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

VONDA THOMPSON-WYNN, *et al.*, Plaintiffs, v. CORD BYRD, in his official capacity as Florida Secretary of State, *et al.*, Defendants.	Case No. 2026 CA 925
EQUAL GROUND EDUCATION FUND INC., *et al.*, Plaintiffs, v. CORD BYRD, in his official capacity as Florida Secretary of State, *et al.*, Defendants.	Case No. 2026 CA 925
COMMON CAUSE, *et al.*, Plaintiffs, v. CORD BYRD, in his official capacity as Florida Secretary of State, *et al.*, Defendants.	Case No. 2026 CA 928

***THOMPSON-WYNN* PLAINTIFFS' REPLY TO THE FLORIDA HOUSE OF REPRESENTATIVES' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY INJUCTION**

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INTRODUCTION

Defendant Florida House of Representatives' ("the House") Response fails to provide any allegations or evidence to rebut the voluminous direct and circumstantial evidence Plaintiffs have offered regarding the 2026 Plan's violation of the Fair Districts Amendment's ("FDA") prohibition on redistricting to favor or disfavor political parties or incumbents and requirement that any congressional plan utilize political and geographic boundaries where feasible. Instead, the House's Response attempts to dodge the responsibility to comply with those provisions of the Florida Constitution by making the irrelevant and unavailing arguments that the race-related provisions of the FDA are unconstitutional and that the remainder of the FDA is not severable from them. The Court need not reach these arguments but, to the extent that it does, they fail.

ARGUMENT

I. This Court need not reach Defendants' claims related to the race-related provisions of the FDA.

This Court need not reach Defendants' claims that the race-related provisions of the FDA violate the U.S. Constitution's Equal Protection Clause and/or are non-severable from the remainder of article III, § 20 of the Florida Constitution. First and foremost, no party here brings a race-related claim under the FDA. There is thus no reason for this Court to even consider the constitutionality of the un-raised race-related provisions of the FDA in its adjudication of Plaintiffs' partisan intent and Tier II compliance claims.[1] This approach would be in line with the Florida Supreme Court, which has demonstrated appropriate restraint when addressing the FDA. For example, the Court explicitly limited its analysis in *Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y, Fla. Dep't of State* to the specific application of the FDA's non-diminishment clause,

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[1] *See Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y, Fla. Dep't of State*, 415 So. 3d 180, 192 (Fla. 2025) ("Even when a district court disagrees with a decision of this Court, it is the lower court's duty to follow our precedent.").

because the case did "not require [the Court] to revisit or add to [its] precedents on the meaning and application of" the FDA's vote dilution provision. 415 So. 3d 180, 186 (Fla. 2025) ("*Black Voters Matter II*"). There is no reason for this Court to depart from the measured practice of the Florida Supreme Court where there is clear precedent that can be applied to assess Plaintiffs' partisan intent and Tier II compliance claims without needing to address the FDA's race-related provisions.

To the extent that Defendants claim that returning to the 2022 Plan requires this Court to assess the constitutionality or severability of the FDA's race-related provisions due to their influence on the 2022 Plan, Defendants are incorrect. At the outset, no Plaintiff in this suit has challenged the constitutionality of the 2022 Plan, and courts have only *upheld* its constitutionality. Nevertheless, Defendants contend that *Black Voters Matter II* requires Plaintiffs to demonstrate the lawfulness of the 2022 Plan because Plaintiffs are asking this Court to enjoin the 2026 Plan, which would result in a reversion to the 2022 Plan by operation of law. Not so.

First, the burden is not on Plaintiffs to demonstrate the lawfulness of the 2022 Plan. *Black Voters Matter II* does not establish otherwise, and Defendants' argument is nothing more than an attempt to side-step the public official standing doctrine, under which Defendants cannot challenge the constitutionality of state law or refuse to administer state law as unconstitutional. *See State ex rel. Atl. Coast Line R. Co. v. State Bd. of Equalizers*, 94 So. 681 (Fla. 1922); *Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793 (Fla. 2008). To begin, the *Black Voters Matter II* Plaintiffs were seeking to impose a remedial plan that had never been enacted by the legislature, whereas Plaintiffs here seek to return to the *legislatively-enacted* 2022 Plan. The 2022 Plan is presumptively constitutional, and Plaintiffs do not challenge its constitutionality. Seeking to invalidate an entire voter-enacted constitutional amendment through the backdoor, Defendants

thus themselves are challenging the constitutionality of the 2022 Plan, which is unquestionably a state statute. Indeed, Defendants here seek to challenge the constitutionality of the very statute they defended in *Black Voters Matter II. See* 415 So. 3d at 195. This is impermissible under the public official standing doctrine, as is Defendants' constitutional challenge to the FDA itself.[2]

Second, even if Defendants were permitted to challenge the 2022 Plan in this proceeding and posture—which they are not—Defendants have failed even to *attempt* to reach the high burden of proving a racial gerrymandering claim for any district in the 2022 Plan. The Florida Supreme Court recently articulated the two-step inquiry that must be undertaken to challenge a district as a racial gerrymander. The court must first answer the threshold question of "whether race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.* at 195 (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 192 (2017)). This is a weighty burden. *See, e.g.*, *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024) (the "evidentiary burden in these cases is especially stringent."). Strict scrutiny is only applied in a second step "once it has been shown that 'racial considerations predominated over others'" in the drawing of that district. *Black Voters Matter II*, 415 So. 3d at 196 (quoting *Bethune-Hill*, 580 U.S. at 191). Defendants here, however, make no allegations regarding whether race predominated in the creation of any district in the 2022 Plan. To do so, Defendants would have to admit that they violated the constitution in drawing the 2022 Plan, which they have vigorously denied. Indeed, the House fails even to identify any congressional district to which it *might* make such a challenge. Therefore, Defendants fail to provide any of the allegations

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[2] *Thompson-Wynn* Plaintiffs also adopt the *Equal Ground Education Fund* Plaintiffs' arguments regarding how Defendants' constitutional challenge to the FDA violates the public official standing doctrine. Plaintiffs' Reply Br. in Support of Mot. for Temp. Injunction, *Equal Ground Ed. Fund Inc., et al. v. Cord Byrd, et al.*, Case No. 2026-ca-000914, Filing # 248214234, at 22-24 ("*Equal Ground* Pls.' Reply").

or evidence needed for the Court to conduct even the threshold question of racial predominance, let alone to move onto a strict scrutiny analysis of the 2022 Plan.

Nor is there any evidence on the record which would suggest that the 2022 Plan is unlawful. The 2022 Plan, "like any legislation, is entitled to a presumption of validity." *Black Voters Matter II*, 415 So. 3d at 197. By adopting the 2022 Plan, the legislature endorsed its constitutionality, and Defendants have been and currently still are in court defending the 2022 Plan. Apart from signing the 2022 Plan into law, the governor has also separately stated that the 2022 Plan is constitutional. *Thompson-Wynn* Pls.' Emergency Mot. for Temp. Injunction, Ex. 1 at 14. No state or federal court has found any district in the 2022 Plan—or any provisions of the FDA—to violate state or federal law. Further, as discussed below, Defendants have not sufficiently alleged that the FDA's race-related provisions facially violate the Equal Protection Clause. Accordingly, there is no reason whatsoever for this Court even to undertake the analysis of whether the 2022 Plan is constitutional, let alone to conclude that race predominated in the creation of any district in the 2022 Plan.

Likewise, because (1) Plaintiffs have not raised any race-related claims, (2) Defendants cannot challenge the constitutionality of the 2022 Plan or the FDA under the public official standing doctrine, (3) Defendants have not even attempted to lodge a racial gerrymandering challenge to any 2022 Plan district that might implicate the lawfulness of the FDA's race-related provisions, and (4) as discussed below, Defendants have not shown that the FDA's race-related provisions violate the Equal Protection Clause, *there is no reason* for this Court to reach the question of whether the FDA is severable. This Court should instead follow the proper course to determine whether Plaintiffs have demonstrated that a temporary injunction is justified in this instance. The Florida House of Representatives' Response—which rests entirely on impermissible, irrelevant, and unavailing arguments regarding the constitutionality or severability of the FDA—

fails to rebut any of the allegations and evidence supporting Plaintiffs' Emergency Motion for Temporary Injunction.

II. Defendants have not met their burden to demonstrate that the race-related provisions of the FDA violate the Equal Protection Clause.

Regardless, Defendants have failed to show that the race-related provisions of the FDA necessarily violate the federal Equal Protection Clause. The text of the FDA's race-related provisions does not require that race predominate in the creation of districts, nor has any court—state or federal—held that such a requirement for racial predominance exists in the FDA. To the contrary, the Florida Supreme Court recently held that compliance with the Tier I non-diminishment provision did *not* require the creation of a non-compact district if doing so would require racial predominance. *Black Voters Matter II*, 415 So. 3d at 198-99. The Court made this holding without finding that the FDA's non-diminishment requirement violated the U.S. Constitution's Equal Protection Clause. And nothing in the U.S. Supreme Court's recent decision in *Louisiana v. Callais*, No. 24-109, 2026 WL 1153054 (U.S. Apr. 29, 2026), invalidates the FDA under the Equal Protection Clause. Rather, the U.S. Supreme Court's interpretation of Section 2 of the federal Voting Rights Act in *Callais* provides *support* for the constitutionality of the FDA's race-related provisions.

Florida courts have dual obligations that lead *Callais* to lend support to the constitutionality of the FDA's race-related provisions. First, Florida courts are obligated to interpret constitutional provisions in a way that preserves the constitutionality of the provision at question. *See, e.g.*, *Lewis v. Leon Cnty.*, 73 So. 3d 151, 153 (Fla. 2011) (articulating the rule that "statutes come clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome" and stating that Florida courts follow parallel principles when assessing constitutional provisions). Second, Florida courts are to interpret the race-related provisions of the

FDA in line with parallel federal precedent. *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 620-21 (Fla. 2012) (mem.) ("We [] review the language of Sections 2 and 5, and how each has been judicially interpreted, to give meaning to our state counterpart.") ("*Apportionment I*"); *see also Black Voters Matter II*, 415 So. 3d at 187-88 (leaving undisturbed the precedent of the Florida Supreme Court's "reliance on Voting Rights Act jurisprudence to guide the interpretation of the FDA").

Both of these obligations compel to the same outcome here: even if this Court were to find issue with the previous interpretation of the FDA's race-related provisions, the Court should follow the lead of the Florida Supreme Court and adopt a saving construction, like the one the U.S. Supreme Court adopted in *Callais* in declining to wholly invalidate Section 2, and interpret the FDA in line with the federal Equal Protection Clause. *Callais*, 2026 WL 1153054, at *12. The House has failed to provide any valid justification for why this Court should instead choose to construe the FDA in a manner, not required by its text or prior Florida Supreme Court precedent, that instead brings it into conflict with the U.S. Constitution.

III. Defendants have not met their burden to demonstrate that the FDA is not severable.

Even if this Court were to reach the question Defendants raise regarding the race-related provisions of the FDA and then determine that they do in fact violate the Equal Protection Clause, Defendants' argument is *still* unavailing because the race-related provisions of the FDA are plainly severable. The burden of proving non-severability belongs to the party advocating that position, which here is Defendants. *See Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999). Defendants have not approached meeting that burden.

The Florida Supreme Court has held that, because "the initiative power of fully informed citizens to amend the Constitution must be respected as an important aspect of the democratic process," courts "must afford [] deference to constitutional amendments initiated by our citizens

and uphold the amendment if, after striking the invalid provisions, the purpose of the amendment can still be accomplished." *Id.*; *see also Apportionment I*, 83 So. 3d at 640 ("[T]he Court's obligation is to ensure that 'every clause and every part' of the language of the constitution is given effect where 'an interpretation can be found which gives it effect.'") (quoting *In re Apportionment Law Senate Joint Resol. No. 1305, 1971 Regular Session*, 263 So. 2d 797, 807 (Fla. 1972)).

When part of a law or constitutional amendment is declared unconstitutional, the remainder will be permitted to stand if:

> (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Ray, 742 So. 2d at 1281. All four prongs here favor severability.

A. The allegedly unconstitutional provisions of the FDA can be separated from the remaining provisions.

Defendants have not met their burden in showing that a severing of the race-related provisions from the FDA would impact its textual integrity or structural coherence. The House claims that "the valid and invalid provisions are functionally dependent and form an interlocking plan," *see* House Br. at 12, attempt to make much of the FDA's tiered structure, and rely on strained comparisons to *Emerson v. Hillsborough County*, 312 So. 3d 451 (Fla. 2021). *See id.* at 11-15. All these arguments, however, obfuscate the obvious. A removal of the race-related provisions from the FDA leaves in place an entirely self-contained partisan gerrymandering ban, relying in part on the adherence to traditional redistricting criteria, not at all unlike those present in other state constitutions.[3] Just as in *Ray*, the racial and partisan provisions of the FDA "are functionally

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[3] *See, e.g.*, Ariz. Const. art. IV, pt. 2, § 1(14); Haw. Rev. Stat. § 25-2(b); Idaho Code § 72-1506; Mich. Const. art. IV, § 6(13); Mont. Code Ann. § 5-1-115(2); Wash. Rev. Code § 44.05.090.

independent." 742 So. 2d at 1283. This is not a hypothetical supposition; the Florida Supreme Court has already in fact found Tier I and Tier II violations in absence of *any* race-related findings. *See, e.g.*, *Apportionment I*, 83 So. 3d at 662-65. As such, it is clear that the race-related provisions in the FDA can be "stricken without disrupting the integrity" of the other criteria. *Ray*, 742 So. 2d at 1283.

B. The purpose of the non-race-related provisions of the FDA can be accomplished independently of the race-related provisions.

The overarching purpose of the FDA could still be accomplished if the race-related provisions were struck from subsection (a) of article III, § 20. The Florida Supreme Court itself has said that "[t]here is no question that the goal of minimizing opportunities for political favoritism was the driving force behind the passage of the Fair Districts Amendment." *Apportionment I*, 83 So. 3d at 639; *see also League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 415 (Fla. 2015) (". . . the intent of the framers and voters who passed the Fair Districts Amendment to outlaw partisan political gerrymandering."); *Black Voters Matter II*, 415 So. 3d at 185 ("The FDA brought substantial change to our state's districting practices, *most notably* by prohibiting intentional political favoritism and regulating the shape of districts.") (emphasis added). Plaintiffs have also provided an abundance of evidence showing that voters' understanding of the purpose of the FDA was centered around ending partisan gerrymandering. *See* Ex. 1 at 5-12. And, as noted in the previous section, the Florida Supreme Court has already demonstrated via its ruling in *Apportionment I* that this purpose can be served in the absence of any race-related findings.

The House argues that "[i]f the Racial Provisions were severed, then [the Tier II requirements] would step into the foreground and apply universally to all districts, improperly expanding the scope of the provision's intended breadth beyond the amendment's purpose." House Br. at 13 (citation modified). This argument misses entirely that Tier I includes not just the race-

related provisions, but also the party favoritism, incumbent favoritism, and contiguity provisions, all of which would remain as constraints on the Tier II requirements.

In passing the FDA, voters sought fairer elections and a more representative government. As the *Apportionment* cases of the 2010s decisively showed, none of the non-race-related provisions rely on the race-related provisions in order to fulfill their purpose in furthering those ends.

C. It cannot be said the voters would not have passed the FDA without the race-related provisions.

Defendants have not shown—and indeed cannot show—that Florida voters would have declined to adopt the FDA absent the race-related provisions. Apart from the Florida Supreme Court's findings regarding the motivating purpose of the FDA, *see supra*, there is also voluminous evidence making clear that voters' primary understanding of the FDA was in fact as a ban on partisan gerrymandering. *See* Ex. 1 at 5-12; *see also Equal Ground* Pls.' Reply at 48-50.

The House seeks to undermine this evidence by cherry-picking two statements from the entire run-up to the passage of the FDA: a statement by the chair of the FDA's initiative committee at a single legislative hearing and a statement by the Florida NAACP in its written endorsement of the FDA. House Br. at 16-17. But these selectively chosen quotes cannot overcome the multitude of statements made by FDA proponents—including other statements by the FDA initiative committee chair—and in endorsements and editorials in every prominent newspaper across the state. The record is so indisputable that an expert report commissioned by Defendant Secretary of State Byrd in prior litigation concluded after a thorough analysis that "the primary purpose of the Fair Districts [A]mendment[]" was its prohibition on "redistricting based on political partisanship," rather than "preservation of minority representation." Plaintiffs' Notice of Filing Exhibits in Support of Mot. for Temp. Injunction, *Equal Ground Ed. Fund Inc., et al. v.*

Cord Byrd, et al., Case No. 2026-ca-000914, Filing # 247932466, at 41, 95. Defendants' efforts at an about-face in this litigation thus fail, and this factor favors Plaintiffs.

D. The FDA would remain complete in itself without the race-related provisions.

As noted *supra*, a removal of the race-related provisions from the FDA leaves in place an entirely self-contained partisan gerrymandering ban that relies in part on the adherence to traditional redistricting criteria. The Florida Supreme Court showed in *Apportionment I*, *see* 83 So. 3d at 662-65, that the FDA's partisan gerrymandering prohibition, in combination with its contiguity and Tier II requirements, can independently operate as an effective restriction on redistricting in line with that sought by the voters in the passing of the FDA.

As a result, all four prongs of the severability test favor Plaintiffs. Defendants thus fail to meet their burden on all fronts.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Emergency Motion for Temporary Injunctive Relief to avoid the irreparable harm that will befall Plaintiffs if the 2026 Plan is permitted to govern the 2026 congressional elections.

Respectfully submitted this 18th day of May, 2026,

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*motions for admission *pro hac vice* pending
**motion for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Florida Courts E-Filing Portal on this 18th day of May, 2026.

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