept jurisdiction and provide an opinion interpreting the Florida Constitution’s non-diminishment requirement in the specific context of Benchmark Congressional District 5. The Legislature’s brief noted that judicial guidance on the narrow question presented by the Governor “will provide needed resolution of a question of significant importance to the enactment and executive approval of a congressional redistricting plan for the State

of Florida, and may obviate the need for judicial involvement at later stages of that process.” Fla. Legislature’s Jurisdictional Br. at 3 (Feb. 7, 2022). Three days later, the Florida Supreme Court issued an opinion “acknowledg[ing] the importance of the issues presented by the Governor” but declining to grant an advisory opinion in the absence of a complete factual record. *Adv. Op. to Gov. re Whether Article III, Section 20(a) of Fla. Const. Requires Retention of a Dist. in N. Fla.*, 333 So. 3d at 1108.

On March 4, 2022, the Legislature passed Senate Bill 102, which apportioned the State into 28 congressional districts. That map contained a district that, like Benchmark Congressional District 5, connected portions of Duval County with Gadsden County and portions of Leon County in an attempt to comply with the Florida Constitution’s non-diminishment provision. Governor DeSantis vetoed the bill on the basis that the North Florida district violated the Equal Protection Clause.

In a special session, the Legislature considered a new proposed map that incorporated some districts approved by the Legislature at its regular session and a new configuration in North Florida. The new configuration in North Florida proceeded on the premise that the unique geography and population demographics in North Florida would preclude the drawing of a district that satisfied the non-diminishment requirement without racial considerations predominating over traditional redistricting criteria.

The redistricting process concluded with the Florida Legislature’s passage and the Governor’s approval of Senate Bill 2-C on April 22, 2022.

Argument

I. The Equal Protection Clause prohibits the drawing of a North Florida Congressional District that would satisfy the Florida Constitution's non-diminishment provision as to Benchmark Congressional District 5.

Plaintiffs ask this Court to declare Congressional District 4 unconstitutional under the Florida Constitution because it “diminishes” the opportunity of Black Floridians to elect the candidate of their choice as compared to Benchmark Congressional District 5. But Plaintiffs ask this Court to ignore the other side of the “competing hazards of liability” facing States that consider race in the districting process. *Abbott v. Perez*, 138 S. Ct. 2305, 2315 (2018) (quoting *Bush v. Vera*, 517 U.S. 952, 977 (1996) (plurality opinion)). That is because the only way to satisfy the Florida Constitution's non-diminishment requirement under the unique geography and population demographics of North Florida is to create a sprawling and non-compact congressional district that subordinates all other redistricting criteria to racial considerations in violation of the federal constitution's Equal Protection Clause. Because the Supremacy Clause requires this conflict to be resolved in favor of the federal constitution, the non-diminishment requirement cannot constitutionally be applied to Benchmark Congressional District 5.

Ordinarily, a State violates the Equal Protection Clause when it makes race the predominant factor in drawing an electoral district. *Miller v. Johnson*, 515 U.S. 900, 916 (1995). In other words, a State may not “subordinate[] traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political

subdivisions or communities defined by actual shared interests, to racial considerations.” *Id.* Race predominates in establishing district boundaries when “race-neutral considerations come into play only after the race-based decision had been made,” *Allen v. Milligan*, 143 S. Ct. 1487, 1510 (2023) (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017)), or when race furnished “the overriding reason for choosing one map over others,” *Cooper*, 581 U.S. at 301 n.3 (quoting *Bethune-Hill*, 580 U.S. at 190).

When race predominates over traditional race-neutral districting principles, then, to survive constitutional scrutiny, the district must be narrowly tailored to serve a compelling governmental interest. *Abrams v. Johnson*, 521 U.S. 74, 91 (1997). Apart from a State’s interest in prison safety, the only compelling interest the United States Supreme Court has ever recognized to justify race-based government action is the remediation of “specific, identified instances of past discrimination that violated the Constitution or a statute.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2162 (2023). The Supreme Court has only assumed, but not decided, that a State’s compliance with the federal Voting Rights Act advances a compelling interest. *Bethune-Hill*, 580 U.S. at 193.

These standards are demanding because even benign race-based government action offends the “core purpose of the Fourteenth Amendment . . . to do away with all governmentally imposed discrimination based on race.” *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984) (footnote omitted); *accord Miller*, 515 U.S. at 904 (explaining that the

central mandate of equal protection is “racial neutrality in governmental decision making” and applies “regardless of ‘the race of those burdened or benefited by a particular classification’”). Race-based redistricting, “even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendments embody.” *Shaw v. Reno*, 509 U.S. 630, 657 (1993). “It reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls”—perceptions that the Supreme Court has “rejected . . . as impermissible racial stereotypes.” *Id.* at 647. The “Constitution’s pledge of racial equality” cannot, therefore, be “overridden except in the most extraordinary case.” *Students for Fair Admissions, Inc.*, 143 S. Ct. at 2161, 2163.

The Supreme Court acknowledged in *Abbott v. Perez* that “[r]edistricting is never easy.” 138 S. Ct. at 2314. States must draw districts that are substantially equal in population. They must comply with the federal constitution’s Equal Protection Clause, which prohibits the intentional assignment of citizens to districts on the basis of race without sufficient justification and also forbids intentional “vote dilution”—the invidious minimizing or cancellation of the voting potential of racial or ethnic minorities. *Id.*

At the same time that the Equal Protection Clause restricts the consideration of race in the districting process, compliance with the VRA pulls in the opposite direction.

Since the Equal Protection Clause limits what the VRA demands—the consideration of race in redistricting—a legislature attempting to produce a lawful districting plan is vulnerable to “competing hazards of liability.” *Id.* at 2315 (quoting *Bush*, 517 U.S. at 977 (plurality opinion)). The Supreme Court has assumed, without deciding, that compliance with the VRA is a compelling state interest and that consideration of race in making districting decisions is narrowly tailored if the State has “good reasons” for believing that those decisions are necessary to comply with the VRA. *Cooper*, 581 U.S. at 293 (quoting *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015)).

The Florida Constitution also prescribes standards for establishing congressional district boundaries. Art. III, § 20, Fla. Const. As relevant here, the Tier One standards prohibit the drawing of districts “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.” *Id.* at § 20(a).¹ The Florida Supreme Court has held that these requirements parallel the requirements of both Section 2 and Section 5 of the VRA. *In re Senate Joint Resol. of Legislative Apportionment 1176*, 83 So. 3d 597, 620 (Fla. 2012) (“*Apportionment I*”). Section 2 of the VRA applies nationwide and prohibits “vote dilution.” *Id.* at 620–22. Section 5 of the VRA prohibits

¹ The “Tier One” standards also prohibit the drawing of districts with the intent to favor or disfavor a political party or an incumbent and require districts to consist of contiguous territory. Art. III, § 20(a), Fla. Const. These provisions are no longer at issue in this case following Plaintiffs’ abandonment of the partisan gerrymandering claims in Count III of the Amended Complaint.

“retrogression”—a diminishment in the ability of a racial or language minority group to elect representatives of their choice as compared to a “benchmark” district that provided that ability. *Id.* at 623–24. Five Florida counties² were subject to Section 5’s non-diminishment requirement, *id.* at 624—at least before the coverage formula was invalidated by the Supreme Court in *Shelby County v. Holder*, 570 U.S. 529 (2013). The Florida Constitution’s non-diminishment provision applies statewide and—unlike its federal analogue—has no sunset or expiration date.

The “Tier Two” standards of the Florida Constitution, which apply except in the case of a conflict with the Tier-One standards, require districts to be compact, “as nearly equal in population as is practicable,” and, where feasible, to “utilize existing political and geographical boundaries.” Art. I, § 20(b), Fla. Const.

II. The Equal Protection concerns raised by the application of the non-diminishment requirement are limited to Benchmark Congressional District 5.

Because of North Florida’s unique geography and population demographics, Benchmark Congressional District 5 presents unique equal-protection concerns in the application of Florida Constitution’s non-diminishment provision. Benchmark Congressional District 5’s configuration renders it an extreme outlier on the “traditional redistricting criteria” reflected in Florida’s Tier Two standards. It is egregiously non-compact and disregards existing political and geographical boundaries on both the east

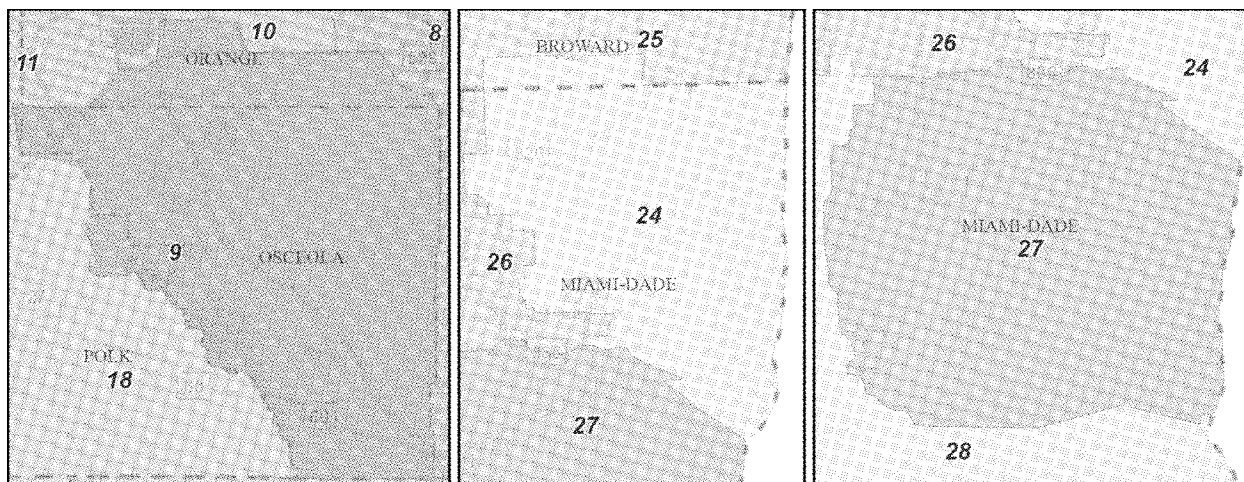
² Florida’s five “covered counties” were Collier, Hardee, Hendry, Hillsborough, and Monroe—none of which are in North Florida. *Apportionment I*, 83 So. 3d at 624.

and west ends of the district in an attempt to capture a sufficient number of Black voters to satisfy the Florida Constitution's non-diminishment requirement. In short, the population demographics in North Florida reflected in the 2020 census simply do not allow for the creation of a congressional district that accomplishes non-diminishment with respect to Benchmark Congressional District 5 without elevating race to the predominant consideration in the assignment of voters to districts.

Benchmark Congressional District 5 abandons traditional race-neutral districting principles. Its 200-mile length is approximately ten times its 20-mile height, which narrows to approximately two miles north of Tallahassee and west of Jacksonville. The district not only does not respect political and geographical boundaries; it splits four counties and reaches into Jacksonville and Tallahassee with narrow, tortured arms and fingers to carve from these cities large numbers of minority voters. The district strings eight counties together in a line. In the process, it combines some of the State's most densely populated urban areas with some of Florida's most sparsely populated, agrarian counties—and does so to connect pockets of minority voters in urban Jacksonville and Tallahassee that are more than 150 miles apart. Most of the district's population lies at its outermost ends, with comparatively little population found in the five-county corridor that connects those populous, far-flung extremities.



No other district in the Benchmark Map raises the same equal-protection concerns. In contrast to Benchmark Congressional District 5, concerns about racial predominance did not prohibit Florida from drawing congressional districts elsewhere in the State that satisfy the Florida Constitution, the VRA, and the Fourteenth Amendment. For example, Congressional Districts 9, 24, and 27 in the Enacted Map are compact districts both visually and by statistical measurements and were drawn with respect for existing political and geographical boundaries. But these districts also do not diminish the ability of racial and ethnic minorities to elect representatives of their choice.



In Central and South Florida, the geography and population demographics can accommodate congressional districting decisions that are simply not possible in North Florida.

Plaintiffs have not demonstrated³ that a compelling state interest justifies a North Florida district drawn predominantly on the basis of race. The record contains no evidence that the maintenance of a race-based district is necessary to eradicate the ongoing effects of specific, identifiable instances of past discrimination. *See, e.g., Bush*, 517 U.S. at 982 (plurality opinion) (explaining that a State’s interest in remedying past

³ As the proponents of a race-based assignment of voters to congressional districts, Plaintiffs necessarily bear the burden to demonstrate that the use of race is justified by a compelling state interest and is narrowly tailored to accomplish that interest. *Bethune-Hill*, 580 U.S. at 193 (explaining that, where the State has enacted a race-based district, the burden shifts to the State to prove that consideration of race was narrowly tailored to serve a compelling interest). This allocation of the burden is consistent with the disfavored status and presumptive invalidity of racial classifications under the Equal Protection Clause. *See Johnson v. Bd. of Regents of Univ. of Ga.*, 263 F.3d 1234, 1244 (11th Cir. 2001) (“The proponent of the classification bears the burden of proving that its consideration of race is narrowly tailored to serve a compelling governmental interest.”).

discrimination is “compelling” when the discrimination is “specific” and “identified,” and the State had a “strong basis in evidence” to conclude that its remedial action was necessary); *Miller*, 515 U.S. at 920–22. Nor does any party claim that the VRA protects Benchmark Congressional District 5 and requires its preservation. Absent a compelling interest in its preservation, Benchmark Congressional District 5’s subordination—and indeed outright abandonment—of traditional race-neutral districting principles cannot be justified.

The Supreme Court has repeatedly assumed, without deciding, that a State’s compliance with the VRA serves a compelling interest. But the Court has never extended the same presumption to a State’s efforts to comply with its own laws requiring government decisions to be made on racial grounds. This distinction is perhaps unsurprising when considering the history that led to the adoption of the Fourteenth Amendment: States’ denial of the equal protection of the laws on the basis of race.

Moreover, even if compliance with the VRA serves a compelling state interest, it does not follow that compliance with Florida’s non-diminishment standard does too. As the Secretary argues in his Trial Brief, there are important differences between the VRA and Florida’s non-diminishment standard. The VRA’s mandates are narrow in scope; section 5 of the VRA, which prohibited retrogression, was both time-limited and limited to “covered” jurisdictions in which Congress found evidence of race discrimination in elections. 52 U.S.C. §§ 10303(a)(8), (b), 10304; *Shelby Cnty.*, 570 U.S.

at 537–39. Thus, when the U.S. Supreme Court assumed that compliance with a federal retrogression prohibition advances a compelling state interest, its assumption was limited to a prohibition that applied only to jurisdictions with a demonstrated history of racial discrimination.

Florida’s non-diminishment standard, in contrast, has no time limitation and applies statewide without regard to whether an affected jurisdiction has any recent or identifiable history of racial discrimination in elections. Unlike section 5 of the VRA, then, it is *not even arguably* tethered to specific, identified instances of past discrimination that demand remediation. The U.S. Supreme Court has never assumed, let alone held, that there is a compelling state interest in preventing retrogression or diminishment for its own sake, or on a blanket basis. Moreover, the non-diminishment standard does not share the VRA’s storied legacy as landmark civil-rights legislation and, unlike the VRA, Florida’s non-diminishment standard finds no express constitutional warrant in the Fourteenth Amendment. Mere compliance with Florida’s non-diminishment standard is not, without more, a compelling state interest that might justify the elevation of race above traditional race-neutral districting principles consistent with the requirements of the Equal Protection Clause.

Plaintiffs’ absolutist approach would require Florida to ensure non-diminishment no matter how much the resulting district would subordinate traditional redistricting criteria to racial considerations. But Plaintiffs offer no limiting principle or logical endpoint to this argument. *Cf. Students for Fair Admissions, Inc.*, 143 S. Ct. at 2170–

73, 2175 (holding that race-based admissions programs could not be reconciled with the Equal Protection Clause, in part, because they lacked any meaningful endpoint). If the 2020 census had revealed that Black population of Benchmark Congressional District 5 had decreased by 50%, the Plaintiffs' approach would require the State to draw an even more sprawling district with tendrils stretching perhaps as far as Panama City and Orlando to ensure non-diminishment. The Equal Protection Clause does not tolerate the total abandonment of traditional race-neutral districting principles in favor of the single-minded pursuit of racial considerations in redistricting. And in regions of the State where application of the Florida Constitution's requirements would necessarily conflict with the requirements of the Fourteenth Amendment, the Supremacy Clause requires the former to yield.

When racial considerations outrank race-neutral considerations in redistricting, the resulting district is subject to strict scrutiny. Here, the non-diminishment standard, as Plaintiffs interpret it, would require not only the elevation of racial over race-neutral considerations, but also the adoption and perpetual preservation of a district so focused on race that it wholly abandons—and does not even minimally advance—traditional race-neutral districting principles. Because the maintenance of Benchmark Congressional District 5 would have violated the Equal Protection Clause, the non-diminishment standard could not compel its preservation.

Conclusion

Plaintiffs' challenge to the Enacted Map should be denied in its entirety, and the Court should enter final judgment in favor of Defendants.

Respectfully submitted,

/s/ Andy Bardos

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Counsel for the Florida Senate

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on all parties of record through the Florida Courts E-Filing Portal on August 16, 2023.

/s/ Daniel Nordby