

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

EQUAL GROUND EDUCATION FUND,  
INC., *et al.*,

*Plaintiffs,*

Case No. 2026-CA-000914

v.

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

*Defendants.*

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VONDA THOMPSON-WYNN, *et al.*,

*Plaintiffs,*

Case No. 2026-CA-000925

v.

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

*Defendants.*

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COMMON CAUSE, *et al.*,

*Plaintiffs,*

Case No. 2026-CA-000928

v.

RON DESANTIS, Florida Governor, *et al.*,

*Defendants.*

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**THE FLORIDA HOUSE OF REPRESENTATIVES’  
SUR-REPLY TO THOMPSON-WYNN  
PLAINTIFFS’ MOTION FOR TEMPORARY INJUNCTION**

Defendant, the Florida House of Representatives (the “House”), respectfully offers this sur-reply to the “*Thompson-Wynn* Plaintiffs’ Reply to the Florida House of Representatives’ Response in Opposition to Plaintiffs’ Motion for Temporary Injunction,” dated May 18, 2026.<sup>1</sup>

Plaintiffs<sup>2</sup> first reply to an argument the House never made. Reply at 2–4. The House has not taken any position on the constitutionality of the 2022 map in this litigation. Rather, it argued that the Racial Provisions—express racial classifications codified in article III, section 20(a) of the Florida Constitution—violate the Equal Protection Clause.

These express racial classifications treat people of different races differently. They enshrine permanent racial preferences in the Florida Constitution. They compel the Legislature, at each redistricting, to design districts that members of certain races will control. And they confer on some voters—based solely on their race—a constitutional right to a district designed to elect candidates whom their racial group supports.

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<sup>1</sup> If necessary, the House respectfully requests leave to file this sur-reply. The importance of the questions presented to the Court and Plaintiffs’ submission of their reply more than 72 hours *after* the injunction hearing supports this request. The House submits that this brief sur-reply will assist the Court’s resolution the pending requests for extraordinary relief.

<sup>2</sup> In this sur-reply, “Plaintiffs” refers to the *Thompson-Wynn* Plaintiffs.

Plaintiffs do not deny that *all* express racial classifications are presumptively invalid and subject to strict scrutiny. They simply don't address it. They offer no compelling interest to support the Racial Provisions. The words "compelling interest" do not even appear in their reply. Their silence on that score utterly condemns the Racial Provisions.

The best that Plaintiffs can muster is to argue that the Racial Provisions do not necessarily require race to "predominate" in the drawing of districts. Reply at 5. But again, the House has not challenged any map or a district. It challenges permanent racial preferences codified in the Florida Constitution—racial preferences that *mandate* the creation of districts that a racial group will control. All express racial classifications are subject to strict scrutiny, *Adarand Constructors v. Peña*, 515 U.S. 200, 227 (1995) ("Accordingly, we hold today that all racial classifications . . . must be analyzed by a reviewing court under strict scrutiny."), and Plaintiffs concede by their silence that no compelling interest supports the Racial Provisions.

Plaintiffs claim the House bears the burden to establish the invalidity of the Racial Provisions and non-severability, Reply at 5–7, but Plaintiffs forget the posture of this case. The House bears no burden to *disprove* Plaintiffs' entitlement to a temporary injunction. Courts do not presume a movant's entitlement to such extraordinary relief. Rather, at the temporary-injunction stage, *Plaintiffs* bear the burden to demonstrate a substantial likelihood of success on the merits—including a substantial likelihood that the non-movants will be unable to establish their affirmative defenses at the merits stage. *Bradley v. Health Coal., Inc.*, 687 So. 2d 329, 333 (Fla. 3d DCA 1997) (explaining that,

at the temporary-injunction stage, a plaintiff “must demonstrate likelihood of success on the merits as to asserted affirmative defenses as well as . . . elements of plaintiff’s prima facie case” (quoting *Cordis Corp. v. Prooslin*, 482 So. 2d 486, 490 (Fla. 3d DCA 1986))).

Next, Plaintiffs urge the Court to adopt a saving construction of the Racial Provisions. Reply at 6. But Plaintiffs do not explain what that construction is, where in the text of the Racial Provisions that construction can be found, *see Brown v. State*, 358 So.2d 16, 20 (Fla.1978) (“When the [challenged law] in no way suggests a saving construction, we will not abandon judicial restraint and effectively rewrite the enactment.”), or how this Court can disregard the Florida Supreme Court’s binding interpretations of the Racial Provisions and reinterpret those provisions here, *see, e.g., Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec’y, Fla. Dep’t of State*, 415 So. 3d 180, 186–87 (Fla. 2025) (interpreting the Racial Provisions); *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 619–627 (Fla. 2012) (same). And even if the Racial Provisions were susceptible of a saving construction, Plaintiffs do not explain how that construction (which they do not identify) complies with equal protection, or what compelling interest supports it. Simply narrowing an express racial classification does not relieve Plaintiffs of their burden to identify a compelling interest that supports the classification.

A saving construction was possible in *Louisiana v. Callais*, No. 24-109 (U.S. Apr. 29, 2026), only because the statute at issue there—section 2 of the federal Voting Rights Act—was enacted pursuant to Congress’s express authority to enforce the Fifteenth Amendment’s prohibition against intentional discrimination in voting. The Court

recalibrated section 2 to target intentional discrimination—the very practice the Fifteenth Amendment prohibits. But the Racial Provisions were not enacted pursuant to the Fifteenth Amendment. The Fifteenth Amendment confers legislative authority only on Congress—not the States. So *Callais* does not suggest how the Racial Provisions in Florida’s Constitution could be saved.

*Callais*, moreover, addressed only section 2 of the VRA. One of Florida’s two Racial Provisions—the Non-Diminishment Clause—was patterned after section 5 of the VRA, not section 2. *See Black Voters Matter*, 415 So. 3d at 187 (explaining that the Florida Supreme Court has “looked to Section 2 on the issue of vote dilution and to Section 5 on diminishment”); *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d at 625 (noting that “Section 2 jurisprudence guides . . . state vote dilution claims” while “jurisprudence interpreting Section 5” guides claims of diminishment). These are wholly different provisions: section 2 and section 5 of the VRA “differ in structure, purpose, and application,” *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 477 (1997) (quoting *Holder*, 512 U.S. at 883 (plurality opinion)), and “combat different evils and . . . impose very different duties upon the States,” *id.* Plaintiffs do not explain how the Non-Diminishment Clause could be narrowed in a constitutional way.

Finally, Plaintiffs rehash their previous arguments on severability. Reply at 6–10. None overcomes the arguments the House has advanced. The essence of Plaintiffs’ argument is that, if the Racial Provisions are unconstitutional, then it would still be *possible* to implement the remainder of article III, section 20. But that argument

addresses only the first element of the four-part severability standard articulated in *Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999).

The mere fact that it would be *possible* to implement the remainder of the provisions without the invalid provisions is not sufficient to establish severability. If it were, then the outcome in *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008), would have been different. Clearly, it would have been possible to treat all revocations of pharmacist licenses as permanent, even after the court invalidated the exception that authorized reapplication in some circumstances. But the two provisions operated in concert, and the invalidity of the exception rendered the general rule unenforceable too.

*Sloban and Florida Department of State, Division of Elections v. Martin*, 916 So. 2d 763, 773–74 (Fla. 2005), establish that, when an exception to a general rule is found unconstitutional, courts will not sever the exception and transform the general rule into an absolute rule. To do so would rewrite the law—not preserve it.

The provisions of article III, section 20 represent a set of rules or standards that operate in combination to produce a redistricting map. The removal of one standard alters the recipe the voters approved. And that is what Plaintiffs ask this Court to do: to remove only one ingredient, change the mix of standards that produces Florida’s redistricting maps, and transform the general rule of compactness and boundary utilization—which voters placed in the lower tier of standards—into unyielding, absolute rules. Severance of the Racial Provisions would therefore judicially redesign the machinery the voters approved. Here, the “taint of an illegal provision has infected the entire enactment,

requiring the whole unit to fail.” *See Ray*, 742 So. 2d at 1280 (quoting *Schmitt v. State*, 590 So. 2d 404, 414 (Fla. 1991))

In any event, Plaintiffs have not come close to carrying their burden to establish a substantial likelihood that the House will be unable to establish its defense—including the non-severability of the Racial Provisions—at the merits stage.

For these reasons and the reasons stated in the House’s Response to Plaintiffs’ Motion for Temporary Injunction, dated May 13, 2026, this Court should deny Plaintiffs’ Motion for Temporary Injunction.

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**CERTIFICATE OF SERVICE**

I certify that, on May 19, 2026, the foregoing document was furnished by email to all individuals identified on the Service List that follows.

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