

IN THE SUPREME COURT OF FLORIDA

**Case No.: SC26 - _____
L.T. Case Nos. 1D2026-1539, 2026-CA-914**

Equal Ground Education Fund, Inc., et al.,

Petitioners,

v.

**Cord Byrd, in his official capacity as Florida Secretary of State,
the Florida House of Representatives,
and the Florida Senate,**

Respondents.

**APPENDIX OF EMERGENCY PETITION
FOR CONSTITUTIONAL WRIT
Volume 6**

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admission forthcoming*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 4, 2026 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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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY

Equal Ground Education Fund, *et al.*,

Plaintiffs,

Case No. 2026 CA 000914

v.

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

Defendants.

**SECRETARY OF STATE'S RESPONSE IN OPPOSITION TO
MOTION FOR TEMPORARY INJUNCTION**

This Court should deny Plaintiffs' motion for temporary injunction. The problems with it are fourfold: (1) such injunctions aren't available in declaratory judgment actions like this one; (2) the kind of prohibitory *and* mandatory relief that Plaintiffs seek is exceedingly rare and inappropriate here; (3) Plaintiffs are unlikely to succeed on the merits; and (4) the changes Plaintiffs seek this close to an election are highly disfavored because of their potential to cause confusion and chances for errors. Compounding problems, as to the merits argument, Plaintiffs haven't met the fact-specific test for showing that the State has run afoul of the prohibitions on partisan gerrymandering. Nor have they shown that the State has run afoul of the preferences for compactness and adherence to political and geographic boundaries. And even if they could establish a violation of the prohibitions and preferences in Article III, § 20, the State is under no obligation to adhere to this provision when a cornerstone of its tiered architecture is invalid under the U.S. Constitution's Equal Protection Clause.

Background

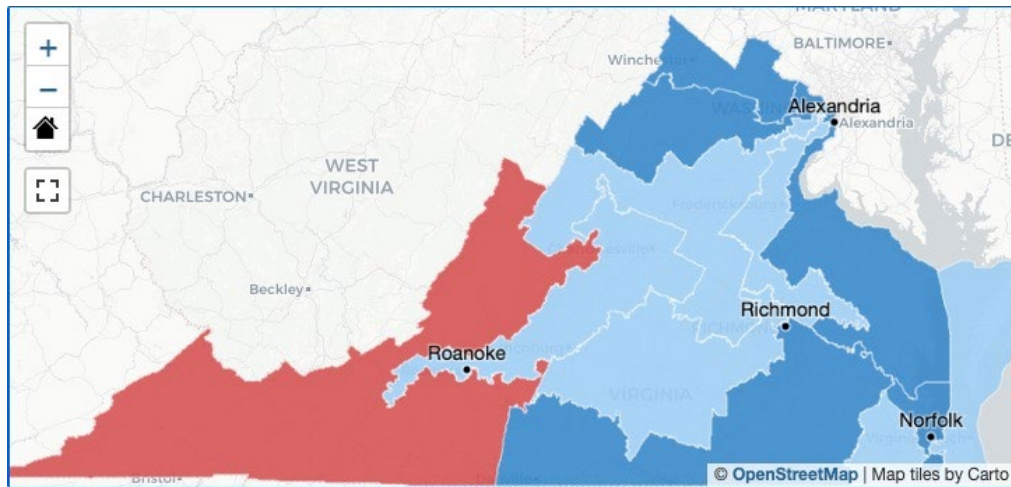
On April 29, 2026, the Florida Legislature passed a bill creating a new congressional redistricting plan. On May 4, 2026, the Governor signed that bill into law. Plaintiffs filed their complaint the same day. They moved for a temporary injunction on May 6, 2026.

In their motion, Plaintiffs provide reams of material but scant evidence to support the extraordinary relief they seek. The claim of partisan favoritism is tethered only to maps showing the district lines overlayed onto the results of a few elections, hearsay from their supposed experts, thoughts about tweets, their perspective on Fox News coverage, and a single factual representation from the Governor’s map drawer. *See* Mot. at 7-11. The mapmaker’s statement was that he used “the entire suite of redistricting criteria that are available to other states” “including partisan data.” Mot. at 10 (quoting legislative transcript). Missing from Plaintiffs’ facts is anything suggesting that the legislature—a separate branch of government—harbored an improper intent. Also missing is evidence of the kind of third-party influence on the redistricting process that proved dispositive after the 2010 decennial census. Though that was a *post-trial* finding. *See, e.g., League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 262 (Fla. 2015) (“*Apportionment VIII*”); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 374 (Fla. 2015) (“*Apportionment VII*”).

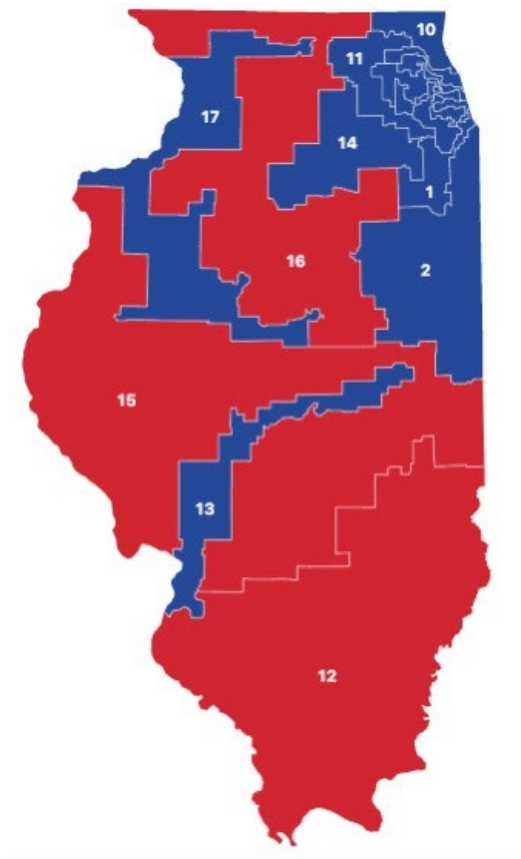
When it comes to compactness and boundary scores, these are relative concepts. There is no brightline beyond which a map goes from being compact to uncompact and no precise boundary score that serves as a cutoff for compliance; there are only comparisons. *See generally* **Exhibit 2** (Dr. Trende Report) at 13-18 (discussing compactness). And, when judged against the 2022 map—which was tested in the state and federal courts—the two maps are comparable, as Mr. Poreda told the legislature. **Exhibit 8** (Senate Rules Committee Transcript) at 11; *see also* Map & Statistics Package, https://www.flsenate.gov/PublishedContent/Session/Congressional/11x17_mapandstats_EOGPC_RP2026.pdf (last visited May 13, 2026) (providing statistics for the 2026 plan).

Finally, on its face, Florida’s map lacks the telltale signs of a partisan gerrymander. That’s unlike Virginia’s recently approved (and later enjoined) congressional plan where one part of the map (northern Virginia) looms over the rest with partisan thunder bolts clapping down onto the rest of the state. Nor is it like Illinois’ map with the Chicago area split into as many districts as possible to favor

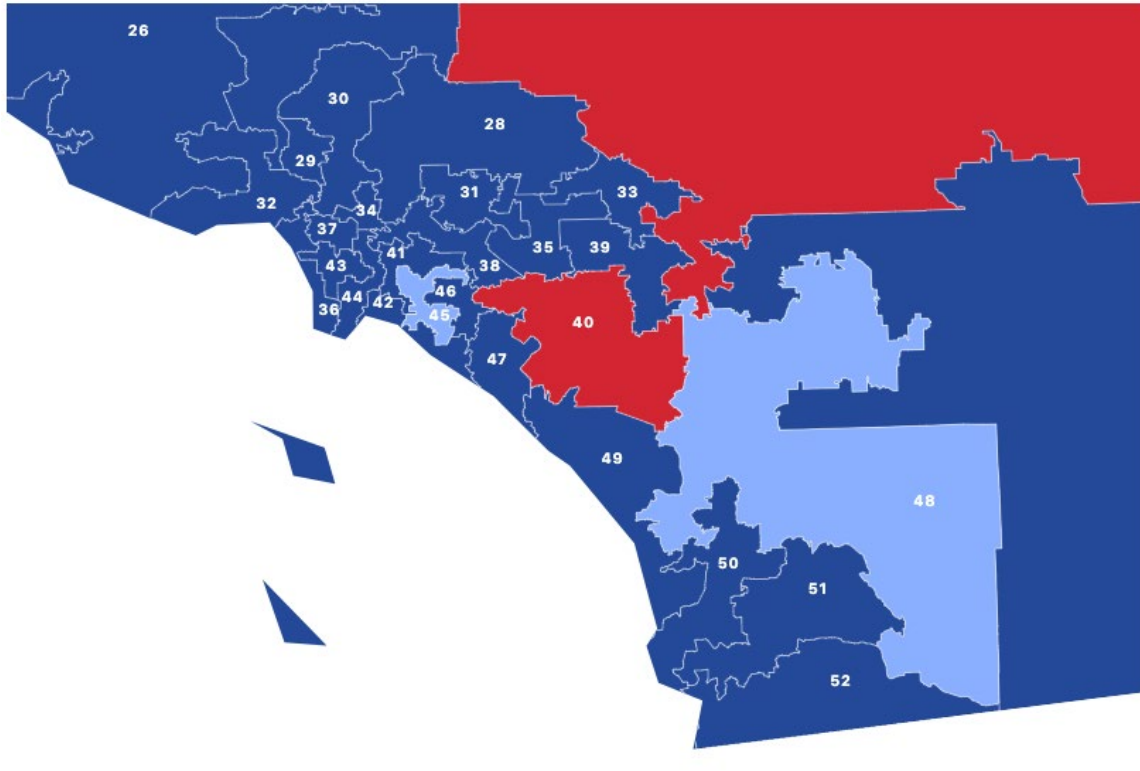
one political party. Or the California plan with large urban areas like Los Angeles split up like strands of blue spaghetti.



(Virginia) <https://www.vpap.org/redistricting/2026>



(Illinois) <https://www.270towin.com/2026-house-election/states/illinois>



(Los Angeles Zoomed In) <https://www.270towin.com/2026-house-election/states/california>

The Secretary disputes that the 2026 congressional plan is “more partisan than any plan enacted in any state in the past fifty years,” as Plaintiffs claim through their expert analysis. Mot. at 26; *see also* Mot. at 31. With additional time, the Secretary hopes to prove this statement to be false.

Argument

I. **No *temporary* injunction is available in a declaratory judgment action such as this; there needs to be a trial before Plaintiffs can get the relief they seek.**

Plaintiffs seek to invalidate a map properly passed by the legislature and signed into law by the Governor. That is no small feat given that the redistricting plan, “like any legislation, is entitled to a presumption of validity.” *Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec’y, Fla. Dep’t of State*, 415 So. 3d 180, 197 (Fla. 2025) (“*BVM IP*”). But even more brazen is Plaintiffs’ attempt to secure *preliminary* relief while the case is litigated. The First District recently told this Court that it can’t temporarily enjoin and then replace congressional plans enacted by the Florida Legislature and signed into law by

the Governor. *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070 (Fla. 1st DCA 2022), *writ denied*, 340 So. 3d 475 (Fla. 2022) (“*BVMI*”). That case concerned the State’s 2022 plan. “Because there ha[d] been no trial and no final adjudication,” this Court “could not reach whether recently enacted Senate Bill 2-C (“SB 2-C”) comports with Article III, section 20, of the Florida Constitution.” *Id.* at 1073.

More specifically, the First District explained in *BVMI* that the “unique nature of a declaratory judgment” makes it so the declaration itself “*is the final relief.*” *Id.* at 1077. “There [is] nothing to remedy beforehand.” *Id.* That’s because “[t]he nature of a declaratory judgment is distinctive in that it ‘stands by itself; that is, no executory process follows as of course. In other words, *such a judgment does not involve executory or coercive relief.*’” *Id.* (citing *Watson v. Claughton*, 34 So. 2d 243, 245 (Fla. 1948)). Thus, “chapter 86 provides no authority for the circuit court to grant any affirmative, remedial relief,” *id.* at 1078, prior to a merits decision after trial on a declaratory action. Only after a merits decision can supplemental measures, including injunctions, “become available as needed to effectuate the judgment.” *Id.* at 1082. For good measure, the First District noted that “[a] temporary injunction is not an adjudication; it does not decide the merits.” *Id.* at 1078. This means that “a temporary injunction cannot be used in a declaratory judgment action as an interim remedial tool.” *Id.* at 1082. “The declaratory judgment must come first as a final order.” *Id.*

The First District went on to put its decision into “the proper context” by going “way back to 2012.” *Id.* at 1079. There, as here, litigation began shortly after the Florida Legislature enacted its plan. *Id.* But it took “years of litigation” for another plan to be put in place for the 2016 congressional election, *id.*; “not one, but two congressional elections went forward under a redistricting plan that was challenged,” and was later found to violate the Florida Constitution, *id.* at 1083. There was no rush to impose a *temporary* injunction that granted *final* relief without deciding the merits after a trial.

Id.; see also *City of Newberry v. Alachua County*, 366 So. 3d 1176, 1179 (Fla. 1st DCA 2023) (“[C]hapter 86 requires a plaintiff to obtain declaratory relief first, *before* the plaintiff seeks an injunction.”).

The setup for this case is like *BVM I*. Plaintiffs seek to temporarily enjoin a new congressional plan. They wish to do so through a declaratory judgment action. They wish to do so without an adjudication on the merits. And they wish to do so on the cusp of the next election, with the Florida Department of State accepting qualifying materials for congressional candidates beginning May 25, 2026. § 99.061(8), Fla. Stat.; see also **Exhibit 3** (Matthews Declaration). That’s improper. Such relief is unavailable under binding First District precedent.

This Court came to a similar conclusion in *City of Destin v. The Honorable J. Alex Kelly, Secretary of Commerce*, No. 2025-CA-1876, Doc.42 (Fla. 2d Cir. Ct. Dec. 29, 2025) (Dempsey, J.). **Exhibit 4**. There, the plaintiffs filed an action challenging the validity and constitutionality of Senate Bill 180, Ch. 2025-190, Laws of Florida, which concerned limitations on local governments in emergencies, and sought to enjoin it through a temporary injunction filed in a declaratory judgment case. This Court denied that motion, relying in part on *BVM I*. **Exhibit 4** at 2 (quoting *BVM I*, 339 So. 3d at 1077) (finding that “*Black Voters Matter*” “precludes the issuance of the requested preliminary injunction here”); see also *State v. Planned Parenthood of Sw. & Cent. Fla.*, 342 So. 3d 863, 868 (Fla. 1st DCA 2022) (similar).

Nor can Plaintiffs defend their request for a temporary injunction on the theory that they merely seek to “preserve the status quo.” Mot. at 1. As explained by the Governor in his letter to the legislature, the 2022 map—the status quo that Plaintiffs ask to maintain—was a “compromise” map that, although preferable to prior maps, suffers from racial defects. **Exhibit 5** (Axelman Letter) at 2. “[R]eturning to the status quo” would therefore be “infeasib[le].” *BVM I*, 339 So. 3d at 1080; see also *id.* at 1081 (noting that courts should consider the “unavailability of the status quo” before entering interim injunctive relief). In particular, “Congressional District 20 in the southeast has an odd shape

with two claws that track the black population,” “arguably a telltale sign of racial predominance.” **Exhibit 5** at 2. And the “legislative record shows” that several other districts in the 2022 map “were drawn with the Hispanic voting age population in mind to comply with the race-based requirements of the FDA.” **Exhibit 5** at 2. Both the Florida and U.S. Supreme Courts have since made clear that this sort of reliance on race is impermissible and fails strict scrutiny in all but the most extraordinary cases. *See BVM II*, 415 So. 3d at 197; *Louisiana v. Callais*, No. 24-109, slip op. at 33 (U.S. Apr. 29, 2026). The 2022 map is not one of those extraordinary cases—no one has identified any ongoing, concrete racial discrimination that its race-based considerations were drawn to rectify. *See Callais*, No. 24-109, slip op. at 30-31. And it’s Plaintiffs burden to show that the 2022 congressional plan remains workable. *BVM II*, 415 So. 3d at 197-98.

Bottomline: *BVM I* precludes this Court from issuing a temporary injunction. This Court should thus decline to issue one just as it did in *City of Destin*.

II. The prohibitory and mandatory relief being sought is inappropriate.

Even if this Court could issue a temporary injunction in a declaratory judgment case, such an injunction would still be inappropriate. Plaintiffs seek to *prohibit* the use of the 2026 congressional plan and *mandate* the use of another congressional plan before a trial on the merits. *See* Mot. at 1 (arguing for “the court-approved map that governed Florida’s last two congressional elections”); *id.* at 55 (similar). It’s this second part that creates an additional problem for Plaintiffs. “[I]njunctions which compel or mandate affirmative action by a party are disfavored.” *Bull Motors, LLC v. Brown*, 152 So. 3d 32, 35 (Fla. 3d DCA 2014). Courts should be “even more reluctant to issue [mandatory injunctions] than prohibitory ones.” *Grant v. GHG014, LLC*, 65 So. 3d 1066, 1067 (Fla. 4th DCA 2010). Mandatory injunctions are “seldom granted,” *Groff G.M.C. Trucks, Inc. v. Driggers*, 101 So. 2d 58, 60 (Fla. 1st DCA 1958), and only in “rare cases,” *Kline v. State Beverage Dep’t of Fla.*, 77 So. 2d 872, 874 (Fla. 1955), where

there's a clear legal right "free from reasonable doubt," *Spradley v. Old Harmony Baptist Church*, 721 So. 2d 735, 737 (Fla. 1st DCA 1998).

This is not that rare case. Plaintiffs' partisanship claim turns on a fact-specific, burden-shifting, totality-of-circumstances test for partisan intent under Article III, § 20(a) of the Florida Constitution. *Infra*. Claims related to compactness and boundary adherence have no clear-cut answers, either. *Infra*. That's because compactness and boundary analysis are relative concepts—they turn on comparisons. *Infra*. All of that's *before* this Court even considers whether adherence to Article III, § 20 is required when a centerpiece of that provision mandates express racial classifications in violation of the Federal Constitution's guarantee of equal protection. *Infra*.

In short, as further detailed below, Plaintiffs can't establish a clear legal right free from reasonable doubt. It follows that Plaintiffs aren't entitled to a judicially disfavored *mandatory* injunction directing the State to run an election under a map other than the one approved and enacted by the political branches. Rather, this case fits neatly within the "general rule that a mandatory injunction can only be properly granted on a final hearing"—a trial. *Wilson v. Sandstrom*, 317 So. 2d 732, 736 (Fla. 1975); *see also Gulf Power Co. v. Glass*, 355 So. 2d 147, 148 (Fla. 1st DCA 1978). That hasn't happened.

III. Plaintiffs are unlikely to succeed on the merits and a temporary injunction isn't in the public interest.

If Plaintiffs get past the initial hurdles to a temporary injunction—and they shouldn't—they must still (1) demonstrate "a substantial likelihood of success on the merits," (2) show "lack of an adequate remedy at law," (3) prove "irreparable harm," and (4) make plain that the injunction is in the "public interest." *Reform Party of Fla. v. Black*, 885 So. 2d 303, 305 (Fla. 2004). Plaintiffs aren't entitled to this "extraordinary remedy" because they stumble at the first and fourth steps, likelihood for success on the merits and the public interest. *City of Jacksonville v. Naegele Outdoor Advert. Co.*, 634 So. 2d 750, 752 (Fla. 1st DCA 1994).

A. Plaintiffs are unlikely to succeed on the merits.

Plaintiffs claim that Florida’s 2026 congressional plan violates several provisions of Article III, § 20 of the Florida Constitution. Article III, § 20 erects two tiers of standards for congressional boundaries and instructions on how the two tiers should interact:

(a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn 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; and districts shall consist of contiguous territory.

(b) Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(c) The order in which the standards within subsections (a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

Plaintiffs’ main merits argument centers on an alleged violation of Article III, § 20’s prohibition on partisan intent—the Tier I argument. Mot. at 28-37. They also contend that Florida’s 2026 congressional plan “violates the Florida Constitution’s Tier II requirements,” namely those concerning compactness and adherence to geographic and political boundaries. Mot. at 38-46. Plaintiffs recognize, of course, that their Tier I and Tier II arguments overlap. Mot. at 30-35. Yet they still say that the race-based provisions of Article III, § 20—which violate the Federal Constitution’s Fourteenth Amendment—are severable from the other provisions. Mot. at 46-50. But, at this early stage of the proceedings, Plaintiffs can’t establish improper partisan intent on the part of the executive or legislative branch. They can’t show a violation of the Tier II standards. Nor do they succeed in establishing that they are likely to prevail on the severability argument.

1. Plaintiffs can't meet the current test for improper partisan intent.

a. Among other things, Article III, § 20(a) provides that “[n]o apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party.” Challengers bear the heavy burden of overcoming the presumption of validity that attaches to every enacted plan when attempting to prove improper partisan intent. *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 606 (2012) (“*Apportionment P*”); see also *In re Senate Joint Resol. of Legis. Apportionment 2-B*, 89 So. 3d 872, 881 (Fla. 2012) (“*Apportionment II*”). The presumption is significant: It “serves to recognize the deference initially owed to legislative acts upon passage” and reflects the “fundamental doctrine of separation of powers” that places “the primary responsibility” of line-drawing on the political branches. *Apportionment I*, 83 So. 3d at 606. It persists until a court makes an affirmative finding that the plan was drawn with unconstitutional partisan intent. *Apportionment VII*, 172 So. 3d at 391-92. Only “[o]nce a tier-one violation of the constitutional intent standard is found” does the burden shift to the State “to justify its decisions, and no deference should [be] afforded to the Legislature’s decisions regarding the drawing of the districts.” *Id.* at 400.

Article III, § 20(a)’s use of the word “intent” is also significant. In this way, the Florida Constitution “does not require the affirmative creation of a fair plan”—one whose partisan *effect* is the proportional distribution of seats to the two major parties. *Apportionment I*, 83 So. 3d at 643. The Florida Supreme Court has even said that the State doesn’t need to “compensate for a natural packing effect of urban Democrats in order to create a ‘fair’ plan,” or “alter the plan to bring it more in balance with the composition of voters statewide.” *Id.*

Proving intent is then an inherently fact-specific task. It’s a difficult task as well. Plaintiffs must prove the collective intent of a legislative body from a mix of statements, processes, and outcomes. *Apportionment VII*, 172 So. 3d at 376-78, 388-89. The facts considered include the improper use of and access to “political data,” *Apportionment I*, 83 So. 3d at 619; the “effects of the plan,” though effect

isn't sufficient by itself, *id.* at 617; the “shape of district lines,” *id.*; a “disregard for [Tier II] principles,” *id.* at 618; an assessment of alternative plans, *id.* at 611; the “specific sequence of events leading up to the challenged decision,” *Apportionment VII*, 172 So. 3d at 389; and “[d]epartures from the normal procedural sequence,” *id.* This list is not exhaustive, however. The Florida Supreme Court’s test relies on a totality-of-circumstances framework borrowed from the federal courts. *Id.* at 388-89 (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977)).

The only previous instance of Article III, § 20(a) being used to invalidate a congressional plan followed a twelve-day trial. *Apportionment VII*, 172 So. 3d at 376. Among other things, the adjudicated facts included the following:

- The existence of a parallel redistricting process separate from the legislature’s public-facing process, *id.* at 376-77;
- The legislature’s destruction of “almost all” emails and “other documentation relating to redistricting,” *id.* at 392;
- Evidence of meetings between political consultants and legislative leaders early in the redistricting process, *id.*;
- Continued involvement and influence of political consultants throughout the legislative process, *id.*; and
- The use of an admittedly partisan 2002 congressional plan as the starting point for the redistricting, *id.* at 371.

Importantly, none of these facts are present in Plaintiffs’ challenge to the 2026 congressional plan.

There’s another complication when it comes to partisan intent in the drawing of a congressional plan. The Governor can, if he chooses, become involved in the congressional redistricting process. If that happens, Plaintiffs must bear the burden of proving improper partisan intent on the part of the Governor *and* the Florida Legislature. The allegedly improper intent of one branch can’t be imputed to the other. The U.S. Supreme Court has explained that such a “‘cat’s paw’ theory has no application to legislative bodies.” *Brnovich v. DNC*, 594 U.S. 647, 689 (2021). The

executive and legislative branches are separate entities with different duties and functions and are accountable to different constituencies. “It is insulting to suggest that” state legislators “are mere dupes or tools” of another branch of government. *Id.* at 690.

b. Plaintiffs fall short of establishing partisan intent under the existing framework. The 2026 congressional plan comes to this Court with a presumption of correctness. That presumption is overcome only after this Court holds a trial and makes an affirmative finding that the plan is infected with improper partisan intent. *See Apportionment VII*, 172 So. 3d at 391-92. But there’s been no trial. There’s been no adjudicated finding of improper partisan intent. So, the presumption must stand.

Even if the presumption could be overcome without a trial, Plaintiffs haven’t overcome it here. Statements attributed to the President of the United States and legislators in Texas, North Carolina, and Missouri can’t overcome the presumption. Mot. at 7. They play no role in Florida’s redistricting process. Nor can the hearsay statement attributed to Senator Joe Gruters overcome the presumption. Mot. at 7. That’s because he never participated in any legislative hearing on the plan, and he never even voted on the plan. **Exhibit 6** (Senate Rules Committee Vote); **Exhibit 7** (Senate Floor Vote). Tweets from the handle “Team DeSantis” don’t speak for the Executive Office of the Governor and aren’t self-authenticating. *See generally* § 90.902, Fla. Stat. A statement from the Governor about Republicans now having a “1.5 million” voter registration advantage is a statement of fact that has little effect on the intent inquiry. Mot. at 9. Mr. Poreda’s statement that he looked at “the entire suite of redistricting criteria,” “including partisan data,” doesn’t move the ball as much as Plaintiffs need. Mot. at 10. That’s because no legislator asked Mr. Poreda what precisely that data was—voter registration, turnout data, all available election results, or merely the results of one recent election. Nor did anyone ask Mr. Poreda how he used that partisan data—whether it affected *any* of the shapes of *any* of the districts. And Mr. Poreda stated emphatically on the record that he did not have partisan intent. **Exhibit 8** (Senate Rules Committee Transcript). The Senate’s sponsor later relied

on Mr. Poreda’s statement in his floor speech. **Exhibit 9** (Senate Floor Debate Transcript) at 8 (“The Governor’s representatives indicated yesterday that they did not use partisan information in a way that was different from the usual fashion that redistricting is done and that functional analysis is done.”).

All that’s left are the expert reports from Drs. Rodden, Chen, and Warshaw. They provide analysis that the State’s experts (Drs. Trende and Voss) rebut. This Court has had no opportunity to hear from any of these experts, assess their methodology, or judge their credibility, so those reports cannot possibly justify preliminary relief at this stage of the litigation.

At the most basic level, Plaintiffs’ experts gripe that Democrats don’t have enough proportional representation. But that’s not enough to succeed in a partisan intent claim. After all, the Florida Constitution “does not require the affirmative creation of a fair plan” that must “compensate for a natural packing effect of urban Democrats” or bring the likely results “more in balance with the composition of voters statewide.” *Apportionment I*, 83 So. 3d at 643.

That’s not all. As Dr. Voss notes, Dr. Chen’s claims about partisanship suffer from several methodological problems. **Exhibit 1** (Dr. Voss Report). As an initial matter, Dr. Chen doesn’t try “to capture legislative intent directly.” **Exhibit 1** at 5. Rather, this is an inference being drawn from simulations in a state whose “political geography favors the Republican Party,” which Dr. Chen must concede. **Exhibit 1** at 5. Dr. Chen also fails to “systematically isolate the effect of political geography from the effect of the newly adopted lines,” creating a bias in his analysis. **Exhibit 1** at 5. He further collapses the requirement to utilize existing political and geographic boundaries into a “single consideration,” the preservation of county borders. **Exhibit 1** at 6. He then “selectively uses” the 2022 map in his analysis, using it for his county comparisons but *not* for compactness or boundary usage. **Exhibit 1** at 6. Nor does Dr. Chen assess whether any “previous number of county splits might have been imposed by an obsolete interpretation” of the Voting Rights Act. **Exhibit 1** at 6. The “overwhelming emphasis on counties” may also skew Dr. Chen’s simulations to favor the Democratic

Party. **Exhibit 1** at 6-7. Other problems include an unexplained floor for county splits, **Exhibit 1** at 7; possible errors in the number of splits, **Exhibit 1** at 7; misleading presentations of compactness numbers that, frankly, are not that different from the 2022 congressional plan, **Exhibit 1** at 7-8; unexplained assumptions about voting behavior at the Census block level “despite voting not being reported for those geographical areas,” **Exhibit 1** at 8; and the failure to provide “diagnostics for the simulations” so we can tell whether the 5,000 simulated maps are really any different from one another, **Exhibit 1** at 9. Other problems couldn’t be adequately studied given the rushed nature of these proceedings. **Exhibit 1** at 3-4.

Dr. Trende takes issue with the conclusions offered by Drs. Warshaw and Rodden. **Exhibit 2** (Dr. Trende Report). Dr. Warshaw uses a metric called “GEOMETRIC” in his analysis that, in Dr. Trende’s estimation, “appears to be both theoretically and operationally flawed,” **Exhibit 2** at 4; “has never been utilized before in litigation,” **Exhibit 2** at 4; fails to account for “any of the principles that might constrain parties in the real world,” **Exhibit 2** at 6, and just gets the question of partisan gerrymandering plain wrong in several known instances, **Exhibit 2** at 6-7. Dr. Warshaw also used an “efficiency gap” metric for partisanship, which looks at a party’s “excess” or “wasted” votes. **Exhibit 2** at 7-8. But this approach is riddled with flaws, **Exhibit 2** at 8-11, and it’s not a stable metric that tells us “whether something is or is not a gerrymander” in “future year[s],” **Exhibit 2** at 11. The “declination” metric has a history of misclassifying maps. **Exhibit 2** at 11. And Dr. Warshaw’s touting of the correlation between these various metrics doesn’t make sense to Dr. Trende. If the metrics are correlated, “what is the point of including them all?” **Exhibit 2** at 12. Dr. Trende also finds it surprising that Dr. Warshaw didn’t use other more common metrics, like the “mean-median score” or the “mean-median gap” that Dr. Warshaw employed in prior work, including prior work in Florida. **Exhibit 2** at 12-13.

As for Dr. Rodden, his attempt at showing the packing or cracking of Democratic voters is also flawed. “[W]hat Dr. Rodden seems to want is for Democrats in Tampa to be packed, and for Democrats in Miami to be cracked” without some baseline metric of why. **Exhibit 2** at 18. He wants cities to be kept whole. **Exhibit 2** at 19. But the Florida Constitution speaks in terms of all political and geographic boundaries *and* “cities in Florida are often non-compact and even non-contiguous.” **Exhibit 2** at 19. Dr. Rodden also reviews “the political performance of the 2015 plan, which was drawn with one fewer [congressional] district and uses population figures from 2010,” all of which tells us little about the 2026 congressional plan. **Exhibit 2** at 19. He faults the 2026 congressional plan for splitting Census Designated Places without telling us whether Florida respects or requires consideration of CDPs. **Exhibit 2** at 19. The color-coding on his maps misleads the reader into thinking that Republican areas are more Republican than they actually are. **Exhibit 2** at 19-20. The city splits in his report similarly mislead the reader by displaying only the cities in the region that are split, instead of including all the cities in a region which would “illustrate the complexity of following municipal boundaries to keep them whole.” **Exhibit 2** at 20. And some of the core-retention figures in his report are inaccurate. **Exhibit 2** at 20.

In sum, based on the material provided to date, Plaintiffs can’t establish partisan intent on the part of the Governor or the Florida Legislature.

2. Plaintiffs can’t establish that the 2026 plan fails the Tier II requirements.

a. The Tier II requirements also require Plaintiffs to overcome the presumption of correctness. Compactness requires a showing that the shape of the district is unusual. *Apportionment I*, 83 So. 3d at 634. “[F]inger-like extensions,” “narrow and bizarrely shaped tentacles,” and “hook-like shape[s]” are “constitutionally suspect and often indicative of racial and partisan gerrymandering.” *Id.* at 638. “[Q]uantitative geometric measures of compactness” from “commonly used redistricting software” are used as proxies for the eye-ball test. *Id.* at 635. Alternatives are considered for comparison. *See, e.g.,*

Apportionment VII, 172 So. 3d at 436. The story is much the same for adherence to geographic and political boundaries. Importantly, as Plaintiffs note in their papers, the Tier II requirements are most relevant when used as a “yardstick by which to evaluate” whether a district can be drawn with improper partisan intent. *Apportionment I*, 83 So. 3d at 636. In this way, the Tier II requirements overlap with the Tier I analysis and vice versa. So, again, proving a violation requires well-developed facts.

b. Here, as Mr. Poreda testified before the Florida Legislature, the overall compactness of the 2026 congressional plan is consistent with the 2022 congressional plan that it replaced. **Exhibit 8** (Senate Rules Committee Transcript) at 11. The geographic and political boundary scores are much the same, too. **Exhibit 8** at 11-12; *see also* Map & Statistics Package, https://www.flsenate.gov/PublishedContent/Session/Congressional/11x17_mapandstats_EOGPC_RP2026.pdf (last visited May 13, 2026) (providing statistics for the 2026 plan); **Exhibit 1** (Dr. Voss Report) at 7-8 (discussing compactness). For Plaintiffs to rebut these statements made on the legislative record, they must explain why any differences on a plan-wide basis or on a district-by-district basis are meaningful from a practical perspective. Dr. Chen’s statistical sleight of hand doesn’t get the job done for the reasons that Dr. Voss explains. **Exhibit 1** at 7-8.

3. Article III, § 20 is unconstitutional and not severable.

a. If Plaintiffs can show that they are entitled to a preliminary injunction in a declaratory judgment case such as this *and* that a prohibitory and mandatory injunction is appropriate *and* that they have enough facts to satisfy the test for partisan intent or failure to adhere to Tier II criteria, they still lose. That’s because Article III, § 20 is unconstitutional and inseverable.

b. Article III, § 20(a) makes express classifications based on race. It states that “districts shall not be drawn 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.” Art. III, § 20(a), Fla. Const. Article III, § 20(b) goes on to say that

these race-based provisions supersede traditional redistricting criteria, like compactness and use of political and geographic boundaries, whenever there are “conflicts.” Race is a Tier I consideration, per Article III, § 20. Traditional redistricting criteria are Tier II considerations.

By its plain language, Article III, § 20 thus directs the legislature to use racial data, assess the political behavior of racial groups, determine whether racial minorities can elect candidates of their choice in specific districts, and draw (or refrain from drawing) district lines to protect the electoral prospects of people divvied up by their race. The Florida Supreme Court recognized as much in its earliest case interpreting the race-based provisions of Article III, § 20. *Apportionment I*, 83 So. 3d at 619, 625-26 (discussing the functional analyses necessary under Article III, § 20).

To put it another way, Article III, § 20 isn’t a race-neutral provision susceptible to both constitutional and unconstitutional applications. Rather, it’s a provision that, in every “set of circumstances,” requires the legislature to sort voters by race and make legislative decisions based on racial classifications. *United States v. Salerno*, 481 U.S. 739, 745 (1987). The next question then is whether this race-based sorting is constitutional. It isn’t.

Sorting people based on race is highly suspect. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 208 (2023). It triggers the strictest of constitutional scrutiny. *Id.* at 206-07. To satisfy this strictest of scrutiny, there must be a compelling reason justifying the use of race, and a narrowly tailored application of the race-based solution to solve the race-based problem. *Id.*; *see also Callais*, No. 24-109, slip op. at 33 (“Louisiana’s enactment of SB8 triggered strict scrutiny because the State’s underlying goal was racial.”).

When it comes to redistricting, only “[c]ompliance with § 2 [of the Voting Rights Act], *as properly construed*, can provide such a [compelling] reason.” *Id.* at 2-3. That section of the Voting Rights Act was enacted through Congress’ exclusive authority to enforce the Fifteenth Amendment to the

U.S. Constitution. *Id.* at 4. And it was supported by a detailed record of race-based problems. *Id.* at 3 (citing *South Carolina v. Katzenbach*, 383 U.S. 301, 309-15 (1966)).

To state the obvious, Article III, § 20 of the Florida Constitution is nothing like the Voting Rights Act properly construed. In *BVM II*, the Florida Supreme Court held just that. 415 So. 3d at 197. *BVM II* said that Florida’s race-based provisions fail to provide the compelling reason necessary to justify the use of race because Article III, § 20 “is untethered to documented findings of intentional discrimination, past or present.” *Id.* “[U]nlike the Voting Rights Act,” Article III, § 20 also “lacks features tying its continued existence to the persistence of intentional discrimination in the future.” *Id.* It was adopted through a citizen-initiative process without any “voluminous record” showing a race-based problem that needed a race-based solution and without Congress’ exclusive enforcement authority under section two of the Fifteenth Amendment. *Id.* It was also modeled after a now improper interpretation of the Voting Rights Act. *See Callais*, No. 24-109, slip op. at 17-35. Thus, complying with Article III, § 20 can’t satisfy strict scrutiny. *See BVM II*, 415 So. 3d at 197.

To recap: Application of Article III, § 20’s race-based provisions necessarily requires racial classifications. These classifications, particularly after *BVM II*, can’t provide the compelling interest that strict scrutiny demands. 415 So. 3d at 197-98. The U.S. Supreme Court has made plain that race-based government action is inherently odious, even when undertaken for a remedial reason. *Students for Fair Admissions*, 600 U.S. at 206-08. And so, Article III, § 20’s race-based provisions violate the guarantees of equal protection under the U.S. Constitution’s Fourteenth Amendment—the superior and supreme law of the land. *See id.*; *Callais*, No. 24-109, slip op. at 18.

c. Because Article III, § 20’s race-based provisions are unconstitutional, the next question becomes whether these provisions are severable from the rest of this section. They are not.

First, severability plays a role in the analysis because it “implicates separation of powers.” *Gaymon v. State*, 288 So. 3d 1087, 1092 (Fla. 2020). Florida’s earliest case concerning the issue

emphasizes the need to prevent “trespass by the judicial department upon the legislative domain.” *State v. Deal*, 4 So. 899, 907 (1888). Done properly, severability aims to effectuate legislative intent without rewriting the law. So “a court *should hesitate* before pronouncing any of its parts to have the force of law” “unless it is *entirely clear* that the spurious parts are such as could not have influenced [the legislature] to approve the other parts, or, in other words, unless the latter are entirely severable, or distinct, and independent from the former.” *Id.* (emphasis added).

The danger is apparent: Allowing a law to stumble along after a court has excised some of its component parts undermines the entire legislative scheme. The danger becomes more acute when confronting language—as here—adopted by citizen initiative.

Article XI, § 3 of the Florida Constitution imposes a strict single-subject requirement for citizen initiatives. It provides that citizen initiatives “shall embrace but *one subject* and matter *directly* connected therewith.” Art. XI, § 3, Fla. Const. (emphasis added). That’s stronger than the connection required for legislative enactments, because the legislative single-subject provision requires only that a “law shall embrace but one subject and matter *properly* connected therewith.” Art. III, § 6, Fla. Const. (emphasis added).

When a measure is put to the voters, therefore, its various parts must form one cohesive whole. Absent some overwhelmingly clear textual evidence—like a severability provision in the initiative’s text presented to the voters—the initiative must rise or fall as a single, unified whole.

Decisions from other states with citizen-initiative provisions reinforce the principle. In *Thom v. Barnett*, for example, the South Dakota Supreme Court struck down a marijuana-legalization initiative because it combined recreational marijuana, medical marijuana, and hemp into a single proposal, and then refused to sever portions of the initiative. 967 N.W.2d 261, 281-83 (S.D. 2021). The South Dakota Supreme Court cited other state courts that similarly declined to sever portions of citizen initiatives based on an anti-logrolling rationale—disincentivizing the joining together of

unpopular measures with popular measures to get them passed. *Id.* at 282 (citing *Mont. Ass’n of Cnty. v. State*, 404 P.3d 733, 747 (Mont. 2017); *Armatta v. Kitzhaber*, 959 P.2d 49, 68 (Or. 1998)).

Second, putting together the animating purpose of severability with the constitutional distinctions between citizen initiatives and legislative enactments means this: At the very least, there must be some clear intent in the citizen initiative to let parts of a stricken initiative stand. In *Ray v. Mortham*, the Florida Supreme Court found that clear intent in an express severability clause that was put before the voters as part of an initiative concerning legislative term limits for federal and state officeholders. 742 So. 2d 1276, 1283 (Fla. 1999).

When presented to the voters, Article III, § 20 included *no* severability clause. **Exhibit 10** (Certified Copy of Amendment Text). The ballot summary also sold the initiative as a single package to voters. **Exhibit 11** (Certified Copy of Ballot Title and Summary). Proponents of the initiative told the Florida Supreme Court that the initiative had “a single concept, designed to do one goal,” that “each of the [initiative’s] standards serve[d] that same singular purpose,” and so all of Article III, § 20 had a “cohesive unity.” SC08-986, Oral Arguments, Florida Supreme Court Gavel to Gavel Video Portal | Case SC08-986, SC08-1163, SC08-1149, SC08-1165 (wfsu.org/gavel2gavel/), at 3:10-3:40 (last visited May 10, 2026). And the Florida Supreme Court’s 2009 advisory opinion approving the amendment for ballot placement embraced the argument. It said that the initiative’s various components “possess a natural relation and connection as component parts or aspects of a single dominant plan or scheme.” *Advisory Op. re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 175, 181-82 (Fla. 2010) (quotation removed). Put differently, Article III, § 20 has a “single unified purpose” of which the race-based provisions were integral component parts. *Id.* at 183. Article III, § 20 is thus inseverable.

Some, like Plaintiffs, seemingly read *Ray v. Mortham* as allowing for severability with or without a severability clause *and* despite the Florida Supreme Court’s earlier conclusion that the fair districts

initiative serves a single unified purpose. *See* Mot. at 47-50. That gets things backwards. Even with a severability clause, severing an initiative remains in tension with the single-subject requirement. As Justice Lewis explained in *Ray v. Mortham*, “it should be beyond debate that any initiative petition containing a severability clause telegraphs the message that even its proponents realize it does not contain a ‘single,’ discrete subject,” though “[a]nything that is divisible is not, by definition, ‘single.’” 742 So. 2d at 1289 (Lewis, J., concurring in result). The only way to resolve the tension, as the Florida Supreme Court did in *Ray v. Mortham*, is to lean on the severability clause presented to the voters as “persuasive of the fact the framers intended severability to save the amendment in case portions of it were declared invalid.” *Id.* at 1283 (majority opinion). In this way, an express severability clause presented to the voters becomes essential to squaring the analysis with Article XI, § 3’s single-subject requirement.

It’s wrong then to read *Ray v. Mortham* as allowing for severability absent an express severability clause. The four-part severability test borrowed from statutory severability cases is triggered only if there’s an express severability provision presented to the voters. Any other reading would require a reconsideration of *Ray v. Mortham* to square it with Article XI, § 3’s single-subject requirement.

Third, even if the *statutory* severability text from *Ray v. Mortham* is triggered, that text confirms that the race-based provisions in Article III, § 20 aren’t severable. That “test” says:

When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (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.

742 So. 2d at 1280-81 (quoting *Cramp v. Bd. of Pub. Instruction*, 137 So. 2d 828, 830 (Fla. 1962)).

The first and fourth parts of the test focus on structure and function. Subsection (a) in Article III, § 20 includes both the race-based protections and partisanship-based prohibitions. Subsection (b)

concerns traditional redistricting criteria, namely equal population, compactness, and adherence to existing political and geographic boundaries. Subsection (b) also creates the tiered scheme in Article III, § 20 by making subsection (a) Tier I and subsection (b) Tier II. There's then an interlocking structural connection between the two subsections. Subsection (c) reinforces the structure by explaining that there is no “priority of one standard over the other within that subsection.”

Indeed, the Florida Supreme Court's totality-of-circumstances test for Tier I violations makes the structural and functional connection plainer still. That test looks at the “extent to which the Legislature complies with the sum of Florida's traditional redistricting principles”—the Tier II standards—“as an objective indicator” of Tier I problems. *Apportionment I*, 83 So. 3d at 639; *see also* Mot. at 34-35.

Similar structural and functional connectivity was a reason for the U.S. Supreme Court's refusal to sever the constitutional from unconstitutional parts of the Professional and Amateur Sports Protection Act in *Murphy v. NCAA*, 584 U.S. 453 (2018). There, as here, severability wasn't an option where provisions were “obviously meant to work together” and “were meant to be deployed in tandem” to accomplish a singular purpose. *Id.* at 483-84. The singular purpose in *Murphy* was preventing legalized sports gambling. *Id.* And, as the Florida Supreme Court said in 2009, Article III, § 20 serves the “single unified purpose of establishing standards by which legislative and congressional districts are to be drawn.” *Advisory Op. re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d at 183.

Notably, the U.S. Supreme Court's recent decision in *Callais* further recognized the continuing interplay between race-based remedial provisions and partisanship, as well. “[C]urrent political conditions” and “current data” remain essential to assessing whether there's a violation of the Voting Rights Act. No. 24-109, slip op. at 31. So, focusing on the first and fourth parts of the test from *Ray v. Mortham*, it's clear that the various components of Article III, § 20 were both structured and, in fact, function as one cohesive whole. *Cf. Emerson v. Hillsborough County*, 312 So. 3d 451, 460-61 (Fla. 2021)

(explaining that the “dual purpose[s]” of a statute could not “reasonably be divorced from” one another such that the provisions were functionally dependent and inseverable).

The second and third parts of *Ray v. Mortham*’s severability test focus on intent, i.e., whether the citizens would have approved Article III, § 20 without its race-based provisions. As addressed in the single-subject discussion above, that’s highly unlikely given the proposed text provided to voters *without* a severability provision, the ballot summary that discussed the amendment as having one singular goal, representations to the Florida Supreme Court, and the Florida Supreme Court’s own decision in 2009.

The text reinforces the intent point. Subsection (c) states that “[t]he order in which the standards within subsections (a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.” The text thus tells us that the race-based provisions and the partisanship-related provisions and the remainder of subsection (a) are equally important—they are a packaged deal. Given this text, it’s difficult to conclude that voters would have intended to vote for one but not the other. That wasn’t the deal put before them.

Next, consider some of the additional context. The NAACP’s endorsement of what became Article III, § 20 turned on the proposal being a packaged deal. **Exhibit 12** (NAACP Endorsement in Preclearance Package). That endorsement said that the “main purpose” of the initiative was to “stop the abusive practice” of “gerrymandering,” but it “[a]bsolutely [would] not” “lessen the ability of Florida’s black voters to elect candidates of their choice.” **Exhibit 12** at 2. The NAACP supported the Tier II standards—compactness and adherence to political and geographic boundaries—only because these “problematic standards would *not* come into play” “to prevent the drawing of non-compact black majority districts, and districts such as those represented by Congresswoman Brown and Congressman Hastings would remain protected.” **Exhibit 12** at 3.

The sponsors of Article III, § 20, through Ellen Freidin, also testified before the Florida Legislature on February 11, 2010, where they doubled down on the packaged nature of the proposal. **Exhibit 13** (Freidin Testimony). She gave “an emphatic no” to the question of whether the initiative would “interfere with the rights of minority voters” and whether “minority voters [will] be worse off when the [initiative is] in the Constitution.” **Exhibit 13** at 17-18. She went on to explain that the initiative would “not in any way reduce the rights of minority voters.” **Exhibit 13** at 18. She touted how “leaders of minority communities support the Fair Districts’ amendments,” specifically referencing the NAACP who had “joined the Fair Districts’ team because they agree that in addition to reducing partisan gerrymandering, the amendments will add permanent protections for minority voters that are greater than what exist today in Florida or any other state.” **Exhibit 13** at 19. “Just look at the language,” she said in response to concerns about the proposal’s effect on minority rights. **Exhibit 13** at 19. The Tier II requirements like compactness and adherence to political and geographic boundaries would give way to the race-based provisions in Tier I. **Exhibit 13** at 21-22. So too would the prohibition on partisanship. **Exhibit 13** at 22.

Looking through the lens of the second and third parts of *Ray v. Mortham*’s severability test shows that the race-based provisions were an integral part of the package being sold to voters. Voters couldn’t have intended to vote for one part without the others.

In sum, Article III, § 20 was conceived, approved, and has always been applied as one cohesive whole. It can’t be severed now. And because it’s inseverable, and because its race-based provisions violate the federal guarantee of equal protection, Article III, § 20 doesn’t constrain redistricting.

d. “[T]he Legislature is of necessity, in the first instance, to be the judge of its own constitutional powers.” *BVM II*, 415 So. 3d at 197 (quoting *Cotten v. Leon Cnty. Comm’rs*, 6 Fla. 610, 616 (1856)). The legislation now at issue—the State’s 2026 congressional plan—reflects the considered judgment of the political branches of their superior obligations under federal law. That a litigant raises

constitutional questions isn't reason enough to rush to a resolution without trial and on a truncated record. Florida courts didn't do that after the enactment of the 2012 congressional map or the 2022 congressional map. There's no reason to do so now.

B. The public interest favors denial of a temporary injunction.

Finally, the public interest favors denial of a temporary injunction. Stability and predictability in election-related laws promote “[c]onfidence in the integrity of our electoral processes,” which “is essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Courts risk “voter confusion” and “incentive to remain away from the polls” when they order changes on the eve of elections, with the risk “increas[ing]” “[a]s an election draws closer.” *Id.* at 4-5.

Relying on this *Purcell* principle, the U.S. “Supreme Court has repeatedly” held that it’s improper to enjoin state election laws close to an election. *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1284 (11th Cir. 2020). And during the 2020 cycle, for example, every federal district court that tried to do so met the same fate: either the court of appeals granted a stay of the injunction, or the U.S. Supreme Court did. *See, e.g., RNC v. DNC*, 589 U.S. 423 (2020); *Tex. Democratic Party v. Abbott*, 961 F.3d 389 (5th Cir. 2020), *application to vacate stay denied*, 591 U.S. 1013; *Thompson v. DeWine*, 959 F.3d 804 (6th Cir. 2020), *application to vacate stay denied*, 2020 WL 3456705; *Merrill v. People First of Ala.*, 591 U.S. 1024 (2020); *Little v. Reclaim Idaho*, 591 U.S. 1060 (2020); *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081 (9th Cir. 2020); *Clarno v. People Not Politicians Or.*, 591 U.S. 1073 (2020); *Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020); *Andino v. Middleton*, 141 S. Ct. 9 (2020); *A. Philip Randolph Inst. of Ohio v. LaRose*, 831 F. App’x 188 (6th Cir. 2020); *Tex. All. for Retired Ams. v. Hughs*, 976 F.3d 564 (5th Cir. 2020); *Richardson v. Tex. Sec’y of State*, 978 F.3d 220 (5th Cir. 2020); *Priorities USA v. Nessel*, 978 F.3d 976 (6th Cir. 2020); *Common Cause Ind. v. Lawson*, 978 F.3d 1036 (7th Cir. 2020); *Curling v. Sec’y of State for*

Ga., 2020 WL 6301847 (11th Cir. 2020); *DNC v. Bostelmann*, 977 F.3d 639 (7th Cir. 2020), *application to vacate stay denied*, *DNC v. Wis. State Leg.*, 141 S. Ct. 28.

The Eleventh Circuit also used *Purcell* as one of two independent bases to stay a federal district court’s order enjoining Florida from implementing provisions of its election code during the 2022 redistricting. That court began by asking: “When is an election sufficiently ‘close at hand’ that the *Purcell* principle applies?” *League of Women Voters of Fla. v. Lee*, No. 22-11143, slip op. at 6 (11th Cir. May 6, 2022). It noted that the U.S. Supreme Court has relied on *Purcell* to preserve election laws where elections were as far as “about four months” away, and then concluded that “[w]hatever *Purcell*’s outer bounds,” the State of Florida “fits within them” because “the next statewide election [is] set to begin in less than four months” and the State’s election machinery is already moving. *Id.* at 7.

So too here. The primary election is three months away. The general election is six months away. Work is already underway to implement the 2026 congressional plan. Being this close to an election, therefore, makes any temporary injunctive relief inappropriate. *See, e.g., Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (staying the lower court’s redistricting order when the state’s primary election was four months away, and the general election was eleven months away); *see also id.* at 428 (Kagan, J., dissenting) (describing Texas’s election timeline).

Importantly, Florida’s statutory date for the beginning of candidate qualification is May 25, 2026, meaning the districts where these candidates are running should be set by then. § 99.061(8), Fla. Stat. With local election officials already implementing the new districts, *see Exhibit 3* (Matthews Declaration & Supervisors of Elections’ Letter), and candidates declaring for districts, a temporary injunction would be precisely the kind of disruption *Purcell* forbids. The confusion and administrative burden that would follow from a court’s interference with redistricting this close to an election would

undermine the orderly administration of Florida’s electoral process and the confidence of voters, candidates, and officials alike.

Purcell runs shoulder-to-shoulder with prior Florida cases. In its prior redistricting cases, the Florida Supreme Court waited until *after* a trial on the merits and *after* giving the Florida Legislature an opportunity to adopt a remedial congressional plan before imposing one of its own. *Apportionment VIII*, 179 So. 3d at 272. And the Florida Supreme Court did so *almost a year before* the next congressional election but still limited the time for filing motions for rehearing and clarification “[b]ecause of the extremely limited timeframe.” *Id.* at 298 (issued on December 2, 2015, for the 2016 congressional election); *see also Apportionment VII*, 172 So. 3d at 372 (“We emphasize the time-sensitive nature of these proceedings, with *candidate qualifying* for the 2016 congressional elections now less than a year away.” (emphasis added)).

Other Florida Supreme Court precedent neatly follows *Purcell*’s commonsense contour, as well. It recognizes that “[t]o interfere with the election process at [a] late date, even if a clear legal right were shown, would result in confusion and injuriously affect the rights of third persons.” *State ex rel. Haft v. Adams*, 238 So. 2d 843, 845 (Fla. 1970). This potential for interference provides reason enough to deny pre-election relief. *Id.*; *see also State ex rel. Walker v. Best*, 163 So. 696, 697 (Fla. 1935) (same).

Like the U.S. Supreme Court and the Florida Supreme Court, this Court should deny the request for a temporary injunction this close to the elections. The public interest demands as much.

Conclusion

For the reasons discussed above, the Court should deny Plaintiffs’ motion for temporary injunction. No temporary injunction is available in this declaratory judgment action. That’s especially true because Plaintiffs seek mandatory relief, as well. Plaintiffs are also unlikely to succeed on the merits. And the public interest strongly cautions against imposing any injunction at this time.

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**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.

**THE FLORIDA HOUSE OF REPRESENTATIVES' RESPONSE IN
OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION**

Defendant, the Florida House of Representatives (“House”), respectfully opposes Plaintiffs’ Motion for Temporary Injunction, dated May 6, 2026 (“Motion”). For the reasons set forth below, and in the House’s accompanying memorandum of law, this Court should deny Plaintiffs’ Motion.

Plaintiffs’ Motion should be denied because Plaintiffs have failed to demonstrate a substantial likelihood of success on the merits. Plaintiff seeks relief under article III, section 20 of the Florida Constitution, which governs congressional redistricting. However, the provisions of article III, section 20 that Plaintiffs seek to enforce are unconstitutional because they are interconnected with—and not severable from—related provisions that violate the Equal Protection Clause.

Article III, section 20's express racial classifications (the "Racial Provisions"), which permanently treat people of different races differently and confer constitutional rights on some people solely based on their race, are contrary to the United States Constitutional's promise of race neutrality in official action. *See Miller v. Johnson*, 515 U.S. 900, 904 (1995); *see also City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 518 (1989) (Kennedy, J., concurring) ("The moral imperative of racial neutrality is the driving force of the Equal Protection Clause."). All express racial classifications are inherently suspect, presumptively invalid, and subject to strict scrutiny, and their proponents must carry the extraordinarily onerous burden of proving that the race-based provisions are narrowly tailored to serve a compelling state interest. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007) (when the "government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny."); *Shaw v. Reno*, 509 U.S. 630, 642 (1993) ("Express racial classifications are immediately suspect . . ."); *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979) ("A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.").

Plaintiffs fail to carry the extraordinary burden of satisfying strict scrutiny. No compelling interest justifies the express racial classifications in article III, section 20. *Louisiana v. Callais*, --- S. Ct. ----, No. 24-109, 2026 WL 1153054, at *10 (U.S. Apr. 29, 2026) (recognizing only three compelling interests justifying racially discriminatory state action). The Racial Provisions are not a remedy for a specific, identified instance of past unlawful discrimination. *Id.* (explaining that the remediation of "past discrimination in a

particular industry or region” or “the effects of societal discrimination” is insufficient (quoting *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996))). The Racial Provisions do not serve a compelling state interest and violate the Equal Protection Clause’s guarantee of race neutrality.

Even if the Racial Provisions did serve a compelling interest, Plaintiffs cannot demonstrate that the Racial Provisions are “narrowly tailored—meaning ‘necessary’—to achieve that interest.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 207 (2023). To be narrowly tailored, express racial classifications employed for remedial ends must be time-limited. *Grutter v. Bollinger*, 539 U.S. 306, 341–42 (2003). The Racial Provisions have no temporal limitation. Their indefinite duration establishes, without more, that the Racial Provisions are not narrowly tailored.

Finally, the racial provisions are not severable from the remainder of article III, section 20. As explained more fully in the accompanying memorandum, Section 20’s hierarchical structure, as well as its grammar, renders severability inappropriate. “Severability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions.” *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999). “The severability analysis answers the question whether ‘the taint of an illegal provision has infected the entire enactment, requiring the whole unit to fail.’” *Id.* (quoting *Schmitt v. State*, 590 So. 2d 404, 414 (Fla. 1991)). The provisions of Section 20 are “functionally dependent” on each other and form an “interlocking plan” that cannot not “reasonably be

divorced” from one another. *Emerson v. Hillsborough County*, 312 So. 3d 451, 461 (Fla. 2021). Article III, section 20’s provisions are linguistically and structurally interconnected. Invalidation of one provision would disrupt the structure and function of the amendment in a manner inconsistent with voter expectations. This Court should find that severability of the unconstitutional Racial Provisions is inappropriate.

For these reasons, this Court should deny Plaintiffs’ Motion for Temporary Injunction.

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_____ /

**THE FLORIDA HOUSE OF REPRESENTATIVES'
MEMORANDUM OF LAW IN SUPPORT OF ITS RESPONSE
TO PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION**

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Defendant, the Florida House of Representatives, submits this memorandum of law in support of its response to Plaintiffs’ Motion for Temporary Injunction, dated May 6, 2026.

INTRODUCTION

The provisions of article III, section 20 that Plaintiffs seek to enforce are unenforceable because they are interconnected with—and not severable from—related provisions that are unconstitutional.

Specifically, article III, section 20 contains express racial classifications—permanent provisions that treat people of different races differently and confer constitutional rights on some people solely because of their race. These racial preferences purport to require the Legislature, whenever it redistricts, to design districts that voters of particular races will “control,” *Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec’y, Fla. Dep’t of State*, 415 So. 3d 180, 187 (Fla. 2025)—districts crafted to elect candidates preferred by the protected race and to defeat candidates preferred by unprotected races.

Express racial classifications in a state constitution are wrong—and contrary to the United States Constitution’s promise of race neutrality in official action. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 518 (1989) (Kennedy, J., concurring) (“The moral imperative of racial neutrality is the driving force of the Equal Protection Clause.”). All express racial classifications are inherently suspect, presumptively invalid, and subject to strict scrutiny, and their proponents must carry the extraordinarily onerous burden of proving that the race-based provisions are narrowly tailored to serve a compelling state interest.

In their Memorandum of Law in Support of Motion for Temporary Injunction, dated May 6, 2026, Plaintiffs try but fail to demonstrate that article III, section 20's express racial classifications (the "Racial Provisions") satisfy this most rigorous standard. *See* Memo. at 46. Nor are the invalid provisions severable from the remainder of article III, section 20. The hierarchical structure and functional interdependence of that section's provisions demonstrate that the invalid provisions are interconnected with and not severable from the remainder of the section.

For these reasons, Plaintiffs cannot demonstrate a substantial likelihood of success on the merits, and this Court should deny their Motion for Temporary Injunction.

BACKGROUND

In 2010, voters approved a citizen initiative that created article III, section 20 of the Florida Constitution. That section governs congressional redistricting. It sets forth two tiers of standards. The first tier prohibits intentional partisan and incumbent favoritism and requires districts to be contiguous. Art. III, § 20(a), Fla. Const. The second requires districts to be equally populated and compact and, where feasible, to utilize political and geographical boundaries. Art. III, § 20(b), Fla. Const.

Tier One also "includes two clauses that expressly address 'racial . . . minorities.'" *Black Voters Matter*, 415 So. 3d at 186 (quoting Art. III, § 20(a), Fla. Const.). The Non-Diminishment Clause provides that "districts shall not be drawn . . . to diminish [the] ability [of racial minorities] to elect representatives of their choice." Art. III, § 20(a), Fla. Const. Under that provision, the Legislature may not "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.” *In re Senate Joint Resol. of Legis. Apportionment 100*, 334 So. 3d 1282, 1289 (Fla. 2022) (quoting *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 625 (Fla. 2012)).

Thus, if a minority group is able to elect its preferred candidate in a district, then the Non-Diminishment Clause prohibits any decrease in the minority group’s voting strength when the district is redrawn. The Legislature must perform a “functional analysis” of election and population data to identify each district in which a minority group was previously able to elect its preferred candidates and, when it draws the new district, to confirm that the new district does not diminish that ability. *Black Voters Matter*, 415 So. 3d at 186–87. The Legislature must configure the new district to ensure that the protected race “controls” the primary and general elections, as in the predecessor district. *Id.* at 187. It must pick winners and losers based on race.

In practical effect, the Non-Diminishment Clause requires the Legislature, if possible, to draw a minimum number of minority-controlled districts, maintaining at least the same number as in the prior map.

The other clause that addresses racial minorities prohibits vote dilution. *Id.* at 186. It provides that “districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process.” Art. III, § 20(a), Fla. Const. Under this provision, if members of different races prefer different candidates—*i.e.*, the minority group is politically cohesive while the majority votes sufficiently as a bloc usually to defeat the minority group’s preferred candidate—then, in some circumstances, the Legislature must draw a district

that tilts the scale in favor of the minority group’s electoral preference and enables its preferred candidates to win. *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 622–23 (Fla. 2012).

To the extent the standards in the two tiers conflict, the standards in Tier One prevail. Art. III, § 20(b), Fla. Const.; *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d at 640. Thus, in case of conflict, districts drawn to perform for minority voters in compliance with Tier One are exempt from the general rule that districts must be compact and, where feasible, utilize political and geographical boundaries. *See In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d at 640 (explaining that Tier One’s “minority voting-rights protections may require the preservation or creation of non-compact districts”). Stated differently, article III, section 20’s tiered structure ensures that the secondary goals of compactness and boundary utilization yield to the primary goal of crafting districts that perform for voters of particular races.

ARGUMENT

I. THE RACIAL PROVISIONS VIOLATE THE EQUAL PROTECTION CLAUSE.

The express racial classifications in article III, section 20 violate equal protection. On their face, they distinguish between people of different races, grant constitutional rights solely on the basis of race, and compel the government to treat people of different races differently. The Equal Protection Clause forbids such expressly race-based policies.

A. The Racial Provisions’ Proponents Bear an Extraordinary Burden to Satisfy Strict Scrutiny.

Under the Equal Protection Clause, a State may not “deny to any person within its jurisdiction the equal protection of the laws.” Amend. XIV, U.S. Const. “The central purpose of the Equal Protection Clause . . . is the prevention of official conduct discriminating on the basis of race.” *Washington v. Davis*, 426 U.S. 229, 239 (1976). Simply put, equal protection “requires equality of treatment before the law for all persons without regard to race.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 205 (2023) (quoting *Browder v. Gayle*, 142 F. Supp. 707, 715 (M.D. Ala. 1956)).

The central mandate of equal protection is “racial neutrality in governmental decision making.” *Miller v. Johnson*, 515 U.S. 900, 904 (1995). “When racial classifications are explicit, no inquiry into legislative purpose is necessary” because the purpose to differentiate on the basis of race is plain on the face of the law. *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999). “A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979); accord *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (“Express racial classifications are immediately suspect . . .”).

When the “government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny.” *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007). To comply with the

constitutional guarantee of equal protection, express racial classifications must be “narrowly tailored to further compelling governmental interests.” *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003). The party that defends the classification bears the burden of proof. *Johnson v. California*, 543 U.S. 499, 505 (2005); *Johnson v. Bd. of Regents of Univ. of Ga.*, 263 F.3d 1234, 1244 (11th Cir. 2001).

Strict scrutiny applies to express racial classifications “in every context” and even to “so-called ‘benign’ racial classifications.” *Johnson*, 543 U.S. at 505; *accord Adarand Constructors v. Peña*, 515 U.S. 200, 227 (1995) (holding, in a challenge to financial incentives to hire minority subcontractors, “that all racial classifications . . . must be analyzed . . . under strict scrutiny”). Even in the pursuit of “remedial objectives,” racial classifications may “stimulate our society’s latent race consciousness” and suggest the “propriety of basing decisions on a factor that ideally bears no relationship to an individual’s worth or needs.” *Shaw*, 509 U.S. at 643 (quoting *United Jewish Orgs. v. Carey*, 430 U.S. 144, 173 (1977) (Brennan, J., concurring)).

B. Plaintiffs Cannot Establish That the Racial Provisions Serve a Compelling Interest.

No compelling interest justifies the express racial classifications in article III, section 20. The Supreme Court has recognized only three compelling interests that justify racially discriminatory state action: (1) the avoidance of imminent and serious risks to human safety in prisons, such as race riots; (2) the remediation of specific, identified instances of past unlawful discrimination; and (3) compliance with a proper construction

of section 2 of the federal Voting Rights Act. *Louisiana v. Callais*, --- S. Ct. ----, No. 24-109, 2026 WL 1153054, at *10 (U.S. Apr. 29, 2026).

The first and third of these interests are not implicated here. The Racial Provisions have nothing to do with prisons and were not enacted to comply with the federal Voting Rights Act.

Nor are the Racial Provisions a remedy for specific, identified instances of past unlawful discrimination. “To rise to the level of a compelling state interest, an effort to remediate past discrimination must satisfy two conditions.” *Id.* (internal marks omitted). *First*, the government must “identify the specific instances of past discrimination that it aims to remediate and, in light of that specification, must determine the precise scope of the injury.” *Id.* (internal marks omitted). Generally remediating “past discrimination in a particular industry or region” or “the effects of societal discrimination” is insufficient. *Id.* (quoting *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) (“*Shaw I*”)). *Second*, the government must have a “strong basis in evidence to conclude that its remedial action is necessary.” *Id.* (quoting *Shaw II*, 517 U.S. at 910).

Enacted by citizen initiative, the Racial Provisions fail both conditions. The Racial Provisions came with “no pre-enactment record identifying the discrimination—past or present, public or private—that [they were] meant to remedy.” *Black Voters Matter*, 415 So. 3d at 196. “Nor is there pre-enactment documentation of the evidence necessary to establish a proper connection between [their] means and ends.” *Id.*

Plaintiffs might argue that the Racial Provisions are at least facially constitutional because, in drawing districts, equal protection affords States some leeway to consider

race, provided that race is not their “predominant” motive. *Miller*, 515 U.S. at 916. But the Racial Provisions go much further: they enshrine permanent racial preferences in the Florida Constitution. They impose on the Legislature a *constitutional duty* not only to consider race, but also to design a minimum number of districts that the protected race will control. And they confer on some voters a *constitutional right* to a favorable district based solely on their membership in a racial group. It is this constitutional guarantee—not the drawing of specific districts—that Plaintiffs must justify.

A stricter equal-protection standard applies in challenges to express racial classifications than in challenges to individual districts on a map. A district map “typically does not classify persons at all; it classifies tracts of land.” *Shaw*, 509 U.S. at 646. Thus, a plaintiff who challenges a district must first prove that the district “was drawn with an impermissible racial motive.” *Hunt*, 526 U.S. at 547. In contrast, the Supreme Court has struck down nearly all express racial classifications it has considered; to the extent it has upheld them, it has since reversed course. *United States v. Skrametti*, 605 U.S. 495, 571 (2025) (Alito, J., concurring in part).

Because they do not serve a compelling state interest, the Racial Provisions violate the Equal Protection Clause’s guarantee of race neutrality.

C. Plaintiffs Cannot Establish That the Racial Provisions Are Narrowly Tailored.

Even if they could establish that the Racial Provisions serve a compelling interest, Plaintiffs would be unable to demonstrate that the Racial Provisions are “narrowly

tailored—meaning ‘necessary’—to achieve that interest.” *Students for Fair Admissions, Inc.*, 600 U.S. at 207.

To be narrowly tailored, express racial classifications employed for remedial ends must be time-limited. *Grutter*, 539 U.S. at 341–42. This “requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands.” *Id.* It also assures all citizens “that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter, a measure taken in the service of the goal of equality itself.” *Id.* at 342 (quoting *Croson*, 488 U.S. at 510 (plurality opinion)).

The Racial Provisions have no temporal limitation. On the contrary, they reflect a permanent enshrinement of racial classifications in the Florida Constitution. Their indefinite duration establishes, without more, that the Racial Provisions are not narrowly tailored.

Finally, narrow tailoring requires “serious, good faith consideration of workable race-neutral alternatives.” *Parents Involved in Cmty. Schs.*, 551 U.S. at 734 (quoting *Grutter*, 539 U.S. at 339). The absence of evidence of any consideration of “methods other than explicit racial classifications” establishes that article III, section 20’s racial classifications are not narrowly tailored. *Id.*

II. THE RACIAL PROVISIONS ARE NOT SEVERABLE FROM THE REMAINDER OF ARTICLE III, SECTION 20.

The valid and invalid provisions of article III, section 20 are not severable from each other. The standards to draw congressional districts are arranged in a hierarchical

structure that reveals close attention to the interdependent relationships between the standards. Indeed, the Florida NAACP endorsed the citizen initiative that created article III, section 20 in reliance on the textual guarantee that, in case of conflict, minority-controlled districts would be exempt from Tier Two's compactness and boundary-utilization requirements. Because the valid and invalid provisions are not severable, the provisions that Plaintiffs invoke are unenforceable.

A. The Language and Structure of Article III, Section 20 Establish That the Racial Provisions Are Not Severable.

Section 20's hierarchical structure, as well as its grammar, renders severability inappropriate. "Severability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999). "The severability analysis answers the question whether 'the taint of an illegal provision has infected the entire enactment, requiring the whole unit to fail.'" *Id.* (quoting *Schmitt v. State*, 590 So. 2d 404, 414 (Fla. 1991)).

In *Ray*, the Court held that initiative petitions to amend the Florida Constitution are subject to the same rules of severability that apply to ordinary legislation. Under that analysis, an invalid provision is severable from the remainder of the amendment if:

(1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the . . . 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 [electorate] would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Id. at 1281 (quoting *Smith v. Dep’t of Ins.*, 507 So. 2d 1080, 1089 (Fla. 1987)). To determine whether the purpose of the valid provisions can be accomplished independently of the invalid provisions, courts ask whether “the provisions of the amendment are so mutually dependent on one another that the overall purpose of the amendment cannot be accomplished absent the invalid provisions.” *Id.* at 1282 (emphasis omitted).

For example, in *Ray*, the Court considered a constitutional amendment that imposed term-limit requirements on members of Congress and state officials. The Court concluded that a State may not constitutionally limit the terms of members of Congress, but that the remainder of the amendment was “functionally independent” of the invalid provision and thus severable. *Id.* at 1283. The provision that applied to members of Congress could “be stricken without disrupting the integrity” of the provisions that applied to state officials. *Id.*

In contrast, in *Emerson v. Hillsborough County*, 312 So. 3d 451 (Fla. 2021), the Court examined a charter amendment that imposed a sales surtax and determined how the surtax revenue would be distributed. The Court invalidated the revenue-distribution provisions and concluded that those provisions were not severable from the provisions that imposed the surtax. *Id.* at 460–61. The purpose of the amendment would have been

“thwarted” if the surtax were levied without the voter-approved provisions that governed the distribution of surtax-generated revenue. *Id.* at 461. The amendment’s provisions were “functionally dependent” and formed an “interlocking plan” and could not “reasonably be divorced” from one another. *Id.*

Here, as in *Emerson*, the valid and invalid provisions are functionally dependent and form an interlocking plan. The text of article III, section 20 arranges its standards into two tiers. The effect of this tiered organization is to give precedence to certain standards over others in case of conflict. To the extent that compliance with the tier-two standards “conflicts with” tier-one standards, tier-one standards prevail and tier-two standards yield. Art. III, § 20(b), Fla. Const. The text further acknowledges the interconnectedness of the standards making clear that, within a single tier, the “order in which the standards . . . are set forth” does not “establish any priority of one standard over the other.” Art. III, § 20(c), Fla. Const. “Consequently, the Legislature is tasked with balancing the tier-two standards together in order to strike a constitutional result” *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d at 639.

Clearly, the drafters paid especially close attention to the interaction and organization of the standards and even codified the relationships between those standards. For example, the drafters elevated the Racial Provisions to tier-one status. In case of conflict, the Racial Provisions take precedence and form an exception to the background principles in Tier Two. To the extent necessary to avoid diminishment or vote dilution, article III, section 20 purports to *compel* the Legislature to depart from the general rule that districts be compact and utilize political and geographical boundaries where feasible.

If the Racial Provisions were severed, then these background principles would step into the foreground and apply universally to all districts, improperly “expand[ing] the scope of the [provision’s] intended breadth” beyond the amendment’s purpose. *State v. Catalano*, 105 So. 3d 1069, 1081 (Fla. 2012) (finding that a statutory provision was not severable because severance “would expand the statute’s reach beyond what the Legislature contemplated”). This would defeat the intent of the drafters and voters, who approved the amendment with an understanding that compactness and boundary utilization would *not* restrict the Legislature’s ability to create or maintain minority-controlled districts.

When an exception to a general rule is found unconstitutional, courts have declined to sever the exception from the general rule. In *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008), the court considered a statute that declared any revocation of a pharmacist’s license permanent, but that created an exception that allowed pharmacists whose licenses had been revoked to reapply for licensure “in some circumstances.” *Id.* at 30, 32–33. The court found the exception unconstitutional and refused to sever it from the general rule of permanent revocation. *Id.* at 32–33. It explained that the Legislature had manifested its intent to permit reapplication in some circumstances, and that this exception was not “merely surplusage.” *Id.* The court was unconvinced that the Legislature would have passed the permanent-revocation provision without the exception that permitted reapplication “in some instances.” *Id.*; accord *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So. 2d 763, 773–74 (Fla. 2005) (concluding that, where a statute authorized candidates for

public office to withdraw at least 42 days before an election, but authorized election officials to make exceptions and permit candidates in some instances to withdraw fewer than 42 days before an election, the exception was unconstitutional and not severable from the general rule, since the Legislature did not intend the 42-day rule to be absolute).

The same is true here. The drafters and voters established, as a general rule, that districts must be compact and, where feasible, utilize political and geographical boundaries. But that rule was never intended to be absolute; the drafters and voters also created an exception that authorized deviations from these principles in some circumstances. This exception was not merely surplusage. Under *Sloban*, it cannot be said that the voters would have approved the general provision that requires compactness and boundary utilization without the exception that allowed departures in some instances.

Tier One standards, moreover, are explicitly combined together with each clause separated from the others by the conjunctive “and.” The tier-one standards are a package deal. The drafters and voters intended this combination of standards to be implemented in unison. *See Fla. Birth-Related Neurological Injury Comp. Ass’n v. Fla. Div. of Admin. Hearings*, 686 So. 2d 1349, 1354–55 (Fla. 1997) (holding that the word “and” should be read in the conjunctive and that doing otherwise “would lead to unreasonable, absurd results and thus defeat the legislature’s intent”). If one standard is unconstitutional—which the Racial Provisions are, *see supra* Part I—then all standards must fall in their entirety. *See Ray*, 742 So. 2d at 1280 (“The severability analysis answers the question of whether ‘the taint of an illegal provision has infected the *entire enactment*, requiring the *whole unit* to fail.” (quoting *Schmitt*, 590 So. 2d at 414) (emphases added)). The Tier One

requirements “cannot reasonably be divorced” from each other, *Emerson*, 312 So. 3d at 461, and reflect article III, section 20’s multiple aims in drawing districts. The three conjunctive clauses form an “interlocking” mandate that determines how districts will be drawn, making them “functionally dependent” on each other. *Id.*

The interaction and mutual dependence of these provisions is unlike the relationship between the valid and invalid provisions in *Ray*. The relevant constitutional text in *Ray* included separate paragraphs deliberately dividing each elective office into distinct and independent sections. *See* Art. VI, § 4(c), Fla. Const. Term limits could easily be applied to state offices but not federal offices, and the voters clearly would have intended to apply term limits to as many of the offices identified in the amendment as possible.

This case is more like *Emerson*, where voters authorized a surtax and decided how surtax revenue would be distributed. These provisions operated hand in hand, and the Court was unconvinced that voters would have submitted to the surtax without the invalid distribution scheme.

Here too, article III, section 20’s provisions are structurally, functionally, and linguistically interconnected. Together, they form a reticulated scheme of intertwined standards—an integrated whole. Invalidation of one provision disrupts the structure and function of the amendment in a manner inconsistent with voter expectations.

B. Pre-Enactment Evidence of Voter Intent Opposes Severability.

Records contemporaneous with the proposal and adoption of article III, section 20 confirm the mutual dependence of its provisions and the importance of the Racial Provisions to the amendment's success at the ballot box.

On April 13, 2010, the Florida NAACP issued a two-page endorsement of the citizen initiative that created article III, section 20. *See* Ex. A. Written in question-and-answer format, one of the seven questions concerned the interaction of the Racial Provisions and the tier-two standards. *Id.* at 2 (Question 6). It asked whether the compactness and boundary-utilization standards are “inconsistent with the need to draw black majority districts that are elongated and irregularly shaped.” *Id.* The Florida NAACP conceded that deviations from compactness are often necessary to “provide an effective opportunity” for minority voters and cited three congressional districts as examples. *Id.* But it explained that, because the Racial Provisions take precedence, the compactness and boundary-utilization standards “would not come into play” if compliance with these “problematic standards” would conflict with the protection of minority voters. *Id.* (emphasis in original). The Florida NAACP concluded that “there is nothing to lose” and “urge[d] all of its officers and members to vote for the proposed amendment.” *Id.*

For its part, the initiative sponsor touted the Florida NAACP's endorsement at a joint meeting of two legislative committees. Ex. B at 19. Accompanied by a Florida NAACP representative, the sponsor's campaign chair explained that “leaders of minority communities support” the amendment and that, “after studying [its] benefits,” the Florida

NAACP “unanimously approved and endorsed” it. *Id.* The sponsor echoed the Florida NAACP’s observation that the Racial Provisions interact with and protect minority-controlled districts from the compactness and boundary-utilization standards:

Another question has been raised about how some of the other standards interact with the provisions for protection of minority voters.

It has been asked whether it would be impossible to draw minority districts while complying with the requirements of compactness and utilization of local boundaries.

The answer is, no. This question ignores the plain wording of the amendments. Protection of minority voters is expressly given priority over these requirements. Compactness and utilization of local boundaries only come into play to the extent that they can without conflicting with the protection of minority voters.

Ex. B at 21–22.

In light of this evidence, “it cannot be said that [voters] would have passed” the valid provisions without the invalid provisions. *Ray*, 742 So. 2d at 1281 (quoting *Smith*, 507 So. 2d at 1089). The sponsor touted the support of the Florida NAACP and other leaders of minority communities. The Florida NAACP considered the tier-two standards to be “problematic” but explained that the Racial Provisions will, in case of conflict, shield minority-controlled districts those standards. Ex. A at 2. With this assurance, it urged its entire membership to vote for the measure. *Id.* The amendment barely cleared the 60-percent threshold required for voter approval, receiving 62.9 percent of the vote. *See* FLA. DEP’T OF STATE, DIV. OF ELECTIONS, <https://results.elections.myflorida.com>.

Of course, it is never possible to determine with certainty whether voters would have adopted a measure under hypothetical circumstances. But the Racial Provisions

were integral to a critical endorsement precisely because, in their absence, other provisions would have been problematic. The Racial Provisions secured the Florida NAACP’s endorsement in support of a measure that barely passed.

C. The Absence of a Severability Clause Opposes Severability.

Finally, the citizen initiative that created article III, section 20 did not contain a severability clause. In *Ray*, the Court emphasized that the term-limits amendment “specifically contained a severability clause, which is persuasive of the fact that the framers intended severability to save the amendment in case portions of it were declared invalid.” 742 So. 2d at 1283. Voters therefore had “clear notice of severability” and approved the amendment with that understanding. *Id.*

The absence of a severability clause in the citizen initiative at issue here weighs heavily against severability. With a severability clause, the drafters could have expressed their preference for severability and alerted voters—and the Florida NAACP—to the possibility that invalidation of one provision might alter the balance and ordering of article III, section 20’s standards. Because the drafters did not include a severability clause, voters were never invited to contemplate a partially operative structure of redistricting standards.

Because article III, section 20 forms an integrated and interlocking plan, its Racial Provisions are not severable, and the remainder of the section is unenforceable.

CONCLUSION

For these reasons, this Court should deny Plaintiffs’ Motion for Temporary Injunction, dated May 6, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on May 13, 2026, the foregoing document was furnished by email to all individuals identified on the Service List that follows.

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Exhibit A



FLORIDA STATE CONFERENCE NAACP
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

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April 13, 2010

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President Emeritus

**FLORIDA NAACP ENDORSES
FAIR DISTRICTS FLORIDA**

1. What is Fair Districts Florida?

It is a citizen-sponsored ballot initiative that has successfully placed two measures dealing with redistricting on the ballot for Florida's Nov. 2 general election. One of the measures deals with redistricting Florida's congressional districts; the other deals with redistricting Florida's state legislative districts. If the measures are approved by 60% of the voters, they will become amendments to the Florida Constitution and will provide fair standards for how the Legislature draws electoral districts in the future.

2. What is the main purpose of the proposed amendments?

The main purpose is to stop the abusive practice, known as gerrymandering, of drawing electoral districts designed to favor one political party over the other or to give incumbent officeholders an unfair advantage over non-incumbents.

3. If the ballot measures are approved by the voters and become amendments to the Florida Constitution, will it lessen the ability of Florida's black voters to elect candidates of their choice?

Absolutely not. Both ballot measures contain language making it clear that electoral districts "shall not be drawn 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." This language mirrors the key language of the Voting Rights Act.

4. Is it possible that the language in the ballot measures will enhance the rights that minority voters presently have under the federal Voting Rights Act?

Yes. While the courts have not yet had an opportunity to interpret the new redistricting standards, attorneys for the NAACP and other voting rights experts believe it is likely that the new standards will give Florida's minority voters even more protection than they presently have under the federal Voting Rights Act.

5. What are some of the ways in which the rights of minority voters might be enhanced by the new redistricting standards?

Several of the more significant enhancements are the following:

(a) The Supreme Court, interpreting Section 2 of the Voting Rights Act, recently held that in order to establish a claim for vote dilution in a redistricting case, a minority group must prove that it makes up more than 50% of the voting age population in the relevant geographic area. Bartlett v. Strickland, 129 S. Ct. 1231 (2009). Under

MEMBERSHIP: "LIFEBLOOD OF THE NAACP"

this ruling, states are not required to draw "crossover" districts in which the minority group makes up less than a majority of the voting age population even though it is large enough to elect a candidate of its choice with the help of non-minority voters who cross over the racial divide to support the minority's preferred candidate. This places a significant limitation on the ability to protect "crossover" districts under the Voting Rights Act.

By contrast, the language in the amendments to the Florida Constitution proposed by Fair Districts Florida is broader and more inclusive than Section 2, and would protect such "crossover" districts. Therefore, it likely will provide greater minority rights than federal law, including the rights of a minority group to block the dismantling of "crossover" districts.

(b) Section 5 of the Voting Rights Act prohibits "covered jurisdictions" from adopting a redistricting plan that would result in a "retrogression," or weakening, of the electoral strength that a minority group already possesses. The non-"retrogression" standard would prohibit, for example, significantly reducing the percentage of black voters residing in an existing black majority district or "crossover" district. In Florida, however, Section 5's prohibition of "retrogression" applies in only five counties – Collier, Hardee, Hendry, Hillsborough and Monroe. This is a very significant limitation.

By contrast, the amendments to the Florida Constitution that are proposed by Fair Districts Florida include a prohibition similar to Section 5's that would apply to all counties in Florida.

6. What about the additional redistricting standards in the proposed amendments that electoral districts "shall be compact" and "shall, where feasible, utilize existing political and geographical boundaries"? Aren't standards such as these inconsistent with the need to draw black majority districts that are elongated and irregularly shaped?

Often, but not always, it is necessary to draw black majority districts that are not compact in order for the district to provide an effective opportunity for blacks (or other minority) voters to elect candidates of their choice. For example, in Florida, Congressional District 3 (Rep. Corrine Brown) and Congressional District 23 (Rep. Alcee Hastings) do not satisfy some of the standard tests for measuring district compactness, while Congressional District 17 (Rep. Kendrick Meek) does satisfy such tests.

In the amendments to the Florida Constitution proposed by Fair Districts Florida, the standards of compactness and the utilization of existing political and geographic boundaries would not come into play if they would "conflict with the standards in subsection (1) [dealing with equal opportunity for minority voters] or with federal law." Clearly there would be such a conflict in some cases. Therefore, the problematic standards would not come into play in those cases to prevent the drawing of non-compact black majority districts, and districts such as those represented by Congresswoman Brown and Congressman Hastings would remain protected.

7. So, after weighing all of these considerations, what is the NAACP's conclusion?

The NAACP believes there is nothing to lose and much to be gained by supporting the Constitutional amendments proposed by Fair Districts Florida. The NAACP has endorsed the ballot initiatives and urges all of its officers and members to vote for the proposed amendments in the Nov. 2 general election.

Exhibit B

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JOINT MEETING OF THE SENATE REAPPORTIONMENT COMMITTEE
AND HOUSE SELECT POLICY COUNCIL ON STRATEGIC AND
ECONOMIC PLANNING

Held on February 11, 2010

Transcribed by:
CLARA C. ROTRUCK
Court Reporter

1 REAPPORTIONMENT (JOINT MEETING WITH HOUSE IN 212KB)

2 REPRESENTATIVE CANNON: And Senators and
3 Representatives, we are now going to convene the
4 Joint Meeting of the House Select Policy Council on
5 Strategic and Economic Planning and the Senate
6 Committee on Reapportionment and ask Tamara and
7 Michelle to commence our activities by calling the
8 role.

9 A VOICE: Senator Haridopolis.

10 SENATOR HARIDOPOLIS: Here.

11 A VOICE: Senator Smith.

12 SENATOR SMITH: Here.

13 A VOICE: Senator Bennett.

14 SENATOR BENNETT: Here.

15 A VOICE: Senator Dean.

16 SENATOR DEAN: Here.

17 A VOICE: Senator Gardiner. Senator Lawson.

18 Senator Negrón.

19 SENATOR NEGRON: Here.

20 A VOICE: Senator Ring.

21 SENATOR RING: Here.

22 A VOICE: Senator Siplin. Senator Storms.

23 Senator Thrasher.

24 SENATOR THRASHER: Here.

25 A VOICE: Senator Wilson.

FOR THE RECORD REPORTING TALLAHASSEE FLORIDA 850.222.5491

1 A VOICE: Chairman Cannon.
2 REPRESENTATIVE CANNON: Here.
3 A VOICE: Vice Chair Grimsley. Representative
4 Aubuchon.
5 REPRESENTATIVE AUBUCHON: Here.
6 A VOICE: Brisé.
7 REPRESENTATIVE BRISE: Here.
8 A VOICE: Carroll.
9 REPRESENTATIVE CARROLL: Here.
10 A VOICE: Chestnut.
11 REPRESENTATIVE CHESTNUT: Here.
12 A VOICE: Fitzgerald. Holder.
13 REPRESENTATIVE HOLDER: Here.
14 A VOICE: Hudson.
15 REPRESENTATIVE HUDSON: Here.
16 A VOICE: Hukill.
17 REPRESENTATIVE HUKILL: Here.
18 A VOICE: Jones.
19 REPRESENTATIVE JONES: Here.
20 A VOICE: Kreegel.
21 REPRESENTATIVE KREEGEL: Here.
22 A VOICE: McKee].
23 REPRESENTATIVE MCKEEL: Here.
24 A VOICE: Porth. Proctor.
25 REPRESENTATIVE PROCTOR: Here.

1 A VOICE: Thurston.

2 REPRESENTATIVE THURSTON: Here.

3 A VOICE: Weatherford.

4 REPRESENTATIVE WEATHERFORD: Here.

5 A VOICE: A quorum is present, Mr. Chairman.

6 REPRESENTATIVE CANNON: All right, thank you,
7 Tamara and Michelle, and Chairman Haridopolis and
8 Members.

9 Today we are again meeting jointly to further
10 discuss the two proposed Constitutional amendments
11 to Florida's reapportionment process proposed by
12 Fair Districts.

13 As you know this is a subject that our
14 respective committees have talked about in detail,
15 beginning last October 2009, up until the present
16 time.

17 You may recall, Members, that both in October
18 and November, our respective legal counsel gave us
19 initial reports that the language of the Fair
20 Districts' petitions may constrain the
21 Legislature's constitutional duty to redraw the
22 District boundary lines with potentially mutually
23 exclusive requirements.

24 In December of last year, our respective legal
25 counsel and staff provided us with presentations to

1 help us address similar concerns to our own that
2 were raised by Florida Congresswoman Corrine Brown
3 and Florida Congressman Mario Diaz-Blart.

4 The Congress persons primary concern was the
5 impact of the U.S. Supreme Court case of Bartlett
6 versus Strickland and how the terms of these
7 petitions may affect the ability and the discretion
8 of the Legislature to create minority access or
9 so-called crossover districts.

10 Last month we met jointly in order to
11 facilitate a public dialogue with Congresswoman
12 Brown and Congressman Diaz-Blart so that they could
13 share their concerns with us. And during that
14 meeting both of the Congress-persons stressed that
15 they felt that the petitions were unworkable, and
16 that the petitions would potentially dilute
17 minority representation in the Florida Legislature
18 and in Florida's Congressional delegation.

19 Just recently the Fair Districts' petitions
20 achieved the signature threshold necessary for
21 placement on the 2010 general election ballot, and
22 with that milestone behind them the principles from
23 Fair Districts have agreed to meet with us here
24 today, present their proposed amendments to
25 Florida's Constitution and address our questions on

1 this very important topic.

2 To Ms. Freidin, to our guests from Fair
3 Districts, please know that we are very grateful
4 for your presence today and your indulgence of our
5 questions.

6 while political preferences and viewpoints do
7 sometimes divide us, there is certainly no reason
8 that we should ever miss an opportunity to at least
9 understand each other better.

10 while our committees have tried to be very
11 deliberative, we hope that your remarks today and
12 responses can fill in some of the missing details
13 and perhaps close the door on some unanswered
14 questions and give us the opportunity to better
15 understand your intentions as the crafters of these
16 potential amendments to Florida's Constitution.

17 I think I speak for both Chairman Haridopolis
18 and myself when I say that we treat the
19 constitutional process with the utmost of respect,
20 and if these petitions do become part of Florida'
21 Constitution we intend to fully perform our duties
22 to carry out the requirements of those petitions
23 fully.

24 As we all know, redistricting is not an
25 overnight assignment and many years of both

1 planning, coordinating with the census and a lot of
2 work will go into doing the reapportionment and the
3 redistricting.

4 So if these pass we need your help to
5 determine the manner in which we can best execute
6 our constitutional duties.

7 Members, with that, before we invite Fair
8 Districts to begin their presentation, I would like
9 to briefly call your attention to the Power Point
10 presentation on the monitor. I believe you are
11 fairly familiar with these slides.

12 After the title slide, the first substantive
13 slide, these are the general redistricting
14 standards, the federal standards being one person,
15 one vote.

16 Obviously Section II and Section V of the
17 Voting Rights Act, and then the Florida standard
18 that they be contiguous.

19 The next slide has copies of the Fair
20 Districts' petitions, one for the Congressional
21 districts and the other for the legislative
22 district boundaries.

23 And then the last slide shows a comparison of
24 both the current standards and then the proposed
25 additional standards for the petitions in question.

1 Those materials are also in your packets, Members,
2 and with that we would like to call on and
3 recognize Ms. Ellen Freidin, the Campaign Chair for
4 Fair Districts.org.

5 Ms. Freidin, again, we very much appreciate
6 your taking the time to be with us today and you
7 are recognized to address the Joint Meeting.

8 MS. FREIDIN: Thank you, Mr. Chairman.
9 Mr. Chairman, Members of the Committee, I am Ellen
10 Freidin, and I am here today to talk with you on
11 behalf of close to a million voters who signed 1.7
12 million petitions to earn the Fair Districts
13 amendments, positions five and six on the November
14 2nd ballot coming up. So thanks to the wonders of
15 the podcast, which I compliment you for making
16 available to the public.

17 I have been able to listen to the many, many
18 hours of hearings that you have had, both the
19 Senate and the House Committee and the Committees
20 jointly together with your many, many lawyers
21 raising what seem, at least seemed to me to be
22 endless questions about our amendments.

23 So let's make one thing clear when we start.
24 Our amendments which are simply intended to
25 establish common sense, fairness standards for you

1 to follow when you redraw the legislative and
2 district lines.

3 These two amendments were certified because
4 voters exercised their constitutional right to sign
5 petitions so that they and others in our state
6 could have the opportunity to put these standards
7 in the Florida Constitution.

8 The signers of these petitions who are
9 Republicans, who are Democrats and who are
10 Independents are part of an effort by thousands
11 Floridians of all political persuasions, who are
12 committed to eliminating Florida's historical
13 distinction as one of the most politically
14 gerrymandered states in the Union, that this
15 probably exist is absolutely undeniable.

16 Those who are working tirelessly on this
17 monumental project are supported and they are
18 encouraged by the unanimous opinions of Florida's
19 newspaper editorial boards, which clearly explain
20 why we must take this unique opportunity to make a
21 very necessary, fundamental change in this state
22 which I know that all of us love so much.

23 Now, I want to just go over with you a few of
24 the comments that have been made by some of the
25 editorial boards in this state.

1 The Orlando Sentinel said, "This is a campaign
2 to restore some integrity to the now corrupt system
3 of drawing legislative and Congressional districts.
4 Unless the process is changed, voters won't get the
5 choices that they deserve."

6 The St. Pete Times said, "The current system
7 for drawing legislative and Congressional districts
8 is broken."

9 The Gainesville Sun said, "There is nothing
10 state lawmakers guard more jealously than their
11 power to rig legislative and congressional
12 districts to serve their own interests and their
13 party's desire for control."

14 The Tampa Tribune said, "The redistricting
15 process needs to be overhauled. It is critical to
16 remove selfish political motives from the process."

17 The Tallahassee Democrat said, "The present
18 rules of redistricting serve the interest of
19 politicians more than voters. The intent of the
20 amendments is sound and that is to give voters more
21 power and the powerful politicians less power."

22 The Florida Times Union said, "Fortunately a
23 group called Fair Districts Florida is seeking a
24 constitutional ban on gerrymandering. Lines
25 shouldn't go drawn to help a party, an incumbent or

1 anyone else."

2 Florida Today, "End the political
3 gerrymandering that harms democracy."

4 The Sarasota Herald Tribune, "Gerrymandering
5 by either party is an affront to democracy and to
6 the expectation that all men and women are equal
7 under the law."

8 The Daytona News Journal said, "Many
9 Legislators are outraged at proposals that would
10 strip them of the ability to rig districts to
11 benefit parties or individual, but Fair Districts
12 can only be good for Florida. Here is hoping that
13 the voters see through the distractions and vote to
14 protect their interests."

15 The South Florida Sun Sentinel said,
16 "Opponents of the amendments should just be honest
17 about it and admit that they don't want to change a
18 system that helps them hold onto power."

19 The Palm Beach Post said, "This bipartisan
20 campaign deserves broad bipartisan support."

21 The Bradenton Herald said, "Florida's voters
22 now have the monumental opportunity to end the
23 patently unfair practice of gerrymandering."

24 And the Miami Herald said, "Amendments V and
25 VI will give control of elections back to Florida's

1 voters where it belongs."

2 Florida presently has absolutely no
3 prohibitions against drawing districts for partisan
4 reasons or incumbency protection. It never has.
5 This is evidenced by the bizarrely shaped Rorschach
6 like districts that often snake through as many as
7 five or as many as eight counties over more than
8 100 miles, splintering communities and confusing
9 voters.

10 Some very small towns, like Winter Park and
11 Temple Terrace are represented in this state by as
12 many as four different members of Congress.

13 You know, I have been traveling through this
14 state for three years now talking about -- talking
15 to Florida citizens about this subject, and I often
16 start my talks by asking citizens, people in the
17 audience to raise their hand if they know who their
18 state legislators are. I almost never see a hand
19 raised.

20 The same thing happens when I ask them if they
21 know who represents them in Congress, and it is no
22 surprise, they don't know the answer to that. And
23 it is because communities are divided, neighbors
24 often don't have the same representative.

25 It is no wonder that the Florida League of

1 Cities, the Florida League of Mayors and the
2 Florida Black Caucus of local elected officials are
3 part of the local coalition supporting amendments V
4 and VI. They are tired of having their town
5 splintered and having Representatives that live far
6 away.

7 I don't know, is Rebecca O'Hare here today? I
8 think she was planning on being here to represent
9 those organizations.

10 In the last 10 years, Mr. Chairman, and
11 Members of the Committee, out of hundreds of
12 legislators up for reelection, only 10 incumbent
13 State Representatives and one incumbent State
14 Senator have been defeated.

15 No wonder Florida is considered to have among
16 the least competitive legislative elections of any
17 state in the Union. We are third from the bottom
18 on the competitiveness scale.

19 The need for change in our state and the
20 solution that we are now proposing is nothing new.
21 The effort to reform the way Florida draws its
22 district maps as far as I know started in 1978,
23 when the Constitution Revision Commission took up
24 the matter and suggested the creation of standards,
25 very much like the ones that are contained in

1 Amendments V and VI.

2 That effort didn't succeed, but then in the
3 earlier '90s, when both Houses were controlled by
4 Democrats, a bipartisan group led by then State
5 Senator and now Congressman Ander Crenshaw and
6 including our Governor Charlie Crist, who was in
7 the Senate then, proposed a constitutional
8 amendment with standards almost identical to the
9 ones that voters will have a chance to approve this
10 coming November.

11 It passed the Senate unanimously, but it died
12 in the House. In other words, this solution to a
13 long existing problem is something that was
14 embraced and has been embraced for years by
15 Republicans and Democrats alike.

16 In the 1998 Constitution Revision Commission,
17 which is where I learned about the urgent need for
18 these reforms, former State Representative Marilyn
19 Evans-Jones, a Republican from Melbourne,
20 introduced a similar proposal.

21 It came very close, but failed to pass the
22 Commission by the narrowest of margins, and then
23 there were a couple of other citizen efforts, one
24 of them led by Marilyn Evans-Jones and the other by
25 the non partisan organizations of common cause and

1 League of Women Voters.

2 In fact, the League of Women Voters has been
3 fighting these reforms for decades, and their State
4 President, Deira McNabb is here, Deira, stand up
5 and let everybody know you are here, and she is
6 here with a whole host of other members of the
7 League today that are all part of her leadership
8 team.

9 So should -- so it really should be clear that
10 this is something that Republicans and Democrats
11 have proposed many, many times over the years.

12 We at Fair Districts Florida are not the
13 originators of this idea, but 2010 is the time that
14 it is going to become a reality. It is obvious to
15 us because of the spontaneous reaction of thousands
16 of Floridians that our amendments are very, very
17 popular with people all over the state, from the
18 panhandle to Key West.

19 This decade the people of Florida want to see
20 districts in our state that make sense, that are
21 compact and that keep communities together.
22 Districts that are drawn fairly and free of
23 intentional partisan favoritism, and maps that
24 ensure that minority voters are protected from
25 diminished representation.

1 In other words, districts that will permit the
2 people to fairly choose their Representatives. The
3 practice of gerrymandering is not unique to
4 Florida. National leaders of all political
5 persuasions have recently spoken out about the
6 problem and the need for change.

7 Mayor Michael Bloomberg, who you all know is
8 an Independent in New York City. He said, "There
9 is a partisanship that has paralyzed our country."
10 Both parties have redistricted themselves, such
11 that they don't have to worry about a challenge
12 across the aisle, but they worry about a challenge
13 from their flanks so that the Conservatives are
14 less willing to move to the middle, the Liberals
15 are less willing to move to the middle and we have
16 got to get over that and we have got to understand
17 that we are all in this together.

18 Unless we have bipartisan legislation and
19 bipartisan government at the federal, state and
20 city levels we are just going to have one problem
21 after another and the future is not as bright as I
22 think it should be for America.

23 Senator John McCain says that we need to stop
24 politicians in both parties from drawing rigged
25 districts that they can never lose. And President?

1 Barack Obama says, the fact of the matter is that
2 we have now a system where too often our
3 Representatives are selecting there voters as
4 opposed to the voters selecting the
5 Representatives.

6 That is a situation that I think the American
7 people should not accept. But while there has been
8 historic broad support for redistricting reform
9 here and elsewhere, elsewhere, in the many, many
10 hours of hearings these committees have had in the
11 last few months we have heard little, but criticism
12 of these reforms.

13 There has been no explanation or even mention
14 of why these reforms are needed. And it is
15 understandable that some would be concerned about a
16 citizen's effort to place limits on political
17 gerrymandering where none have existed before.

18 Some of the questions that have been raised by
19 your lawyers and your Members, Mr. Chairman, have
20 been complicated and sometimes confusing, but I am
21 here today to try and answer them as best I can and
22 to describe the fundamental goals of these citizen
23 initiatives. The many questions raised seem to
24 fall into three categories.

25 First, will these amendments interfere with

1 the rights of minority voters and will minority
2 voters be worse off when the amendments are in the
3 Constitution.

4 Second, aren't the standards so conflicting
5 and confusing that they simply cannot be applied?

6 And third, won't these new requirements lead
7 to increased litigation?

8 The answer to each of these questions is an
9 emphatic no. I cannot possibly address every
10 nuance of every question that has been asked, so I
11 will address each of these categories and explain
12 to the best of my ability the intent of the
13 amendment.

14 These amendments will not in any way reduce
15 the rights of minority voters, and in fact, they
16 will add a guarantee to the Florida Constitution
17 that the ability of minority voters to elect
18 representatives of their choice will not be
19 diminished.

20 Presently minority voters are protected by the
21 Voting Rights Act, you all know that. A federal
22 statute that exist at the pleasure of Congress and
23 is constantly being eroded by the courts. When
24 these amendments are embedded in the Florida
25 Constitution protection from discrimination and

1 redistricting will become a lasting commitment to
2 the people of Florida.

3 Because of this, leaders of minority
4 communities support the Fair Districts' amendments.
5 I have pleased to announce today that the Florida
6 State Conference of NAACP branches after studying
7 the benefits of these amendments has unanimously
8 approved and endorsed Amendments V and VI, and here
9 today representing the NAACP is Charlie Burr, stand
10 up Charlie.

11 They have joined the Fair Districts' team
12 because they agree that in addition to reducing
13 partisan gerrymandering, the amendments will add
14 permanent protections for minority voters that are
15 greater than what exist today in Florida or any
16 other state.

17 Just look at the language. The language says,
18 "Districts shall not be drawn with the intent or
19 result of denying or abridging the equal
20 opportunity of racial or language minorities to
21 participate in the political process or to elect --
22 or to diminish their ability to elect
23 representatives of their choice."

24 That last phrase prohibits the drawing of any
25 district or plan that will reduce the ability of

1 minorities to elect minority representatives.
2 Plain and simple.

3 Now there has been a lot of talk at these
4 hearings about the impact of Bartlett versus
5 Strickland on our standards.

6 Some of your lawyers have questioned whether
7 after Bartlett our standards will permit you to
8 draw crossover districts. The language, the
9 Bartlett opinion specifically addresses that
10 question, and I don't believe that this part of
11 Bartlett has been raised in these hearings.

12 Let me read it to you. From the Bartlett case
13 directly, "Section II allows states to choose their
14 own method of complying with the Voting Rights Act
15 and we have said that that may include drawing
16 crossover districts. States that wish to draw
17 crossover districts are free to do so where no
18 other prohibition exist."

19 In other words, there is nothing in Bartlett
20 versus Strickland or in the language of the
21 amendments that would change your previous ability
22 to draw crossover districts.

23 "However, with the amendments expressed
24 prohibition of diminishing ability to elect
25 representatives of choice, you would be free after

1 Bartlett to refuse to draw crossover districts." I
2 am sorry, I made a mistake there and I want to
3 start that sentence over again, because I want to
4 make this very, very clear.

5 "However, without the amendments expressed
6 prohibition of diminishing ability to elect
7 representatives of choice, you would be free after
8 Bartlett to refuse to draw crossover districts, but
9 with the addition of the new language you will be
10 required to use every tool you have, including the
11 drawing of crossover districts to be sure that the
12 rights of minority voters are not taken away."

13 Another question has been raised about how
14 some of the other standards interact with the
15 provisions for protection of minority voters.

16 It has been asked whether it would be
17 impossible to draw minority districts while
18 complying with the requirements of compactness and
19 utilization of local boundaries.

20 The answer is, no. This question ignores the
21 plain wording of the amendments. Protection of
22 minority voters is expressly given priority over
23 these requirements. Compactness and utilization of
24 local boundaries only come into play to the extent
25 that they can without conflicting with the

1 protection of minority voters.

2 It has also been asked whether it is
3 impossible to draw minority districts without
4 violating the prohibition against favoring a party
5 or an incumbent. This question again ignores the
6 plain wording of the amendments.

7 Let me make this very, very clear. The
8 prohibition against drawing districts -- the
9 prohibition is against drawing districts with
10 intent to favor or disfavor a party or an
11 incumbent.

12 That means that you will be prohibited from
13 drawing districts or plans for the intended purpose
14 of attaining a particular partisan result. If you
15 are drawing a district in order to protect minority
16 voters against discrimination, there can be no
17 violation unless you design the district for the
18 specific purpose of favoring or disfavoring a party
19 or an incumbent, and there is no prohibition
20 against using voting data in order to accomplish
21 the permissible goal of protecting minority rights.
22 In fact, you would have to.

23 I want to remind you that Senator Smith and
24 Representative Thurston requested the opinion of
25 voting rights lawyers at Jenner and Block who

1 specialize in redistricting, and that letter is in
2 the record of these proceedings.

3 They are top lawyers in the country on voting
4 rights and redistricting. To my knowledge they are
5 completely neutral and certainly not involved --
6 haven't been involved in the drafting or the
7 promotion of the Fair Districts amendments.

8 Their letter supports every one of these
9 answers. It is their unbiased opinion that with
10 the amendments in place, Bartlett, and I quote
11 them, "In no way restricts Florida in drawing
12 districts in which minorities are able to elect
13 representatives of their choice."

14 So with these amendments you will not only be
15 free, but you will actually be required to create
16 minority access seats to the extent necessary to
17 ensure that the ability of minority voters to elect
18 representatives of their choice is not diminished.

19 In fact, the lawyers at Jenner and Block
20 conclude that our amendments would, and I am
21 quoting from their letter, "would dramatically
22 improve the redistricting process in Florida and
23 make Florida's elections fairer for all political
24 parties and candidates."

25 They also go onto say that the amendments

1 would also protect and indeed enhance the ability
2 of minorities to participate in the political
3 process and elect representatives of their choice.

4 Now, other questions have been asked about
5 whether the new standards are in conflict with each
6 other, and therefore, would be impossible to apply
7 them.

8 The implication is that you cannot as a
9 practical matter apply so many standards. I cannot
10 emphasize this enough. The standards don't
11 conflict and a good faith common sense approach
12 will allow you to comply with the standards and
13 create districts that are fairer and more
14 understandable to the citizens of Florida.

15 Fair Districts Florida did not manufacture
16 these standards. These are the same standards that
17 have been proposed in Florida numerous times
18 before.

19 I want to point out the fact that Florida has
20 fewer requirements as you see -- well, on the slide
21 that was shown earlier, the only state requirement
22 in Florida is that the districts be contiguous.

23 Florida has fewer requirements than almost any
24 other state. There are only two other states in
25 the Union that have as few requirements as Florida.

1 But more importantly, 36 states require
2 compactness, 44 states require adherence to local
3 boundaries, 12 prohibit protecting incumbents, 27
4 have their own protections for minority voters, and
5 of course, all 50 states have to comply with the
6 Federal voting right laws.

7 Many states actually have the same combination
8 of standards as Amendments V and VI. These states
9 all managed to get their maps drawn.

10 I have no doubt that this Legislature has the
11 expertise, the intelligence and the talent to be
12 able to apply these standards fairly and without
13 confusion.

14 Now, the lawyers for these committees and some
15 members have asked whether the amendments will lead
16 to lengthy and expensive litigation.

17 It has been suggested that we should remove
18 the Fair Districts designation and rename
19 Amendments V and VI, the lawyers' relief act.

20 Our answer is, if the Legislature follows the
21 standards there is not going to be need for anymore
22 litigation than in previous years.

23 The Legislature already made this argument to
24 the Florida Supreme Court and the Court held that
25 any prediction of increased litigation must be

1 based on the assumption, and now I am quoting from
2 the Florida Supreme Court, "Must be based on the
3 assumption that the Legislature will fail to adhere
4 to guidelines and fail to fulfill its
5 constitutional duty."

6 It also said, the Supreme Court also said,
7 "That it is dubious and highly speculative to try
8 and establish that there will be more litigation if
9 these amendments are in the Constitution."

10 I cannot stress enough to you that if the
11 Legislature follows the standards and the
12 Legislature can follow the standards, there will be
13 no need for increased litigation. I am confident
14 that this Legislature can follow these standards.

15 These amendments make absolutely no change in
16 the role of the courts in redistricting. That role
17 is simply to be sure that the districts are drawn
18 in compliance with the law, nothing else.

19 The Supreme Court is constitutionally required
20 to review the legislative plans and there is a
21 clear time frame for that to happen. There is no
22 change in that.

23 Citizens are free presently without these
24 amendments to challenge districts or plans in other
25 courts and that is nothing new and it does nothing

1 is added that will change that. And lawsuits have
2 always varied in number and in length from decade
3 to decade.

4 Now, some have asked specifically whether the
5 prohibition of intent to favor or disfavor in
6 Section I of the amendments will make litigation
7 more likely.

8 There have been many questions about how
9 intent or lack of intent will be proved. Intent is
10 an element of all kinds of statutes that you
11 consider and you pass every single session, and it
12 is an integral part of applying the Voting Rights
13 Act.

14 It is not unusual to have to prove intent in
15 litigation. Lawyers and courts deal with it every
16 day. If districts do intend to be drawn with such
17 intent, proof will be made as it always is by
18 testimony and all of the surrounding circumstances.

19 A clear example of intent to favor or disfavor
20 has been recently reported in the press and can
21 serve as one example of what the citizens of
22 Florida want to eliminate.

23 It is well known, for example, that certain
24 legislators who are about to leave the Legislature
25 have designed Congressional districts that they can

1 run in after their terms are up. It is that sort
2 of blatant favoritism that Florida voters want to
3 end.

4 Now, there has been a big red heron raised in
5 the form of a question about public testimony and
6 its impact on proof of intent.

7 I believe that one of the Committee Members
8 asked what would happen if a voter testified that
9 she liked her district just the way it was and then
10 you drew that district just as she wanted it.

11 Well, without more, that would not be evidence
12 of intent to favor or disfavor. Such evidence
13 comes from your thoughts, your actions, your words
14 and the maps that you draw.

15 If someone suggest that you draw a district to
16 be sure that it is safely democratic or safely
17 Republican, that doesn't provide evidence of
18 intent. The issue is what you do.

19 So there is no chilling of free speech, no
20 reason to stop public comment, and in fact, we hope
21 with these standards the public will become more
22 involved in the process, because with clear
23 standards they will understand that redistricting
24 is no longer a free for all in political
25 preservation and that they can actually have an

1 impact in creating districts that make sense.

2 Mr. Chairman, I have done my best to answer
3 the questions that you, your many lawyers and your
4 Members have posed about our fairness amendments.
5 I hope I have satisfied your concerns.

6 On behalf of the Floridians who signaled their
7 dissatisfaction with the status quo by signing 1.7
8 million petitions, and the thousands of others who
9 have worked and contributed to bring these
10 amendments to the ballot, I urge you to remember
11 the first line of the Florida Constitution.

12 The first line of the Florida Constitution
13 says, "All political power is inherent in the
14 people." If these amendments pass the Legislature
15 will be called upon to exercise good faith, common
16 sense and balance to accomplish the goals that the
17 people have told you that they want.

18 I have every belief that you will respect the
19 right of the people of Florida to decide if they
20 want to end the blatant political favoritism that
21 has long pervaded redistricting in our state.

22 When the voters put the standards in the
23 Constitution we have every confidence that you will
24 follow them.

25 REPRESENTATIVE CANNON: First of all,

1 Ms. Freidin, thank you for the excellent
2 presentation. I know Members, several Members have
3 expressed an intention in asking questions. I will
4 begin with Representative Kreegel.

5 REPRESENTATIVE KREEGEL: Thank you, Mr. Chair,
6 and thank you for being here today to explain that
7 to us.

8 I am looking at the first part of the Section
9 I there where it says, "No apportionment plan shall
10 be drawn with the intent to disfavor."

11 My question to you would be short of wiring
12 the Legislature up to a polygraph, how do you plan
13 on dividing the intent?

14 MS. FREIDIN: Well, if you look at the current
15 map of Florida districts, it is -- it is so
16 blatantly obvious that the districts were drawn
17 with intent to favor or disfavor a political party
18 or an incumbent because of the way the districts
19 look.

20 They are drawn -- they go for hundreds of
21 miles. They split up communities, they travel
22 through multiple cities and counties and that would
23 certainly be the first and the very best evidence
24 of intent.

25 You know, you could think of yourselves when

1 you are drawing the lines of the districts as
2 judges, because every day judges have matters that
3 come before them, and when they have those -- when
4 they have matters that come before them they know
5 that they have to decide the case, whatever it is
6 that is before them, on the facts and on the law.

7 So they apply the facts and the law and they
8 come up with a decision. Now, that decision is
9 going to favor somebody and it is going to disfavor
10 somebody, but the judge's job is to do it
11 impartially and your job would be to do it
12 impartially in the same way.

13 You will have before you all the information
14 that you need to draw districts. You will have the
15 laws that would be -- the new law which would be
16 what Amendments V and VI will put into the
17 Constitution, and if you follow the law and you
18 apply the fact that you have before you to the law,
19 I have confidence that you will be able to come up
20 with districts that are not -- that do not
21 intentionally favor or disfavor an incumbent or a
22 political party.

23 REPRESENTATIVE CANNON: For a follow up,
24 Representative Kreegel.

25 REPRESENTATIVE KREEGEL: Thank you,

1 Mr. Chairman. And thank you for that answer by the
2 way.

3 I did have the pleasure of being able to
4 interact with several of the petition gatherers
5 outside of our courthouse and county buildings and
6 was able to speak with them a bit about it.

7 Most of them didn't -- they weren't too
8 informative because most of them were paid petition
9 gatherers, and seeing that your organization did
10 such an excellent job statewide of gathering these
11 petitions, I figured there must be a lot of
12 petition gatherers paid and other finances there.

13 Could you tell us something about who funded
14 your organization?

15 MS. FREIDIN: Well, it is all public record
16 and you, I am sure you know it probably better than
17 I do.

18 REPRESENTATIVE CANNON: Actually, Ms. Freidin,
19 there is some lack of familiarity with that. Could
20 you answer Representative Kreegel's question?

21 MS. FREIDIN: Yes, we have over -- over almost
22 3,000 people who have contributed to Fair Districts
23 Florida, and they are people who are Republicans,
24 they are people who are Democrats, they are
25 businesses, they are organizations, they are, you

1 know, it is a wide variety of people.

2 REPRESENTATIVE CANNON: For follow up,
3 Representative Kreegel.

4 REPRESENTATIVE KREEGEL: Thank you,
5 Mr. Chairman. You mentioned organizations. Are
6 there political action committees, electionary
7 communication organizations, CCEs who have
8 contributed and could you tell us who the large
9 contributors are?

10 MS. FREIDIN: I actually don't know what --
11 what -- who falls into what category, so I can't.

12 REPRESENTATIVE KREEGEL: That is all, thank
13 you.

14 REPRESENTATIVE CANNON: Okay, Representative
15 Hukill for a question.

16 REPRESENTATIVE HUKILL: Mr. Chair, back here,
17 thank you. For a series of questions, Mr. Chair.

18 REPRESENTATIVE CANNON: For a series.

19 REPRESENTATIVE HUKILL: Thank you very much.
20 Thank you, Ms. Freidin, and we are so happy that
21 you came here today to share your thoughts with us.

22 I have just a few questions for the record
23 before we begin. I want to confirm, you are the
24 Chairperson for Fair Districts Florida.org
25 Campaign, is that correct?

1 MS. FREIDIN: I am the Campaign Chair for Fair
2 Districts Florida.

3 REPRESENTATIVE HUKILL: The Campaign Chair?

4 MS. FREIDIN: Yes.

5 REPRESENTATIVE HUKILL: Is that different from
6 chairperson?

7 MS. FREIDIN: Well, I am not officially the
8 Chair of the committee. So the answer would be,
9 yes, I guess, if that is what -- if that is what
10 you are asking.

11 REPRESENTATIVE HUKILL: All right. Also, you
12 are an attorney duly admitted to practice law in
13 the state of Florida, is that correct?

14 MS. FREIDIN: I am.

15 REPRESENTATIVE HUKILL: And you were a member
16 of the 1998 Constitutional Revision Commission, is
17 that correct?

18 MS. FREIDIN: I was.

19 REPRESENTATIVE HUKILL: And you are
20 frequently, as you have been here today, a
21 spokesperson for the Fair Districts Florida.org
22 Campaign as you are often quoted in newspapers
23 articles.

24 MS. FREIDIN: Yes.

25 REPRESENTATIVE HUKILL: Is that correct? Yes.

1 So would it be fair to say that your views on the
2 Fair Districts Florida.org petitions are very
3 relevant to people who may still be considering
4 whether or not they would support these amendments?

5 MS. FREIDIN: Well, I think that the language
6 of the amendments speak for themselves and I hope
7 that most people would make their decision based on
8 a reading of the amendments and a decision of their
9 own, whether they would want to support the
10 amendments or not, but I am a spokesperson and I do
11 frequently speak.

12 REPRESENTATIVE HUKILL: All right. Would you
13 concede, assuming that people make decisions on
14 their own, which I am sure they do, would you agree
15 that there will be people who will rely upon the
16 positions that you espouse either publicly in the
17 paper, on the website that are attributed to you?

18 MS. FREIDIN: I -- I have -- I would assume
19 so, but I don't know.

20 REPRESENTATIVE HUKILL: Well, thank you very
21 much. I have a question for you.

22 In your opening remarks you stated that the
23 Fair Districts Florida petitions.org petitions
24 enhances the Voting Rights Act, is that correct?

25 MS. FREIDIN: No, I think that what I said was

1 it enhances the law that actually doesn't expressly
2 exist in the Florida Constitution today.

3 REPRESENTATIVE HUKILL: Would you repeat that?

4 MS. FREIDIN: I think that I said that it
5 enhances the law as it exist in Florida today
6 under -- under the -- in the Florida Constitution.

7 REPRESENTATIVE HUKILL: All right, well then
8 let's go back a bit. In some press accounts
9 oftentimes through statements that you have made
10 through the press, Fair Districts has suggested
11 that the petitions merely inshrine the voting
12 Rights Act.

13 And then in other statements oftentimes also
14 attributed to you that have been made to the press,
15 Fair Districts has stated the petitions enhance
16 minority rights.

17 In fact, Former Speaker John Mills circulated
18 in March 2009, a two-page informational sheet on
19 behalf of Fair Districts with their paid political
20 advertisement disclaimer at the bottom which
21 stated, "That while minority voting rights are
22 presently guaranteed by Federal statute, the new
23 standards will inshrine them in the Florida
24 Constitution."

25 Since I seem to have misunderstood what you

1 have said in your opening remarks, which is it, do
2 the petitions duplicate the Voting Rights Act, or
3 do they confer broader rights than the Voting
4 Rights Act?

5 MS. FREIDIN: Well, I don't think that what
6 you read to me from Chairman Mills -- that Speaker
7 Mills said or shall we call him Dean Mills or
8 Professor Mills, I don't think that any of those
9 what you read is not exactly -- doesn't exactly
10 follow with what I understand your question to be.

11 But if you are asking me flat out do I think
12 that these -- that what our amendments do -- is
13 what you are asking do I -- do I think that what
14 our amendments do increases Voting Rights Act,
15 voting rights for our Florida minority voters, is
16 that what you are asking?

17 REPRESENTATIVE HUKILL: Does it inshrine the
18 rights provided by the Voting Rights Act or does it
19 enhance, increase the rights that are provided by
20 the Voting Rights Act?

21 MS. FREIDIN: Well, I think that if, you know,
22 there are -- I think that you need to look at the
23 language, itself. The language, itself, doesn't
24 exactly mirror, it is not the same exact language
25 that is in the Voting Rights Act, nor is it -- and

1 it does enhance voting rights.

2 You know there was a letter from -- that you
3 all have and that I referred to earlier from Jenner
4 and Block and actually says, their letter and they
5 are voting rights expert lawyers, I am not, and it
6 says that they would protect and indeed enhance the
7 ability of minorities to participate in the
8 political process and elect representatives of
9 their choice.

10 Now, what our rights, what our amendments do
11 is they guarantee to minority voters that they
12 will, and this is a constitutional guarantee that
13 will be permanently in the Florida Constitution,
14 not subject to being chipped away by -- by Federal
15 courts, nor subject to being repealed or reduced by
16 the Congress, because they will be permanently in
17 our Constitution.

18 And what the language says is, that districts
19 shall not be drawn with the intent or result of
20 denying or abridging the equal opportunity of
21 racial or language minorities to participate in the
22 political process, or to diminish their ability to
23 elect representatives of their choice.

24 Now, that is very clear language. There is
25 nothing unclear about that. It is there in black

1 and white and if it is in the Florida Constitution,
2 that is exactly what it is going to say.

3 Minority's ability, the ability of minority
4 voters to elect representatives of their choice is
5 not going to be diminished with this amendment.

6 REPRESENTATIVE HUKILL: All right, let's
7 follow up on that. You didn't specifically answer
8 my question, but the Voting Rights Act already
9 provides protections for minorities in
10 redistricting.

11 And my question is whether the petitions adopt
12 the Voting Rights Act or add protections beyond the
13 Voting Rights Act and in your opinion?

14 MS. FREIDIN: I am not an expert redistricting
15 lawyer and I really don't have an opinion. What I
16 do know is that these amendments will very clearly
17 by their language forbid any legislator or any
18 Legislature I should say, to adopt any plan that
19 diminishes the ability of minority voters to elect
20 representatives of their choice.

21 REPRESENTATIVE HUKILL: A follow up on that,
22 Ms. Freidin.

23 There are certain statements that have been
24 attributed to you in various press sources.

25 For instance, in the Orlando Sentinel,

1 November 18, 2009, you are quoted as saying that
2 these would not in any way conflict with the Voting
3 Rights Act.

4 In November 27, 2009, the Herald Tribune you
5 said, "Our amendment will not dilute minority
6 representation and it will add a right to the
7 Florida Constitution that doesn't exist in any
8 other state in the Union." Is that your statement?

9 MS. FREIDIN: Not the second part of it. I
10 don't think I have ever said that exactly.

11 REPRESENTATIVE HUKILL: So you disagree with
12 the statement written in the Tribune of
13 November 27, 2009, that was attributed to you?

14 MS. FREIDIN: No, I think what I said was they
15 will put into the Florida Constitution rights that
16 don't exist in other state Constitutions.

17 REPRESENTATIVE HUKILL: All right. In the
18 Tampa Tribune, January 12, 2010, attributed to you
19 is a statement that says, "It will provide greater
20 protection that exist today in Federal law."

21 Is that a statement that you attribute that
22 you made?

23 MS. FREIDIN: Well, again, every statement
24 that I have made about these rights, first of all,
25 we can't have an impact on Federal law. Federal

1 law is Federal law. That much -- that is basic
2 law, I know that.

3 But as far as the statements I have made about
4 these amendments is that there will now be in the
5 Florida Constitution rights that are there
6 permanently.

7 That is in and of itself, the permanency in
8 the Florida Constitution is in and of itself a
9 difference than from the Federal Voting Rights Act,
10 and I am certain that that is what I have been
11 saying all along.

12 REPRESENTATIVE HUKILL: Thank you, Ms.
13 Freidin, I am not trying to be contentious about
14 this, but the citizens read a petition and they
15 have to look to statements that are made,
16 representations that are made in order to help
17 understand what they are voting for, and it is very
18 important that it be clear and precise and that a
19 citizen knows what they are voting for.

20 So I am just trying to work with you and
21 understand if these statements that are attributed
22 to you, that you acknowledge have been made by you
23 and that I feel that the citizens at some point
24 will rely upon as a representative, you being a
25 representative of Fair Districts Florida.org.

1 So can you tell me that you disagree with
2 those statements or you agree that they are
3 correct?

4 MS. FREIDIN: I told you that -- I already
5 told you that I -- that I don't think that one of
6 them was exactly what I said. And what I have
7 repeatedly told you is that what all of those
8 statements say is that I have and are consistent
9 with what I am telling you right now.

10 That this inshrines in the Florida
11 constitution voting rights that don't exist today.

12 REPRESENTATIVE HUKILL: So my original
13 question of do the petitions inshrine what is in
14 the Voting Rights Act or do they extend beyond what
15 is in the Voting Rights Act?

16 My understanding is you are now saying that it
17 extends beyond. As you said, it inshrines rights
18 that do not exist today. So to me that is
19 extending beyond.

20 MS. FREIDIN: You know, with all due respect,
21 Mr. Chairman, I believe that my words are getting
22 twisted here and I don't -- and, you know, I came
23 here at my own expense. I am here to represent all
24 of the people, the thousands and thousands and
25 hundreds of thousands of people who want to see

1 this on the ballot today.

2 I am not going to be badgered by this. I
3 apologize, but I just -- I just can't do that. I
4 think I have made my position very clear. I am --
5 my position is that and has been with all of these
6 press statements, is that there are now -- if the
7 voters pass this and put it into the Florida
8 Constitution, there will be rights that are in our
9 Florida Constitution that aren't there today.

10 And this language is not exactly the same as
11 the Voting Rights Act and that is, you know, there
12 should be no more conflict about that.

13 REPRESENTATIVE CANNON: And Ms. Freidin,
14 actually there is and with all due respect we
15 represent the 18 million Floridians who elected us
16 to come here and make policy and we have a
17 constitution duty to redraw the House seats and the
18 Senate seats according to the precise language of
19 the Constitution.

20 And so I am sorry it is frustrating, it is
21 equally as frustrating for us, because there are
22 statements, in your introductory remarks commented
23 that newspapers have made this or that statement.

24 well, I think what Representative Hukill is
25 trying to get to is, there have been two different

1 types of articulations of what these mean as a
2 matter of law, and I am sure a fellow member of the
3 Bar and somebody who was on the Constitution
4 Revision Commission you can appreciate that words
5 have meaning, particularly when they are in the
6 Constitution.

7 So I think what Representative Hukill was
8 trying to ask is, and as a precursor to this
9 question and I will try and ask it another way.

10 we are well familiar with the concept of
11 Federal preemption, at the Federal law we cannot
12 diminish, but we can as a State Legislature or our
13 Constitution can go beyond what the Federal
14 Constitution or the Federal laws provide. Do you
15 agree with that statement?

16 MS. FREIDIN: Yes.

17 REPRESENTATIVE CANNON: Okay. In the same way
18 that certain of the Federal First Amendment some
19 states confer extra First Amendment protections
20 beyond those guaranteed by Federal law. Are you
21 familiar with that?

22 MS. FREIDIN: Right.

23 REPRESENTATIVE CANNON: Okay. And in Florida
24 we have extra protections to protect, for example,
25 against eminent domain takings for economic

1 development beyond the Federal law. Are you
2 familiar with that?

3 MS. FREIDIN: Of course.

4 REPRESENTATIVE CANNON: Okay. So what
5 Representative Hukill is asking is, would the
6 language of your proposed amendments provide extra
7 protections beyond those assured today by Federal
8 law in the voting rights environment? It is a yes
9 or no question.

10 MS. FREIDIN: The language -- the language
11 says that districts cannot be drawn or plans cannot
12 be drawn to diminish the ability of minority voters
13 to elect representatives of their choice.

14 That is not presently part of the Voting
15 Rights Act, except to the extent that it might be
16 somewhat similar to what is in Section V.

17 REPRESENTATIVE CANNON: Okay. But --

18 MS. FREIDIN: So that would be an additional
19 protection.

20 REPRESENTATIVE CANNON: Thank you. Senator
21 Storms for a question.

22 SENATOR STORMS: Thank you, thank you,
23 Mr. Chair, and I just want to encourage you, ma'am,
24 to sort of toughen up there because this is going
25 to be -- it is going to be a rocky ride and if you

1 are getting a little frustrated and feeling a
2 little sensitive in this very mild environment,
3 then I encourage you to go to a couple of public
4 meetings where you have some fired up voters on
5 your hands as they're talking about it.

6 So I just really encourage you to, you know,
7 not take this --

8 MS. FREIDIN: Well, thank you, Senator, for
9 that encouragement.

10 SENATOR STORMS: Okay, you are welcome, you
11 are welcome. I just wanted to -- I have some
12 concerns about -- about the minority district.

13 I represent Beeville. I have been an elected
14 official for 12 years, and I have had a wonderful
15 experience representing Beeville. Beeville is an
16 area of my district that was settled by emancipated
17 slaves when Lincoln signed the emancipation
18 proclamation and I have had a very tight
19 relationship with my district, and particularly
20 with Beeville over the years.

21 And so I am very sensitive to anything that
22 would diminish the ability of minority folks in my
23 district and in other districts to participate in
24 the process.

25 And so I looked -- I read your letter that you

1 referenced in your comments and I just wanted to go
2 over some of those with you, because I am also an
3 attorney by training and you are, too.

4 So I read the language directly that you
5 pointed to as not diminishing the minority
6 participation, and I just wondered if you could
7 look at that with me.

8 It says, "The districts shall not be drawn to
9 deny racial nor language minorities the equal
10 opportunity to participate in the political process
11 and elect language minorities the equal -- and
12 elect representatives of their choice."

13 MS. FREIDIN: Well, that is the -- that is the
14 ballot language, but that is not the constitutional
15 language. So which are we talking about?

16 REPRESENTATIVE HUKILL: So that would be the
17 ballot summary. I guess this is your sheet that I
18 am reading from. So it is the ballot summary that
19 I am reading.

20 And then if you drop down to the full text, in
21 subparagraph (1) it says, "No apportionment plan or
22 district shall be drawn with the intent to favor or
23 disfavor a political party or an incumbent and
24 districts shall not be drawn with the intent or
25 result of denying or abridging the equal

1 opportunity of racial or language minorities to
2 participate."

3 Again, it is the same language, "to
4 participate in the political process or to diminish
5 their ability to elect representatives of their
6 choice." That is the language.

7 MS. FREIDIN: That is the constitutional
8 language.

9 REPRESENTATIVE HUKILL: And so in your letter
10 that you referenced it is saying that it would
11 provide more protection --

12 MS. FREIDIN: When you are referring to my
13 letter, I don't know what you are talking about.

14 REPRESENTATIVE HUKILL: The letter and your
15 comments about the attorney, Jenner and Block.

16 MS. FREIDIN: Let me -- let me make one thing
17 clear.

18 REPRESENTATIVE HUKILL: Excuse me just for a
19 second, Mr. Chair.

20 REPRESENTATIVE CANNON: Senator Storms.

21 SENATOR STORMS: So I recognize you are not
22 saying that this is your -- I am not saying your
23 name is on it, but it is a letter you referenced.
24 Is that better for you? In your statements you
25 referenced this letter. Mr. Chair.

1 MS. FREIDIN: May I answer?

2 REPRESENTATIVE CANNON: Ms. Freidin, sure.

3 MS. FREIDIN: I referenced the letter because
4 it is something that was requested by Senator Smith
5 and Representative Thurston.

6 It is a letter that is in the record of your
7 proceedings. It is not a letter that I requested,
8 and frankly the first time I saw it was when they
9 turned it to you and I had nothing to do with it.
10 It is not my letter.

11 So I would just simply disagree with your
12 characterization of it as my letter.

13 SENATOR STORMS: Okay. Well, I didn't mean
14 for you to take it personally, it is okay, peace.

15 MS. FREIDIN: I am not -- I am not taking it
16 personally. I just want to make sure that the
17 voters of Florida understand what is going on here.

18 SENATOR STORMS: Okay.

19 MS. FREIDIN: Because that is a letter that
20 was written by -- by your -- at the request of your
21 colleagues by neutral observers who are lawyers in
22 Washington.

23 SENATOR STORMS: Mr. Chair. I understand,
24 okay.

25 REPRESENTATIVE CANNON: Representative Storms.

1 SENATOR STORMS: I am sorry, peace, stand
2 down, I am not saying it is your letter. What I
3 mean is the letter you referenced and you said it
4 supported the position that minorities would not be
5 diminished.

6 And I would say to you, I look at page 4 of it
7 and it clearly says under subparagraph (8) that
8 within these two bounds the Legislature would have
9 substantial discretion. And it is talking about
10 drafting minority districts.

11 It specifically says, "It will be able to, but
12 would not have to formulate a plan under which
13 minorities would be able to elect more
14 representatives of their choice compared to the
15 status quo."

16 And so -- and in another place it says, "The
17 scenario envisioned by this question, a non compact
18 majority controlled district abutting a non compact
19 district in which a minority can elect a
20 representative of its choice would therefore be
21 extremely rare. In any event, under such a
22 scenario the same factors that justified the
23 creation of the minority controlled district would
24 also shield the minority controlled district, the
25 majority controlled district from attack.

1 In other words, the non compact majority
2 controlled district would be an inevitable and
3 permissible byproduct of the protection of
4 minorities' ability to elect representatives of
5 their choice."

6 Now if you go down to paragraph 11 it says,
7 "But it is clear that there were alternatives
8 presented at that time that maintained a comparable
9 ability of minorities to elect candidates of choice
10 while avoiding some of the other ills, like undue
11 non compactness that are among the targets of the
12 amendments."

13 And then finally I want to reference this
14 point before I ask the question, another question.
15 "If however the Legislature did withdraw a district
16 and therefore destroyed a minority group's current
17 ability to elect the representatives of its choice,
18 then that could indeed be a violation of the
19 amendment, but not necessarily."

20 So -- so as you read this you say that this
21 letter supports your position. I read this letter
22 and say, no, what it says is the Legislature has
23 wide discretion. And so the result is a
24 diminishment of the minority participation by a
25 minority district.

1 REPRESENTATIVE CANNON: Ms. Freidin.

2 MS. FREIDIN: I am not sure what the question
3 is.

4 REPRESENTATIVE CANNON: Senator Storms.

5 SENATOR STORMS: Mr. Chair, the question is,
6 you talked about the intent and when my colleague
7 here from the House asked what the intent was,
8 could you restate how you were able to devine the
9 intent.

10 MS. FREIDIN: The intent is to ensure that
11 districts in the state of Florida are drawn for the
12 people instead of for political preservation, while
13 also ensuring that there is no impingement or
14 infringement on minority voting rights.

15 SENATOR STORMS: Mr. Chair.

16 MS. FREIDIN: May I finish?

17 SENATOR STORMS: You are not answering the
18 question that I asked.

19 MS. FREIDIN: May I finish?

20 SENATOR STORMS: I just want to get to the
21 point. He asked you how you devine the intent of
22 the Legislature under the current districts and you
23 said, just look at any of the districts, they are
24 all over the place. That is how you devine intent,
25 because you can look at -- according to what you

1 said just a few minutes ago he asked you how do you
2 know what we intended to do.

3 And you said, well, anybody could look at the
4 maps and see that they are all over the place. So
5 we can tell your intent that it was done to protect
6 the political party. That was my understanding of
7 what you just said. I am not trying to engage in
8 gotcha. I am just trying to help you understand
9 where I am coming from.

10 MS. FREIDIN: I did say that.

11 SENATOR STORMS: Yes, okay.

12 MS. FREIDIN: So I don't understand what that
13 relates to the Jenner and Block letter.

14 SENATOR STORMS: Here is how that relates.
15 Because according to this then if -- one way or the
16 other we can say it is our intent to protect
17 minority districts, right?

18 Then we can keep all of the districts exactly
19 like they are, because if it is our intent right
20 now to protect the minority districts, all of the
21 districts could stay the same. So that all we have
22 to do is articulate one intent.

23 We want to protect minority districts and we
24 going to protect that representation. Therefore,
25 we are not going to deviate because all of the

1 districts are the same.

2 Or is it that the Legislature has more
3 discretion than that, and if they have more
4 discretion than that, isn't it true that we could
5 and possibly would be forced to reduce those
6 minority districts, because if all we have to do is
7 say it is our intent to preserve those districts
8 and we do nothing else, then we can settle that by
9 saying, we are keeping the status quo just like it
10 is today, because we are going to protect those
11 minorities districts, that is our intents.

12 And so long as we say that on the record, you
13 say that, you say that, you say that, you say that,
14 everybody says that, there is no problem. How else
15 do you determine intent?

16 MS. FREIDIN: Well, first of all, I think -- I
17 think this is a multi part question and I am going
18 to try and answer it. But the first thing you
19 asked was, can we keep all the districts the same.

20 The answer is, we can't possibly know today
21 what the census data and what the other data that
22 is necessary to draw minority districts is going to
23 be in 2012, when you are charged with the awesome
24 responsibility of drawing those districts.

25 So we don't know if the districts today can be

1 the same as what they are today. We have no idea
2 and -- and it is highly unlikely that every
3 district or even many districts could remain
4 exactly the same.

5 However, given that and given the language
6 that is in our amendment, you cannot diminish the
7 ability of representatives -- of minority voters to
8 elect representatives of their choice.

9 So that is a protection that will be in the
10 Florida Constitution. You will be violating the
11 Constitution if you diminish the ability of
12 minority voters to elect representatives of their
13 choice.

14 Now, the point, you know, you went very fast
15 on that letter, but the one thing that you did
16 point out was you were saying that within the
17 bounds, within these two bounds the Legislature
18 would have substantial discretion. It would be
19 able to, but would not have to formulate a plan
20 under which minorities would be able to elect more
21 representatives.

22 Now that is not what we are claiming nor is it
23 what the language says. What our language says is
24 that you cannot write -- make districts or create a
25 plan that diminishes the ability of minority voters

1 to elect representatives of their choice.

2 It would be illegal to have a quota or
3 anything in our Constitution that says you have got
4 to have a certain number -- you have got to make
5 sure that there ends up being a certain number of
6 minority voters. That is not the issue.

7 The issue is the ability of minority voters to
8 elect representatives of their choice. You have
9 done a very good job of ensuring that those
10 districts exist today, and I am sure that you can
11 continue doing that and making sure that that
12 ability is not diminished.

13 SENATOR STORMS: Mr. Chair, if I could --

14 REPRESENTATIVE CANNON: For a follow up,
15 Senator Storms.

16 SENATOR STORMS: Thank you, Mr. Chair. But
17 that really goes to the essence, because see I
18 guess where you and are differing on this is that
19 you talk about the intent as though -- and I think
20 the best description of it is devining intent.

21 And my question is, goes to how -- how
22 somebody if it is not going to be challengeable at
23 every turn, how do you devine intent.

24 Because if you look at say Tony Hill's seat in
25 the Senate, are you familiar with Senator Tony

1 Hill's seat?

2 MS. FREIDIN: No, I am not. I must confess to
3 not really being familiar with any individual or
4 specific seats.

5 SENATOR STORMS: Okay, well, that is an
6 important point, because Senator Hill is a minority
7 representative and his district is very
8 gerrymandered. I mean, it goes, it is a shoestring
9 and goes all the way down.

10 Okay, so -- so if we start here, if the
11 Members here say, we are going to start by
12 protecting, we don't want to diminish any minority
13 seats and minority representatives and that is
14 Congressional, State and House, Senate and House.

15 So we are doing to start with that
16 perspective. All of the minority seats are going
17 to still be gerrymandered. That means all of the
18 seats that are minority seats that are touching
19 them have to within some way gerrymandered also to
20 accommodate that sort of gerrymandering, but then
21 that goes to intent to do what.

22 How do you measure intent, because according
23 to what you said that that gerrymandering is
24 de-facto bad intent. That is de-facto bad intent.

25 You said the outcome. When he asked you how

1 do you measure intent, how do you devine intent,
2 although it is not the exactly words, you said, by
3 looking at the map and they are all gerrymandering,
4 therefore, you know.

5 That means that outcome is de-facto intent,
6 and I don't know how you protect those minority
7 seats that are gerrymandered without necessarily
8 having majority seats that touch them also be
9 gerrymandered in order to protect them.

10 I don't know how you could that without
11 subjecting it to a challenge. And so I guess what
12 my question to you is, besides outcome, which you
13 have already enumerated, what else are you going to
14 use as a tool to determine intent? How else will
15 you use it besides outcome?

16 MS. FREIDIN: Well, first of all it is not --
17 as I told you, it is -- it is the province of the
18 Legislature in terms of intent, it is the province
19 of the Legislature to avoid intent, and the way the
20 Legislature would avoid intent would be to look at
21 the facts, would be the geographical information,
22 if it is a race district, if it is a racial or
23 language minority district it is going to be a very
24 different calculus than it is going to be if it
25 is a -- if it is a non minority district.

1 So, you know, if you have a non minority
2 district that is -- that is -- that is what I was
3 referring to when I said, just look at the map,
4 because I was being asked how do you devine intent
5 to favor or disfavor a political party or a
6 candidate.

7 That was the question that I was being asked.
8 I was not being asked at the time about minority
9 districts.

10 REPRESENTATIVE THURSTON: Mr. Chair.

11 SENATOR STORMS: Mr. Chair.

12 REPRESENTATIVE CANNON: Let's do this, if it
13 is all right with you Senator Storms, I have got
14 Representative Thurston, Representative Carroll, I
15 think I heard Senator Thrasher. Let's start there
16 and then we will come back as necessary.

17 So Representative Thurston for a question.

18 REPRESENTATIVE THURSTON: Thank you,
19 Mr. Chair. Thank you for being here this
20 afternoon. I want you to know that this does not
21 necessarily have to be a rocky road though. This
22 can be more gentle.

23 But I want to thank you because a couple of
24 occasions it was referenced that Fair Districts
25 were not present and I did receive a letter from

1 you a while back saying that once you reach the
2 signature threshold that you would come forward and
3 I am glad that you are here.

4 My first question and I only have two
5 questions. My first question is, you have
6 indicated that there have been a number of prior
7 efforts to get the same language passed or added to
8 the Constitution.

9 And we are making a big deal about the
10 language that we are utilizing here. Can you tell
11 me, because I am not familiar with what the
12 Constitution Revision Commission said or the prior
13 efforts of Congressman Mario Diaz-Blart was.

14 was that language substantially different than
15 the language in your petition, and if so, tell me
16 what that was?

17 MS. FREIDIN: Well, the language of the
18 earlier efforts actually all included a
19 redistricting commission which we chose not to do,
20 because we believe that this Legislature has the
21 ability and will have the will when it is in the
22 Florida Constitution, and in good faith can draw
23 these districts in a fair manner.

24 But in terms of the standards, which all of
25 those efforts included as well, the standards were

1 essentially identical to -- I mean, with slight
2 changes in wording. So that for example, the one
3 that was in 1993, and it was sponsored by Ander
4 Crenshaw with co-sponsorship by our Governor,
5 Charlie Crist, and other Democrats and Republicans
6 together, it contained requirements of compactness.

7 It contained requirements of contiguousness.
8 It required -- it required that no district be
9 drawn to protect an incumbent's or a party, and it
10 also required that voting rights not be diminished.

11 And it had -- it had all of the components
12 that our amendment has. So this is nothing new
13 what we are doing here today.

14 REPRESENTATIVE THURSTON: Follow up,
15 Mr. Chair.

16 REPRESENTATIVE CANNON: Follow up.

17 REPRESENTATIVE THURSTON: Thank you. When you
18 began you summarized the issues that you have heard
19 in watching the previous hearings, and you listed
20 the three as a protection or interfering with
21 minorities ability to elect representatives of
22 their choice, confusion and also more litigation.

23 And I am glad you had as your number one the
24 representation, preservation of minority
25 representation. I, like many of the other members

1 on this Commission, are truly concerned about that.

2 So I guess my question is, is there anything
3 that would -- is there any intent in your petitions
4 as it relates to continued minority representation?
5 And there has been a reference saying that there
6 could be diminishment of minority representation.
7 Is there anything prohibiting that in your
8 petitions?

9 MS. FREIDIN: There is nothing in our
10 petitions that would prohibit you as a legislator
11 from continuing to create minority opportunities
12 for minority voters, nothing.

13 And not only that, there is a requirement that
14 you not diminish the ability of minority voters to
15 elect representatives of their choice. So I think
16 that that -- the establishment of the intent is in
17 the language, it is in public and private
18 statements that are made by -- by all of you and
19 all of us.

20 REPRESENTATIVE THURSTON: Thank you,
21 Mr. Chairman.

22 REPRESENTATIVE CANNON: Ms. Freidin, next we
23 have Representative Carroll and then
24 Representative -- I mean Senator Thrasher.

25 Before we do that, I just want to make sure I

1 understood your answer to Representative Thurston's
2 question.

3 Is it your testimony that we -- that the
4 Legislature would be permitted to draw non compact
5 disks -- non compact districts that would allow
6 minority access even -- even though they could not
7 be protected by the Federal Voting Rights Act? In
8 other words, that you could draw a non compact
9 district to allow a minority crossover --

10 MS. FREIDIN: Are you talking about an under
11 50 percent district?

12 REPRESENTATIVE CANNON: Correct.

13 MS. FREIDIN: Absolutely.

14 REPRESENTATIVE CANNON: Okay.

15 MS. FREIDIN: But that is not from our
16 amendments. I want to make it clear. That is not
17 only -- there is nothing in our amendments that
18 would prohibit that, but remember what I read to
19 you from the Bartlett case.

20 The United States Supreme Court says that
21 there is nothing to stop a state from dropping --
22 from continuing to draw minority access districts
23 as opposed to majority, minority districts.

24 Our amendments simply don't -- we can't change
25 what the United States Supreme Court says. What

1 our amendments say is that with regard to -- with
2 regard to ability to elect representatives of
3 choice, the Legislature cannot do anything to
4 diminish that ability. So that -- that would be
5 the answer to that question I believe.

6 REPRESENTATIVE CANNON: Okay, Representative
7 Carroll, then Senator Thrasher, then Representative
8 Proctor.

9 REPRESENTATIVE CARROLL: Thank you,
10 Mr. Chairman. Thank you so much for being here
11 today and for your passion to bring about fairness.

12 I am getting a bit confused with regards to
13 what this will do with regards to litigation. If
14 anyone of the adopted standards are infringed upon.

15 For example, we have heard a discussion with
16 regards to compactness, but yet still it seems to
17 be an oxymoron with regard to the minority access
18 in majority, minority districts.

19 So if we were to draw lines per the additional
20 standards and stay within the compactness and all
21 of the districts are compact defined by whoever is
22 supposed to define that term, and then we diminish
23 minority access and majority, minority seats, then
24 this will stand for another litigation, because it
25 goes against the compactness, because we will have

1 to redraw those lines. Can you explain that?

2 MS. FREIDIN: Well I don't know -- I don't
3 know -- I am not sure that I understand it. Are
4 you asking me if you make minority districts, I
5 mean, you as a body, if you -- if the Legislature
6 were to make minority districts that were -- if
7 they were to make minority districts more compact,
8 and therefore, have fewer ability to elect --

9 REPRESENTATIVE CARROLL: Mr. Chair, just to
10 clarify my question.

11 REPRESENTATIVE CANNON: Sure, for a follow up.

12 REPRESENTATIVE CARROLL: Not so much -- take
13 away the minority from drawing the line. We draw
14 the lines with blinders on and we make the district
15 compact according to whatever the definition of
16 compact may be.

17 And it so happened that after drawing those
18 lines of compactness according to the additional
19 standards that may be voted on, that diminishes
20 minority seats.

21 That could stand a legal challenge, because
22 now we have gone away from the other part of the
23 Voting Rights Act and the other part of the
24 additional standards in keeping minority seats. So
25 how do we do both?

1 MS. FREIDIN: You have -- you have in the
2 language very clear directive with regard to that.
3 If you look at the -- at the beginning of Section
4 II of the amendment it says, "Unless compliance
5 with the standards in this subsection conflicts
6 with standards in the subsection (1) or Federal
7 law."

8 So that then -- then you have to go on with --
9 with the compactness and the adherence to local
10 boundaries.

11 So first you have to have the minority
12 districts drawn. Once you have those districts
13 drawn you go ahead and you make the other districts
14 to the extent that you can, compact and utilizing
15 existing boundaries.

16 REPRESENTATIVE CARROLL: So it kind of
17 conflicts what you said earlier about having
18 gerrymandered districts. So we can have
19 gerrymandered districts for minority seats, but we
20 cannot have gerrymandered districts for non
21 minority seats?

22 MS. FREIDIN: Well, the definition of
23 gerrymander, the definition of gerrymander is to
24 draw district to end up with a particular political
25 result, and that isn't the same as ending up with a

1 particular constitutionally required fairness
2 result for minority voters.

3 REPRESENTATIVE CARROLL: Interesting you
4 brought up that point, too, because fairness, are
5 we going to have that defined as to what fair
6 means, because it could be subjective?

7 For example the terms of compact, fair
8 geographical boundaries. Those are ambiguous
9 terms. So is there going to be some point where
10 those terms are defined?

11 MS. FREIDIN: Well, those -- are you asking me
12 if compactness is defined?

13 REPRESENTATIVE CARROLL: Well, you brought up
14 fairness as well, because as a minority voter I can
15 say that I don't have an opportunity if I don't
16 have an incumbent, let's say Representative Holder
17 is my incumbent and I want to elect him as a
18 minority to represent me in whatever seat, then I
19 could say that you are taking away my fair choice
20 to elect him.

21 So how do we then define what is the voter's
22 choice; what is fair in this; what is compactness;
23 what is geographical boundaries? Is that going to
24 be in definitions that we are going to be able to
25 use?

1 MS. FREIDIN: These are not -- we haven't --
2 these are not unusual standards. These are
3 standards that are applied in the vast majority of
4 other states and they are -- the definitions are
5 very clear. There is no question about -- about
6 how if you read the cases from the other states,
7 they are very clear.

8 REPRESENTATIVE CARROLL: So Mr. Chairman,
9 follow up.

10 REPRESENTATIVE CANNON: Sure.

11 REPRESENTATIVE CARROLL: Then if our voters
12 may be confused as I am as to what is going to be
13 fair, what is fair for Representative Holder and
14 Thurston may not be fair for me.

15 would that confusion to the voters then, are
16 they supposed to be go look to other states for the
17 definition of fair?

18 MS. FREIDIN: No.

19 REPRESENTATIVE CARROLL: If they wanted to
20 bring a legal challenge?

21 MS. FREIDIN: And let me -- let me go back to
22 that, because I am not saying that fairness is a
23 standard in any state, nor is it -- I don't believe
24 it is mentioned anywhere in our amendments.

25 The word fairness is not -- is not there. The

1 question that I thought you were asking is, if you
2 draw some districts compactly and other districts
3 not compactly, is that -- is that fair. Is that
4 not what you are asking?

5 REPRESENTATIVE CARROLL: Well, in combination,
6 because throughout your presentation you also
7 brought about what is fair, and if that is the
8 dialogue that we are going to have in a
9 conversation we are having with our voters and we
10 are informing them that this is going to be about
11 fair districting, then fairness to almost everyone
12 may be a little bit different.

13 So we need to either define the term what fair
14 means or to have that as clarity that fair may mean
15 130,000 voters, or fair may mean that the borders
16 are going to include a river and a lake or fair may
17 mean -- whatever it may be, but I just don't want
18 our voters to be confused with regards to thinking
19 that they are getting one thing and get something
20 else just to answer your question.

21 I also want to know, early on you made a
22 mention that the petitions were signed by
23 Democrats, Independents and Republicans, and I am
24 curious to know how do you know that since the
25 petition doesn't ask for your political

1 affiliation?

2 MS. FREIDIN: Because there is a record on the
3 voting rolls of every person who signs.

4 REPRESENTATIVE CARROLL: So you guys go look
5 at who signed the petition and get a tally, that
6 sort of thing?

7 MS. FREIDIN: No, I don't have a tally, but I
8 know that they -- I know that there are many
9 Republicans who are very much involved, actively
10 involved and many Independents who are actively
11 involved, many Democrats who are actively involved
12 who I know personally who have signed. There
13 are -- we also, it is public record who signs.

14 That is easy, but, Mr. Chairman, may I respond
15 on the fairness issue that she is raising?

16 REPRESENTATIVE CANNON: Certainly.

17 MS. FREIDIN: Fairness in this context means a
18 lot of different things, but the one thing that
19 these -- there are two things that these amendments
20 were intended to do, and they both involve
21 fairness.

22 These intent -- these amendments are intended
23 to stop districts from being drawn for political
24 purposes by the legislators, to particularly to
25 advance the political goals of the legislators who

1 are drawing the districts. That is an unfair
2 situation that is intended to be stopped here.

3 The other part of the fairness that is being
4 sought here is to ensure that these amendments do
5 not create any situation that would be unfair in
6 any way or disadvantaged in any way minority
7 voters. Those are the things that we are trying to
8 accomplish here.

9 We are trying to accomplish districts that
10 make sense, districts that aren't strung out over
11 multiple counties from coast to coast in the state
12 of Florida.

13 We are trying to stop districts from dividing
14 small communities into four and five different
15 districts.

16 We are trying to stop a situation where
17 neighbors don't vote in the same district. We are
18 trying to keep communities together. All of that
19 relates to the fairness that Representative Carroll
20 was referring to.

21 And we want to make sure that in doing all
22 that there is no harm done and no diminution of
23 minority -- of the rights of minority voters.

24 REPRESENTATIVE CANNON: Okay, Senator Thrasher
25 for a question.

1 SENATOR THRASHER: Thank you, Mr. Chairman.

2 Hello, Ms. Freidin, good to see you begin.

3 MS. FREIDIN: Hello, Senator.

4 SENATOR THRASHER: I don't think I have seen
5 you since 1989.

6 MS. FREIDIN: A long time.

7 SENATOR THRASHER: It has been.

8 MS. FREIDIN: Well, maybe the early '90s
9 anyway.

10 SENATOR THRASHER: Thank you for being here.
11 I have a more direct question, more specific
12 question in respect to some of the testimony you
13 have given.

14 And I have asked, we have had as I am sure you
15 are aware of, you said you watched it, testimony
16 and references to districts in the state of Florida
17 and I am asking, I asked the staff if they had and
18 they said they did, if they would mind putting up
19 Congressional District III and I would like to ask
20 you a question about that in respect to the fair
21 district plan.

22 This is -- you said -- you said you were not
23 intimately familiar with the districts, but you
24 have used the word gerrymandering.

25 When I hear the word gerrymandering this

1 district comes to mind, I guess in terms of what I
2 have heard people quote.

3 Under the Fair Districts' plan I would just
4 like to ask you this question. Can we legally draw
5 Congressional District III or something I guess
6 similar to it in order to protect minority
7 representation in Congress?

8 MS. FREIDIN: I know that it was deemed to be
9 legally drawn in 2002. I have no idea what will
10 happen in 2012, because there is no data available.
11 So it is impossible for me.

12 I am not avoiding the comments on District
13 III, but it would be impossible for me, it would be
14 impossible for you or anybody else in this room or
15 this building to today say what can be done with
16 any particular district, because we don't have the
17 data. You know, in order to draw a district you
18 have got to have --

19 SENATOR THRASHER: Let me stop you. I get
20 that, I heard you say that earlier. In all due
21 respect, assuming we had the data and we wanted to
22 draw that district, assuming we spread the data of
23 the population consensus around the state and we
24 wanted to redraw that district, you are saying we
25 could or couldn't redraw it --

1 MS. FREIDIN: I have no idea.

2 SENATOR THRASHER: -- under your testimony?

3 MS. FREIDIN: I have no idea.

4 SENATOR THRASHER: So in your opinion then, I
5 guess, if it is no, the minority representation
6 would diminish then under the Fair Districts' plan,
7 is that correct?

8 MS. FREIDIN: You would have to be able to
9 have the data for the entire state. You would have
10 to have voting data in minority districts, in
11 minority areas. You would also have to have a
12 census data which isn't available. I can't answer
13 that question.

14 SENATOR THRASHER: Okay, fair enough. Let me
15 ask you just in a follow up then to that if I may,
16 Mr. Chairman.

17 REPRESENTATIVE CANNON: Absolutely.

18 SENATOR THRASHER: Since -- since we know the
19 shape of the district and the current partisan
20 makeup who is represented by Corrine Brown, who is
21 a Democrat, would we if we had the correct census
22 and we still wanted to draw that district, would we
23 be intending to a favor her if we drew that
24 district in a similar way or the same way?

25 MS. FREIDIN: It depends on the reasons you

1 are drawing the district for that -- for that --
2 for that purpose. I really -- I really cannot
3 comment on any particular district, but I can say
4 this.

5 That with regard to any district, I know the
6 question has been asked, if we draw a district
7 identical to the prior district, does that mean
8 that we are -- that we are favoring or disfavoring
9 a particular -- a particular incumbent, and the
10 answer is, it depends on why you are drawing the
11 district that way.

12 SENATOR THRASHER: Let me ask you.

13 MS. FREIDIN: And you know that. I can't.

14 SENATOR THRASHER: Let me ask you another
15 question then if I may, Mr. Chairman.

16 REPRESENTATIVE CANNON: Sure.

17 SENATOR THRASHER: I heard your testimony
18 earlier about, and I tried to write it down,
19 particularly about the public hearings, and I think
20 the Legislature has had a history of holding public
21 hearings around the state to hear the views of
22 citizens.

23 Suppose and your testimony I think was
24 directed that it would be okay if somebody in one
25 of those hearings said, she liked or he liked a

1 particular district.

2 what if they said, we like our particular
3 Representative or Senator or Congressman, would
4 that testimony provide improper intent for us I
5 guess?

6 MS. FREIDIN: I think it would depend on what
7 you do. The intent is yours, not -- public comment
8 is very, very important in this context. There
9 will be lots of public comment and it will be very
10 varied and certainly there is no reason for -- for
11 you as members of the committees that are dealing
12 with it or the entire Legislature to ever except
13 public comment. There is nothing wrong with that.

14 The question is what do you do when you go
15 into -- into the map drawing room and you draw the
16 map.

17 SENATOR THRASHER: I mean, say we get a bunch
18 of comments that somebody likes Senator Storms as
19 their Representative or their Senator and we go
20 back in and we draw a district, you know, similar
21 to what it is now.

22 I guess that is my dilemma. You can't answer
23 these questions. How in the world and you are the
24 ones who drew the districts -- drew the language in
25 the quote, unquote, Fair Districts of Florida, if

1 you can't answer them, this was your -- you
2 obviously understood the language you were writing.
3 How in the world do you expect us to answer those,
4 or how in the world do you expect our citizens to
5 understand that?

6 MS. FREIDIN: Well, I think that there are
7 many examples of times, and Senator Thrasher, with
8 all -- with all the experience that you have and
9 the redistricting experience, specific
10 redistricting experience you have, you know that
11 there have been many times in which and probably
12 almost every time in which districts are examined
13 to determine whether they're going to be good for
14 an existing incumbent or not or whether they're
15 going to be for a party or not.

16 we are asking you to not look at that
17 information anymore. To eliminate that
18 consideration from your calculus.

19 SENATOR THRASHER: You want us to go to
20 these --

21 MS. FREIDIN: The public --

22 SENATOR THRASHER: Let me interrupt, in all
23 due respect.

24 REPRESENTATIVE CANNON: Senator Thrasher.

25 SENATOR THRASHER: In all due respect you in

1 essence are saying, let's go to these hearings and
2 put ear muffs on.

3 MS. FREIDIN: No, I am --

4 SENATOR THRASHER: I am not going to do that,
5 I am not going to do that on behalf of my
6 constituents if I am involved in that.

7 Let me ask you the last question, Ms. Freidin.

8 MS. FREIDIN: Mr. Chairman, he is --

9 SENATOR THRASHER: Ms. Freidin.

10 MS. FREIDIN: -- you are not giving me a
11 chance to answer these questions.

12 REPRESENTATIVE CANNON: Ms. Freidin, I assure
13 you you will have ample time to answer anything you
14 want, but I am going to recognize Senator Thrasher.

15 SENATOR THRASHER: My last question,
16 Mr. Chairman. Has Fair Districts drawn any maps
17 previously that you could show us?

18 MS. FREIDIN: No.

19 SENATOR THRASHER: Okay. So you have gone out
20 then and said you have got 1.7 million signatures
21 to sign petitions and you have never even drawn a
22 map to show it will actually work, is that correct?

23 MS. FREIDIN: There is no question that these
24 are workable standards. This is not rocket
25 science. This is something -- these standards are

1 applied in almost every other state in the Union.

2 Florida is the only state in the country that
3 only uses contiguity as its only standard. I am
4 sorry, it is one of three that have as few
5 standards as we have. So that -- that would be the
6 answer. This is not a difficult thing to do and I
7 have every confidence that this Legislature is
8 totally capable of drawing maps with these
9 standards.

10 Now, I want to go back though to the question
11 that you were asking before, because I think it is
12 a very, very important question.

13 What these amendments do is they prohibit the
14 drawing of districts with the intent to favor or
15 disfavor a political party or an incumbent.

16 Now, you -- I think that what you were asking
17 me is if somebody comes before you and says, some
18 member of the public comes before you and says, I
19 want to keep -- Senator Thrasher, I want your
20 district to be exactly the same because I think you
21 are the perfect Senator and I want your district to
22 stay the same.

23 So that would be -- so your question is, if
24 they -- if the Legislature then goes back and draws
25 your district identically, does that mean that --

1 that -- that you then or the Legislature then had
2 intent to favor or disfavor.

3 The answer to that question cannot be devined
4 today, but it could be devined after you draw the
5 districts. And the way that it would be devined
6 was there could be testimony about conversations
7 that were had among legislators.

8 We want to make sure that we are protecting
9 this particular district. We want to make sure
10 that we are protecting -- we are ensuring that
11 there is as many Democratic seats as possible in
12 the Legislature. That would be one way.

13 Another way would be the data that you use to
14 rely on to draw a particular district. Now, we --
15 there is no question and this question has been
16 raised time and time again in these hearings.

17 We understand the data must be used in drawing
18 minority districts, but it doesn't have to be used
19 in drawing the non minority districts. So
20 registration and performance data shouldn't and
21 doesn't have to be used.

22 And before and after results also could be
23 used to determine what the intent of the drafters
24 of the districts was, and what the districts
25 actually look at.

1 So those -- those are the three things that
2 can be used and it is impossible to say that just
3 because somebody came before you that -- and made
4 some comment, that that would be proof of intent.
5 That doesn't make sense.

6 What makes sense is what you say, what you
7 think and what you do when you go and draw those
8 districts.

9 SENATOR THRASHER: Just a final comment,
10 Mr. Chairman.

11 REPRESENTATIVE CANNON: Certainly, Senator
12 Thrasher.

13 SENATOR THRASHER: As I understand your
14 testimony then, what you are saying is that just
15 about any plan we draw that has something to do
16 with intent is going to go challenged in the court.
17 So that is where I am going.

18 People don't understand this, you don't
19 understand it in terms of how we -- it will be
20 reflected in the courts. I don't know whether the
21 courts will have to follow the same standards of us
22 that we do. I don't know what the definition of
23 intent is, you don't. I don't know what the
24 standard of proof is, you don't. We don't what
25 evidence will be required, you don't.

1 So to me this sets up what I have said all
2 along, an obstacle for this Florida Legislature to
3 design a plan that obviously meets your criteria,
4 and ultimately it is going to be challenged in the
5 courts and the courts are going to make that
6 determination which I believe is your intent.
7 Thank you, Mr. Chairman.

8 MS. FREIDIN: Mr. Chairman --

9 REPRESENTATIVE CANNON: Senator Haridopolis.

10 MS. FREIDIN: -- may I respond to that,
11 because he just made some comments that -- about
12 things that I don't think are true about what my
13 thought is and I just want to clarify.

14 REPRESENTATIVE CANNON: Sure.

15 MS. FREIDIN: I want to clarify something.

16 REPRESENTATIVE CANNON: Sure.

17 MS. FREIDIN: It is not the intent of Fair
18 Districts Florida to have this end up in the
19 courts, and if the districts are drawn according to
20 the standards there will be no more litigation than
21 ever before.

22 The Supreme Court of Florida has -- this is an
23 issue that was raised before the Supreme Court of
24 Florida, and the Supreme Court of Florida rejected
25 it soundly that there would even be more

1 litigation.

2 with regard to intent, I just gave you three
3 standards that we certainly can rely on in terms of
4 whether or not there is intent and we need to be
5 really careful how we are throwing this word intent
6 around, because the only intent here that is --
7 that we are talking about at this moment is the
8 intent to favor or disfavor a political party or an
9 incumbent.

10 And we all know that for the last, and it is
11 not just the last 10 years and it is not just the
12 last 20 years, it is as far as anybody can remember
13 back in Florida districts have been drawn for the
14 purpose of accomplishing a particular political
15 result. And that is the -- it is the intent to
16 that, that Fair Districts Florida is trying to
17 eliminate.

18 REPRESENTATIVE CANNON: Ms. Freidin, with all
19 due respect, the word intent and the things you
20 mentioned, testimony, data, evidence, the actual
21 intent could only be determined by a court, could
22 it not, as a matter of law?

23 MS. FREIDIN: No, I think that the intent
24 starts with you and I think that if you -- if
25 legislators understand that they are not supposed

1 to be drawing districts to accomplish a particular
2 political result, then -- then it never needs to
3 get to a court.

4 There are many states that have the
5 requirement of drawing districts not to favor a
6 political party or an incumbent, there are many
7 states that do that and they all manage to get
8 their maps drawn.

9 There are many other states that give it to --
10 give the responsibility to a commission and those
11 commissions are not -- are charged with not drawing
12 for a particular political purpose. They manage to
13 get their maps drawn and then the maps, they all
14 have the requirement of no intent.

15 They have no problem getting their maps drawn
16 and their districts in place and having their
17 elections held. There is no reason in the world
18 that Florida can't do that, too.

19 REPRESENTATIVE CANNON: Chairman Haridopolis.

20 CHAIRMAN HARIDOPOLIS: Thank you. I just have
21 a question. I think your words, it doesn't take
22 rocket science to do this, and as far as the
23 records show I think roughly three and-a-half
24 million dollars have been spent, that is a pretty
25 big business enterprise, but it is so easy maybe a

1 legislator can draw these lines.

2 But let me ask you, we have information from
3 2002, we have a lot of folks here who are very
4 intelligent folks on your side who believe
5 passionately in this and I respect that.

6 we have the ability, what we would like to do,
7 it is a pretty easy thing, you have described it,
8 it is pretty easy to do. We will give you the
9 software, we will give you a week, maybe two weeks
10 if that is enough time because it is so easy to do
11 and we would like you to come back and show us how
12 each of the criteria that are so easy to do, it is
13 not rocket science can be done.

14 Because to this point all of the members,
15 Republican and Democrat who have been up here
16 trying to understand this are having great
17 difficulty and today you are not helping your
18 cause.

19 So to help your cause we would respectfully
20 ask you to come back in a week with the 2002 data
21 that is not rocket science and show us how -- we
22 wouldn't even ask you to do all 120, that is a lot
23 of work, not even 40 Senate districts, have a good
24 25 Congressional seats and draw those for us and
25 show us just how easy that is. Could you help us

1 do that?

2 MS. FREIDIN: I couldn't do it today and you
3 couldn't do it today, Senator.

4 CHAIRMAN HARIDOPOLIS: I have already admitted
5 that I can't do it. We said --

6 MS. FREIDIN: We all know --

7 CHAIRMAN HARIDOPOLIS: No, don't tell me that.

8 REPRESENTATIVE CANNON: Ms. Freidin, please
9 let Senator Haridopolis speak.

10 CHAIRMAN HARIDOPOLIS: You just described it
11 as rocket science. It is not rocket science, okay.
12 So what I would like to ask, please look at me, I
13 am speaking with you, I am asking you a simple
14 question.

15 You describe it as a very easy process to use
16 the technology that is readily available and draw
17 25 districts that meet your easy to reach criteria
18 and I will give you one week, would you like two
19 weeks, because the people of Florida are going to
20 vote in November, and you have represented certain
21 ideas.

22 would you like one week or two weeks with your
23 team of lawyers, spend three and-a-half million
24 dollars and show us the districts. I don't think
25 it is an unfair request, considering this is an

1 important process, and remember, this is a
2 constitutional requirement every 10 years. So can
3 you do it or can you not do it?

4 MS. FREIDIN: Nobody can do it.

5 REPRESENTATIVE CANNON: So it is impossible?

6 MS. FREIDIN: May I finish the answer?

7 REPRESENTATIVE CANNON: Sure.

8 MS. FREIDIN: Nobody can do it, and Senator,
9 this is -- it is like this is not really a possible
10 thing that you are asking me to do. You know, I
11 would ask have you all drawn maps.

12 REPRESENTATIVE CANNON: Actually we did in the
13 current districts we all sit in.

14 CHAIRMAN HARIDOPOLIS: And met Federal
15 requirements according to the United States
16 Constitution and Federal law.

17 MS. FREIDIN: Well, but you haven't drawn them
18 with the new criteria.

19 CHAIRMAN HARIDOPOLIS: And that is what we are
20 asking. You came up with the idea, you spent three
21 and-a-half million dollars and now you say I won't
22 do it?

23 MS. FREIDIN: Actually, we didn't come up with
24 the idea. Members of the Legislature who had just
25 gone through a redistricting came up with the idea

1 in 1993, of these particular standards.

2 The answer is that in order to draw these maps
3 you must have not only data, but you must have
4 census information. You must have voting data, you
5 must have census information, you must have
6 geographical information and you have also got to
7 have a balancing by a legislative body of all of
8 the criteria.

9 And the balancing factor can't be -- can't be
10 applied by me, nor could I possibly draw a map
11 without the data that exist, that doesn't exist
12 today.

13 REPRESENTATIVE CANNON: Senator Haridopolis.

14 CHAIRMAN HARIDOPOLIS: The data exist, the
15 data exist from 2002. It is known data and we can
16 figure that up, we can do it with 2002 data,
17 because as you mentioned before, you said Senator
18 Thrasher had some experience with redistricting.

19 He has zero experience with redistricting. He
20 was not here in 1992, he was not here in 2002, and
21 all we are saying is that I read your newspaper
22 accounts. We have read the hyperbole in the
23 responses and we are saying, it is like health
24 carry form.

25 Everyone is for it, then once it actually

1 comes to a piece of legislation, people make a
2 decision. If you are the expert on this, you have
3 been dealing with this 1998. You led a campaign
4 which raised over three and-a-half million dollars.
5 You have the editorial support of so many folks and
6 that is impressive.

7 So at the end of the day what matters is that
8 something that works, because theory is one thing,
9 practice is another.

10 You have an outstanding group of folks who got
11 this thing on the ballot, which is not an easy
12 thing to do and we have existing data from 2002,
13 that is so available. It is a yes or no question.

14 Are you willing to draw maps so that we can
15 have a better idea how we can serve our
16 constitutional requirements as members of the
17 Legislature, yes or no?

18 MS. FREIDIN: Are you suggesting, Senator,
19 that maps, that redistricting maps can be drawn
20 simply by plugging information into a computer?

21 REPRESENTATIVE CANNON: Ms. Freidin, the
22 question Senator Haridopolis asked was, if
23 essentially if the language that you are proposing
24 were in the Constitution back pre 2000, and we have
25 got that historical data and Senator Thrasher asked

1 some questions about it, if the standards that you
2 are proposing be injected into the Florida
3 Constitution had been in place, how could the maps
4 have been drawn. And I think Senator Haridopolis'
5 question is, could you show us that?

6 MS. FREIDIN: I am going to answer your
7 question one more time. To draw a good plan, to
8 draw a map under any criteria you need census data,
9 you need voting performance and registration data
10 for minority districts.

11 You need the input of the public and you need
12 the collegial work of all of the legislative body.
13 The answer is, I can't do that, because I don't
14 have any of that.

15 REPRESENTATIVE CANNON: We will supply you all
16 of the data -- all of the objective data --

17 MS. FREIDIN: And you can't --

18 REPRESENTATIVE CANNON: Ms. Freidin, please
19 excuse me. We will supply you all of that
20 historical voter data, all of the census block
21 tract and number data from 2000, and we would
22 simply ask you to prepare a set of Congressional
23 districts that you contend actually would pass
24 muster under your proposed constitutional
25 amendment, will you do it or not?

1 MS. FREIDIN: The answer is the data is not
2 available and the -- and the collegial, the
3 collegial work -- I don't have a Legislature to
4 work with me on this, nor do I have public hearings
5 to do this, and I don't have the data and it cannot
6 be done by me and it can't be done by anybody else.

7 It can't be done retrospectively, because we
8 don't know what went into the decision-making in
9 2002, to draw the districts that were drawn.

10 REPRESENTATIVE PROCTOR: Mr. Chairman, I have,
11 I am back in the back.

12 REPRESENTATIVE CANNON: If I may, I have got a
13 long list if it is all right. Representative
14 Proctor for a question. Senator, and then we will
15 go Proctor, Negron, Weatherford and we actually
16 have several from there. Representative Proctor.

17 REPRESENTATIVE PROCTOR: Thank you,
18 Mr. Chairman. Ma'am, I appreciate you being here
19 with us and I would like to address a question to
20 four terms that are used and I am not clear on them
21 and perhaps you will tell me that they have been
22 defined elsewhere and that well may be. I am not
23 aware of that, but first let me ask this.

24 When you use the term, contiguous, you said it
25 shall be contiguous. And when you use the term,

1 compact, you say, it shall be compact. And when
2 you use boundaries, you say, where feasible. And
3 when you say, equal in population, you say, as
4 practicable.

5 And the term shall, is that synonymous here
6 with should or is it imperative?

7 MS. FREIDIN: It is imperative.

8 REPRESENTATIVE PROCTOR: So it is imperative
9 that the districts be compact?

10 MS. FREIDIN: Yes.

11 REPRESENTATIVE PROCTOR: All districts?

12 MS. FREIDIN: All districts unless to do so
13 would interfere with the criteria that are stated
14 in Section I or Federal law.

15 Now, that Federal law includes the Voting
16 Rights Act and it also includes the equality of
17 population requirements.

18 REPRESENTATIVE PROCTOR: So if I am trying to
19 understand the extent to which I must apply the
20 criteria of compactness, I have to temper that with
21 Section I and the Voting Rights Act, is that
22 correct?

23 MS. FREIDIN: Yes.

24 REPRESENTATIVE PROCTOR: So with regard to
25 compactness, is there any analytical tool, standard

1 that I may use to determine if a district is
2 compact?

3 MS. FREIDIN: I am not sure that I understand
4 your question. Is there any analytical tool? Do
5 you mean is there any formula?

6 REPRESENTATIVE PROCTOR: I might look at a
7 district and believe it to be compact. You might
8 see it otherwise.

9 Is there any quantitative criteria or
10 analytical tool that will tell us whether or not a
11 district is compact? Go ahead.

12 MS. FREIDIN: There are many cases that deal
13 with the question of compactness. It is a term of
14 art in redistricting, and I am not aware of any
15 formula of any sort that would be -- that would be
16 used to -- to --

17 REPRESENTATIVE PROCTOR: So people of good
18 faith could disagree upon whether a district is
19 compact?

20 MS. FREIDIN: I would imagine they could.

21 REPRESENTATIVE PROCTOR: So now let me move
22 just a moment to the word, diminish. Used the
23 sense that we don't want to diminish the rights of
24 minorities to participate.

25 If we have a district that we have, let us say

1 currently is 29 percent minority and we follow all
2 of the guidelines. We draw, it is contiguous,
3 reasonable people would say it is compact. We have
4 used boundaries where it is feasible and we have
5 something approaching equal population, and we
6 reduce that minority representation from 29 to 27
7 and the results are the loss of the minority seat.
8 would that be evidence of intention?

9 MS. FREIDIN: I can't possibly comment on any
10 particular hypothetical situation, because there is
11 so much else that goes into it.

12 REPRESENTATIVE PROCTOR: But I just put every
13 standard that you applied in and I said, as a
14 result of using all those standards with good
15 intent, and I had to reduce the minority
16 representation by two percentage points, and as a
17 result we diminished the minority representation.
18 Could we be accused of doing that intentionally?

19 MS. FREIDIN: Okay. You need to look at the
20 language. The language says that -- that districts
21 shall not be drawn to diminish the ability of
22 minority voters to elect representatives of their
23 choice and that is the only thing -- that is the
24 only thing --

25 REPRESENTATIVE PROCTOR: well, we didn't do it

1 for that reason --

2 MS. FREIDIN: That is the only --

3 REPRESENTATIVE PROCTOR: -- we did it to
4 comply with all of the criteria as honestly as we
5 could. Unfortunately it did reduce the minority
6 population by two percent.

7 The results then, would the results be proof
8 of intent to lose that district to the minority?

9 MS. FREIDIN: It is my understanding that
10 the -- and it is the intent of Fair Districts that
11 there can never be a guarantee of a result in a
12 particular election.

13 The issue here is whether you as a legislator
14 decide to draw a plan for a district that
15 diminishes the ability of minority voters to elect
16 representatives of their choice.

17 REPRESENTATIVE PROCTOR: Let me see if I can
18 clarify my question. My intent is quite obvious.
19 I have gone by every criteria you have established.
20 I have used compactness, I have used
21 contiguousness, I have used population and I have
22 used geographical and political boundaries, but
23 unfortunately to achieve all that I had to reduce
24 the minority representation in that district.

25 Let's say, let's take it a little longer.

1 Let's say I reduced it from 29 percent to
2 25 percent. Couldn't someone reasonably claim if
3 the results lost the seat that that was my intent?

4 MS. FREIDIN: Mr. Chairman, I think I have
5 already answered this question two or three times.

6 REPRESENTATIVE CANNON: If you can answer the
7 question, please answer the question, otherwise, I
8 am going to recognize Representative Proctor for a
9 follow up.

10 REPRESENTATIVE PROCTOR: And your answer is
11 nobody can tell what my intent was?

12 MS. FREIDIN: No, that was not my answer.

13 REPRESENTATIVE PROCTOR: I am sorry, what is
14 your answer, ma'am?

15 MS. FREIDIN: My answer is that you need to
16 look at the language of the -- of the amendments.

17 REPRESENTATIVE PROCTOR: I am looking at it.
18 I used all --

19 MS. FREIDIN: The language of the amendment
20 says that you can't draw districts to diminish the
21 ability to elect representatives of choice and that
22 is -- that is the prohibition.

23 REPRESENTATIVE PROCTOR: So my question to
24 you --

25 REPRESENTATIVE CANNON: And if I can help out

1 Representative Proctor, the language Representative
2 Proctor is talking to you says intent or result.

3 REPRESENTATIVE PROCTOR: That is right.

4 REPRESENTATIVE CANNON: It is not just intent,
5 it is result as well.

6 REPRESENTATIVE PROCTOR: Yes, or results. So
7 based on the results --

8 MS. FREIDIN: We are talking about ability to
9 elect a representative.

10 REPRESENTATIVE PROCTOR: Ma'am, could you put
11 ability into a quantitative term for me? Had I
12 reduced it from 29 to 20, would they have still had
13 the ability?

14 MS. FREIDIN: I -- I cannot.

15 REPRESENTATIVE PROCTOR: Can I move on,
16 Mr. Chairman?

17 REPRESENTATIVE CANNON: Certainly.

18 REPRESENTATIVE PROCTOR: Because I don't think
19 I am getting the clarity I am seeking on this one.

20 REPRESENTATIVE CANNON: Yes, sir.

21 REPRESENTATIVE PROCTOR: Let me ask you about
22 this term, language minorities. Are there a
23 limited number of minorities that have to be
24 protected? Does it extend to all types of
25 minorities?

1 MS. FREIDIN: Are you asking me if every --
2 every person who speaks a different language is
3 protected?

4 REPRESENTATIVE PROCTOR: Well, it says if you
5 read it --

6 MS. FREIDIN: Under the current -- under the
7 current Federal law as that term is defined, it is
8 Hispanic language minority are the minorities that
9 are protected.

10 REPRESENTATIVE PROCTOR: So we would be
11 required to draw districts that we could be assured
12 reasonably represented all language minorities
13 equally with opportunity to elect candidates of
14 their choice?

15 MS. FREIDIN: Under the present -- I think I
16 just answered that question. And it was not what
17 you said. I said under the present state of the
18 law language minority is considered to be Hispanic
19 language minority.

20 REPRESENTATIVE PROCTOR: Just one more
21 question I think.

22 REPRESENTATIVE CANNON: For a follow up,
23 Representative Proctor.

24 REPRESENTATIVE PROCTOR: Ma'am, when you
25 started someone said they thought think would

1 invite litigation. And I thoroughly agree with
2 that, because so many of the terms I can't get
3 concrete definitions of.

4 So if I sit down and have to put something
5 concrete on a map, I should know what all the
6 operative terms mean. And I have trouble getting
7 those definitions.

8 So let me invite you to do this. You look at
9 this set of standards and you say the intent --
10 Senator Thrasher if I understand him, looks at the
11 exactly the same set of standards and he says the
12 intent is that you assert the legislative authority
13 and put the issue in the court. Now, who is right
14 on intent and how do you decide?

15 MS. FREIDIN: Well, I think the voters are
16 going to decide when they read the language on
17 November 2nd. They're going to go into the voting
18 booths and they're going to make a decision about
19 whether they want to see you eliminate political
20 partisanship from the calculus of your district
21 drawing in 2012.

22 REPRESENTATIVE PROCTOR: Closing statement if
23 I may?

24 REPRESENTATIVE CANNON: Representative
25 Proctor.

1 REPRESENTATIVE PROCTOR: Exactly my point.
2 You went back to results and the example I gave
3 you, if I diminished the minority by reducing it
4 four points, even though I adhered to all your
5 criteria I would be accused of intent based on
6 results which is just what you used in answer to my
7 question. You said the results proves the intent.
8 Thank you, ma'am.

9 MS. FREIDIN: Chairman --

10 REPRESENTATIVE CANNON: Thank you.
11 Representative Weatherford for a question.

12 REPRESENTATIVE WEATHERFORD: Thank you,
13 Mr. Chairman. I have got a brief series, I will
14 try to keep it brief.

15 Thank you very much for being here. I
16 appreciate your patience in taking all of these
17 questions, I know it is a lot of them, but it is an
18 important issue.

19 MS. FREIDIN: It is taking a lot of patience,
20 sir.

21 REPRESENTATIVE WEATHERFORD: Well, we
22 appreciate it, so keep it up. In reference, I want
23 to go back very briefly to a comment that Senator
24 Storms said earlier in regard to the Jenner Block
25 letter.

1 Is it my understanding that although you
2 didn't write the letter and you stated that, that
3 you agree with the analysis that was in the Jenner
4 Block letter that went to the two Senators?

5 MS. FREIDIN: I agree with some of the
6 analysis, most of the analysis. Actually I agree
7 with the analysis. I don't agree with some of the
8 suppositions that are made.

9 REPRESENTATIVE WEATHERFORD: But is it your
10 opinion that it accurately reflects what the
11 petition actually does?

12 MS. FREIDIN: You know, I can't make a comment
13 on -- I don't want -- I don't want to make such a
14 broad comment because I don't have the letter
15 committed to memory, but what I do agree with is
16 what they say that these amendments would make the
17 elections fairer for all political parties and
18 candidates and that they would also protect and
19 indeed enhance the ability of minorities to
20 participate in the political process and elect
21 representatives of their choice. That is the part
22 I am sure I agree with.

23 If you want to ask me a specific question, I
24 will try and answer it, but if I could ask, if you
25 could go a little slower than Senator Storms went,

1 because I really was not able to keep up with all
2 of the different quotes she was putting at me.

3 REPRESENTATIVE WEATHERFORD: Senator Storms, I
4 am not as sharp as Senator Storms. So I will
5 certainly be going slower.

6 MS. FREIDIN: Obviously, me either.

7 REPRESENTATIVE WEATHERFORD: I -- I have
8 another question in regard to your website. It
9 states that the voter registration in the state of
10 Florida is 42 percent Democrat, 36 percent
11 Republican and 19 percent Independent in Florida.
12 Is that correct?

13 MS. FREIDIN: That is my understanding of what
14 the voter registration is, and it is on our
15 website.

16 REPRESENTATIVE WEATHERFORD: Yes. And I am
17 assuming that partisan equality and balance are
18 very important principles and probably the genesis
19 for what your petitions -- why you have brought
20 these petitions forth. Would that be correct?

21 MS. FREIDIN: No. I -- I think -- I wouldn't
22 put it that way. I would say that partisan
23 fairness and the lack of partisan rigging of
24 districts is what we are about.

25 REPRESENTATIVE WEATHERFORD: But not partisan

1 equality?

2 MS. FREIDIN: Not necessarily, no. This is,
3 you know, you have to remember that this is
4 something -- listen, when Democrats were in charge
5 of the Legislature this is something that
6 Republicans introduced.

7 Now the fact -- and it has been -- it has been
8 championed by Republicans and Democrats in Florida
9 for many, many years. I don't think anybody is
10 looking for partisan equality. I think what we are
11 trying to avoid is a situation what exist today
12 where the Legislature draws these maps to
13 accomplish a particular political result where
14 districts are assigned to be, Republicans districts
15 or Democratic districts as opposed to districts for
16 the people and that is what we are trying to
17 accomplish here.

18 REPRESENTATIVE WEATHERFORD: Okay, well then I
19 guess my question is generally trying to figure out
20 what a statistical result or results would meet the
21 petitions' intent.

22 So for example, if a single district was drawn
23 to be 55 percent Democrat or 55 percent Republican,
24 does that district violate the intent of the
25 petition?

1 MS. FREIDIN: It depends on why it was drawn
2 that way. If it was drawn for the purpose of
3 making it 55 percent of one party or the other, it
4 absolutely would violate the petition.

5 If it resulted in -- in being 55 percent one
6 party or the other, then that would not be a
7 violation.

8 REPRESENTATIVE WEATHERFORD: But given the
9 fact that the state is 42 percent Democrat,
10 36 percent Republican and 19 percent Independent,
11 by not adhering to those numbers and drawing
12 anything else -- and have any type of other
13 statistical data or registration, wouldn't it be in
14 violation of the petition?

15 MS. FREIDIN: In order -- are you asking me if
16 the petition prohibits you from setting up a
17 district in a particular partisan way?

18 REPRESENTATIVE WEATHERFORD: Well, that is
19 what I am trying to figure out, yes.

20 MS. FREIDIN: The answer is it absolutely does
21 prohibit you from setting up a district in a
22 particular partisan way.

23 REPRESENTATIVE WEATHERFORD: But if a district
24 is not set up for a particular partisan way, but
25 happens to have 55 percent Democrat and/or

1 Republican, that doesn't violate any of the
2 principles --

3 MS. FREIDIN: Right.

4 REPRESENTATIVE WEATHERFORD: -- or the
5 classifications within the petition?

6 MS. FREIDIN: Correct.

7 REPRESENTATIVE WEATHERFORD: So, okay, let's
8 suppose there is a Democrat or Republican seat that
9 is at 60 percent Republican or Democrat today, but
10 during the redistricting process goes down to
11 55 percent or 50 percent for that matter.

12 Are you saying that that would not be
13 disfavoring a political party and/or a person's
14 district or a member?

15 MS. FREIDIN: Representative Weatherford, the
16 intent and the language of these amendments is to
17 avoid the situation that exist today when districts
18 are drawn specifically for the purpose of
19 incorporating a certain number of Democrats or a
20 certain number of Republicans in the district.

21 If districts are drawing compactly and they
22 adhere to community boundaries as is required and
23 there is no intent to -- to place a particular
24 number of one party or another or independents into
25 that district, then that would be compliant with

1 the standards.

2 REPRESENTATIVE WEATHERFORD: Okay. I will
3 tell you, Mr. Chairman, it is unfortunate what is
4 happening on the Space Coast and the fact that we
5 have so many scientists that are no longer working
6 on shuttle launches, but I can tell you we are
7 going to need to hire them about a year from now to
8 help us figure out this constitutional amendment if
9 it passes, because it is quite confusing.

10 REPRESENTATIVE CANNON: Senator Negron for a
11 question.

12 SENATOR NEGRON: Thank you, Mr. Chairman. You
13 said earlier, ma'am, in response to a question
14 about determining intent, that you gave the example
15 of, you know, did a legislator or legislators have
16 conversations about this would help my district.

17 So would you agree that it is a reasonable
18 probability that whenever the inevitable court
19 challenge comes to redistricting which has happened
20 and will likely to continue to happen, that it is
21 very probable that all 160 members of the
22 Legislature would be subpoenaed in that case in
23 order to determine intent?

24 And if you agree with that, should we avoid
25 conversations about reapportionment, should we keep

1 records about all our conversations that we have,
2 or is it acceptable to you that 160 legislators
3 would have to be called as witnesses in a court
4 proceeding to determine intent?

5 MS. FREIDIN: Well, I think that is a highly
6 unlikely situation, especially because I have full
7 confidence that this Legislature will if the
8 standards are in the Constitution, draw districts,
9 not for the purpose of creating a particular
10 political result, but draw districts that are
11 fairly, geographically fair, that make geographical
12 sense, that don't divide communities and then it
13 will be -- there will be no need for anybody to be
14 called to talk about whether they intended to
15 accomplish a particular political result, whether
16 they intended to favor or disfavor a political
17 party or an incumbent.

18 REPRESENTATIVE WEATHERFORD: But would you
19 agree that some people may not be as willing to
20 just accept our word or accept the benevolence in
21 the process, and if there is litigation, which is
22 probable, you would agree that the only way that
23 you could prove intent would be to actually have a
24 legislator on the stand being examined and cross
25 examined about what was going on in their mind at

1 the time they made a certain decision?

2 MS. FREIDIN: No, I think if you had -- you
3 would have information about what data was used to
4 draw a particular district. You would also have
5 exactly -- take a look at the district.

6 I mean, if you have a district that goes from
7 one end of the state to the other, one side of the
8 state to the other, then it is going to be --
9 somebody is going to take a look at that district
10 and say, why was that drawn that way, because it
11 doesn't make geographical sense.

12 It crosses the other way, it crosses Lake
13 Okeechobee or goes from the Space Coast to the --
14 to the Tampa Bay area. That is the sort of thing
15 that would cause somebody to look at a district and
16 say, that looks like a gerrymander district. .

17 But if the districts make sense and are
18 understandable to the people geographically there
19 shouldn't be -- there would be very little or no
20 reason to challenge them on the basis of what
21 somebody might have said about them, about their
22 intent in drawing them I should say.

23 REPRESENTATIVE WEATHERFORD: Then I will move
24 on with the Chair's permission to another area.

25 REPRESENTATIVE CANNON: Sure.

1 REPRESENTATIVE WEATHERFORD: But I am willing
2 to state on the record right now, a prediction that
3 there will be litigation resulting no matter how
4 the lines are drawn.

5 Secondly, ma'am, in your opening remarks you
6 gave the example of Winter Park and an example of a
7 policy that you don't support would that be that
8 there is more than one Representative, separate
9 Representatives for the Winter Park area.

10 If I could give you an example in my district,
11 which is Senate District 28. There is a community
12 called Okeechobee, it is a municipality and I
13 represent part of Okeechobee and Senator J. D.
14 Alexander represents part of Okeechobee.

15 would you at least concede that an equally
16 compelling argument could be made that in actuality
17 the residents of Okeechobee, that it is a benefit
18 to them to have two members of the State Senate,
19 particularly one who is new, myself, the other
20 Senator is the Chairman of the Ways and Means
21 Committee and in charge of the appropriation
22 process in the Senate, so he is the kind of person
23 you would want to be your State Senator.

24 So would you at least acknowledge that while
25 you -- I understand your point, but there is also a

1 counter argument that having multiple members
2 represent a community such as Okeechobee, which is
3 a relatively small rural community, that that is
4 actually an advantage for the residents of
5 Okeechobee and something that is good for them?

6 MS. FREIDIN: Senator, I have heard that
7 argument before, but I have also been to the League
8 of Cities, the Leagues of Mayors and the League of
9 Local Black Elected Officials, and all of them, all
10 of those organizations have voted unanimously to
11 support the Fair Districts amendments.

12 They are the people who I would rely on to
13 tell me if it is good to have cities represented by
14 chopped up into pieces so that they are represented
15 by many different people.

16 I can't answer your question other than to say
17 that the experts, the people who are dealing with
18 it from the point of view of the cities and the
19 mayors and the other local, black local elected
20 officials at least, from their point of view they
21 don't apparently want to see that anymore, because
22 they have voted unanimously to support Fair
23 Districts Florida.

24 REPRESENTATIVE WEATHERFORD: I guess I am
25 asking your opinion as the Chairman of the

1 campaign, Chairperson of the campaign.

2 Are you willing to concede there is any
3 validity in the exact illustration that I just gave
4 you about the city of Okeechobee, or do you
5 discount that that has any merit?

6 MS. FREIDIN: I -- I actually don't an opinion
7 on it.

8 REPRESENTATIVE WEATHERFORD: Okay, that is
9 fine. Could I have one more question,
10 Mr. Chairman?

11 REPRESENTATIVE CANNON: Sure.

12 REPRESENTATIVE WEATHERFORD: There is an
13 article in Creative Loafing dated December 16th,
14 2009, that has a quote from you saying, let me read
15 it here, "That the state's population is a little
16 more than one-third Republican, yet the Legislature
17 is two-thirds Republicans."

18 And the premises of that observation would
19 seem to me to be that you would assume that
20 Republicans wouldn't vote for Democrats or that
21 Democrats wouldn't vote for Republicans, and there
22 is something amiss when the party registration
23 differs from the results.

24 I just want to give you two quick examples and
25 ask you if you would reconsider the premises in

1 your statement, at least as I interpret it.

2 Going back again to Okeechobee. That is a
3 county in my district, it is majority Democrat
4 county and I won 71 percent of the district,
5 because apparently a lot of the Democrats decided
6 for whatever reasons to vote for me.

7 I am sure you are aware that when Republicans
8 took over control of the House in 1996, and Speaker
9 webster became Speaker, that was done based on
10 lines that the Democrats drew earlier, four years
11 earlier.

12 So would you be willing to acknowledge that
13 there are national trends, there are many other
14 factors?

15 And so that your contention that because there
16 are more of one party than another based on
17 registration, that you are under estimating or
18 ignoring the individual rights of voters to vote
19 across part lines both ways?

20 MS. FREIDIN: I actually don't have an opinion
21 on that either.

22 REPRESENTATIVE WEATHERFORD: Okay, thank you.

23 REPRESENTATIVE CANNON: All right, Members, we
24 have been doing for a while, since 1:00. I am
25 going to propose that we take a five-minute recess.

1 Is there any objection to a five-minute recess?

2 Seeing none, we will pick back up with Senator
3 Bennett right after the recess. Please, ladies and
4 gentleman, try to be back in five minutes, thank
5 you. We will stand in recess.

6 (Brief recess.)

7 REPRESENTATIVE CANNON: Ms. Freidin, welcome
8 back. Okay, you are welcome back any time.

9 And Senator Bennett, you are recognized for a
10 question.

11 SENATOR BENNETT: Thank you, Mr. Chairman.
12 welcome. A couple of questions and it really
13 bothers me and I am assuming a lot of people don't
14 want to talk about it because they get really
15 nervous about anything we talk about having racial
16 ideas or something like that, but, you know, you
17 said before that the first thing we would have to
18 do to draw these seats would be to draw the
19 minority seats first. Is that correct pretty much
20 in your estimation?

21 MS. FREIDIN: Well, I think that that would be
22 one approach that you could take, but I am not a
23 person who has ever drawn a map.

24 SENATOR BENNETT: It is obvious, it really is.
25 However --

1 MS. FREIDIN: I am sure it is.

2 SENATOR BENNETT: But let me ask you
3 something. If in fact all but one of the black
4 members of the Florida Legislature are Democrat, if
5 we drew those seats, wouldn't you be, in fact,
6 favoring the Democrat party and somebody could say
7 that, you know, challenge us in court because you
8 have favored the Democrat party, even though you
9 are trying to say, well, we are trying to protect
10 the minority seats, couldn't it be interpreted
11 because of that huge representation of blacks who
12 serve in the Democrat party in the Legislature,
13 wouldn't you, in fact, be favoring the Democrat
14 party?

15 MS. FREIDIN: There are districts that make it
16 possible for minority voters to elect
17 representatives of their choice.

18 SENATOR BENNETT: I don't think what is what
19 it says. I think it says to participate in the
20 political process.

21 MS. FREIDIN: And --

22 SENATOR BENNETT: To participate in the
23 political process could be as simple as voting. I
24 don't think it means you have got to get elected.

25 MS. FREIDIN: Well, but there is a second part

1 of it that says that -- that we have to have -- we
2 have to ensure that we don't diminish the ability
3 of minority voters to elect representatives of
4 their choice.

5 And that is a permissible consideration. If
6 it turns out that -- that those minority voters are
7 Democratic, then, in fact, that wouldn't be the
8 reason that you are drawing those districts.

9 Now, on the other hand if it turns out that
10 because there are many minority representatives in
11 this body in the House and the Senate who are
12 Republican, who -- and that -- neither would that
13 be favoring them.

14 It would be if you are drawing districts in
15 order to favor minority voters, in order to create
16 the ability of minority voters to elect
17 representatives of their choice, you are not making
18 the decision to favor or disfavor a particular
19 political party.

20 SENATOR BENNETT: But I think you would agree
21 that it could be a subject of a challenge that you
22 have actually drawn those districts --

23 MS. FREIDIN: I would not agree.

24 SENATOR BENNETT: Let me ask you,
25 Mr. Chairman, if I could on the last question. You

1 have been very, very good about representing the,
2 what did you say, one and a half million, 1.7
3 million people who have signed this petition, is
4 that something --

5 MS. FREIDIN: It is close to 1.7 million.

6 SENATOR BENNETT: 1.7 million people. And I
7 appreciate the fact that you are trying to
8 represent them, and obviously you owe a debt to
9 them because of all the efforts that they have gone
10 and taken the time.

11 So since you owe a debt to them, wouldn't you
12 feel that to pay that debt, it would be encumbent
13 upon you all to try to show them that they didn't
14 waste their time and, therefore, by taking up
15 Senator Haridopolis' offer to go ahead and draw the
16 districts, you could show these people that what
17 they signed and what they were purported by your
18 representative was true and just, here is an
19 example of what we have asked you to do, therefore,
20 we have approved it.

21 So don't you feel like you owe them that
22 opportunity, since we are saying we can't do it,
23 don't you feel that some kind of debt to show them
24 that they didn't waste their time?

25 MS. FREIDIN: Every day that you pass laws

1 that you consider laws, you do a balancing of a
2 number of factors and you come up with what you
3 consider to be the proper law.

4 Redistricting is really nothing different.
5 The people of Florida if they agree that these are
6 criteria that they want you to follow, if they want
7 you to stop partisan gerrymandering and to start
8 following these criteria instead, then I have every
9 confidence that this is something that you will be
10 able to do.

11 SENATOR BENNETT: Mr. Chairman, if I could
12 just make a comment. Right now as we know our
13 budget is about three million upside down and I am
14 going to pass legislation this coming week that we
15 are going to get that \$3 million out of heaven,
16 because I am sure somebody is going to do it and I
17 think it is about the same analogy. Just because,
18 you know, you want it doesn't necessarily mean it
19 is going to happen.

20 REPRESENTATIVE CANNON: Representative Hudson
21 for a question.

22 REPRESENTATIVE HUDSON: Thank you,
23 Mr. Chairman. Thank you for your testimony today.
24 Certainly it has been an interesting, interesting
25 day.

1 But I want to go back and just kind of clarify
2 some of the things that I heard you say. You
3 mentioned a word a number of times and it has been
4 a source of great debate today, but you said that
5 this amendment was simply intended, that it was
6 intentional to avoid party favoritism.

7 You said that -- well, you said quite frankly
8 that it is not unusual to have intent proved in
9 litigation.

10 wouldn't it be easier to understand the intent
11 prior to that so we don't have litigious
12 litigation?

13 MS. FREIDIN: Representative Hudson, you know
14 as well as I do, that from the beginning of
15 redistricting in Florida the intent of the
16 Legislature has been to protect its own seats and
17 those of the party that is in control of the
18 Legislature.

19 Now, all we are trying to do is ask the voters
20 of Florida if they would like to stop that and to
21 create a set of standards that will require that
22 instead of drawing districts with the intent to
23 feather a particular political nest, that the
24 districts be drawn with no intent to do that, and
25 be drawn to make sense, to keep communities

1 together, to keep cities, counties or other
2 geographical areas together whenever possible.
3 That is all we are asking. And we are confident
4 that this Legislature can do that.

5 REPRESENTATIVE HUDSON: Follow up, Mr. Chair?

6 REPRESENTATIVE CANNON: Follow up.

7 REPRESENTATIVE HUDSON: Thank you. Well, I
8 absolutely would not agree with you and I have no
9 earthly idea what happened at the turn of the
10 century when it comes to redistricting and
11 balancing things, and quite frankly, I don't think
12 anyone else here does as well. And to presume that
13 quite frankly is not right.

14 At the end of the day people elect you because
15 they either like you or they don't. It is just
16 that simple.

17 Now, what is the intent? How do we define
18 intent? When we take public testimony and we
19 ultimately vote on this, will every legislator be
20 called for subpoena? Will we all stand before a
21 judge and say, hey, this is what we were thinking
22 or not thinking?

23 MS. FREIDIN: Representative, I already
24 asked -- answered that question from the other
25 side. I am not sure who it was that answered it,

1 but I think I have answered that.

2 REPRESENTATIVE HUDSON: No, you didn't. Yes
3 or no?

4 MS. FREIDIN: The answer about did I expect
5 that 170 people would be called? It was no, I
6 already answered that question.

7 REPRESENTATIVE HUDSON: Okay. Let's move to
8 another topic. Our plan ultimately would have to
9 go before the Supreme Court for a review.

10 MS. FREIDIN: As it does now.

11 REPRESENTATIVE HUDSON: Correct, without
12 question. And they have a 30-day period of time in
13 which to review that, correct?

14 MS. FREIDIN: As far as I know, yes.

15 REPRESENTATIVE HUDSON: Okay. Now previously
16 the Supreme Court has indicated that it would be
17 highly problematic for them to be able to review a
18 Voters Right Act plan within 30 days.

19 Given the additional things that are up on the
20 screen right now, going from three to a myriad, how
21 could they possibly get that done within 30 days?

22 MS. FREIDIN: They have a constitutional
23 requirement to do it and they will do what they can
24 do, and if the Legislature chooses not to follow
25 the standards, that can be litigated in other

1 forums. Just like many other issues in
2 redistricting have always been litigated in other
3 forums.

4 REPRESENTATIVE HUDSON: So we are back to
5 litigation. Okay, thank you for your answer.

6 REPRESENTATIVE CANNON: Representative
7 Fitzgerald for a question.

8 REPRESENTATIVE FITZGERALD: Thank you,
9 Mr. Chairman. And I have a few, but I will try to
10 be as quick as I can. I am a little bit confused
11 by some of the confusion.

12 would you agree with me that in characterizing
13 the process of drawing districts, that what
14 implicitly or explicitly a legislator or whatever
15 body has to engage in, is coming up with a set of
16 rules for solving the problem of how to draw the
17 lines on the map? I mean, isn't that what you are
18 doing?

19 MS. FREIDIN: Yes, of course.

20 REPRESENTATIVE FITZGERALD: And the technical
21 term for a set of rules to solve a problem is an
22 algorithm, correct?

23 MS. FREIDIN: I actually don't know the term.

24 REPRESENTATIVE FITZGERALD: That is what it is
25 called.

1 MS. FREIDIN: But I will accept it if you say
2 it.

3 REPRESENTATIVE FITZGERALD: In evaluating the
4 complexity of solving a problem, does having more
5 criteria make it more complex or does have fewer
6 criteria make it more complex?

7 MS. FREIDIN: I quite frankly think -- I don't
8 want to talk in a vacuum, Representative
9 Fitzgerald, but let's talk about these particular
10 criteria.

11 REPRESENTATIVE FITZGERALD: Okay.

12 MS. FREIDIN: I think these criteria, although
13 I understand that there has been a huge effort here
14 today to make it sound like it is -- that it is
15 very complex, but I think that if you have the
16 more -- the more limits that you have, the easier
17 it becomes to draw the district.

18 REPRESENTATIVE FITZGERALD: So an algorism
19 could be written in the form of a computer program
20 in some cases, correct?

21 MS. FREIDIN: Forgive me, because I don't know
22 about the word, algorism, but I do know that a
23 computer --

24 REPRESENTATIVE FITZGERALD: Well, it is what
25 you call a computer program.

1 MS. FREIDIN: -- that you certainly could put
2 these criteria into a computer and ask the computer
3 to draw districts.

4 REPRESENTATIVE FITZGERALD: And in fact, isn't
5 that what happens in the state of Iowa and a few
6 other states, that they have a nonpartisan
7 commission that defines criteria, they write a
8 computer program and they draw the district lines
9 on that basis?

10 MS. FREIDIN: Yes, but I think also that there
11 is always public input and there is always
12 discussion, even in the states that have
13 redistricting commissions. There is discussion
14 among the members as there would be discussion and
15 debate among the Representatives here.

16 REPRESENTATIVE FITZGERALD: So as I read this
17 and I will start with Amendment V. It says, "No
18 apportionment plan or district shall be drawn with
19 the intent to favor or disfavor a political party
20 or an incumbent."

21 So that is removing two rules or criteria from
22 the problem of drawing the line. Just saying you
23 can't take that into consideration, so in fact, it
24 is simplifying the process, not making it more
25 complex which the drawing of the lines.

1 MS. FREIDIN: Absolutely.

2 REPRESENTATIVE FITZGERALD: So we do have
3 questions of intent clearly. Is -- is it an
4 unusual, as a lawyer, I am not a lawyer, is there
5 anything unusual in civil or criminal law to have
6 as an aspect the proceedings, findings about intent
7 based on evidence?

8 MS. FREIDIN: Absolutely not. Intent is -- is
9 considered all the time.

10 REPRESENTATIVE FITZGERALD: And with or
11 without these criteria as part of the equation in
12 drawing these boundaries, would a court challenge
13 in all likelihood involve questions of intent?

14 MS. FREIDIN: It certainly could in the Voting
15 Rights Act context.

16 REPRESENTATIVE FITZGERALD: So in fact we have
17 not added complexity, we have removed it by saying
18 we cannot intend to do these, but we certainly have
19 to have some evidentiary finding if someone asserts
20 that that has taken place, a separate process,
21 correct?

22 MS. FREIDIN: Correct.

23 REPRESENTATIVE FITZGERALD: Okay. And so all
24 of these terms that are confusing people, like
25 intent already presently involved in the process,

1 correct?

2 MS. FREIDIN: Correct.

3 REPRESENTATIVE FITZGERALD: Compactness is a
4 feature of the Florida Constitution, it is not an
5 addition to -- by your amendment.

6 MS. FREIDIN: Well, compactness --

7 REPRESENTATIVE FITZGERALD: I mean,
8 compactness --

9 MS. FREIDIN: -- is, contiguity.

10 REPRESENTATIVE FITZGERALD: Contiguity, sorry.
11 So we add compactness. That is a level of
12 complexity.

13 Are there other states that have that as a
14 requirement in their process?

15 MS. FREIDIN: Contiguity?

16 REPRESENTATIVE FITZGERALD: No, compactness.

17 MS. FREIDIN: Compactness, yes, I think that
18 there are 36 other states that use compactness.

19 REPRESENTATIVE FITZGERALD: And is it the case
20 that they all navigate these waters fairly --
21 fairly successfully?

22 MS. FREIDIN: Thirty-six states, they all have
23 districts and they all have -- and they all have
24 representatives elected from the districts.

25 REPRESENTATIVE FITZGERALD: Now I have a

1 couple of questions more and they may in some ways,
2 I guess dispute a little an answer you gave
3 earlier.

4 You were asked about whether we could do, you
5 could do in a week or two weeks this solution. I
6 think we have heard statements already that this
7 Legislature is already engaged in the process of
8 drawing these districts.

9 So that is not exactly a commensurable
10 standard, but on the other hand if we eliminated
11 party or incumbency as a criterion, isn't it the
12 case that you could write a computer program that
13 would do this?

14 MS. FREIDIN: Well, I think that the very
15 principal of districting and the way it has always
16 been done in the past is to do it after public
17 comment and with collegial collaboration among the
18 members.

19 So do I think that you could come up with some
20 sort of a map, but it would not be necessarily an
21 appropriate map nor would it necessarily be
22 compliant.

23 REPRESENTATIVE FITZGERALD: Right, but my
24 question is --

25 MS. FREIDIN: There is too much that goes into

1 it.

2 REPRESENTATIVE FITZGERALD: If we wanted to
3 give up the value of the collegiality and the input
4 and so forth and maximize speed in order to do
5 this, it is done in other states, it has been done
6 and it probably could be done given a certain
7 commitment of resources.

8 MS. FREIDIN: I am actually not familiar with
9 the answer to that question. It sounds like you
10 are from your question, but I don't know.

11 REPRESENTATIVE FITZGERALD: Let me ask you a
12 final question then.

13 Are you familiar with a study by a couple of
14 authors, one named Jotway (phonetic) Chen and the
15 other Jonathan Rucker, the first from the
16 University of Michigan at Ann Arbor and the other at,
17 I believe Stanford University called Tobler's Law
18 Urbanization Electoral Bias. Have you heard of
19 this study?

20 MS. FREIDIN: No.

21 REPRESENTATIVE FITZGERALD: Are you aware that
22 it is actually done exactly what Senator
23 Haridopolis proposed would be done? In other
24 words, it took the 2000 -- it actually had a unique
25 dataset that used the outcome of the 2000 election,

1 as opposed to the voter registration files, but it
2 used that to draw a series of district boundaries
3 in the state of Florida to see what the impact of a
4 applying compact, compactness and contiguity as
5 criteria would be.

6 MS. FREIDIN: I am not aware of it.

7 REPRESENTATIVE FITZGERALD: The study has been
8 done, it exist, it is on line, it is published.
9 The sub title by the way, and this will be my final
10 comment, of that study was, "why compact contiguous
11 districts are bad for Democrats," and that is where
12 I will stop.

13 MS. FREIDIN: I don't know anything about it.

14 REPRESENTATIVE CANNON: Senator Lawson for a
15 question.

16 SENATOR LAWSON: well, I don't know that I
17 have a question. I have had the opportunity to
18 listen to all of the comments and maybe I do have a
19 question. And I also had the opportunity, maybe
20 only one or two of us go through two
21 reapportionments since I have been in the
22 Legislature.

23 And my question probably would center around
24 the fact that -- that when -- when reapportionment
25 took place in 2000, the NAACP, SCLC, the voters

1 League, League of Women Voters and many groups
2 signed off on -- on the reapportionment that was
3 being proposed.

4 And -- and when we gathered information, we
5 gathered information based on many of the criteria
6 that are listed up there.

7 And one of the things that occurred is as a
8 result from the first reapportionment to the second
9 that it increased the number of African-Americans
10 serving in the Legislature because of that.

11 And some of the conversation which I was
12 involved very seriously in the Legislature is how
13 do you increase the number of African-Americans.

14 The only concern that has been expressed from
15 some minority groups around the state is that with
16 Fair Districts will that conversation still
17 continue with how to keep the number of
18 African-Americans in the Legislature, because if I
19 understand the way lines were drawn, if the lines
20 are drawn with the perspective that we have now on
21 Fair District, the number of African-Americans in
22 the Legislature certainly would decrease.

23 And I guess the answer would be even though
24 you said earlier in remarks that the NAACP, you
25 know, signed on and so forth and so on, but just

1 judging from where we are now, there wouldn't be
2 any -- there wouldn't be as many African-Americans
3 in the Legislature, even in Congress without
4 gerrymandering.

5 So it brings you to the point to determine,
6 the question would be probably even though they say
7 those minority districts would be protected, then
8 Fair District would involve with some
9 gerrymandering in order to protect those districts,
10 because some of them are gerrymandering.

11 Do you see that as being a factor, or do you
12 see that that would take place, because I don't see
13 any other way from my perspective in just looking
14 at it that it could happen otherwise?

15 MS. FREIDIN: I absolutely cannot say this
16 more unequivocally. That I do not believe and
17 these amendments are not intended to and the
18 reason, NAACP has signed on after hiring counsel
19 and counsel studying the issue. So they don't
20 believe that there is going to be any problem with
21 maintaining the minority representation in the
22 state of Florida after these amendments are.

23 This is not going to be -- there is not a
24 reason to think that this is going to impact
25 negatively minority representation. In fact, that

1 is the reason that the language is in there to
2 ensure that the ability to elect minority -- the
3 ability of minority voters to elect representatives
4 of their choice will not be diminished.

5 I mean, that is an absolute requirement that
6 takes priority. So the term gerrymandering is not
7 in these amendments. There is nowhere in these
8 amendments does it say, is that word used.

9 There are two things that we are looking at.
10 One is favoring or disfavoring a particular party
11 or a particular incumbent. The other is ensuring
12 that minority voters don't have their rights
13 diminished in Florida.

14 And there is no reason to think and I have not
15 heard a sustainable legal argument that -- that
16 would indicate in any way that this does reduce
17 minority voting rights.

18 SENATOR LAWSON: Okay, if I may.

19 REPRESENTATIVE CANNON: Certainly.

20 SENATOR LAWSON: The reason why I made that
21 statement is because I was a part of the Democratic
22 majority, and in collaboration with Republican
23 colleagues and I know from the standpoint of being
24 at the table at night and everything else, that in
25 order, and I understand where you are coming from

1 and I just want to make sure that I am on the
2 record as saying it, but I know that in order for
3 the minorities that are represented here today in
4 this Legislature, if it hadn't been the
5 collaboration between the Democratic leadership and
6 the Republican leadership at the time of what was
7 fair for the state, because they have been left out
8 for 125 years, that they would not be in the
9 Legislature today.

10 My concern stems around, I am for fair
11 districts, how can this collaboration take place?
12 I haven't been able to see by saying that it is
13 just going to happen and you won't take a back
14 seat, but I know what took place at the table at
15 night and looking at the maps and drawing the maps
16 and looking at the population and how people would
17 be affected and what lines you had to go down in
18 order to ensure it and to see where it would really
19 work.

20 we don't have that ability to do that anymore
21 and this is with Democrats at leadership, because I
22 was a part of leadership at that time. If we don't
23 have that opportunity to participate because we are
24 elected, it is a citizen initiative that is given,
25 but we are the ones that write the district.

1 I have to be concerned even though I support
2 fair district on how to make sure that this
3 continues in the state of Florida and not just say
4 because these districts are going to be drawn, I
5 don't have a minority district, you know, and never
6 have in 28 years.

7 So I would say, well, it really doesn't affect
8 me, but I am concerned about some of the members
9 around the state of Florida that I know that when
10 we analyze and their districts, we drew their
11 districts in a way where they would have the
12 opportunity to get elected and have the opportunity
13 to be represented in those communities.

14 And that is the thing that I am concerned
15 about. It may be something that -- I am not going
16 to ask you to answer that question.

17 MS. FREIDIN: Well, I would like to.

18 SENATOR LAWSON: Okay. You can go ahead, yes.

19 MS. FREIDIN: Not only is there nothing in
20 these amendments that would prohibit all the things
21 that you are talking about, which is sitting around
22 a table and looking at the maps and looking at the
23 census data and looking at all of the information
24 that you need to ensure that minority districts
25 continue to be drawn, but in fact, I think that it

1 is required.

2 And in part you have answered the question
3 about -- about why it would be impossible for
4 anybody today to just sit down with a computer and
5 draw a map, that would be a map that you would
6 actually put out there and make the law of Florida
7 for the next 10 years.

8 There is nothing that prohibits that. What is
9 prohibited is drawing districts with intent to
10 protect a particular incumbent or a particular
11 political party. There is nothing that prohibits,
12 and in fact, everything protects the right of or
13 the requirement that all of you do everything you
14 can to protect minority voters. Does that answer
15 the question?

16 SENATOR LAWSON: well, somewhat, and you know,
17 this might be a little bit funny, but when we drew
18 them we thought we were drawing them to protect
19 Democrats and they got defeated, you know.

20 So, you know, you know, and in a way, you
21 know, being honest with you when we were drawing
22 the district there was incumbent Democrats that we
23 thought we were protecting and they got defeated.

24 And so, you know, I am just saying, I
25 understand exactly what you are saying, but there

1 was very powerful members around that table that
2 were concerned about their district. I am the only
3 Democrat in the Senate between Pensacola and
4 Jacksonville and -- and those districts were drawn
5 at that time where it would have been other members
6 that would have got elected, but they did not get
7 elected.

8 So, you know, I have a little trepidation
9 about everything, because it could happen with the
10 Republican time. My goal might to be get rid of as
11 many Republicans as I possibly could before I
12 leave, you know, but -- so I might be the right
13 person to stick around and draw the districts, I
14 don't know, if it goes just the reverse. But I am
15 serious --

16 MS. FREIDIN: The lights just went out on you.

17 SENATOR LAWSON: I have been trying to get rid
18 of Bennett for a while, but that is the thing I am
19 saying. Some people have also left out the intent
20 that we had back in 2000, and I was just wondering
21 how the fair district worked that way.

22 We had no opposition from the Republicans so
23 to speak, everybody was working, you know,
24 together. It was members that, you know, were
25 concerned about their geographical location,

1 somebody didn't want to go here and someone didn't
2 want to go there, but overall, when the gavel went
3 down people were pretty happy.

4 I remember the NAACP saying this is a great
5 plan, you know, and I remember other groups saying
6 it was a great plan. And now that plan is still
7 been in existence, but now when we come back to do
8 reapportionment now, it is obvious that maybe the
9 citizens who signed this would say, well, they
10 really didn't agree with the plan that we had back
11 in 2000, and now we would like to have the plan,
12 make sure we take all these variables out when you
13 are designing the plan.

14 So I think that is thing that we have to
15 wrestle with in the Legislature, because I really
16 want to draw the plans, you know, because I have
17 done it and I know that it is intense and I know to
18 a lot of members who have never done it before, it
19 might seem like it is simple, but it is really not
20 simple. It is very complex. But that is my
21 statement, you know.

22 MS. FREIDIN: Thank you, Senator.

23 Mr. Chairman, having stood up here now for over
24 three hours I must tell you that I really don't
25 think that I have the ability to stay here much

1 longer.

2 So how much longer can we think we could wrap
3 this up?

4 REPRESENTATIVE CANNON: The meeting was
5 noticed to run until 6:00 p.m.

6 MS. FREIDIN: I understand, but you didn't
7 expect me to stand here for all those hours, did
8 you, because I am -- I must admit that it is a long
9 time.

10 REPRESENTATIVE CANNON: Actually, if you need
11 to take another break we will, but, yes, we did.
12 There have been multiple meetings of both the House
13 and Senate Committees and you are the only person
14 who has shown up for Fair Districts so far --

15 MS. FREIDIN: And when --

16 REPRESENTATIVE CANNON: Excuse me one moment.
17 You are the only person who has shown up so far.
18 It may be appropriate at future meetings that we
19 invite Speaker Mills to come as well, because I
20 understand he had some role in authoring the
21 language, but if we need to take a break, we can
22 take them, but I know that I have got a long list
23 and a growing list of Senators and House members
24 who have questions, including myself.

25 So if it is all right with you we are going to

1 continue at least a little bit longer.

2 MS. FREIDIN: Well, I will stay a little bit
3 longer, but I want to also have on the record that
4 when I was asked to come today, I very clearly, I
5 made it very clear that I had somewhere I had to be
6 at 6:00.

7 Actually, I am sorry, at 5:00, because I am
8 trying to catch a 6:00 plane. So it is now a
9 little after 4:00. I am happy to stay a little bit
10 longer, but I hope that we can wrap it up
11 relatively soon.

12 SENATOR THRASHER: Mr. Chairman.
13 Mr. Chairman?

14 REPRESENTATIVE CANNON: Yes, Senator Thrasher.

15 SENATOR THRASHER: And I respect that, I do,
16 but I think along the same lines. We have invited
17 other folks to come. I think Former Speaker Mills
18 was the author of this language or at least
19 attributed to him.

20 He has authored some other pieces of paper. I
21 would love to have him come and hopefully maybe
22 since you couldn't answer a lot of the questions,
23 Ms. Freidin, ask maybe him some of these questions
24 that we have asked today.

25 Now, I would love to that have. I would hope

1 that you would invite him to come.

2 SENATOR HARIDOPOLIS: Before I give this to
3 Speaker Representative Cannon. I mean, this is a
4 pretty serious matter. I mean, I know you had a
5 5:00 or 6:00 flight, but we are going to change the
6 Florida Constitution and you have worked since 1998
7 to work on that.

8 I would hope that you would be willing to come
9 back and share your expertise or as former Speaker
10 Thrasher asked, at least invite the person who
11 created this document to come in and testify.

12 I think the people of Florida deserve that,
13 because there is a reason why the people of Florida
14 raised the standard to 60 percent for a
15 constitutional amendment. And these are very
16 serious questions that the elected representatives
17 of the people would like to ask you.

18 So I hope you would be willing to come back if
19 today is not as convenient for you as you like. I
20 think that might be helpful to all of us.

21 MS. FREIDIN: Well, first of all, let me say
22 this. That John Mills was involved in drafting
23 these amendments, along with probably a dozen, at
24 least a dozen other people. So I just want to make
25 that clear, he is not the drafter of the

1 amendments.

2 Now as far as me, me coming back, if it is
3 your will to keep me here for another couple of
4 hours I will do it. I am here because I represent
5 all the people in Florida who really want to see
6 the partisanship in redistricting stop.

7 I will stay if that is your will. I will be
8 happy to continue answering your questions as best
9 I can, but I want to make clear that the reason I
10 came at all was because I have been working
11 tireless, really not since 1998, but for the last
12 two or three years.

13 I have put my life into this because it is
14 something that I feel very passionately about. I
15 am a volunteer. Nobody has -- I am not getting
16 paid to do this. I probably work 80 hours a week
17 on this and it is something that I feel so strongly
18 about, that is such an unfair thing in the state of
19 Florida and it is something that needs to be
20 stopped and I --

21 REPRESENTATIVE CANNON: Mr. Chair.

22 MS. FREIDIN: -- will stay if you -- if you
23 want me to stay, I will continue. I thought we
24 could probably wrap it up, but if not, go for it.

25 SENATOR HARIDOPOLIS: Sure, thank you, I

1 appreciate your comments today. Representative
2 Cannon.

3 REPRESENTATIVE CANNON: Thank you, Chairman
4 Haridopolis. I want to pick up on something that
5 Senator Lawson alluded to.

6 We spent a pretty good amount of time talking
7 about Congressional District III and I would love
8 to know if the staff could bring that map back up,
9 because I just want to make sure that I do
10 understand the things that you have testified to.

11 And again, I share Chairman Haridopolis'
12 concern and I also appreciate both the sincerity
13 and the work that you have put into this and I know
14 what you said you intended to do.

15 The problem is writing words into the Florida
16 Constitution binds all of us in how we draw these
17 maps and we take that duty remarkably seriously.

18 This is Congressional District III. It was
19 drawn as part of the 2000 reapportionment and it
20 had at the time 46 percent African-American
21 population.

22 I think I understood you to say, and we know
23 that Bartlett v. Strickland has clarified that the
24 Federal Voting Rights Act no longer or doesn't
25 require the creation or the drafting of a minority

1 access seat if it has less than 50 percent minority
2 voting age population. would you agree with that
3 statement?

4 MS. FREIDIN: Yes, but while -- could I
5 interrupt for one second? would it be possible to
6 get me a table and a chair to sit at?

7 REPRESENTATIVE CANNON: Absolutely.

8 MS. FREIDIN: So I don't have to stand here
9 any longer.

10 REPRESENTATIVE CANNON: But as you alluded,
11 Bartlett also allows that it states, and I think
12 the quote from the case is, "States that wish to
13 draw crossover districts are free to do so where no
14 other prohibition exist," correct? Or would you
15 agree with that?

16 MS. FREIDIN: Right.

17 REPRESENTATIVE CANNON: So it is your
18 testimony then or at least we agree that while
19 Bartlett says the Federal Voting Rights Act no
20 longer requires or doesn't require states to draw
21 minority access seats with less than 50 percent
22 minority population, we could do that if a
23 different prohibition did not exist.

24 If no other prohibition exist, then let's say
25 we wanted to honor what Senator Lawson spoke about

1 and we wanted to draw a district that looked like
2 this and it only had 46 percent African-American
3 population.

4 My question to you is, and I think I
5 understand you to say, we are going to need to get
6 Ms. Freidin a microphone and we will take a break
7 if we need to after this.

8 My question is, subsection two of your
9 amendment requires that districts shall be compact,
10 correct?

11 MS. FREIDIN: Correct.

12 REPRESENTATIVE CANNON: And it says unless one
13 of the provisions of subsection one contravenes
14 that.

15 MS. FREIDIN: Right.

16 REPRESENTATIVE CANNON: So is it your
17 testimony that preserving minority representation,
18 such as that currently held by Congresswoman
19 Corrine Brown in a 46 percent access seat, that the
20 preservation of the minority voting rights trumps
21 the compactness requirement?

22 In other words, it is primary before you get
23 to compactness, first you must not diminish the
24 ability of language or racial minorities to elect
25 the representative of their choice?

1 MS. FREIDIN: Okay. First of all, let me make
2 it clear, I am not commenting on any particular
3 district. So my comment, my answer to your
4 question doesn't relate to District III, it relates
5 to a general concept and the answer is yes.

6 REPRESENTATIVE CANNON: Very good. But you
7 would say that the preservation or to use the
8 language from the amendment, the non diminution of
9 the ability of language in racial minorities to
10 elect representatives in their current capacity
11 can't be diminished and that that trumps
12 compactness?

13 MS. FREIDIN: It trumps compactness.

14 REPRESENTATIVE CANNON: Okay, very good.
15 Okay, so it is true that if a district has to be
16 drawn none compact in order to avoid diminution of
17 minority representation, that is okay, that is your
18 intent of the language and that is what you think
19 this language does?

20 MS. FREIDIN: Yes.

21 REPRESENTATIVE CANNON: And let's just use
22 this district. I will grant you that I am not
23 asking you to testify about this specific district,
24 but a district shaped like this. Okay, take a look
25 at the shape. would you say that is compact?

1 MS. FREIDIN: I am not going to comment on any
2 particular district. I am telling you that right
3 now, I won't.

4 REPRESENTATIVE CANNON: We need certainty, and
5 frankly the voters before they walk into the voting
6 booth in November, to decide whether to vote this
7 in or out of the Constitution are entitled to some
8 certainty.

9 So I am not asking you to comment about this
10 district, just the shape. Assume it is not in
11 Jacksonville, assume it down near Fort Myers. Is
12 that shape compact?

13 MS. FREIDIN: I don't -- I can't comment on
14 any particular district. You have a particular
15 district up on the board. I will not comment on
16 any particular district, but I will agree that
17 compactness is trumped by voting rights.

18 REPRESENTATIVE CANNON: Perfect, okay.

19 MS. FREIDIN: Would it be possible to get a
20 microphone so that I could sit down?

21 REPRESENTATIVE CANNON: Yes, we will take a
22 five-minute break until we get a mike and it will
23 be on its way. Thank you very much.

24 Members, we will stand in recess for five
25 minutes.

1 (Brief recess.)

2 REPRESENTATIVE CANNON: And actually it
3 occurred and I think Chairman Haridopolis makes a
4 very good point, which is if you are feeling tired
5 and not up to testifying, we don't want to extend
6 the meeting beyond that at all.

7 we do appreciate your testimony and your
8 passion and your hard work. So if it is all right
9 with the Members and I have gotten sort of general
10 head nods that they are okay allowing the meeting
11 to end here.

12 we would ask you to come back and I will say
13 that our staff has found both the software and all
14 of the data from the 2000 reapportionment, and not
15 just the data, but as well all of the public
16 hearings, all of the testimony that the Department
17 of Justice used when they reviewed the plan back in
18 2000.

19 we would also as Chairman Haridopolis and I
20 have agreed, be willing to make our staff available
21 and because you are a volunteer, pay for any of the
22 time or staff time necessary to have you draw a set
23 of maps, but we do want to renew the request that
24 we have heard testimony, I know back in 2000, both
25 common cause and the Florida League of Women

1 voters, they drew plans.

2 So it is possible and we would sincerely ask
3 you to do that, to demonstrate to us that it is, in
4 fact, possible to draw a set of Congressional maps
5 that you would contend would comport with the
6 language of the amendments.

7 So we will make that available to you and once
8 again, we very, very much appreciate your testimony
9 here today and hope to see you back in conjunction
10 with our staff at a meeting either next week or
11 shortly thereafter.

12 SENATOR SIPLIN: Mr. Chair.

13 REPRESENTATIVE CANNON: Senator Siplin.

14 SENATOR SIPLIN: Yes, thank you. I don't know
15 if it would be an inconvenience, but I would like
16 to request of the Chairmanship if there is other
17 interested parties who were the founders or the
18 originators of this movement, to come and present,
19 too, because I, you know, as a member of the Black
20 Caucus would like to understand the theory and the
21 purpose from which this amendment initiated.

22 And I think it would be relevant under the
23 record concerning the issues that have brought it
24 forward. So I would recommend that those other
25 parties who are a part of this conceptualization or

1 this amendment be invited, also, so we can address
2 the questions to them, also.

3 REPRESENTATIVE CANNON: I think it is a great
4 idea and we will have our staff work with your
5 staff, Ms. Freidin, and once again, we really
6 appreciate your participation today. We will
7 reimburse you for the travel necessary to attend
8 those future meetings as well.

9 MS. FREIDIN: I appreciate that and I just
10 want to make it very clear to everybody in this
11 room and everybody else who is listening, that our
12 goal at Fair Districts Florida is simply to draw
13 districts. To have you all draw districts that
14 benefit the people of Florida and not the
15 politicians of Florida.

16 We want to see brakes put on the political
17 favoritism in redistricting. We want to give
18 voters a choice, a real choice. We want to have
19 districts that make sense geographically. We want
20 to have districts that voters can understand.

21 We want to end this crazy guilt of Rorschach
22 districts that exist in the state today, and we
23 want to make sure that there is equal opportunity
24 for minority voters in all of Florida. We want to
25 stop the legalized conflict of interest. And I

1 thank you for having me here today.

2 REPRESENTATIVE CANNON: And Ms. Freidin, we
3 look forward to you demonstrating to us that that
4 is possible and we will see you at the next
5 meeting. With that Senator Negron moves we rise.
6 without objection, show that motion approved.

7 (Whereupon, the meeting was concluded.)

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1 C E R T I F I C A T E

2 STATE OF FLORIDA)

3 COUNTY OF LEON)

4 I hereby certify that the foregoing transcript
5 is of a tape-recording taken down by the undersigned,
6 and the contents thereof were reduced to typewriting
7 under my direction;

8 That the foregoing pages 2 through 149
9 represent a true, correct, and complete transcript of
10 the tape-recording;

11 And I further certify that I am not of kin or
12 counsel to the parties in the case; am not in the
13 regular employ of counsel for any of said parties; nor
14 am I in anywise interested in the result of said case.

15 Dated this 18th day of February, 2010.

16

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18

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CLARA C. ROTRUCK

20

Notary Public

21

State of Florida at Large

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25

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

EQUAL GROUND EDUCATION FUND,
et al.,

Plaintiffs,

v.

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

Case Nos.: 2026 CA 914
2026 CA 925
2026 CA 928
(Consolidated)

Defendants.

_____ /

**FLORIDA SENATE'S RESPONSE IN OPPOSITION TO
MOTIONS FOR TEMPORARY INJUNCTION**

The Florida Senate responds in opposition to the motions for temporary injunction filed by the Equal Ground, Common Cause, and Thompson-Wynn Plaintiffs in these consolidated cases.

Introduction

Plaintiffs ask this Court to do what Florida law does not permit: resolve a statewide constitutional redistricting dispute through emergency injunction practice, before trial, and order congressional elections to proceed under a plan other than the one duly enacted and signed into law. The motions should be denied.

This case is not a routine request to preserve evidence, maintain possession of property, or prevent some discrete act pending final judgment. Plaintiffs seek extraordinary statewide relief. They ask the Court to enjoin the congressional plan enacted on May 4, 2026 (the "Enacted Plan") and to order the State to conduct the 2026 congressional elections under the 2022 congressional

plan (the “2022 Plan”) instead. That request would not merely preserve conditions while the parties litigate. It would suspend a duly enacted law and substitute a different election regime before any final adjudication on the merits. And the effect of that injunction would be to grant Plaintiffs the ultimate remedy sought in their complaints at the very inception of the case.

The motion should be denied for several independent reasons.

First, Florida law does not permit Plaintiffs to use a temporary injunction as an interim remedial device in declaratory judgment actions. Just four years ago, the First District Court of Appeal confronted materially similar emergency relief in congressional redistricting litigation and held that “a temporary injunction cannot be used in a declaratory judgment action as an interim remedial tool.” *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1082 (Fla. 1st DCA 2022), *writ denied*, 340 So. 3d 475 (Fla. 2022). Plaintiffs try to avoid that rule by describing the 2022 Plan as the “status quo,” but there is no question that the relief they seek would suspend current law and impose a substitute statewide election regime before final adjudication. Plaintiffs have not attempted to carry their burden to prove the validity of the alternative map they now prefer.

Second, Plaintiffs have not established a substantial likelihood of success on the merits. Their partisan-intent theory depends on converting political awareness, political effects, and alleged review of partisan data into constitutionally prohibited intent. But article III, section 20(a) of the Florida Constitution prohibits an apportionment plan or district “drawn with the intent

to favor or disfavor a political party or an incumbent.” Properly read according to its text, structure, and original public meaning, that provision targets the Legislature’s decision-making when placing district lines—not every political statement made in the surrounding public debate and not alleged partisan effects.

Third, Plaintiffs ask the Court to depart from the ordinary presumption of constitutionality owed to duly enacted statutes. The Senate preserves the argument that enacted congressional plans remain entitled to that presumption, that reasonable doubts must be resolved in favor of validity, and that Plaintiffs must prove any constitutional violation beyond a reasonable doubt. The contrary burden-shifting approach reflected in portions of the 2012-15 redistricting litigation should not be extended beyond its extraordinary facts and, if necessary, should be reconsidered by the Florida Supreme Court.

Fourth, Plaintiffs’ Tier II claims fare no better. Their compactness and political-boundary theories depend on expert simulations, competing metrics, and disputed factual inferences. Those issues may be litigated in an appropriate final merits proceeding, but they do not establish the clear legal right required for emergency statewide relief.

Fifth, recent decisions of the Florida Supreme Court and United States Supreme Court create serious unresolved questions concerning the continuing operation, enforceability, and severability of the race-based provisions of the Florida Constitution. Those questions alone preclude a finding that Plaintiffs possess a clear legal right to emergency relief.

Finally, the equities and public interest weigh decisively against Plaintiffs' request. Changing congressional districts through a temporary injunction would disrupt statewide election administration, unsettle candidate and voter expectations, and risk precisely the kind of election confusion that courts have repeatedly cautioned against. If this case warrants expedited treatment, the proper course is expedited final adjudication rather than provisional replacement of Florida's enacted congressional map.

The motions for temporary injunction should be denied.

Background

This case involves a constitutional challenge to the congressional district map passed by the Legislature on April 29, 2026, and signed by the Governor on May 4, 2026. Three groups of plaintiffs have filed suit alleging violations of article III, section 20, of the Florida Constitution, and seeking declaratory and injunctive relief. The complaints assert two principal theories: that the Enacted Plan was drawn with prohibited intent to favor or disfavor a political party or an incumbent; and that several districts violate the Florida Constitution's compactness and boundary-usage provisions. Plaintiffs seek declaratory and injunctive relief against Florida's Secretary of State, the Florida Senate, and the Florida House of Representatives.

Plaintiffs' theory of partisan intent relies heavily on allegations regarding matters outside the Florida Legislature's formal enactment record. Among other things, Plaintiffs cite public statements attributed to political officials, national redistricting efforts, media commentary, statements by members of Congress,

social-media activity, and expert analyses concerning projected partisan performance. *See, e.g.*, Equal Ground Mem. at 7-8, 31; Thompson-Wynn Mem. at 6-11, 17-18, 22-24; Common Cause Mem. at 4-9, 17-22.

As for the legislative record, Plaintiffs rely substantially on the committee testimony of Jason Poreda. *See, e.g.*, Equal Ground Mem. at 10, 29; Thompson-Wynn Mem. at 13, 21, 30-31, 36-38; Common Cause Mem. at 9-10, 16-17. Poreda identified himself as the sole drawer of the map that was transmitted to the bill sponsors, introduced as legislation, passed by the Legislature, and signed by the Governor. SOS Ex. 8 at 23 (testimony of Jason Poreda) (“I am the only one that drew the map.”). The legislative transcripts attached to Plaintiffs’ motions show that Poreda acknowledged considering partisan data as part of a broader set of redistricting information and in “final balancing,” but he denied drawing the map with partisan intent. *Id.* at 54. Plaintiffs also cite statements by counsel for the Governor concerning the legal premises of the map. Equal Ground Mem. at 10, 46; Thompson-Wynn Mem. at 13, 35; Common Cause Mem. at 10, 17-18. Plaintiffs contend that the Enacted Plan “cracks” and “packs” Democratic voters in several regions of the State, including Tampa Bay, Central Florida, and South Florida. Equal Ground Mem. at 13-23; Thompson-Wynn Mem. at 22-32; Common Cause Mem. at 25-43. They rely on expert simulations, partisan-performance metrics, and district-specific comparisons to argue that the Enacted Plan allegedly reflects unconstitutional partisan favoritism.

Notably, Plaintiffs do not allege that *any* legislator’s vote on the Enacted Plan (much less the Legislature as a whole) was motivated by prohibited partisan intent.

Plaintiffs separately challenge several districts as allegedly non-compact or unnecessarily disruptive of political and geographic boundaries, including Congressional Districts 9, 15, 16, 22, and 25. Equal Ground Mem. at 38-46; Thompson-Wynn Mem. at 44-46; Common Cause Mem. at 27-28, 34-35, 42-43. Plaintiffs emphasize, among other things, the geographic shape of District 25, the cross-state configuration of District 22, county and municipal splits, and alternative computer-generated districting simulations. Equal Ground Mem. at 12, 16-17, 19-20, 22, 24, 26, 38, 42; Thompson-Wynn Mem. at 22-32; Common Cause Mem. at 18-19, 25, 28, 38, 42-43. Plaintiffs contend that those simulations purportedly demonstrate the feasibility of more compact or differently configured districts. Equal Ground Mem. at 24-26; Common Cause Mem. at 18-19.

Legal Standard

“A temporary injunction is extraordinary relief that should be granted only when the party seeking the injunction has established four elements: (1) a substantial likelihood of success on the merits, (2) the unavailability of an adequate remedy at law, (3) irreparable harm absent entry of an injunction, and (4) that the injunction would serve the public interest.” *Fla. Dep’t of Health v. Florigrown, LLC*, 317 So. 3d 1101, 1110 (Fla. 2021). Each of these elements “must be proven by the movant with competent, substantial evidence.” *Holland*

M. Ware Charitable Found. v. Tamez Pine Straw LLC, 343 So. 3d 1285, 1289 (Fla. 1st DCA 2022) (citing *State, Dep’t of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 472 (Fla. 1st DCA 2018)). “Failure to prove any one of the four elements mandates denial of the motion for temporary injunction.” *Id.* The writ of injunction “is an extraordinary, not an ordinary, everyday writ, and it should never be granted lightly, but cautiously and sparingly.” *Godwin v. Phifer*, 41 So. 597, 602 (Fla. 1906).

Congressional redistricting legislation, “like any legislation, is entitled to a presumption of validity.” *Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec’y, Fla. Dep’t of State*, 415 So. 3d 180, 197 (Fla. 2025).

Argument

I. The requested temporary injunction is not available in this declaratory judgment action.

Plaintiffs’ motions fail at the threshold because Florida law does not permit the use of a temporary injunction as an interim remedial device in a declaratory judgment action.

This case is controlled by *Byrd v. Black Voters Matter Capacity Building Institute, Inc.*, 339 So. 3d 1070 (Fla. 1st DCA 2022). *Byrd* arose from a constitutional challenge to Florida’s 2022 Plan under article III, section 20, of the Florida Constitution. *Id.* at 1074. There, as here, plaintiffs sought emergency injunctive relief requiring the use of a different congressional plan before a final adjudication on the merits. *Id.* The circuit court granted that request, proscribed the implementation of the 2022 congressional map, and ordered the Secretary of

State to implement a different congressional districting plan for the 2022 election. *Id.* at 1074-75. After the Secretary appealed that order, the circuit court vacated the automatic stay. *Id.* at 1075.

The First District reversed, reinstated the automatic stay, and held unequivocally that “a temporary injunction cannot be used in a declaratory judgment action as an interim remedial tool.” *Id.* at 1082. This is so “even if the status quo cannot be preserved. The declaratory judgment must come first as a final order.” *Id.* Even where a constitutional writ of injunction is authorized, its purpose is “solely preservative or preventative.” *Id.* at 1073. “A temporary injunction that goes beyond that limit, by determining a matter in controversy and granting a remedy, is subject to reversal.” *Id.* at 1078; *see also Geise v. Fleck*, 51 Fla. L. Weekly D694 (Fla. 6th DCA Apr. 2, 2026) (recognizing that chapter 86 “only authorizes the granting of injunctive relief after a declaratory judgment is obtained and only by motion”); *City of Newberry v. Alachua County*, 366 So. 3d 1176, 1179 (Fla. 1st DCA 2023) (acknowledging that “chapter 86 requires a plaintiff to obtain declaratory relief first, *before* the plaintiff seeks an injunction”).

Those principles foreclose the relief Plaintiffs seek here. Before obtaining relief on their declaratory judgment claims, Plaintiffs ask this Court to enjoin enforcement of the Enacted Plan, prohibit elections from taking place under current law, and require Florida to conduct elections under the 2022 Plan instead. Equal Ground Mot. at 3-4; Thompson-Wynn Mot. at 5; Common Cause Mot. at 3-4. The injunction Plaintiffs seek would resolve the central legal dispute

they brought before this Court—whether the Enacted Plan may lawfully govern congressional elections—and “essentially is a grant of the ultimate relief sought by” Plaintiffs. *Byrd*, 339 So. 3d at 1082.

Plaintiffs seek to distinguish *Byrd* on the basis that the circuit court’s injunction there had imposed “an entirely new, never-enacted congressional map” as relief, whereas Plaintiffs seek an injunction requiring elections to be held under the now-repealed 2022 Plan. Equal Ground Mem. at 51-52; Thompson-Wynn Mem. at 50; Common Cause Mem. at 64-65. Although Plaintiffs argue they are seeking less sweeping injunctive relief than the *Byrd* plaintiffs, this distinction is insufficient. Plaintiffs are still asking this Court for a mandatory injunction requiring the State to conduct elections under a repealed congressional map that no longer carries the force of law. They also fail to address the aspects of the First District’s decision discussed above: 1) whether a temporary injunction can be used in a declaratory judgment action as an interim remedial tool; and 2) whether the declaratory judgment must come first, before a plaintiff may seek an injunction to enforce it. And Plaintiffs fail to acknowledge that *they bear the burden* to “produce an alternative plan proving that any asserted defect in the Legislature’s [enacted] plan is remediable.” *Black Voters Matter*, 415 So. 3d at 198.

Plaintiffs ask this Court to preserve the “status quo” that they claim is represented by the repealed 2022 Plan, Equal Ground Mem. at 51-52, Thompson Wynn Mem. at 50, Common Cause Mem. at 64, but do not attempt to defend its configuration as an alternative to the Enacted Plan. Instead, they try to shift that

burden to Defendants contrary to *Black Voters Matter. Id.* This decision is particularly questionable in light of the evolving state and federal precedent concerning the use of race in redistricting since the enactment of the 2022 Plan.

All of these deficiencies are fatal to Plaintiffs’ request for temporary injunctive relief before judgment.

II. Plaintiffs have not established a substantial likelihood of success on their partisan-intent claims.

Plaintiffs’ motions rest on the assertion that the Enacted Plan was drawn with the intent to favor Republicans and disfavor Democrats. Equal Ground Mem. at 1, 7-8; Thompson Wynn Mem. at 1, 17-18, 21-22; Common Cause Mem. at 1-2, 15-16. But their partisan-intent theory asks this Court to equate political awareness, alleged review of partisan data, partisan effects, generalized political context, and public political rhetoric, with constitutionally prohibited intent. The Florida Constitution does not support that theory.

A. The Florida Constitution must be interpreted according to its text, structure, and original public meaning.

Article III, section 20(a) of the Florida Constitution provides that “[n]o apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent.” Under the Florida Supreme Court’s modern interpretive methodology, constitutional provisions are interpreted according to their ordinary meaning at the time of adoption, read in context and in harmony with constitutional structure. *See, e.g., Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 77 (Fla. 2024) (“The goal of this approach is to ascertain the original, public meaning of a constitutional provision—in other

words, the meaning as understood by its ratifiers at the time of its adoption”). Properly interpreted, the constitutional text significantly narrows the theory advanced by Plaintiffs in at least two respects.

First, the operative constitutional language concerns districts “drawn with the intent” to favor or disfavor a political party. Art. III, § 20(a), Fla. Const. The provision therefore regulates the drawing of district lines, the enacted district configurations, and the purpose motivating those line-drawing decisions. The Florida Supreme Court has recognized that the provision “prohibits intent, not effect” and that “redistricting will inherently have political consequences, regardless of the intent used in drawing the lines.” *In re Sen. Joint Resol. of Legis. Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 617 (Fla. 2012). The Florida Constitution does not establish proportional representation requirements, “partisan symmetry” mandates, or any other mathematical measure of partisan “fairness.” Yet Plaintiffs’ theory would effectively insert those requirements into constitutional text where they do not appear.

Second, the passive construction “no apportionment plan or individual district shall be drawn” must be interpreted in light of constitutional structure. The Florida Constitution vests the legislative power of the State of Florida in the Legislature. Art. III, § 1, Fla. Const. Article III, section 20, provides “[s]tandards for establishing congressional district boundaries.” Those boundaries are “establish[ed]” through ordinary legislation dividing the state into 28 congressional districts and assigning every census block within the boundaries

of the state to a particular district. § 8.0002, Fla. Stat. The constitutional “actor” in redistricting is, therefore, the Legislature acting through the enactment of law.

That point substantially narrows the relevant inquiry. The constitutional question is whether *the Legislature* enacted districts with prohibited intent, not whether political commentators outside of Florida’s redistricting process advocated partisan goals, national political actors publicly discussed redistricting, media commentary existed, or partisan consequences were foreseeable. Plaintiffs’ motions repeatedly rely on generalized political context and statements by persons outside the Legislature. Equal Ground Mem. at 7-9 (relying on statements by persons such as Governor DeSantis, party officials, and members of Florida’s congressional delegation); Thompson-Wynn Mem. at 6-7, 10-11 (same); Common Cause Mem. at 5, 8-9 (same). But the constitutional text regulates enacted governmental action, not ambient political atmosphere. The proper focus is therefore on what the *Legislature* did and its intent in doing so, based principally (if not exclusively) on the legislative record on which the redistricting legislation was passed.

To the extent the Florida Supreme Court’s opinions in *Apportionment I* and its progeny are contrary to original public meaning, the Senate respectfully preserves the argument that the Florida Supreme Court should recede from the relevant portions of those decisions in favor of the contrary reading described above.

B. The Enacted Plan is entitled to a presumption of constitutionality.

Florida law has long recognized that duly enacted statutes are presumed constitutional and may not be invalidated unless their unconstitutionality is established beyond a reasonable doubt. *See, e.g., Planned Parenthood*, 384 So. 3d at 77 (“[W]e will . . . determine if, beyond a reasonable doubt, violence was done [to] any provisions of the organic law in the passage of the challenged act, and in doing so will not deal with the merits of the measure, that being the exclusive concern of the Legislature.” (quoting *Waybright v. Duval County*, 196 So. 430, 432 (Fla. 1940))). These standards have historically applied to redistricting legislation. *In re Apportionment L. Senate Joint Resol. No. 1305*, 1972 Regular Session, 263 So. 2d 797, 805-06 (Fla. 1972). And the Florida Supreme Court’s most recent redistricting decision acknowledged that congressional redistricting legislation, “like any legislation, is entitled to a presumption of validity.” *Black Voters Matter*, 415 So. 3d at 197. These principles reflect foundational constitutional norms, including a respect for the separation of powers and the Legislature’s constitutionally assigned policymaking authority.

The Senate recognizes that the Florida Supreme Court in 2015 departed from its longstanding precedent and rejected the “beyond a reasonable doubt” standard in evaluating constitutional compliance of redistricting legislation and adopted an approach that shifted the burden to the Legislature to justify its redistricting choices. *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 398-401 (Fla. 2015), *abrogated in part by Black Voters Matter*, 415 So. 3d at 180. To the extent *Black Voters Matter* did not expressly abrogate this holding, the

Senate respectfully preserves the argument that the Florida Supreme Court should recede from it and restore the ordinary presumption of constitutionality and the “beyond a reasonable doubt” standard. The Florida Supreme Court decisions altering a plaintiff’s burden of proof to establish a constitutional violation based solely upon the subject matter of the challenge find no support in the text of the Florida Constitution and are clearly erroneous.

C. Plaintiffs’ evidence does not establish legislative intent to favor or disfavor a political party.

Plaintiffs principally rely on legislative testimony concerning use of partisan data and expert analyses concerning partisan effects. Neither establishes a substantial likelihood of success.

First, Plaintiffs emphasize isolated committee testimony from Jason Poreda that partisan data was “considered” as part of the “entire suite of redistricting criteria that are available to other states.” Equal Ground Mem. at 10, Thompson-Wynn Mem. at 13; Common Cause Mem. at 10, 16. But Plaintiffs ignore the overwhelming majority of Poreda’s committee presentation, which painstakingly explained his map-drawing process on the basis of non-partisan considerations including race-neutrality, compactness, boundary usage, and population balancing. See Common Cause Ex. 11 at 20:2-7, 74:1-15; SOS Ex. 8 at 26, 27, 33-34.

Plaintiffs also fail to acknowledge Poreda’s testimony expressly denying that he drew the map with partisan intent. See SOS Ex. 8 at 54 (testimony of Jason Poreda) (“I did not draw with partisan intent . . . [M]y intent was not to draw a partisan map in any way . . . [I]t was certainly not a factor and it was not

my intent to create or draw a partisan map.”); *see also id.* at 26 (testimony of Mohammad Jazil, counsel to the Governor) (“Senator, my assessment or my analysis was [if] partisan intent can be taken into account. The map drawer is going to answer the question of whether or not partisan intent was, in fact, taken into account”); Equal Ground Mem. at 9 (citing Poreda’s exchange with Senator Lori Berman where Poreda denied that he “set out to give more seats to Republicans” (SOS Ex. 8 at 50-51)).

Poreda also testified that, to the extent he considered partisan data, it came late in the process during “final balancing” after district configurations were largely established. *See* SOS Ex. 8 at 54. That sequence matters. A review of partisan data after district configurations have largely taken shape is not proof that the districts were drawn *because of* partisan considerations. The Supreme Court recently emphasized this distinction in *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1 (2024). There, the Court rejected inferences of unconstitutional motive based merely on evidence that map drawers “viewed racial data at some point during the redistricting process.” *Id.* at 22-23; *see also id.* at 22 (noting map drawer’s uncontroverted testimony that he considered the relevant racial data only after he had drawn the enacted map).

Plaintiffs’ theory effectively treats any access to or awareness of partisan data as a constitutional violation. But article III, section 20, by its plain terms, does not prohibit a map drawer from reviewing political data. Nor does it require legislators to blind themselves to political *effects* of a districting plan. Instead,

the Florida Constitution prohibits districts drawn “with the intent to favor or disfavor a political party or an incumbent.”

Plaintiffs also rely heavily on expert analyses purporting to show partisan asymmetry, voter “packing” and “cracking,” and deviations from computer-generated simulations. But, once again, alleged partisan *effects* do not establish unconstitutional intent. Nothing in article III, section 20, guarantees proportional partisan outcomes or requires maps to conform to computer generated simulations. At most, Plaintiffs’ experts offer competing policy judgments, disputed statistical analyses, and inferential claims concerning legislative purpose. Those issues are sharply contested and fact intensive. See SOS Exs. 1 & 2.

Importantly, Plaintiffs’ expert witnesses are not authorized to testify as to their opinions about legislative intent. See *Taylor v. Novartis Pharm. Corp.*, No. 06-61337-CIV, 2013 WL 5118945, at *4 (S.D. Fla. Apr. 22, 2013) (“Defendant’s motivation or intent is not a proper subject of expert testimony.”); see also *In re Rezulin Prods. Liab. Litig.*, 309 F. Supp. 2d 531, 546 (S.D.N.Y. 2004) (stating that “the intent, motives or states of mind of corporations, regulatory agencies and others have no basis in any relevant body of knowledge or expertise” and thus are not admissible expert testimony); cf. *Luis v. State*, 851 So. 2d 773, 778 (Fla. 2d DCA 2003) (“[E]xpert testimony concerning the defendant’s intent crosses the line from providing expert testimony to simply telling the jury how to decide the case.”). At best, Plaintiffs have shown this case will involve experts debating over disputed facts and attorneys arguing about purported legislative intent. Plaintiffs

do not establish the clear and undisputed constitutional violation required for emergency injunctive relief.

Plaintiffs additionally seek to aggregate political rhetoric, partisan expectations, national redistricting efforts, media commentary, public statements, and electoral effects into a generalized theory of unconstitutional partisan intent. *See* Equal Ground Mem. at 7-11, 29-31, 35-36; Thompson-Wynn Mem. at 6-7, 10-13, 17-18, 22-23; Common Cause Mem. at 4-9, 18-19. That approach is incompatible with the constitutional text and structure. If accepted, Plaintiffs' theory would effectively constitutionalize a rule that Florida's redistricting process becomes suspect when political actors outside the Legislature advocate political outcomes (or even when an anonymous social media account "re-posts" a partisan message). The text of article III, section 20 contains no such prohibition. And under a faithful textual, structural, and original-public-meaning reading of the Florida Constitution, Plaintiffs have not established a substantial likelihood of proving that the Florida Legislature passed the Enacted Plan with the constitutionally prohibited intent to favor or disfavor a political party.

III. Plaintiffs have not established a substantial likelihood of success on their Tier II claims.

Plaintiffs likewise fail to establish a substantial likelihood of success on their claims under article III, section 20(b), of the Florida Constitution (the "Tier II" claims). At most, Plaintiffs identify disputed factual and methodological disagreements concerning compactness, political-boundary decisions, and competing districting preferences. Those disputes are neither sufficiently clear

nor sufficiently undisputed to entitle Plaintiffs to emergency statewide injunctive relief.

Article III, section 20(b) provides in relevant part that “[u]nless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.” The Tier II standards of stand on equal constitutional footing; none of these standards has priority over another under the Florida Constitution. Compactness and boundary-usage metrics therefore cannot be evaluated in isolation or through abstract geometric preferences divorced from the realities of statewide districting. No constitutional provision requires maximization of any single Tier II metric. *See Apportionment I*, 83 So. 3d at 635 (“The Florida Constitution does not mandate, and no party urges, that districts within a redistricting plan achieve the highest mathematical compactness scores”). As for boundary-usage, the Florida Constitution itself qualifies the criterion. The Florida Supreme Court has stated that the constitutional qualification “where feasible” permits “more flexibility” in balancing the boundary-usage metric with compactness. *Id.* at 636.

Plaintiffs principally challenge Congressional Districts 9, 15, 16, 22, and 25 as allegedly non-compact. They rely on visual comparisons, expert-generated simulations, compactness metrics, and alternative district configurations. But compactness is not a matter of aesthetic preference alone. Courts repeatedly recognize that compactness involves competing methodologies and context-

dependent judgment. *See id.* at 635 (noting that lower compactness measurements may result from the desire “to follow political or geographical boundaries or to keep municipalities wholly intact”). These fact-dependent issues are classic merits questions inappropriate for emergency resolution through temporary injunction proceedings.

Nor do Plaintiffs’ computer-generated simulations establish a constitutional violation, even if they purportedly demonstrate the availability of “more compact” districts. The Florida Constitution does not require the Legislature to adopt the most compact theoretically possible map generated by computational modeling, and compactness statistics are not a ratchet that must be tightened with every new redistricting plan. And computer simulations necessarily reflect the embedded assumptions, programmed priorities, weighting criteria, and discretionary methodological judgments of their programmers which may differ from the equally valid Tier II priorities of another map drawer. At most, simulated alternatives demonstrate that different districting choices were possible—a self-evident proposition. Florida’s Constitution assigns the policy choice surrounding districting responsibility to the Legislature, not to the unknown methodological judgments and policy preferences underlying Plaintiffs’ simulation software.

Finally, Plaintiffs challenge the Enacted Plan on the basis that it splits various counties and cities. Equal Ground Mem. at 13, 44-46; Thompson-Wynn Mem. at 29-30, 38, 45-46; Common Cause Mem. at 23, 26-27, 32-34, 40. While keeping counties or municipalities whole (or minimizing “splits”) may be a

constitutionally *permitted* objective, that statistic alone does not directly measure a plan's compliance with the Florida Constitution's boundary-usage standard. It is, at best, an imperfect proxy for the constitutional requirement that districts use "existing political and geographical boundaries" where feasible. Art. III, § 20(b), Fla. Const. For example, the City of Tallahassee is contained wholly within Congressional District 2. But the district boundaries of District 2 do not coincide at any point with the boundaries of Tallahassee. The fact that Tallahassee is kept whole and not "split" in the Enacted Plan says little about District 2's use of existing political and geographical boundaries. The same is true of the various county or municipal "splits" discussed by Plaintiffs: the existence of splits does not itself establish constitutional infirmity.

In addition, Plaintiffs' overemphasis on city and county boundaries alone ignores the other geographical boundaries that Constitution authorizes the Legislature to take into account, such as roads and rivers. Plaintiffs want this Court to prioritize the usage of political boundaries over geographical ones, but this is not supported by the constitutional text. Municipal boundaries can be non-contiguous and often are not compact. This is yet another example of how following one consideration, such as political boundary usage, can lead to the diminution of another, such as compactness measures.

Ultimately, Plaintiffs' Tier II claims ask this Court to weigh competing expert methodologies, compare alternative districting philosophies, assess simulation models, and determine whether different statewide balancing judgments should have been made. These are quintessential trial issues

requiring full factual development with examination of experts, evidentiary findings, and careful statewide analysis. They are not issues appropriate for emergency resolution through a temporary injunction to replace the Enacted Plan before final adjudication. At minimum, Plaintiffs cannot establish the substantial likelihood of success on their Tier II claims required for the extraordinary statewide relief they seek.

IV. Serious constitutional and severability questions independently preclude emergency relief.

Recent federal and Florida precedent create substantial unresolved constitutional and severability questions concerning the operation and enforceability of article III, section 20. In *Black Voters Matter*, the Florida Supreme Court upheld Florida 2022 Plan on the ground that the remedial district sought by the plaintiffs would violate the Equal Protection Clause. 415 So. 3d at 200. The Court emphasized that federal equal-protection principles supersede the conflicting race-based provisions of the Florida Constitution, stating that “compliance with the Non-Diminishment Clause is not a compelling governmental interest under the test established in the Supreme Court’s Equal Protection Clause jurisprudence.” *Id.* at 197. The United States Supreme Court’s subsequent decision in *Callais* further constrains the use of race-based districting and reinforces the constitutional limits imposed by the Equal Protection Clause.

Taken together, those decisions draw into question the enforceability of the race-based provisions of article III, section 20(a) of the Florida Constitution. As explained in the response of the Florida House of Representatives, those

provisions were adopted by Florida voters as part of a single integrated package addressing party-and-incumbent favoritism, compactness requirements, boundary-usage restrictions, and contiguity requirements. Art. III, § 20, Fla. Const. The ballot initiative was approved for ballot placement as a comprehensive framework addressing a single subject. *Advisory Op. to Att’y Gen. re Standards For Establishing Legis. Dist. Boundaries*, 2 So. 3d 175, 178-79 (Fla. 2009). The race-based provisions were not peripheral features, they were central components of the proposal’s architecture, operation, and political presentation to the electorate.

Accordingly, if portions of article III, section 20 are unconstitutional, serious questions arise concerning whether those provisions are severable from the remainder of the amendment. The response of the Florida House of Representatives thoroughly explains why these provisions are not textually or structurally severable under Florida precedent and that article III, section 20 is unenforceable in its entirety. But at minimum, these issues present substantial and unresolved constitutional questions that independently preclude any finding that Plaintiffs have a “substantial likelihood of success” on the merits of their claims. Expedited temporary injunction proceedings are a poor vehicle for resolving constitutional questions of this magnitude and complexity.

V. The equities and public interest preclude emergency injunctive relief.

Even if the temporary injunctive relief Plaintiffs seek were available, and even if they had a viable merits theory on this record, the equitable considerations independently compel denial of their motions. Temporary

injunctive relief is never awarded as a matter of course, particularly where the requested injunction would disrupt statewide election administration and suspend the operation of a duly enacted law. Here, Plaintiffs seek extraordinary relief affecting every congressional district in Florida on the eve of the 2026 election cycle. The resulting disruption to election administration, candidate reliance, voter expectations, and the orderly conduct of elections would be immediate and substantial.

Supreme Court precedent recognizes the substantial dangers associated with late judicial intervention in election administration. In *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006), the United States Supreme Court explained: “Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls.” The Supreme Court has repeatedly reaffirmed that principle in subsequent election cases involving congressional districting and election administration. For example, in *Merrill v. Milligan*, 142 S. Ct. 879 (2022), the Court entered an order staying district court injunctions that would have required Alabama to redraw its congressional districts in the weeks before the primary elections. Justice Kavanaugh’s concurring opinion emphasized how an injunction in a redistricting case can create a “prescription for chaos for candidates, campaign organizations, independent groups, political parties, and voters, among others.” *Id.* at 880 (Kavanaugh, J., concurring). State and local election officials “need substantial time to plan for elections” and even “heroic efforts likely would not be enough to avoid chaos and confusion.” *Id.* For that reason, the *Purcell* principle teaches

that “[w]hen an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Id.* at 880-81. *See also Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418 (2025) (staying district court decision enjoining the use of Texas’s new congressional map in the 2026 elections).

Plaintiffs understate the magnitude of the disruption their requested relief would cause. Although they seek to characterize their requested injunction as a simple restoration of the prior district lines from the 2022 Plan, the practical reality is far more substantial. The requested injunction would require Florida election officials to immediately suspend administration and implementation of the Enacted Plan, revert election systems to a different congressional map, revise district assignments for purposes of candidate qualifying and ballot styles, modify candidate and voter information, and conduct the 2026 congressional election under a judicially imposed map. Those disruptions would occur against active election-administration deadlines and ongoing reliance interests affecting candidates, political parties, supervisors of elections, and voters statewide.

The requested relief would also inject substantial uncertainty into the electoral process itself. Candidates, election officials, and voters are entitled to stability and predictability in the administration of statewide elections. Temporary injunction proceedings are not meant to impose sweeping election changes on compressed timelines and incomplete factual records. As the First District recognized in *Byrd*, the circuit court that handled the congressional

redistricting litigation following the 2012 apportionment imposed a remedial plan only after a full trial and providing the Legislature two opportunities to adopt a compliant plan. *Byrd*, 339 So. 3d at 1082-83. That process ensured the orderly conduct of elections and avoided the chaos and uncertainty that Plaintiffs’ requested relief could cause.

Here, Plaintiffs seek to skip the trial and jump ahead to their final requested relief. Under the Florida Constitution, the Legislature is entitled to make the policy decisions surrounding the enactment of district maps. Plaintiffs seek to strip the Legislature of this constitutional responsibility and ask the Court to implement their own policy preferences.

Plaintiffs also claim that they will suffer irreparable harm if Florida conducts its congressional elections under the Enacted Plan. Equal Ground Mem. at 53; Thompson-Wynn Mem. at 48; Common Cause Mem. at 62. Contrary to their rhetoric, however, the Plaintiffs’ case involves the configuration of district lines, not the “constitutional right to vote.” *Id.* The voting-method decisions Plaintiffs cite are of little relevance in evaluating the allegations of irreparable harm here.

Finally, the public interest strongly favors the orderly conduct of elections and respect for duly enacted legislation pending final adjudication. Whatever disputes exist concerning the merits of Plaintiffs’ claims, the public interest does not favor emergency judicial replacement of statewide congressional districts through temporary injunction proceedings and on a preliminary evidentiary record. This would create an immediate disruption for election officials,

candidates, and voters. The potential for interlocutory appeals through two levels of Florida's judiciary, and motion practice regarding a stay of any injunction order, only heightens the possibility of electoral chaos. *Byrd* recognized this danger in the congressional redistricting context four years ago and appropriately reinstated a stay of the trial court's preliminary injunction—a decision that was upheld by the Florida Supreme Court when it denied the plaintiffs' petition for a constitutional writ. *Black Voters Matter Capacity Bldg. Inst., Inc.*, 340 So. 3d at 475.

If the case ultimately warrants relief after full adjudication on the merits, the Court will retain authority to enter appropriate final remedies. But the extraordinary and disruptive interim relief Plaintiffs seek is neither necessary nor equitable at this stage.

For all of these reasons, the equities and public interest preclude issuance of a temporary injunction.

Conclusion

Plaintiffs' motions for temporary injunctions should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 13, 2026, this document was filed through the Florida Courts E-Filing portal and was served by email on all counsel of record.

/s/ Daniel Nordby

Attorney

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

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

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' REPLY BRIEF IN SUPPORT OF MOTION FOR TEMPORARY
INJUNCTION**

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INTRODUCTION

The 2026 Plan was not drawn to comply with the Florida Constitution. By the Governor's own map drawer's admission, it was drawn using partisan data, without regard for the Fair Districts Amendment, on the basis of legal theories that no court has accepted. Defendants do not seriously contest any of this. Instead, they attempt to throw up procedural, constitutional, and equitable obstacles in hopes that one of them lands. None does.

The audacity of Defendants' position deserves recognition. Precisely because the partisan intent behind the 2026 Plan is unavoidable, Defendants resort to arguing that the Fair Districts Amendment does not apply at all. Defendants attempt to ground this argument in recent case law, but no precedent from the U.S. Supreme Court or the Florida Supreme Court requires invalidation of the Amendment's racial protections, and even if it did, Florida's severability doctrine does not allow the rest of the Amendment to fall. Rather than embrace this conclusion, Defendants—public officials who swore an oath to uphold the Florida Constitution—are simultaneously arguing that a Florida constitutional amendment endorsed overwhelmingly by the people is unconstitutional and must be struck down in its entirety, while insisting that their admittedly non-compliant 2026 Plan is entitled to a presumption of validity that this Court must respect. It is a stunning display of self-interested advocacy.

At bottom, Plaintiffs ask this Court to do something simple: preserve the status quo by reinstating the lawful, court-approved map that governed Florida's last two congressional elections—a map that Defendants themselves enacted and defended through years of litigation. The Fair Districts Amendment remains fully in force, the 2022 Plan remains constitutionally sound, and this Court has both the authority and the obligation to prevent the 2026 Plan from taking effect before Florida's voters are forced to cast their ballots under a map that was drawn in knowing defiance of their Constitution.

ARGUMENT

I. Plaintiffs are substantially likely to show the 2026 Plan violates the Fair Districts Amendment.

The record before this Court leaves no doubt that the 2026 Plan, both plan-wide and at the district level, violates the Fair Districts Amendment's requirement that "[n]o apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party." Art. III, § 20(a), Fla. Const. Plaintiffs have presented not only direct statements of partisan intent, but also circumstantial evidence of exactly the type contemplated by the Florida Supreme Court in prior decisions construing the Amendment. *See* Pls.' Br. Argument I.A. Plaintiffs have also demonstrated that the 2026 Plan and several of its individual districts independently violate the Fair Districts Amendment's Tier II requirements that "districts shall be compact" and "shall, where feasible, utilize existing political and geographical boundaries." Art. III, § 20(b), Fla. Const.; Opening Br. Argument I.B.

Although Defendants argue the 2026 Plan is entitled to a "presumption of validity," Sec'y Br. at 4 (citing *Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y*, 415 So. 3d 180, 197 (Fla. 2025)), no such presumption should attach when the Plan's map drawer admitted before the Legislature that he drew the plan "not having to comply with the Fair Districts Amendment." Pls.' Ex. 12 at 23. When asked by a Senator, "[H]ow does this map comply with the Florida Fair District[s] Amendment?" Poreda was adamant: "[I]t does not have to." *Id.* at 22. A presumption is just that—a presumption. If there is evidence that overcomes it, the Court cannot ignore it. And if Poreda's admission does not suffice to overcome that presumption, nothing would.

Notably, **none of the Defendants actually claim the 2026 Plan was drawn *without* partisan intent**, nor do they affirmatively claim it complies with the Tier II criteria. Nor do they meaningfully rebut any of Plaintiffs' evidence. Defendants simply bank on this Court eschewing

its duty to uphold the Florida Constitution. The Court should reject that invitation and find Plaintiffs substantially likely to succeed on the merits.

A. The 2026 Plan was drawn with intent to favor the Republican Party and disfavor the Democratic Party.

1. Defendants fail to rebut Plaintiffs’ evidence of partisan intent.

Direct Evidence. This case is unique for the wealth of direct evidence of partisan intent offered on the public record by those directly responsible for drawing the map. *See Harkenrider v. Hochul*, 167 N.Y.S.3d 659, 666 (N.Y. App. Div. 2022) (explaining that, in the context of a partisan gerrymandering claim, “direct evidence is rare and certainly not required for petitioners to meet their burden”). First and foremost, the mapmaker himself, Jason Poreda, openly admitted that he relied on partisan data to craft the 2026 Plan. Poreda told the Legislature that he was “definitively the only person who drew” the 2026 Plan. Pls.’ Ex. 12 at 68. And he repeatedly explained to lawmakers not only that he used partisan data, but that it informed his decisions in drawing district lines, admitting that partisan data “was a consideration as [he] was drawing,” “mixed in” with all other criteria. *See* Pls.’ Ex. 12 at 51–52. There is nothing ambiguous about Poreda’s admission or its damning impact. Just months before his office released the 2026 Plan, Governor DeSantis himself acknowledged that mapmakers “are *not allowed to use* the partisan data.” Pls.’ Ex. 44 (emphasis added).

The Secretary attempts to downplay Poreda’s admission, musing that “partisan data” might have referred to “voter registration” or “turnout” data. Sec’y Br. at 12. Although such an interpretation is not even entirely exculpatory, the Secretary’s speculation is refuted by the exchange in which Mr. Poreda made the admission. Specifically, Senator Osgood asked, “Did you analyze any partisan performance of districts before finalizing the maps?” and Poreda responded, “So . . . not having to comply with the Fair Districts Amendments, the entire suite of redistricting

criteria that are available to other states, I used here, including partisan data.” Pls.’ Ex. 12 at 23. Poreda’s admission was clear: he used data that the Fair Districts Amendment otherwise would have prohibited.

Plaintiffs also presented direct evidence from the Governor’s Office, which employs Poreda. *See* Pls.’ Ex. 12 at 30–31. The day before the Legislature’s special session began, the Governor’s Office sent Fox News a partisan color-coded version of the 2026 Plan that depicted 20 red districts and four blue districts. Pls.’ Ex. 43. In a statement to Fox News, Governor DeSantis explained that the map was drawn to reflect the increase of the Republican population of the state. Ex. 41 (“[W]e have moved from a Democrat majority to a 1.5 million Republican advantage.”). Defendants brush this evidence aside as “public statements” and “partisan expectations,” Senate Br. at 17, but neither characterization undermines the statements’ evidentiary value. This direct evidence of intent speaks for itself.

Circumstantial Evidence. Defendants also fail to even contest—let alone meaningfully rebut—much of Plaintiffs’ circumstantial evidence, including evidence regarding the 2026 Plan’s disregard for Tier II principles, *see* Opening Br. at 34–35, departures from the normal procedural sequence in the 2026 Plan’s passage, *see id.* at 35–36, and pretextual explanations related to population shifts in Florida, *see id.* at 36–37.

Defendants also fail to rebut the fundamental conclusions of *any* of Plaintiffs’ experts. As explained in Plaintiffs’ Opening Brief, *id.* at 11–12, 13–23, ***Dr. Jonathan Rodden*** demonstrates that the 2026 Plan “reflects partisan goals, rather than an effort to respond to population shifts or to improve traditional redistricting criteria as compared to the 2022 Plan.” Pls.’ Ex. 2 at 41. His analysis shows that the 2026 Plan severely alters Democratic-leaning districts in the Tampa Bay, Orlando, and Southeast Florida regions in a manner that violates traditional redistricting principles,

thereby creating a large number of comfortably Republican districts, while leaving untouched Republican districts far from those metropolitan areas. *Id.* Defendants’ experts do not contest any of Dr. Rodden’s core conclusions. In response to Dr. Rodden, Dr. Trende suggests an alternative method of calculating core retention in southeast Florida, *see* Sec’y Ex. 2 at 20, and complains about the shading of Dr. Rodden’s images. Sec’y Ex. 2 at 19–20. As Dr. Rodden’s rebuttal report demonstrates, using Dr. Trende’s preferred methods and color-coding makes no difference to his conclusions. *See* Pls.’ Ex. 73 (May 14, 2026 Rebuttal Report of Dr. Jonathan Rodden) at 3–5. Indeed, Dr. Trende’s suggestions produced images that place the partisan tailoring of the 2026 Plan in even sharper relief. *See id.* at 6–11 & Figs. 1–6. Defendants’ stylistic critiques leave untouched Dr. Rodden’s ultimate conclusion that the 2026 Plan’s changes are consistent with an intentional effort to benefit the Republican Party. Pls.’ Ex. 2 at 41.

Next, **Dr. Jowei Chen’s** race-blind, partisan-blind simulations that adhered to the Fair Districts Amendment’s criteria showed the 2026 Plan creates more Republican-favoring districts than *all* 5,000 of the computer-simulated plans. *See* Pls.’ Ex. 3 ¶ 41. As Dr. Chen showed, the 2026 Plan is an extreme statistical outlier on every partisan measure he considered as compared to the simulations. *See id.* ¶¶ 41–90. Defendants’ experts do not even attempt to rebut these conclusions. Indeed, although Defendants’ expert Dr. Trende has regularly produced simulations and reviewed Dr. Chen’s simulations in other litigation, *see* Pls.’ Ex. 74 (May 14, 2026 Rebuttal Report of Dr. Jowei Chen) ¶ 3, Dr. Trende has nothing to say about Dr. Chen’s simulations here. And Dr. Voss—who has no clear background in redistricting simulations at all—similarly does not attempt to offer any substantive refutation of Dr. Chen’s findings and makes basic errors in attempting to analyze Dr. Chen’s report. *Id.* ¶¶ 11–13; *see also id.* ¶¶ 2–3, 6–10, 14–25. As for Dr. Voss’ critique that Dr. Chen’s original simulations failed to account for the preservation of city boundaries, Dr. Chen

shows that, when the simulations address that specific concern, the result is the same: The 2026 Plan is a blazing outlier in its favoritism to the Republican Party, one that cannot be explained by a race-neutral plan, by a desire to adhere to the Fair Districts Amendment’s criteria, or by Florida’s political geography. *Id.* ¶ 10 & Tbl. 1.

Finally, ***Dr. Christopher Warshaw*** examined an array of traditional partisan bias metrics and found that the 2026 Plan has a historically extreme level of pro-Republican bias—a larger pro-Republican bias than any other congressional plan in any large state over the past 50 years, and a much larger pro-Republican bias than Florida’s 2012 congressional plan that was struck down by the Florida Supreme Court as a partisan gerrymander. Pls.’ Ex. 4 at 8–9. Dr. Trende does not dispute any of Dr. Warshaw’s conclusions or claim to find any errors in his analysis about Florida’s 2026 Plan. In fact, the word “Florida” barely comes up in his report at all. Instead, Dr. Trende nitpicks specific aspects of the individual metrics Dr. Warshaw examined, ignoring Dr. Warshaw’s explanations about the pros and cons of each metric. *See generally* Pls.’ Ex. 4. Although Dr. Trende apparently does not understand “the point of including them all,” Sec’y Ex. 2 at 12, it is precisely to account for the differences between metrics and to determine whether they all point in the same direction. Pls.’ Ex. 4 at 3. And that is exactly what Dr. Warshaw’s results show: each metric he reviewed, including the mean-median analysis that Dr. Trende prefers, *see id.* at A-5, evidences substantial, unprecedented pro-Republican bias, *see generally id.*

2. Defendants’ legal theories to escape liability lack merit.

Against this mountain of evidence of partisan intent, Defendants lob a series of legal theories to escape liability. None have merit. Defendants begin by calling on the Florida Supreme Court to upend its standard of review. But although the Florida Supreme Court gives redistricting plans “an initial presumption of validity,” (one that should not apply here, for the reasons explained above), the Court has explicitly rejected the “beyond a reasonable doubt” standard for Fair Districts

Amendment claims. *See League of Women Voters of Fla. v. Detzner (Apportionment VII)*, 172 So. 3d at 397, 399. The Senate asks this Court to ignore that precedent. *Compare* Senate Br. at 13–14 (calling for a “beyond a reasonable doubt” standard), *with State v. Dwyer*, 332 So. 2d 333, 335 (Fla. 1976) (declaring that “lower courts are bound to adhere to the [Supreme] Court’s ruling”). This Court, however, is bound by that precedent.

Defendants then try to rewrite the Florida Supreme Court’s precedent to shift attention away from the (damning) intent of the map drawer and onto the collective intent of the Florida Legislature. But the Fair Districts Amendment states simply that “[n]o apportionment plan or individual district *shall be drawn* with the intent to favor or disfavor a political party or an incumbent.” Art. III, § 20(a), Fla. Const. (emphasis added). Consequently, intent under the Fair Districts Amendment is ascertained based on “the actions and statements of . . . those directly involved in the map drawing process.” *Apportionment VII*, 172 So. 3d at 388. Determinations of intent under this provision are “entirely different than a traditional lawsuit that seeks to determine legislative intent through statutory construction.” *Id.*¹ Litigants need not “prove the collective intent of a legislative body,” Sec’y Br. at 10, or establish that a specific “legislator’s vote . . . was motivated by prohibited partisan intent,” Senate Br. at 6; *see also id.* at 11–12. Instead, “direct evidence” of intent may be based on communications by the persons “responsible for drafting districting plans.” *Apportionment VII*, 172 So. 3d at 388–89 (quoting *Easley v. Cromartie*, 532 U.S. 234, 254 (2001)).

In any event, the legislators adopted and gave effect to the partisan efforts announced by “those directly involved in the map drawing process.” *Id.* at 388. Unlike the process that led to the 2012 Plan that the Florida Supreme Court struck down as a partisan gerrymander, where external

¹ For this reason, the Senate’s suggestion that Plaintiffs’ experts improperly opine on legislative intent is also incorrect. *See* Senate Br. at 16–17.

operatives “influence[d] the redistricting process and the congressional plan” unbeknownst to many legislators and even certain map drawers, *Apportionment VII*, 172 So. 3d at 392, here the map drawer’s damning admissions were presented in open session, in response to questioning from legislators. *See generally* Pls.’ Exs. 11, 12. The 2026 Plan’s House and Senate sponsors both acknowledged that Poreda used partisan data, *see* Pls.’ Ex. 13 at 7–8; Pls.’ Ex. 14 at 8, and when asked if the Legislature was “totally deferring to the Governor’s Office,” the Senate sponsor refused to disclaim responsibility for the 2026 Plan: “It is now in our hands. And we have the authority to accept it, to reject it, or to amend it. It is not the Governor’s prerogative as to what the maps will be. **It is ours now.**” Pls.’ Ex. 14 at 43 (emphasis added). Far from being “mere dupes or tools,” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 690 (2021), the legislators were active participants in the 2026 Plan’s violation of the Fair Districts Amendment.

Stuck with Poreda’s admissions, Defendants try to minimize their impact by claiming they do not show “districts were drawn *because of* partisan considerations.” Senate Br. at 15. In support, Defendants cite Fourteenth Amendment case law requiring plaintiffs to show that racial considerations *predominated* during redistricting. *See id.* (quoting *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024)). But under the Fair Districts Amendment, “**there is no acceptable level of improper intent.**” *In re Senate Joint Resol. of Legis. Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 617 (Fla. 2012) (emphasis added). Plaintiffs are required to show not that partisan intent predominated in the drawing of the 2026 Plan, but merely that it was present.²

Defendants also point to Poreda’s later disavowal of partisan intent. Sec’y Br. at 12–13; Senate Br. at 14–15. As an initial matter, this self-serving attempt at rehabilitation does not negate Poreda’s initial, repeated admissions on the public record. *See, e.g., Cooper v. Harris*, 581 U.S.

² Plaintiffs would prevail even if a predominance standard applied, as demonstrated by the direct and circumstantial evidence described in their opening brief. *See, e.g., Opening Br.* at 24–27.

285, 315 (2017) (affirming trial court’s rejection of map drawer’s “self-contradictory testimony” as to intent). Indeed, courts routinely reject such assertions of lawful intent. *See, e.g., Bush v. Vera*, 517 U.S. 952, 970 (1996) (affirming trial court’s rejection of legislator’s claim of lawful intent); *Hunt v. Cromartie*, 526 U.S. 541, 549 (1999) (same). In any event, Poreda’s clear admissions as to his use of partisan data are far more probative evidence than his self-serving disavowal of unlawful intent, which is the ultimate legal question presented to this Court. Here, all of the available evidence—including undisputed circumstantial evidence regarding the effect the 2026 Plan, the partisan impact of specific line-drawing decision, the 2026 Plan’s disregard for Tier II principles, alternate plans that demonstrate the 2026 Plan is a partisan outlier, the sequence of events surrounding the 2026 Plan, and departures from normal procedure in its enactment—all point in the same direction as Poreda’s initial admission of impermissible partisan intent. Opening Br. Argument I.A.

Finally, the Secretary suggests the undisputed circumstantial evidence is meaningless because Plaintiffs have not shown the *same* facts established during the prior challenge to the 2012 Plan, including the Legislature’s destruction of emails and documents, the involvement of political consultants, and the use of an admittedly partisan plan as a starting point. *See* Sec’y Br. at 11. But the Florida Supreme Court has consistently applied the holistic intent standard reflected in *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 266 (1977), which acknowledges that there are multiple ways to smoke out unlawful intent, *see, e.g., Apportionment I*, 83 So. 3d at 617; *Apportionment VII*, 172 So. 3d at 389. And it cannot be that the 2012 map drawing process is the only type of process that can evidence unlawful partisan intent. Just as a drawn-out, secretive parallel process may be prohibited, so too can a rushed, brazenly open one.

B. The 2026 Plan violates the Florida Constitution’s Tier II requirements.

Plaintiffs’ evidence also establishes plan-wide and district-specific violations of the constitutional command that “districts shall be compact” and “districts shall, where feasible, utilize existing political and geographical boundaries” “[u]nless compliance . . . conflicts with the [Tier I requirements] or with federal law.” Art. III, § 20(b), Fla. Const.; *see* Opening Brief Argument I.B.

Defendants barely attempt to rebut Plaintiffs’ Tier II evidence on the merits. The Secretary inexplicably invokes a “presumption of correctness”—a doctrine applicable to a trial court’s factual findings, *see Alahad v. State*, 362 So. 3d 190, 198 (Fla. 2023)—and otherwise rests on the assertion that “the overall compactness of the [2026 Plan] is consistent with the” 2022 Plan. Sec’y Br. at 15–16. This characterization glosses over the fact that the compactness inquiry includes “visual examination” in addition to consideration of compactness metrics, *see Apportionment I*, 83 So. 3d at 613, and leaves entirely unaddressed Plaintiffs’ district-specific arguments, *see* Opening Br. at Argument I.B. The Senate, for its part, presents a generalized critique of employing simulation evidence to assess compactness or boundary utilization, *see* Senate Br. at 19, but does not defend the Tier II compliance the 2026 Plan or any of the districts specifically challenged by Plaintiffs on that score.

Unable to dispute what is plain to the naked eye, Defendants suggest Tier II violations are too difficult for this Court to resolve at the temporary injunction stage because they are “fact-dependent.” Senate Br. at 19; *see also* Sec’y Br. at 10–11. But the Florida Supreme Court has had no trouble finding Tier II violations on an expedited basis pursuant to the facial review procedure for state legislative districts. *See Apportionment I*, 83 So. 3d at 653–83; *see also* Art. III, § 16(c), Fla. Const. (requiring automatic, expedited judicial review of validity of legislative apportionment). As to compactness, the Secretary warns there is “no precise boundary score that serves as a cutoff for compliance,” Sec’y Br. at 2, but that has not prevented the Florida Supreme

Court from evaluating compactness metrics to invalidate districts before. *See, e.g., Apportionment I*, 83 So. 3d at 662–65. The Senate likewise complains that the splitting of counties or municipalities is “an imperfect proxy” for Tier II’s boundary utilization requirement, *see* Senate Br. at 19–20, but ignores that the Florida Supreme Court has specifically relied on such splits in finding a Tier II violation, *see, e.g., Apportionment I*, 83 So. 3d at 673 (finding Tier II violation because district “splits counties, municipalities, and geographical features”). In short, this Court cannot simply look away from the 2026 Plan’s glaring Tier II violations, which provide an independent basis for enjoining the 2026 Plan.

II. This Court is duty bound to preserve the Fair Districts Amendment and adopt any saving construction, if necessary.

Because the partisan intent behind the 2026 Plan is so inescapable, Defendants resort to an extraordinary argument: that they need not comply with the Fair Districts Amendment at all. Instead of defending the Florida Constitution and arguing for a constitutional application of its provisions, to the extent those provisions raise any constitutional concerns—as Florida law requires—the State Defendants abandon that duty here altogether, arguing affirmatively for the invalidation of existing provisions of Florida’s Constitution. But neither federal nor Florida precedent requires the drastic outcome Defendants seek. To the contrary, in light of the longstanding presumptions in favor of preserving constitutional enactments, Florida law *requires* this Court to adopt a saving construction of the Fair Districts Amendment’s race provisions, if necessary, and to preserve the rest of the Amendment even if those provisions should fail.

A. The Fair Districts Amendment’s race provisions are not unconstitutional or unenforceable in all of their applications.

Defendants’ attempt to invalidate the Fair Districts Amendment’s race provisions wholesale rests on an oversimplification of precedent on the use of race in redistricting and fails to even attempt to adopt a saving construction of the Amendment, as Florida law requires. As the

Secretary tells it, *any* consideration of race in redistricting is now unlawful. But neither *Black Voters Matter v. Byrd* nor *Louisiana v. Callais* went so far, and neither those nor any other precedent requires holding the Amendment unconstitutional in all of its applications.

To start, although *Callais* establishes a new standard for adjudication for federal Voting Rights Act (VRA) claims, no part of *Callais* requires the invalidation of the Fair Districts Amendment’s race provisions. The Court can and should reach this conclusion in two simple steps: first, by recognizing that it has a duty to construe the Fair Districts Amendment in a manner that would render it constitutional if at all possible, and second, by interpreting the Fair Districts Amendment consistently with federal VRA precedent, *as Florida courts already do*. In so doing, the Court would be following the precise framework *Callais* itself laid out, which did not strike down Section 2 of the VRA as unconstitutional, but instead interpreted it in a manner to avoid constitutional concerns. *See Callais*, No. 24-109, 2026 WL 1153054, at *4 (U.S. Apr. 29, 2026) (“Correctly understood, § 2 does not impose liability at odds with the Constitution . . .”).

The **first step** is consistent with longstanding Florida law: when Florida courts review the constitutionality of state statutes (or here, a state constitutional provision), they come with the “presumption of constitutionality,” and Florida courts have an obligation to construe them “to effect a constitutional outcome whenever possible.” *Fla. Dep’t of Revenue v. Howard*, 916 So. 2d 640, 642 (Fla. 2005); *Indus. Fire & Cas. Ins. Co. v. Kwechin*, 447 So. 2d 1337, 1339 (Fla. 1983) (“[T]he statute must be construed so as to avoid any violation of the constitution.”). Under this doctrine, “every reasonable doubt should be resolved in favor of a law’s constitutionality.” *Franklin v. State*, 887 So. 2d 1063, 1080 (Fla. 2004). Although this doctrine is typically applied in the context of review of a state statute, it applies with equal force—if not more force—to interpretations of Florida’s own constitution. *See Coastal Fla. Police Benevolent Ass’n, Inc. v.*

Williams, 838 So. 2d 543, 548 (Fla. 2003) (per curiam) (“The rules which govern the construction of statutes are generally applicable to the construction of constitutional provisions.”); *see also Lane v. Chiles*, 698 So. 2d 260, 263 (Fla. 1997) (“If a constitutional amendment is a higher authority than a state statute, it stands to reason that it is entitled to an even greater degree of deference from the courts.”); *City of Tallahassee v. Fla. Police Benevolent Ass’n, Inc.*, 375 So. 3d 178, 188 n.14 (Fla. 2023) (in construing constitutional provision, noting the “elementary rule” “that every reasonable construction must be resorted to in order to save a [provision] from unconstitutionality” (alteration in original) (citation omitted)). The Court therefore has an obligation to adopt a saving construction where, as here, one is available.

Notably, this is precisely the approach *Callais* itself took. Section 2 of the VRA, like the corresponding provision of the Fair Districts Amendment, on its face prohibits voting practices that “*result[]* in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” 52 U.S.C. § 10301(a) (emphasis added). Although the Court read the statute on its face to raise constitutional concerns, it construed the statute to “properly fit within” the requirements of the U.S. Constitution by reading in a requirement that Section 2 requires evidence of “intentional discrimination.” *Callais*, 2026 WL 1153054, at *12; *see also id.* (recognizing “where an alternative interpretation of the statute is ‘fairly possible,’ we are obligated to construe the statute to avoid such problems.”) (quoting *Immigr. & Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 299–300 (2001)).

The **second step** follows directly from Florida Supreme Court precedent, which holds that the race provisions of the Fair Districts Amendment should be interpreted consistently with the federal VRA. *See Apportionment I*, 83 So. 3d at 619–20 (explaining that because the Amendments’ race provisions “follow almost verbatim the requirements embodied in the Federal Voting Rights

Act,” “our interpretation of Florida’s corresponding provision is guided by prevailing United States Supreme Court precedent” (citation modified)); *see also Black Voters Matter*, 415 So. 3d. at 187 (adhering to this approach). And while *Callais* has changed the applicable standard for federal VRA claims, *Callais did not strike down Section 2 of the VRA as unconstitutional*. No Defendant suggests otherwise. Accordingly, any Florida court evaluating a claim under the corresponding race provisions of the Fair Districts Amendment can likewise apply the *Callais* standard to that claim *without striking down the Amendment as unconstitutional*.

This Court need not wade into the Amendment’s race provisions. No plaintiff has brought any claim pursuant to those provisions, and this Court is not being asked to apply *Callais* or any other race-related precedent to the claims at issue here. Defendants instead ask the Court to issue a drive-by ruling striking down the race provisions in the course of adjudicating Plaintiffs’ *partisan* claims. But as set forth above, there is no basis in state or federal law for this Court to unilaterally declare those provisions unconstitutional. To the contrary, any such ruling would conflict with precedent that requires this Court to adopt a saving construction of the Amendment where one is plainly available.

The substantive legal standard announced in *Callais* eliminates any constitutional concerns regarding the race provisions of the Fair Districts Amendment. *Callais* made clear that the federal VRA imposes liability “only when the circumstances give rise to a strong inference that intentional discrimination occurred.” 2026 WL 1153054, at *12. Adopting this construction to the equivalent provisions of the Fair Districts Amendment is not only consistent with the Florida Supreme Court’s approach of reading the Amendment consistent with the VRA, it directly addresses the concern raised by the Florida Supreme Court in *Black Voters Matter*: that the Amendment’s provisions could be invoked for a particular district without tying them to “findings of intentional

discrimination, past or present.” 415 So. 3d at 197. It similarly resolves the Florida House’s concern that the Amendment’s race provisions are not time-limited in duration. *See* House Br. at 9. In other words, because liability would attach if plaintiffs can show evidence of “present-day intentional racial discrimination regarding voting,” rather than “discrimination that occurred some time ago,” *Callais*, 2026 WL 1153054, at *16, there is no risk that those provisions will “be employed [] more broadly” than necessary. House Br. at 9 (citing *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003)).

Finally, Defendants try to resurrect an argument they repeatedly raised in the *Black Voters Matter* litigation and no court ever adopted—that the Amendment’s race provisions must be unconstitutional because they “supersede traditional redistricting criteria.” Sec’y Br. at 17, House Br. at 4; *see, e.g.*, Secretary Byrd’s Initial Brief, 2023 WL 6811916, at *28–30. Indeed, the Florida Supreme Court has never interpreted the Amendment to give the State “*carte blanche* to engage in racial gerrymandering,” *Apportionment I*, 83 So. 3d at 627, and it has rejected minority districts that it deemed “simply not compact” enough to trigger Tier I’s minority voting protections, *see Apportionment VII*, 172 So. 3d at 436; *see also Black Voters Matter*, 415 So. 3d at 198–99 (holding map drawers had no obligation to draw noncompact district to preserve Black opportunity district). *Callais* only bolsters the Florida Supreme Court’s reading of the Amendment. *Callais* made clear that “§ 2 [] does not intrude on States’ prerogative to draw districts based on nonracial factors” including “compactness, contiguity, and maintaining the integrity of political subdivisions.” *Id.* at *13 (citation modified); *see also id.* (“It is up to each State to decide what weight, if any, [these criteria] warrant.”). In other words, just as the Court can interpret the Fair Districts Amendment’s substantive race provisions in a constitutional manner consistently with *Callais*, as in fact the Florida Supreme Court effectively did in *Black Voters Matter*, the Court can also interpret the

interplay between the Amendment's Tier I and Tier II criteria in a constitutional manner consistently with *Callais*.

Properly understood, the Amendment's race provisions do not require race to predominate and can be interpreted to fall entirely within the limits of the U.S. Constitution. That reading is faithful to Florida law, consistent with *Callais*, and consistent with Florida Supreme Court practice and preference. There is simply no legitimate basis to take the drastic, unnecessary, and unlawful step of striking down part of the Florida Constitution.

B. Defendants have not met their burden to establish that the Fair Districts Amendment's racial protections are non-severable.

Even if the Fair Districts Amendment's race protections were unconstitutional, that would not foreclose Plaintiffs' claims, as the rest of the Amendment would continue to require map drawers to comply with its partisan gerrymandering prohibition and Tier II criteria. Defendants' arguments to the contrary mischaracterize basic severability doctrine under Florida law and fail to apply longstanding presumptions in favor of preserving constitutional enactments.

The strong judicial presumption in favor of preserving voter-enacted constitutional amendments all but forecloses Defendants' non-severability argument. The severability doctrine requires "the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999); *see also State v. Calhoun County*, 170 So. 883, 886 (Fla. 1936) (recognizing the clear preference under Florida law to preserve the constitutionality of enactments such that if one provision is "consistent with the limitations of the Constitution and another in violation of them, the latter should not control to strike down the statute"). Florida law thus "adopts a strong presumption of severability, and squarely places the burden on the party challenging severability." *Hetherington v. Madden*, 558 F. Supp. 3d 1187, 1191 n.3 (N.D. Fla. 2021).

Ray holds this presumption applies with equal force to constitutional amendments enacted by the citizens of Florida,

[J]ust as we view the severability of laws with deference to the legislative prerogative to enact the law, we conclude that we must afford no less 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.

Ray, 742 So. 2d at 1281; *see also Lane*, 698 So. 2d at 263 (recognizing ultimate deference to constitutional amendments). That deference is especially weighty in the context of post-enactment review. *See Ray*, 742 So. 2d at 1281 (“Rather than ignoring the results of the election and requiring the Secretary of State to show that voters would have approved an amendment without the unconstitutional provisions, the burden is properly placed on the challenging party.”). Here, the Fair Districts Amendment has not simply been approved by Florida voters—it has been in effect for over fifteen years, guiding various legislatures’ redistricting decisions and Florida courts’ review of redistricting plans, and has been cited by the U.S. Supreme Court as a model for the nation. *See Rucho v. Common Cause*, 588 U.S. 684, 719 (2019). The case for preserving it to the maximum extent possible could not be stronger.

The Secretary inexplicably argues for the opposite presumption, invoking *State v. Deal*, 4 So. 899, 907 (Fla. 1888), for the proposition that courts should “hesitate” before allowing portions of a law to stand after other portions are struck. *See Sec’y Br.* at 18–19. But *Ray* was decided more than a century after *Deal*, is directly on point, and establishes a strong presumption in favor of severability, not against it. Moreover, *Deal* is entirely inapposite on its facts: it involved a bill that was enrolled with spurious provisions inserted after legislative passage and presented to the governor in a materially altered form—a circumstance bearing no resemblance whatsoever to this case. *See Deal*, 4 So. 899 at 294, 310. The analysis urged by the Secretary is not only unsupported;

it “would be the antithesis of the purpose underlying severability—to preserve the constitutionality of enactments where it is possible to do so.” *Ray*, 742 So. 2d at 1281.

Rather than apply Florida severability law, the Secretary points to out-of-state cases that declined to sever portions of citizens’ initiative amendments. *See* Sec’y Br. at 19–20. Those cases are inapposite for a fundamental reason: they involved amendments that violated the single-subject or separate-vote requirements of their respective constitutions.³ The logic of those cases—that severability cannot cure a single-subject violation—has no application here, where no single-subject violation exists in the first place. The Florida Supreme Court reviewed and approved the amendment before it appeared on the ballot, expressly finding that it satisfied the single-subject requirement. *See Advisory Op. to Att’y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 181–82 (Fla. 2009).

The Secretary nonetheless argues that *because* the Amendment satisfies the single-subject requirement, its provisions must rise or fall together. That argument is wrong as a matter of Florida law. In *Ray*, the Florida Supreme Court held that compliance with the single-subject requirement “does not mean that the provisions of the amendment are so mutually dependent on one another that the overall purpose of the amendment cannot be accomplished absent the invalid provisions.” 742 So. 2d at 1282. As the Court explained, the single-subject requirement was designed to “protect against multiple ‘precipitous’ and ‘cataclysmic’ changes in the constitution by limiting to a single subject what may be included in any one amendment proposal.” *Id.* (quoting *Advisory Op.*

³ *See Thom v. Barnett*, 967 N.W.2d 261, 282 (S.D. 2021) (explaining that amendment “was not prepared and distinguished such that the different subjects could be considered and voted on separately” and “judicial surgery” could not cure the violation of the single-subject rule); *Mont. Ass’n of Cnty. v. State ex rel. Fox*, 404 P.3d 733, 747 (Mont. 2017) (“[A] constitutional amendment submitted to the electorate in violation of the separate-vote requirement is void in its entirety.”); *Armatta v. Kitzhaber*, 959 P.2d 49, 68 (Or. 1998) (concluding that a failure to comply with the constitutional separate-vote mandate for a constitutional amendment voids it in its entirety).

to *Att’y Gen. re Term Limits Pledge*, 718 So. 2d 798, 801 (Fla. 1998)). The severability analysis, by contrast, concerns “whether, absent the invalid portions, the . . . amendment[] can nonetheless accomplish its purpose.” *Id.* These are distinct inquiries, and satisfying the former does not foreclose the latter. Indeed, because an initiative must satisfy the single-subject requirement before being placed on the ballot, accepting the Secretary’s argument “would require [courts] to invalidate the entirety of every citizens’ initiative amendment whenever a portion was declared invalid after the passage of the amendment.” *Id.* The Florida Supreme Court squarely rejected that approach in *Ray*, and that precedent binds this Court.

After disregarding *Ray*’s holding on the single-subject issue, the Secretary pivots to a new argument: that *Ray* makes severability available to a citizen initiative only if the initiative itself contains an express severability clause. Sec’y Br. at 20–21. Neither the House nor the Senate follow the Secretary down this legally indefensible path. *See* House Br. at 18 (arguing only that the lack of a severability clause weighs against severability). For good reason—that argument egregiously misreads *Ray* and directly contravenes Florida law. *See Calhoun*, 170 So. at 886 (recognizing preference for severability even if “there is no separability clause in the act”); *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 31 (Fla. 1st DCA 2008) (applying four-prong *Cramp* test despite lack of severability provision); *Dade County v. Keyes*, 141 So. 2d 819, 821 (Fla. 3d DCA 1962) (“[I]t is the duty of the court to preserve [remaining portions’] validity whether or not a severability clause was included.”). The Secretary argues that the presence of a severability clause was *essential* to the Florida Supreme Court’s holding in *Ray*, but the Court’s own conclusion on severability says nothing of the kind. *See Ray*, 742 So. 2d at 1284. The Court’s holding rested entirely on its application of the four *Cramp* prongs, and it was only *after* reaching that conclusion that the Court added that the presence of a severability clause was “persuasive” additional evidence

of the framers' intent. *Id.* at 1283–84. That sequencing is dispositive: the severability clause was supplementary confirmation, not a prerequisite. Had it been dispositive, *Ray* would never have applied the *Cramp* prongs in the first place. The absence of a severability clause in the Fair Districts Amendment means only that the Court must look elsewhere for evidence of voter intent. That evidence, as set forth below, strongly supports severability.

Defendants' remaining arguments on the *Cramp* prongs are likewise without merit. On purpose: Relying on the Florida Supreme Court's 2009 advisory opinion, the Secretary argues that the Fair Districts Amendment has a "single unified purpose" and that the racial protections are integral to it. Sec'y Br. at 22. But that advisory opinion addressed the single-subject requirement at the ballot-placement stage, not the severability question now before this Court. As discussed above, *Ray* foreclosed any argument that compliance with the single-subject rule equates to non-severability. The question under *Cramp* is whether the prohibition on partisan gerrymandering can independently accomplish the Amendment's purpose of "establishing [the] standards by which legislative and congressional districts are to be drawn," *Advisory Opinion*, 2 So. 3d at 183—and it plainly can. That purpose is fully accomplished by the prohibition on partisan gerrymandering, the compactness requirement, the boundary utilization requirement, and the contiguity requirement—none of which depends on or references the racial protections. That numerous other states have enacted prohibitions on partisan gerrymandering and compactness requirements without any corresponding racial protections confirms that such provisions are fully capable of operating as standalone requirements. *See* 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.

On structural non-severability: Defendants argue that subsections (a) and (b) of Article III, Section 20 are hopelessly “interlock[ed]” in a tiered scheme. Sec’y Br. at 21–22; House Br. at 12–13. But striking the racial protections from subsection (a) leaves the partisan gerrymandering prohibition—as well as the compactness and boundary requirements in subsection (b)—entirely intact. It simply removes one of the Tier I clauses while leaving the others, and all of Tier II, grammatically sound, fully operative, and independently enforceable. Indeed, the Florida Supreme Court has invalidated districts solely based on partisanship and boundary violations, without any need to interpret or apply the race provisions. *See, e.g., Apportionment I*, 83 So. 3d at 662–65 (finding violations of compactness and boundary requirements in majority-white districts); *id.* at 672–73 (same, and also noting failure to comply with Tier II standards was evidence of intent to favor incumbent). The House’s reliance on *Emerson* is particularly misplaced: that case involved a provision that was literally inoperable without the severed portion—a surtax without a distribution scheme. *Emerson v. Hillsborough County*, 312 So. 3d 451, 461 (Fla. 2021). No such dependency exists here. Every remaining provision of the Fair Districts Amendment is fully operable, fully enforceable, and fully meaningful standing alone.⁴

Finally, on voter intent: Defendants argue that voters would not have adopted the partisan gerrymandering prohibition or boundary requirements without the racial protections, pointing to the NAACP’s endorsement letter and Ellen Frieden’s legislative testimony as evidence that the racial protections were an integral part of a “packaged deal.” Sec’y Br. at 23–24; House Br. at 16–18. But the *Ray* court squarely placed the burden of proving non-severability on the challenging

⁴ The House also relies on *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008), for its structural non-severability argument, but that case held the provision at issue—an exception to a physician licensure revocation requirement—was not severable because “it [did] not appear that the legislature would have passed the [constitutional part] without the rest.” *Id.* at 33. As discussed below, Defendants have not met their burden to prove that the voters who enshrined the Fair Districts Amendment in the Constitution would have voted against it without the racial protections.

party, 742 So. 2d at 1281, and the historical record Defendants cite cuts both ways. Although the NAACP’s endorsement emphasized the racial protections (which is not surprising, given the organization’s focus), the campaign’s own public messaging, newspaper coverage, and television advertisements—directed to the *voters* who would ultimately decide whether to approve or reject the measure—focused overwhelmingly on the compactness and boundary requirements, not the racial protections. Opening Br. at 48–50. And the prohibition on partisan gerrymandering was what newspapers explaining the measure to the public identified as the Amendment’s “crucial language,” and what the campaign’s own spokeswoman described as its animating purpose. *Id.* That historical record was the subject of a detailed expert report commissioned by the Secretary in prior litigation—a report whose principal conclusion was 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,” Pls.’ Ex. 46 at 3, 57—a report Defendants conspicuously fail to mention in their briefs. At minimum, that mixed historical record falls far short of carrying Defendants’ burden to show that voters would have rejected the Amendment absent the racial protections.

C. The Court should not allow Defendants to make an end-run around the public official standing doctrine.

Defendants’ primary position on the merits in this case is that the Fair Districts Amendment itself should be struck down in its entirety. That is not a defense. It is an affirmative constitutional challenge to a voter-enacted amendment that public officials have no standing to bring, as Defendants’ own attorney acknowledged before the Florida Legislature.

Florida’s public official standing doctrine bars government officials from asserting constitutional challenges to laws they are charged with enforcing. *See State ex rel. Atl. Coast Line R.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). As the Florida Supreme Court has explained, “the oath of office ‘to obey the Constitution,’ means to obey the Constitution, not as the officer decides, but as judicially determined.” *Id.* at 683 (quoting *Atl. Coast Line*, 94 So. at 683).

The Secretary’s own attorney, Mohammad Jazil, acknowledged before the Florida Legislature that public officials are prohibited from doing exactly what Defendants are doing here—challenging the constitutionality of the Florida Constitution. When Senator Jones asked why the executive branch did not simply challenge the Amendment in court, Jazil responded:

So, sir, as executive branch officials, the public official standing doctrine prohibits us from challenging the constitutionality of a state provision in the first instance . . . The legislature, the executive branch cannot go challenging a state statute or a state constitutional provision. The way to tee this up is to pass a law, have it plainly before the courts, and have them address it.

Pls.’ Ex. 12 at 29. This admission is as candid as it is damning. Jazil acknowledged in open legislative session that the 2026 Plan is an attempt to accomplish through the back door what Defendants are prohibited from doing directly. The 2026 Plan is not, by Defendants’ own account, a good-faith effort to comply with the Florida Constitution. It is an engineered vehicle to force a constitutional challenge that Defendants cannot bring themselves.

That distinction makes this case markedly different from *Black Voters Matter*, where the Florida Supreme Court held that the public official standing doctrine did not apply because the State was defending a statute they had enacted—then, the 2022 Plan. 415 So. 3d at 195. That holding rested on the premise that Defendants were acting as defenders of enacted law, not as challengers of a constitutional provision. Here, Defendants have openly admitted the 2026 Plan was enacted to manufacture a vehicle for challenging the Fair Districts Amendment’s constitutionality—precisely what the public official standing doctrine forbids. *See Dep’t of Educ.*

v. Lewis, 416 So. 2d 455, 458 (Fla. 1982) (holding that state officers and agencies cannot “initiate litigation” for the purpose of determining the constitutionality of a law).

Defendants’ non-severability argument deepens the problem and underscores just how far outside the bounds of Florida law and precedent Defendants have ventured. Not only are Defendants using the 2026 Plan to challenge the Fair Districts Amendment’s racial protections in a way that they could not do directly, they are simultaneously arguing against the strong presumption in favor of severability that Florida law commands courts to apply to constitutional amendments. *See supra* Argument II.B. It is one thing for a private party to argue that a law is unconstitutional. It is quite another for *public officials* to argue *against* a provision of the state constitution that they are bound to uphold and then try to topple other constitutional provisions in the process. That second step is the tell: the Amendment’s prohibition on partisan gerrymandering has nothing to do with *Callais*, nothing to do with the Equal Protection Clause, and everything to do with the fact that Defendants have every political reason to want that provision eliminated.

The confluence of these positions speaks for itself: Defendants have all but conceded that they have used the 2026 Plan as bait to invite a court to strike down the Fair Districts Amendment. This is not a legal defense. It is an orchestrated attempt by the very officials charged with enforcing and defending the Florida Constitution to dismantle it.

III. This Court can and should preserve the status quo by reinstating the 2022 Plan.

Florida precedent makes clear this Court has the authority to preserve the status quo by reinstating the 2022 Plan. The 2022 Plan is not a novel judicial remedy requiring a full merits trial before implementation; it is the legislatively-enacted congressional plan that has been in place for every election this decade, and Defendants fail to show it has any constitutional defects that would prohibit its continued use. Defendants’ own evidence also shows there is time to revert to the 2022

Plan; any other timing concerns Defendants raise rely on inapplicable case law and are a product of their own making.

A. This Court has the authority to enter a temporary injunction reverting Florida back to the 2022 Plan.

Defendants’ reliance on *Byrd v. Black Voters Matter Capacity Building Inst., Inc.*, 339 So. 3d 1070 (Fla. 1st DCA 2022), to argue Plaintiffs cannot obtain temporary injunctive relief grossly misreads that decision and misapplies it to the facts of this case. *Byrd* does not categorically preclude temporary injunctive relief in a declaratory judgment action involving a redistricting challenge. *Byrd* instead holds that a temporary injunction cannot be used to impose a never-enacted, judicially-created remedial map as provisional relief before a final merits determination. *Id.* at 1073, 1079. But that is not what Plaintiffs seek here.

The *Byrd* court was emphatic that the circuit court below erred precisely because its injunction did “not just return the parties to the condition that existed before the subject matter at the center of the present controversy arose,” but did “much more” by giving “the appellees affirmative relief by requiring the secretary to conduct the 2022 congressional elections under an entirely new, unenacted plan recently proposed by the appellees”—what the court characterized as a “provisional remedy.” *Id.* at 1073. The court’s objection was not to temporary injunctive relief *per se*, but to the imposition of affirmative, remedial relief that went beyond the preservation function the Florida Constitution contemplates for the writ of injunction. *See id.* at 1075 (explaining that the “constitutional writ of injunction . . . functions only to give interim *procedural* relief” to maintain the status quo, which “is not the same as a *remedy*”).⁵

⁵ The Senate argues that granting Plaintiffs a temporary injunction “would be to grant Plaintiffs the ultimate remedy sought in their complaints at the very inception of the case.” Senate Br. at 2, *see also id.* 8–9. But Plaintiffs’ complaint seeks the adoption of “a new congressional districting plan that complies” with the Fair Districts Amendment. *See* Compl. Prayer for Relief. A temporary injunction that maintains the status quo pending a final merits determination is not the “ultimate remedy” that Plaintiffs seek.

Critically, the *Byrd* court then drew the precise line that governs this case: a temporary injunction “**could only reinstate the former congressional map**. It could never put in place a map that did not exist before the present controversy began.” *Id.* at 1079 (emphasis added). That is precisely the narrow relief Plaintiffs’ temporary injunction motion seeks. Pls.’ Mot. at 1–2. Reinstating the 2022 Plan simply “return[s] the parties to the condition that existed before the subject matter at the center of the present controversy arose, *i.e.*, before [the 2026 Plan] became law.” *Byrd*, 339 So. 3d at 1073. That is, in the *Byrd* court’s own words, the one thing a temporary injunction may always do.

Both the Secretary and the Senate further argue that Plaintiffs seek a mandatory injunction, but that characterization is wrong. “Courts distinguish between prohibitory injunctions, which restrain specific conduct, and mandatory injunctions, which command specific conduct and are looked upon with disfavor.” *Park Crossing Homeowners Ass’n, Inc. v. Suarez*, 415 So. 3d 676, 690 (Fla. 4th DCA 2025). What *Byrd* condemned—imposing a never-enacted, judicially proposed remedial map—is the quintessential mandatory injunction: it commands affirmative action the defendant has not previously taken. *See Bull Motors, LLC v. Brown*, 152 So. 3d 32, 35 (Fla. 3d DCA 2014). What *Byrd* preserved—reinstating the prior map to return the parties to the status quo—is the quintessential prohibitory injunction: it restrains enforcement of a new enactment and restores what preceded it, without commanding any new conduct or resolving any disputed legal question. *See Sullivan v. Moreno*, 19 Fla. 200, 215 (1882) (explaining the purpose of a prohibitory injunction is to “preserve the property or rights *in statu quo*, until a satisfactory hearing upon the merits”). Plaintiffs here seek the latter. Reinstating the 2022 Plan restrains enforcement of the 2026 Plan and returns the parties to where they were before.

Defendants’ broadest argument—that a temporary injunction is categorically unavailable in a declaratory judgment action—is wrong as a matter of Florida law. To start, *Byrd* says no such thing. It merely explains that the Declaratory Judgment Act does not contemplate “a provisional remedy.” 339 So. 3d at 1077. But again, Plaintiffs seek no such thing, and *Byrd* expressly preserved the availability of a temporary injunction that maintains the status quo by reinstating the former legal regime displaced by the challenged enactment—the relief Plaintiffs *do* seek here. *See id.* at 1073, 1079. If no temporary injunction were ever available in a declaratory judgment action, the court would have had no reason to specify what kind of temporary injunction was available in *Byrd*.

The Senate also relies on *Geise v. Fleck*, 51 Fla. L. Weekly D694 (Fla. 6th DCA Apr. 2, 2026), and *City of Newberry v. Alachua County*, 366 So. 3d 1176 (Fla. 1st DCA 2023), for the proposition that chapter 86 requires a declaratory judgment before any final injunctive relief may issue. But Plaintiffs are not seeking a temporary injunction under chapter 86; they are seeking relief under Article V, § 5(b) of the Florida Constitution, which gives circuit courts procedural power to issue temporary injunctions to maintain the status quo. *See Byrd*, 339 So. 3d at 1073.

To be clear, Florida courts can—and do—issue temporary injunctions in actions seeking both injunctive and declaratory relief. *See, e.g., City of Miami Beach v. Clevelander Ocean, L.P.*, 338 So. 3d 16, 21 (Fla. 3d DCA 2022). In *Clevelander*, the City of Miami Beach repealed a noise ordinance exemption and sought to enforce the ordinance against a business. *Id.* at 20–21. The trial court granted the business a temporary injunction, *id.* at 21, and the Third DCA affirmed the temporary injunction “preserv[ing] the status quo pending the final resolution of the issues presented.” *Id.* at 23. Similarly, in *Florida Department of Health, Office of Medical Marijuana Use v. Florigrown, LLC*, the First DCA upheld a temporary injunction issued in a declaratory

judgment action, with the Florida Supreme Court later reversing only because the plaintiff had failed to show a likelihood of success on the merits. 320 So. 3d 195, 198 (Fla. 1st DCA 2019), *decision quashed, cause remanded sub nom. Fla. Dep’t of Health v. Florigrown, LLC*, 317 So. 3d 1101 (Fla. 2021).⁶

In short, Plaintiffs here seek the exact temporary relief *Byrd* authorized: a return to the former congressional map—a prohibitory injunction plainly permissible under Article V, § 5(b) of the Florida Constitution.

B. Defendants fail to show the 2022 Plan is unworkable or unlawful.

In arguing the Court cannot order a return to the 2022 Plan, the Secretary takes a two-paragraph, drive-by shot at the 2022 Plan, arguing it suffers from “racial defects” and implying it is unconstitutional. *See* Sec’y Br. at 6–7. Notably, neither the Florida House nor the Senate joined the Secretary’s brief in this regard, and neither goes so far in their own responses.

In suggesting that the 2022 Plan is unlawful—and that this Court cannot order its re-institution to maintain the status quo—the Secretary makes an abrupt turnaround from his four-year long position defending the 2022 Plan as a constitutional plan. From its *inception*, the 2022 Plan was introduced as a plan that is “constitutional.” *See* Pls.’ Ex. 42. That Plan eliminated then-CD 5, which the Governor’s Office identified as an impermissible racial gerrymander, but raised no other concerns with the remaining districts. To the contrary, the 2022 Plan’s map drawer contended the 2022 Plan “resolv[ed] [the] federal constitutional objections” from the Governor’s

⁶ The Secretary also cites *City of Destin v. The Honorable J. Alex Kelly*, No. 2025-CA-1876 (Fla. 2d Cir. Ct. Dec. 29, 2025), Doc. 42, for the proposition that *Byrd* prohibits temporary injunctive relief in any declaratory judgment action. That decision is an unpublished, non-binding trial court order that is, with respect, incorrect. As explained above, *Byrd* did not categorically foreclose temporary injunctive relief in any declaratory judgment action, and Florida courts have granted temporary injunctions in declaratory judgment actions where, as here, the relief sought is to preserve the status quo rather than impose an affirmative remedy.

Office, brought “together some of the best concepts by the legislature’s prior maps and our office’s maps,” and was drawn without race as a factor. Ex. 22 at 13–14, 38. In litigation concerning then-CD 5, the Defendants here—including the Florida House and Senate—were adamant: “No other district [] raises the same equal-protection concerns” as CD 5. Pls.’ Ex. 75 at 11. As they explained, “[i]n 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.” *Id.*

The State, of course, went on to defend the 2022 Plan successfully, both in state court and federal court, and no court—none—has held that race predominated in the drawing of any of its districts. Indeed, as discussed further below, the State is currently vigorously *defending* the 2022 Plan against a claim that it is a racial gerrymander in federal court. *See generally Cuban Pa’lante et al. v. Fla. H.R.*, No. 1:24-cv-21983 (S.D. Fla. 2024).

Although the Secretary *now* (conveniently) suggests that race predominated in the 2022 Plan, the Secretary carries a heavy burden to make such a showing. To start, “the [2022] Plan, like any legislation, is entitled to a presumption of validity,” *Black Voters Matter*, 415 So. 3d at 197, and under U.S. Supreme Court precedent, the Florida Legislature also receives a “presumption that the legislature acted in good faith” when it comes to race-based accusations. *Alexander*, 602 U.S. at 10. This “especially stringent” presumption directs courts “to draw the inference” that race did not predominate, particularly when the evidence supports multiple conclusions. *Id.* at 10–11.

Moreover, the burden of proving a racial gerrymander rests with the party asserting it (here, the Secretary), *see Miller v. Johnson*, 515 U.S. 900, 916 (1995). In arguing that Plaintiffs bear any burden here, the Secretary turns *Black Voters Matter* on its head. *See* Sec’y Br. at 7. In *Black Voters Matter*, the *plaintiffs* claimed the 2022 Plan was unconstitutional, and so they bore the

burden to make such a showing. *See* 415 So. 3d 198. Here, the *Secretary* claims the 2022 Plan is unconstitutional, and the burden rests with him to make such a showing.

But the Secretary does not even attempt to shoulder that burden. At most, the Secretary cites a *single paragraph* from a legal memorandum prepared by the Governor’s counsel claiming CD 20 has an “odd shape” that is “arguably a telltale sign of racial predominance” and claiming the “legislative record shows” other districts in South Florida were drawn with the Hispanic voting age population in mind. Sec’y Br. at 7 (citing Sec’y Ex. 5). The Secretary does not develop the argument whatsoever, resting on legal conclusions from a Governor’s Office memo rather than putting forward actual argument and evidence that would establish that the 2022 Plan is unlawful. The Secretary’s failure to put forward such evidence—particularly against the starting presumptions of legality—should foreclose any finding that the 2022 Plan is unlawful.

But even if the Court examined the existing record, it would not show that the 2022 Plan is unlawful in any respect, either with respect to CD 20, or any other district in South Florida. To start, there is no evidence that CD 20 is a racial gerrymander—certainly none that can overcome the 2022 Plan’s “presumption of validity.” *Black Voters Matter*, 415 So. 3d at 197. To make the requisite showing, the Secretary “must prove that the [mapmakers] subordinated traditional race-neutral districting principles . . . to [race],” *Miller*, 515 U.S. at 916, such as by showing the district is “so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race,” *Shaw v. Reno*, 509 U.S. 630, 658 (1993). As the U.S. Supreme Court has held, a district’s compliance with traditional redistricting criteria “may serve to defeat a claim that a district has been gerrymandered on racial lines.” *Id.* at 647; *see also Miller*, 515 U.S. at 928 (O’Connor, J., concurring) (requiring party asserting racial gerrymandering claim to demonstrate “substantial disregard of customary and traditional districting practices”).

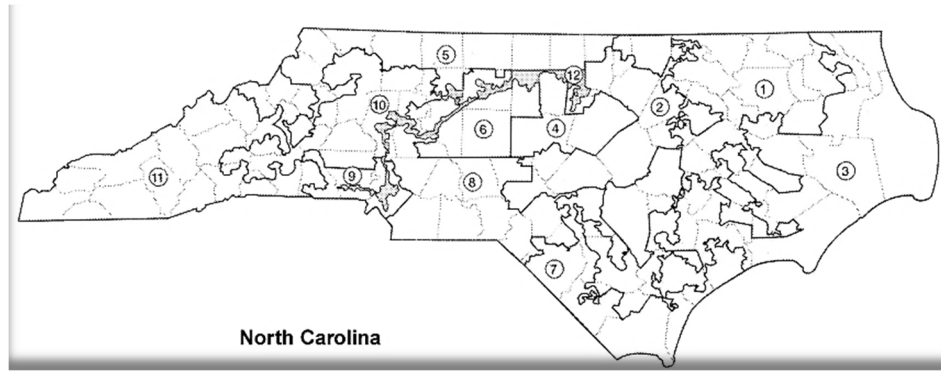
The only evidence in the record about CD 20 in the 2022 Plan is the legislative record that *Plaintiffs submitted* reflecting a commitment to making the district more compliant with the State’s Tier II criteria. As the House Redistricting Chair summarized, “[t]his decade we were able to create [CD 20] in such a way that respects more major roadways in the area, such as U.S. 441, I-95, and the Florida Turnpike, and keeps more cities whole, keeping the cities of Lake Park, Margate, Tamarac, and others wholly within it, which were split a decade ago.” Pls.’ Ex. 20 at 38.

Although the Governor’s Office has (recently) criticized CD 20’s compactness, CD 20 in the 2022 Plan does not have unusually low compactness scores. As the Legislature’s own analysis shows, CD 20’s total mathematical compactness score (the sum of its Reock, Convex Hull, and Polsby-Popper scores) was 1.55, which is *more compact than six districts in the 2022 Plan*, including CDs 4, 10, 17, 19, 26, and 28. *See* Pls.’ Ex. 23 at 10. CD 20 in the 2022 Plan is also more compact than several districts in the 2026 Plan, including new CDs 15 and 25, *on every single mathematical compactness measure. Compare id.*, with Pls.’ Ex. 10 at 16. Moreover, CD 20 simply does not resemble the districts that have been struck down by federal courts as unconstitutional racial gerrymanders, nor is it “so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race.” *Shaw*, 509 U.S. at 658. To put CD 20 in appropriate context, Plaintiffs provide a few images of such districts, each of which had a Polsby-Popper score of just .01 or .02:⁷

North Carolina’s 12th Congressional District (Race Predominates), *Shaw*, 509 U.S. at 635-36.⁸

⁷ The Polsby-Popper scores (unless otherwise noted) come from Richard H. Pildes & Richard G. Niemi, *Expressive Harms, Bizarre Districts, and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483, 562 (1993).

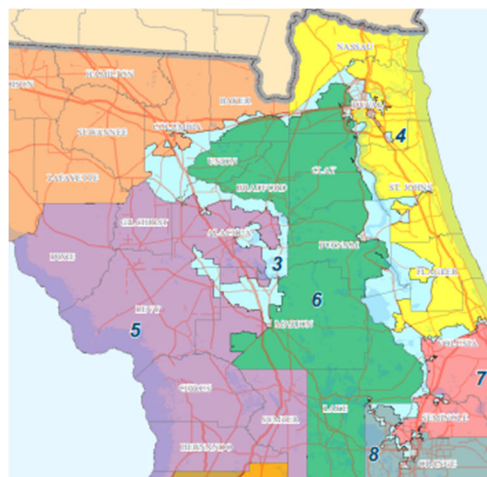
⁸ This image of North Carolina’s 12th district appears in Appendix C to the U.S. Supreme Court’s decision in *Miller v. Johnson*, 515 U.S. 900, 950 (1995), in the official U.S. Reports.



Texas's 18th, 29th, 30th Congressional Districts (Race Predominates), *Vera*, 517 U.S. at 979.⁹



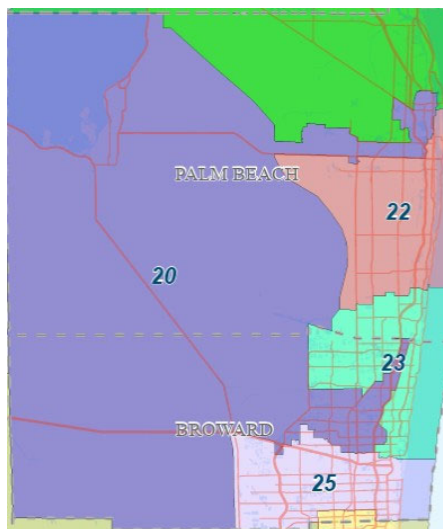
Florida's 3rd Congressional District (Race Predominates), *Johnson v. Mortham*, 915 F. Supp. 1529 (N.D. Fla. 1995).



⁹ See *id.* at 986 (Appendices A–C).

The 2022 Plan’s CD 20, shown below (Ex. 25), simply does not contain the “telltale sign of racial predominance” that the Secretary claims, Sec’y Br. at 7, nor does it resemble the districts struck down as racial gerrymanders in *Shaw*, *Vera*, or *Mortham*, either visually or mathematically. Indeed, CD 20’s Polsby-Popper score (0.28) is *twenty-eight times better* than the districts from *Shaw*, *Vera*, or *Mortham* where race was found to predominate on the basis of the district’s shape, *see supra*. And that is the *only* thing the Secretary offers to suggest race predominated in CD 20: the district’s “odd shape.” Sec’y Br. at 6–7.

CD 20 in 2022 Plan



Finally, CD 20 in the 2022 Plan also compares favorably to the prior CD 5, which the Florida Supreme Court held violated traditional redistricting criteria in *Black Voters Matter*, 415 So. 3d at 198–99. While CD 5 spanned eight counties and was 200 miles long, *id.* at 199, CD 20 spans only two counties (Broward and Palm Beach) and is much smaller in area, *see* Pls.’ Ex. 25. CD 20 is also substantially *more compact than CD 5 on every single mathematical compactness*

measure. Compare Pls.’ Ex. 23 at 10 (CD 20 with total compactness score of 1.55), with Pls.’ Ex. 24 at 43 (CD 5 with total compactness score of 0.88).¹⁰

At bottom, there is no evidence that CD 20 is “so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race,” *Shaw*, 509 U.S. at 658, or that it so “substantial[ly] disregard[ed] customary and traditional districting practices” so as to suggest race was its overriding purpose. *Miller*, 515 U.S. at 928 (O’Connor, J., concurring). To the contrary, the record reflects that the Legislature made an intentional effort to comply with Tier II criteria in drawing it.

The same is true of the other districts in South Florida—none of which the Secretary even bothers to identify. See Sec’y Br. at 7. Indeed, in the *Black Voters Matter* litigation, the Florida House and Florida Senate specifically praised the extent to which minority districts in South Florida complied with traditional redistricting criteria, specifically pointing to Districts 24 and 27 in South Florida as “compact districts both visually and by statistical measurements and [that] were drawn with respect for existing political and geographical boundaries.” Pls.’ Ex. 75 at 11. In even more recent litigation, both the Secretary and the Florida House have vigorously *defended* CD 26 against accusations that it was a racial gerrymander, arguing instead that racial considerations did not predominate and that the district complied with traditional redistricting criteria. See generally *Cubanos Pa’lante et al. v. Fla. H.R.*, No. 1:24-cv-21983 (S.D. Fla.).

The Secretary’s about-face on the lawfulness of the 2022 Plan—now that such a position is convenient—cannot be explained by a change in precedent. Nothing in *Callais* requires a finding that the 2022 Plan is a racial gerrymander—and particularly not on this record. While *Callais* reinterpreted what is required to make a showing of liability under Section 2 of the VRA, see 2026

¹⁰ In particular, where then-CD 5 had a Reock score of just .11, CD 20 has a score of .5, nearly five times better. See *id.* CD 20’s Polsby-Popper score is similarly nearly three times better than CD 5’s. See *id.*

WL 1153054, at *12, *Callais* did not purport to overturn any of the U.S. Supreme Court’s longstanding racial gerrymandering precedent. And nothing in *Callais* prohibits creating majority-minority districts, particularly in areas of the state with substantial minority populations; *Callais* only prohibits the imposition of liability under Section 2 unless certain pre-requisites are shown.¹¹

C. The equities and public interest overwhelmingly favor a temporary injunction.

No defendant argues Plaintiffs have an adequate remedy at law (the second temporary injunction factor), and Defendants do not meaningfully dispute that Plaintiffs will suffer irreparable harm absent a temporary injunction (the third). Although the Senate briefly argues that this case does not involve the constitutional right to vote, and thus cannot impose irreparable harm, *see* Senate Br. at 25, that argument contravenes well-established law finding that “plaintiffs will suffer an irreparable harm if they must vote in . . . congressional elections based on a redistricting plan that violates [the] law.” *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *77 (N.D. Ala. Jan. 24, 2022), *aff’d sub nom. Allen v. Milligan*, 599 U.S. 1 (2023); *see also GRACE, Inc. v. City of Miami*, 674 F. Supp. 3d 1141, 1160–61 (S.D. Fla. 2023) (finding same).

Instead, Defendants argue that reverting to the 2022 Plan is not in the public interest because, regardless of the merits, it is too late for this Court to offer any relief. Sec’y Br. at 25–27; Senate Br. at 22–26. But that argument rests on a misapplication of the federal *Purcell* doctrine—a doctrine that does not bind this Court, has never constituted a per se bar to relief even in the federal courts that created it, and in any event does not apply to the circumstances presented here.

To start, *Purcell* does not bind Florida state courts. The *Purcell* principle is a *federal* doctrine, created by *federal* courts as a tool to restrain *federal* judicial interference in the

¹¹ Indeed, under the 2026 Plan, a “race-neutral” map drawer drew multiple districts in South Florida with substantial minority populations: CD 24, with a Black voting age population (BVAP) of 47.72%, CD 20, with a BVAP of 42.08%, and CDs 26, 27, and 28 with Hispanic voting age populations well above 70%. *See* Pls.’ Ex. 10 at 16.

administration of state elections close to an election. *See Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (“[F]ederal courts should ordinarily not alter the election rules on the eve of an election.”) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). As state courts across the country have recognized, *Purcell* “does not limit state judicial authority where, as here, a *state* court must intervene to remedy violations of the *State* Constitution.” *Harkenrider v. Hochul*, 197 N.E.3d 437, 454 n.16 (N.Y. 2022) (emphases added); *see also State ex rel. Ohio Democratic Party v. LaRose*, 257 N.E.3d 130, 137 (Ohio 2024) (“*Purcell* is a federal case and therefore not binding on this Court”); *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 15 (Iowa 2020) (Appel, J., concurring) (“*Purcell*, of course, is infused with federalism concerns, arising from the notion that federal courts should show a degree of caution before they intervene in state-created election procedures”). This matter, concerning violations of the Florida Constitution, thus poses no threat of a federal court “swoop[ing] in and re-do[ing] a State’s election laws.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring).

Unsurprisingly, Defendants cannot point to a single Florida court that has adopted *Purcell* as a rigid bar to redistricting relief. The cases the Secretary cites—*State ex rel. Haft v. Adams*, 238 So. 2d 843 (Fla. 1970), and *State ex rel. Walker v. Best*, 163 So. 696 (Fla. 1935)—do not establish any such bright-line rule. *Haft* involved a candidate’s attempt to force others off the ballot three weeks before a primary election after sitting on information about an alleged filing fee discrepancy for weeks, which the Court found amounted to an attempt to “belatedly take advantage” of the situation. 238 So. 2d at 845. *Best* involved the question of whether a town clerk could be ordered to publish a charter amendment within the statutory notice period. Neither case stands for the proposition that injunctive relief is categorically unavailable in the weeks before an election.

Even assuming *Purcell* had some relevance to this proceeding, it has never been understood to categorically preclude judicial relief whenever an election is approaching. Indeed, the U.S. Supreme Court itself, without any mention of *Purcell*, recently fast-tracked a final injunction against Louisiana’s congressional map *amid early voting*. See Order on Application to Issue the Judgment Forthwith, *Louisiana v. Callais*, No. 25A1197 (U.S. May 4, 2026). Courts across the country have invalidated redistricting plans and ordered remedies on timelines comparable to—or shorter than—what is available here. See *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022) (invalidating plan approximately three months before primary), *overruled by*, 886 S.E.2d 393 (2023), and *aff’d sub nom. Moore v. Harper*, 600 U.S. 1 (2023); *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (invalidating plan approximately three months before primary and ordering new plan within weeks); *Harkenrider*, 197 N.E.3d at 454–56 (enjoining plan after qualifying period had already passed).

Nor is it too late to offer temporary relief in this case. Florida’s congressional primary is not until August 18, 2026—more than three months away. Plaintiffs are not seeking relief on the eve of an election; they are seeking relief while there is still ample time to revert to the 2022 Plan, which **all 67 Supervisors of Elections were already instructed to preserve** as of May 4, 2026, precisely in anticipation of this contingency. See Pls.’ Ex. 17. And the Secretary’s own evidence confirms that the operative deadline has not passed: According to the Secretary’s own Director of Elections, the Division does not need “a definitive answer on the maps being used” until Monday, May 25, 2026—nearly two weeks away. Sec’y’s Ex. 3 ¶ 13.¹² Against this record, the Senate’s

¹² To be clear, Plaintiffs do not concede reversion to the 2022 Plan would be unworkable after May 25. Matthews’ alleged May 25 deadline is based on the date the Department of State begins accepting candidate qualifying materials, Sec’y Ex. 3 ¶ 8, even though official candidate qualifying period does not begin until June 8, 2026, and candidate names will not be certified until June 13, 2026 at the earliest—underscoring that time remains to reinstate the 2022 Plan. See *id.* ¶ 9. In any event, given the likely appeals in this case, Plaintiffs request this Court issue a decision as soon as possible.

assertion, without any factual evidence, that reverting to the 2022 Plan would cause “chaos,” Senate Br. at 24–26, is pure conjecture, and the Senate’s imagined disruption does not justify allowing an unconstitutional map to remain in place.

To the extent Defendants argue that the calendar constrains this Court’s ability to grant meaningful relief, they cannot invoke equitable principles to benefit from a timeline they created. The Governor’s Office announced a planned special session in *January*, developed the 2026 Plan in secret, delayed that special session, and the Governor did not sign the 2026 Plan into law until five days after it was passed in the legislature. Plaintiffs moved with all deliberate speed: this action was filed *the same day* the Governor signed the 2026 Plan into law, on May 4, and Plaintiffs’ motion for temporary injunction with supporting expert reports followed two days later, on May 6. The same day, the Secretary’s attorney filed a motion to disqualify the assigned judge, which was granted on May 7.¹³ Within minutes of being reassigned to this Court, Plaintiffs sought a hearing on their pending motion, which the Court promptly provided. There is simply no way Plaintiffs or the Court could have moved faster. The compressed timeline Defendants now invoke as a basis for denying relief is entirely of their own making, and equity does not reward a party that creates the very urgency it seeks to exploit. *See Purcell*, 549 U.S. at 4–5.

CONCLUSION

Plaintiffs request that the Court temporarily enjoin implementation of the 2026 Plan and order the use of the 2022 Plan while this case proceeds to a full trial on the merits.

¹³ See Adam Ellis, *Opinion: Florida Judge Recusal Raises “Bizarre” Questions of Bias*, Yahoo! News (May 9, 2026), <https://www.yahoo.com/news/articles/florida-judge-recusal-raises-bizarre-090547623.html>.

Dated: May 14, 2026

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I HEREBY CERTIFY that on May 14, 2026 I electronically filed the foregoing 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.

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

EQUAL GROUND EDUCATION FUND,
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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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Exhibit 73

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

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

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 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

Rushane E Smith

07/31/2028

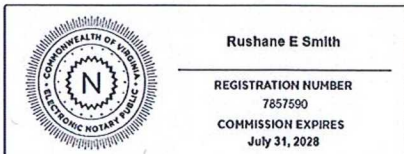
Virginia

Newport News

05/14/2026

App. 2516

Notarized remotely online using communication technology via Proof.



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

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

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

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

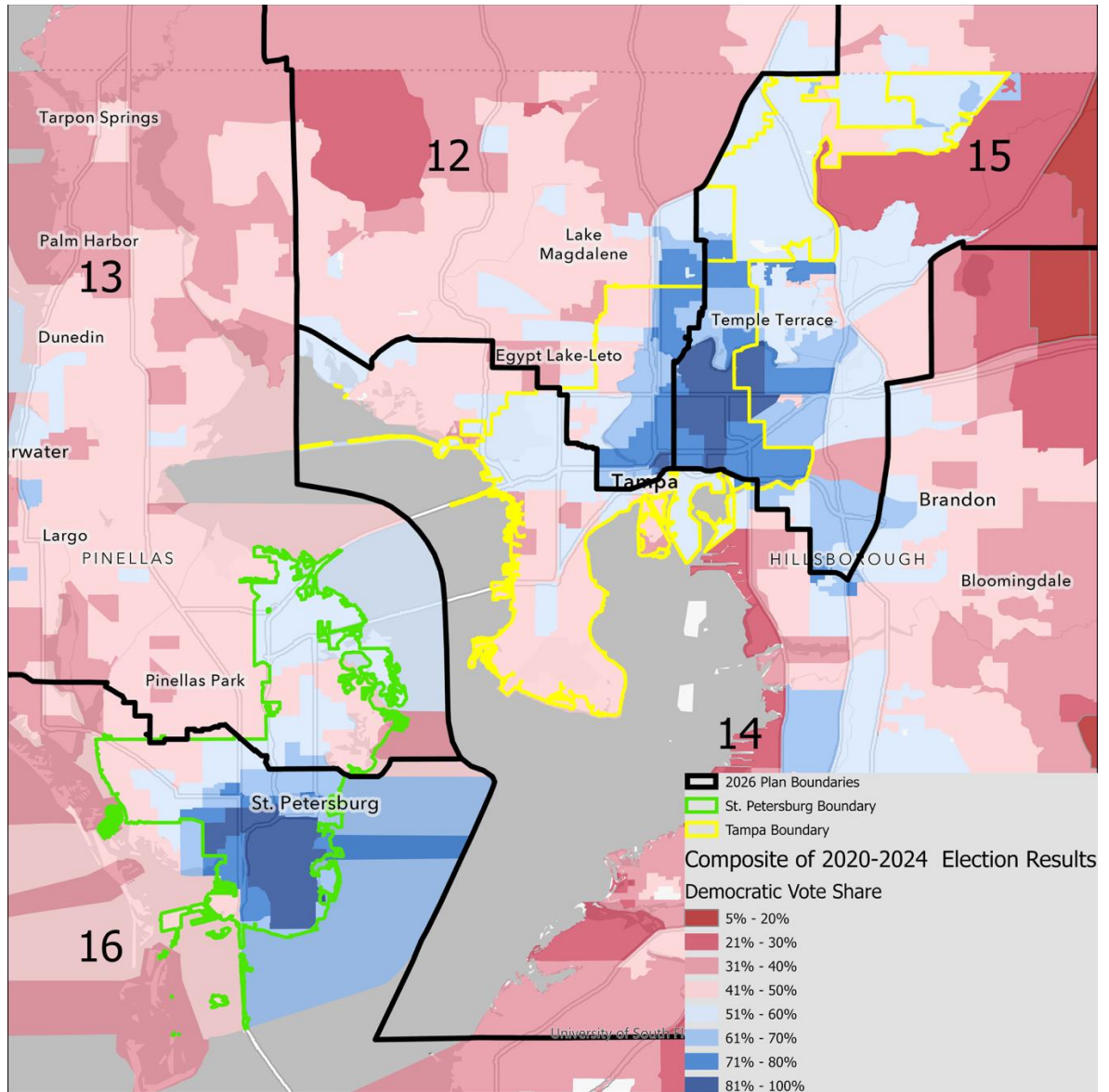


Figure 2: Tampa-St. Petersburg Region

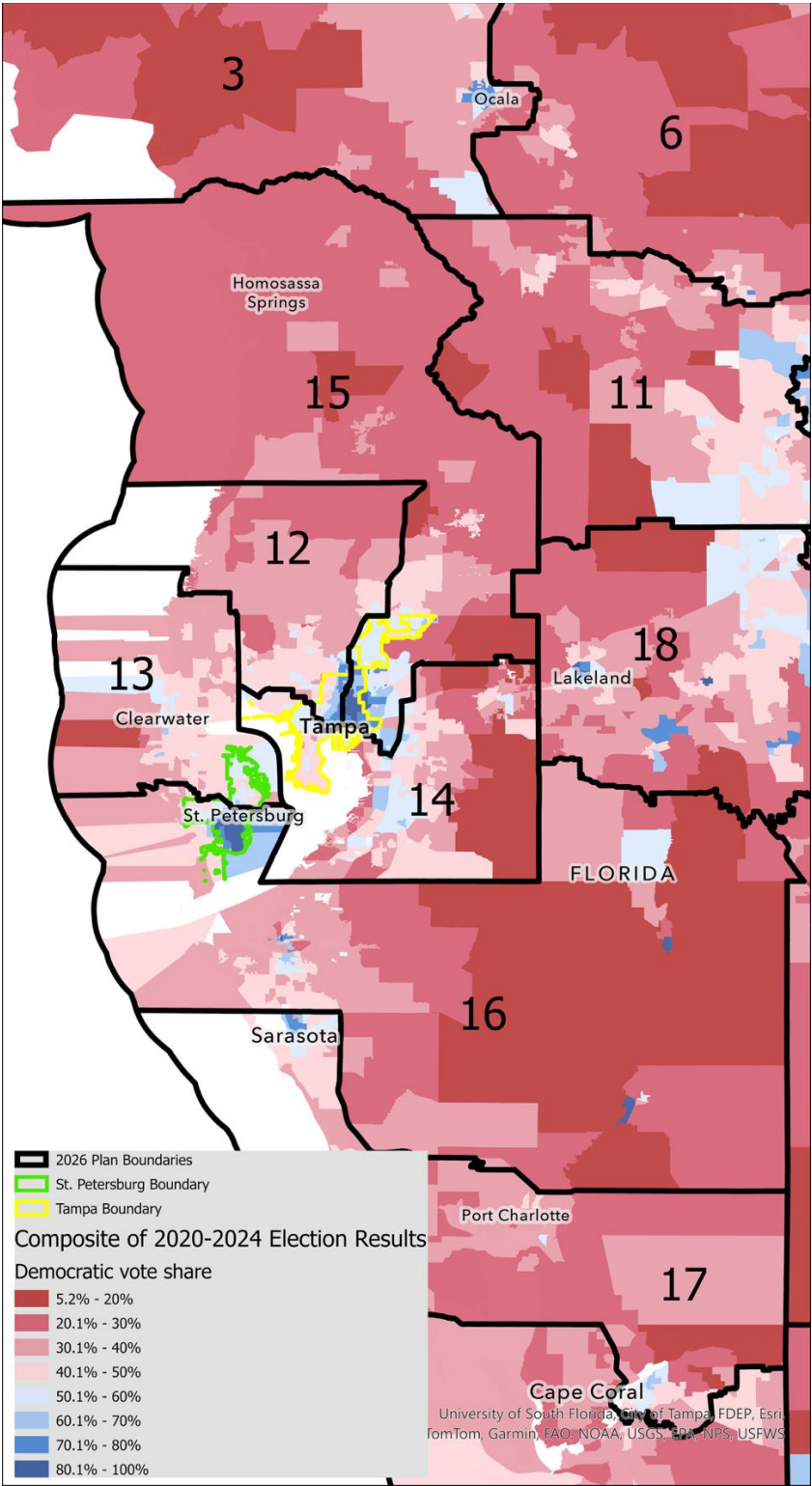


Figure 3: Orlando Closeup

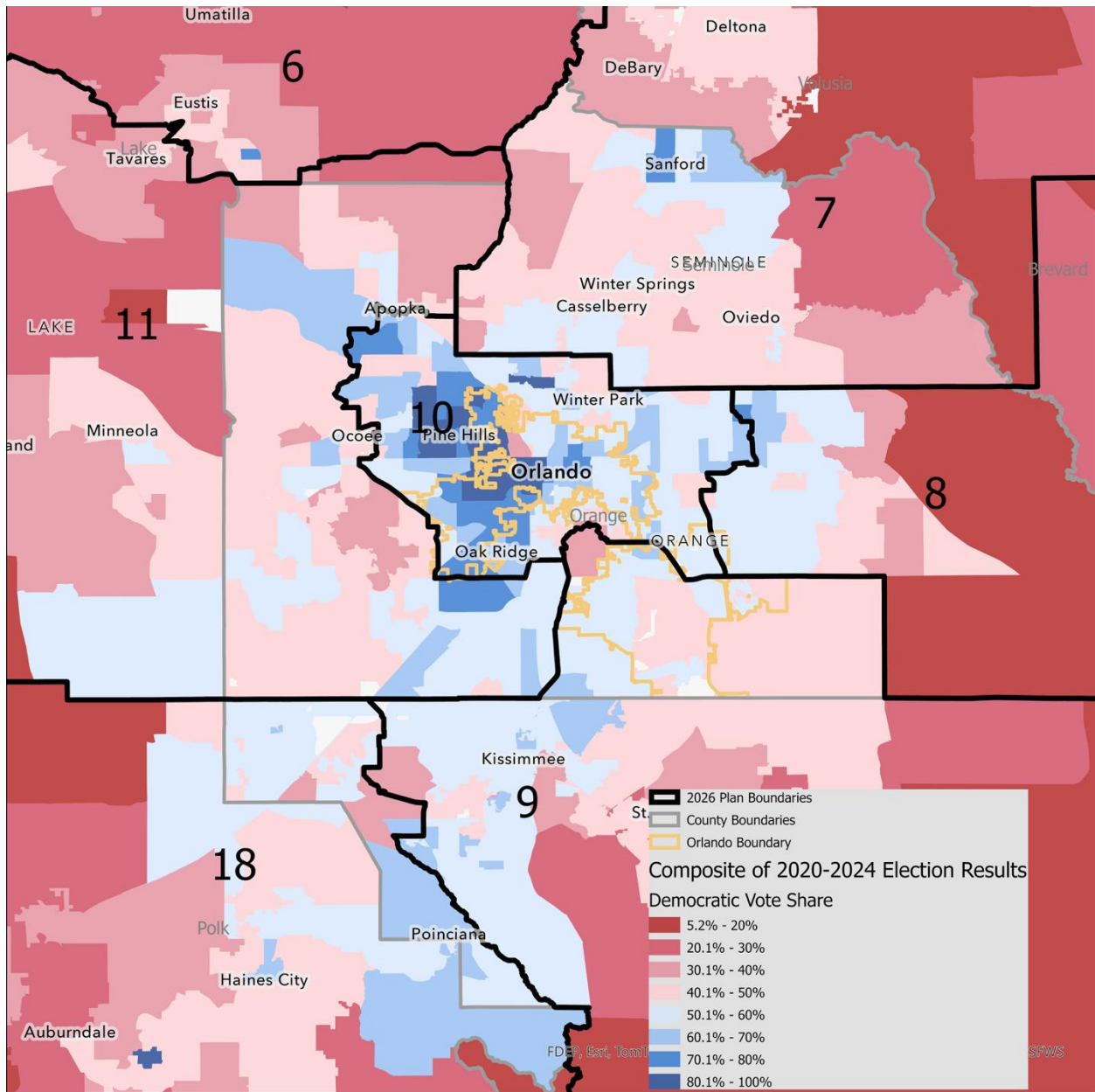


Figure 4: Orlando Region

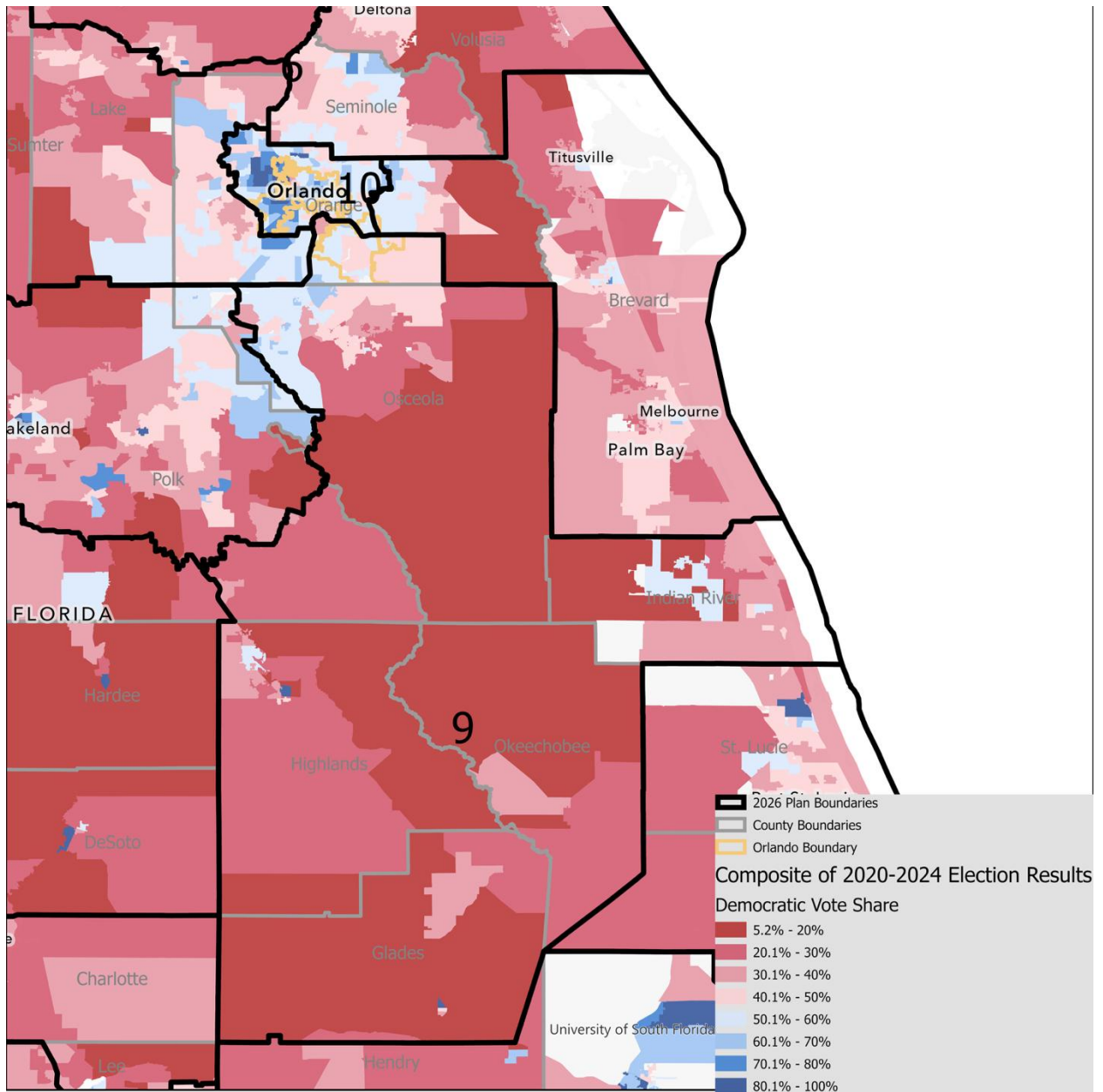


Figure 5: Southeast Florida

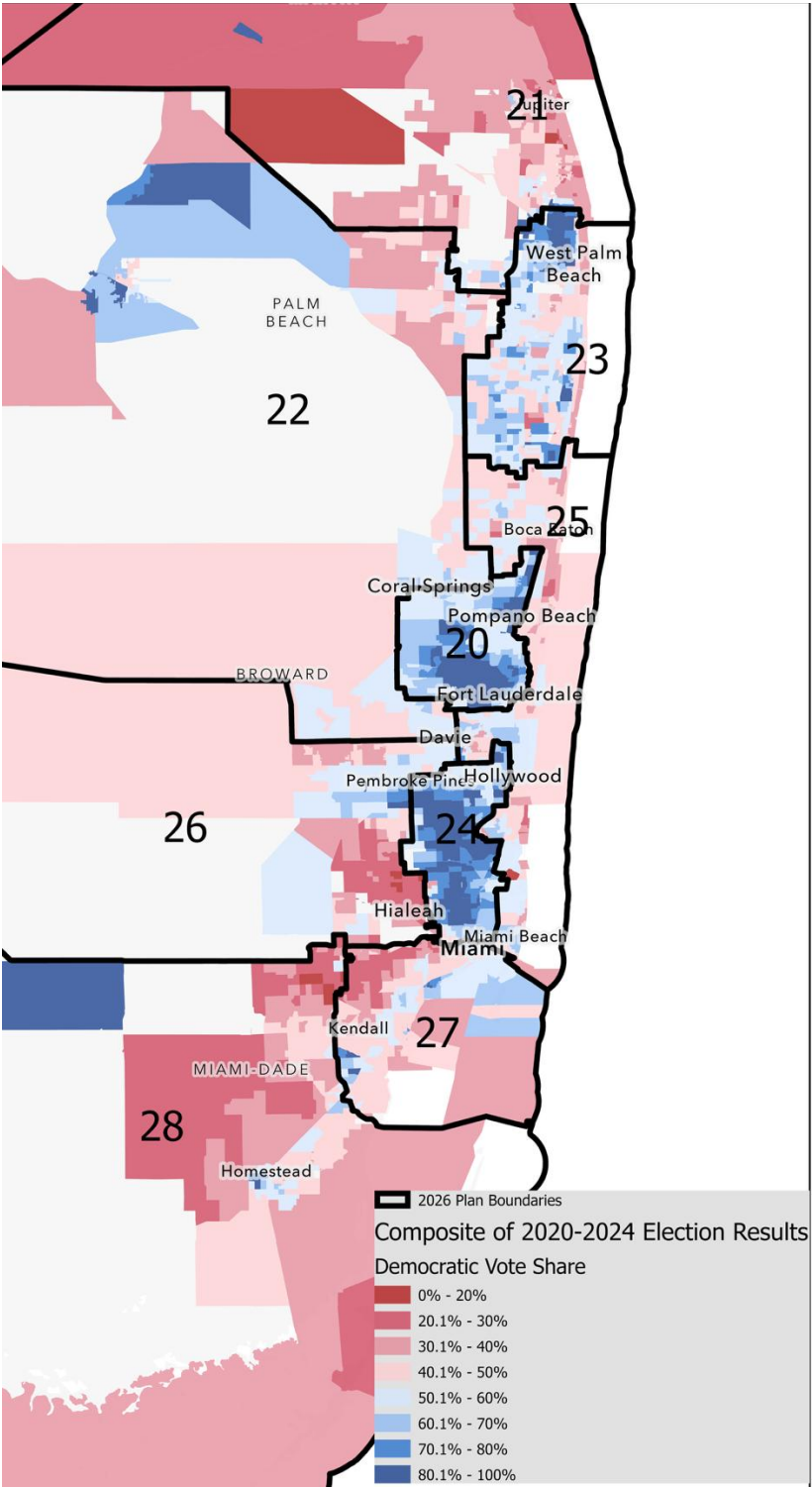


Figure 6: Southeast Florida, Districts 20 and 24

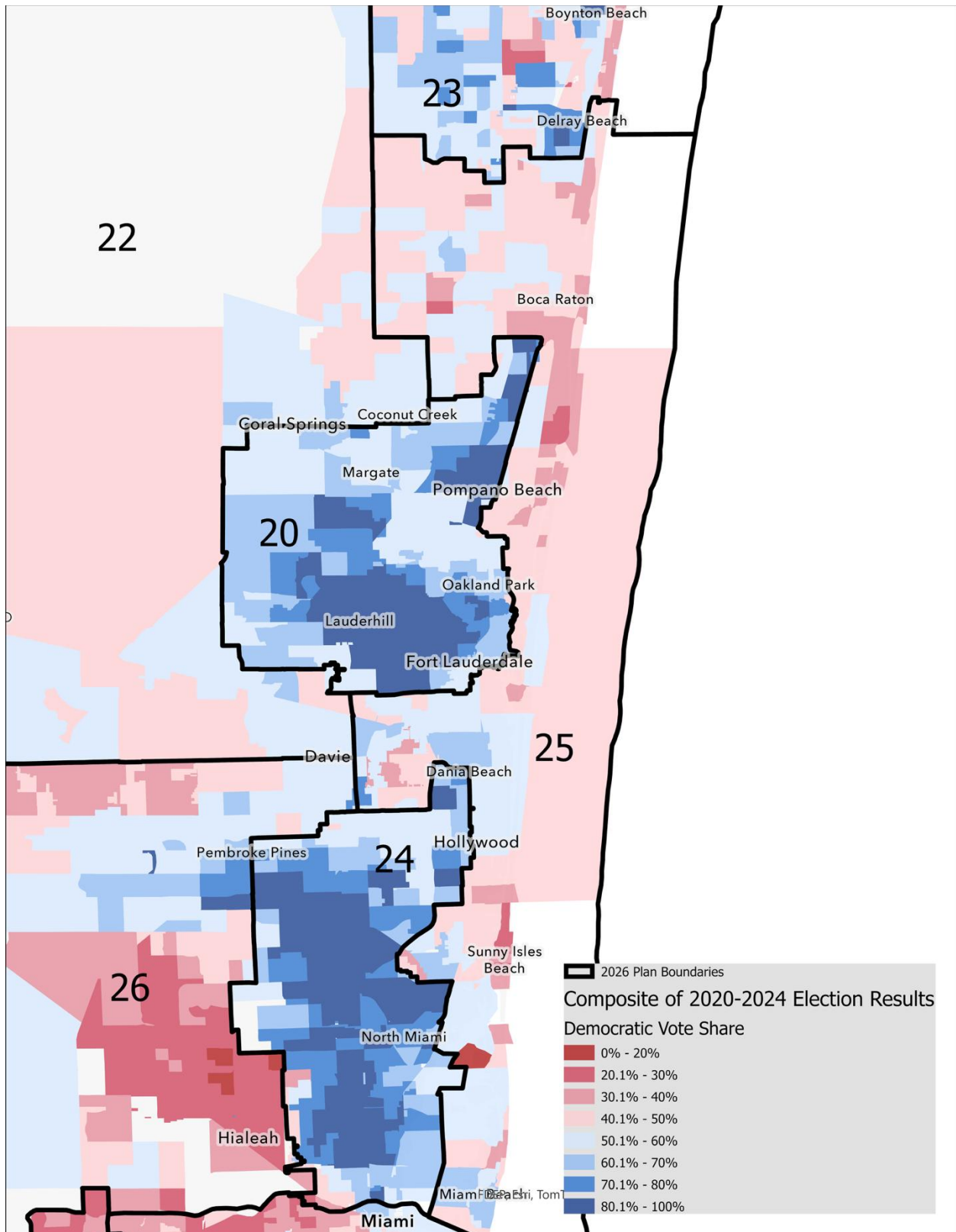


Exhibit 74

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

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

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 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

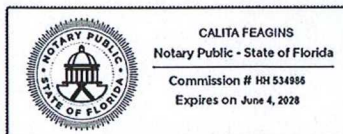
State of Florida
County of Pasco

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

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

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

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 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

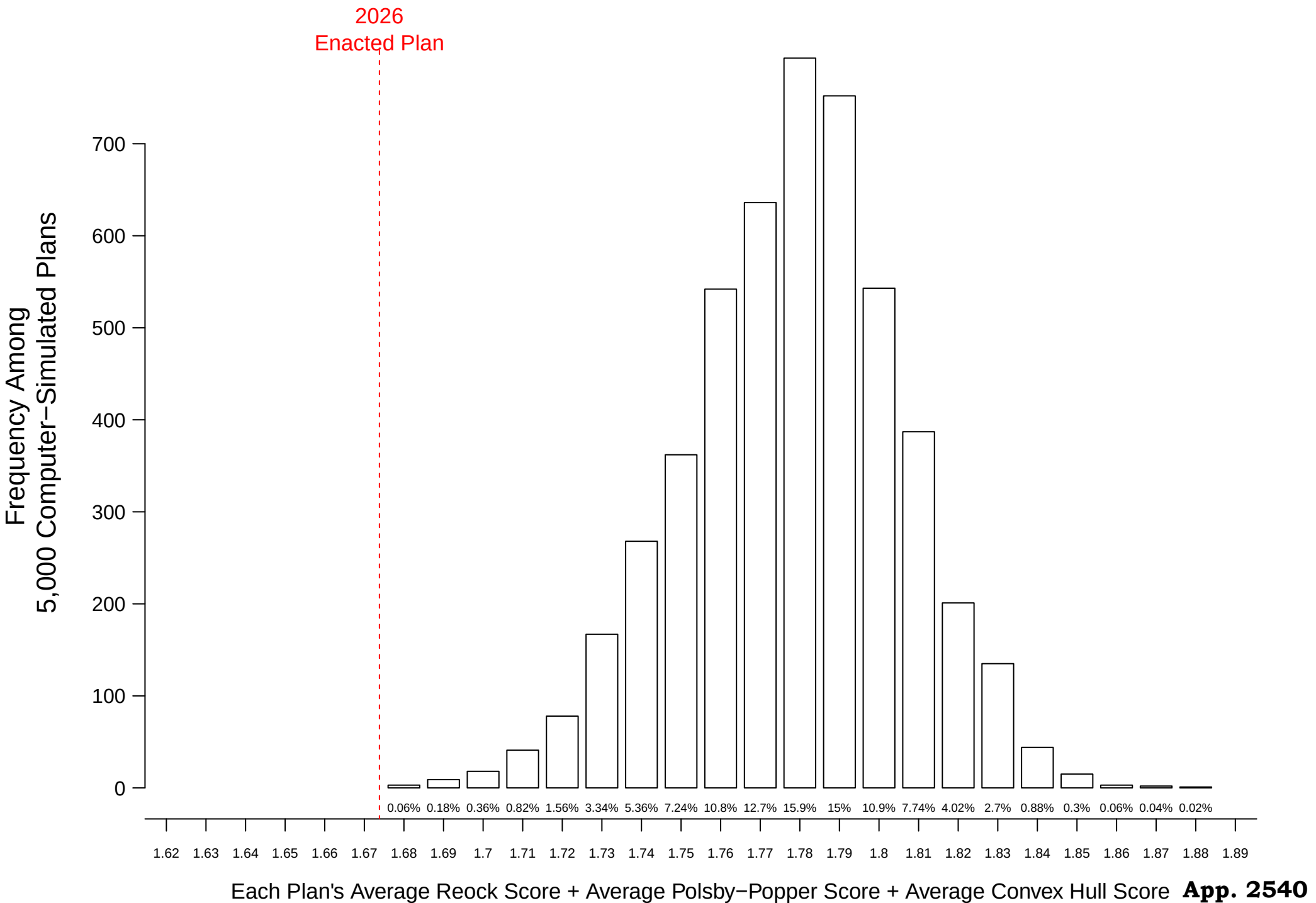


Figure 2B: Number of Split Counties
in the 2026 Enacted Plan and the Computer-Simulated Plans (Simulation Set B)

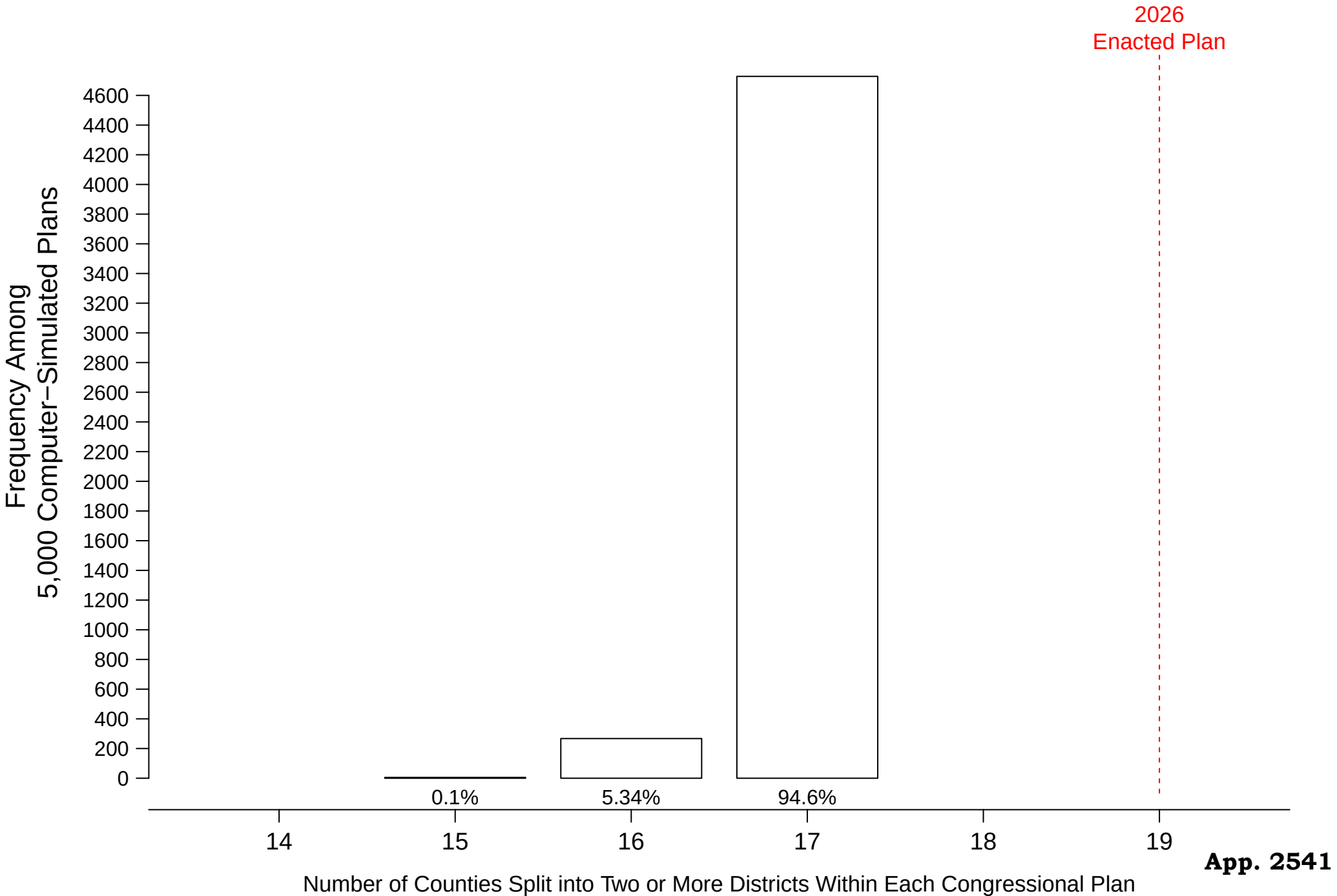


Figure 3B: Number of Split Municipalities
in the 2026 Enacted Plan and the Computer-Simulated Plans (Simulation Set B)

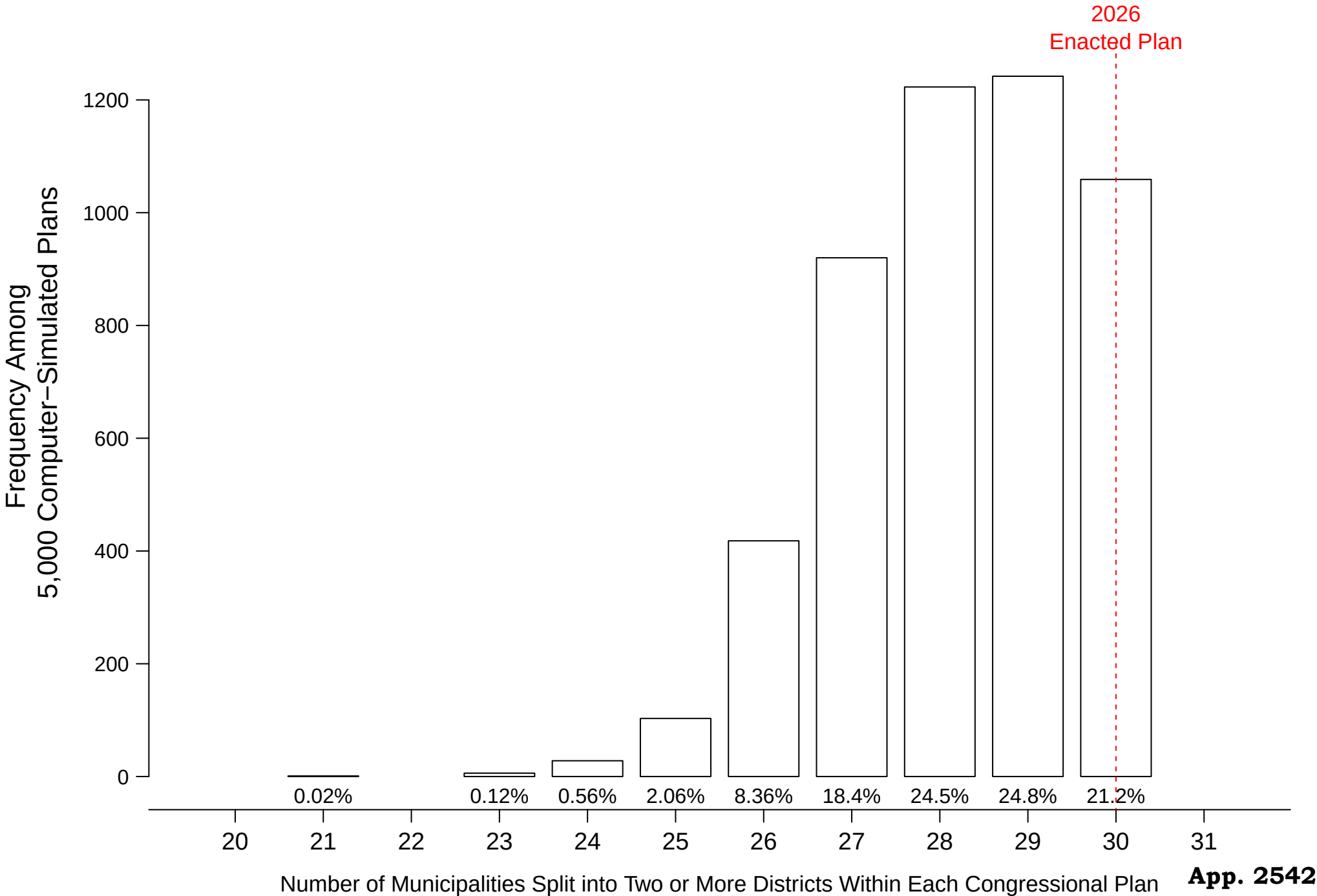


**Figure 4B: Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Number of Republican-Favoring Districts**

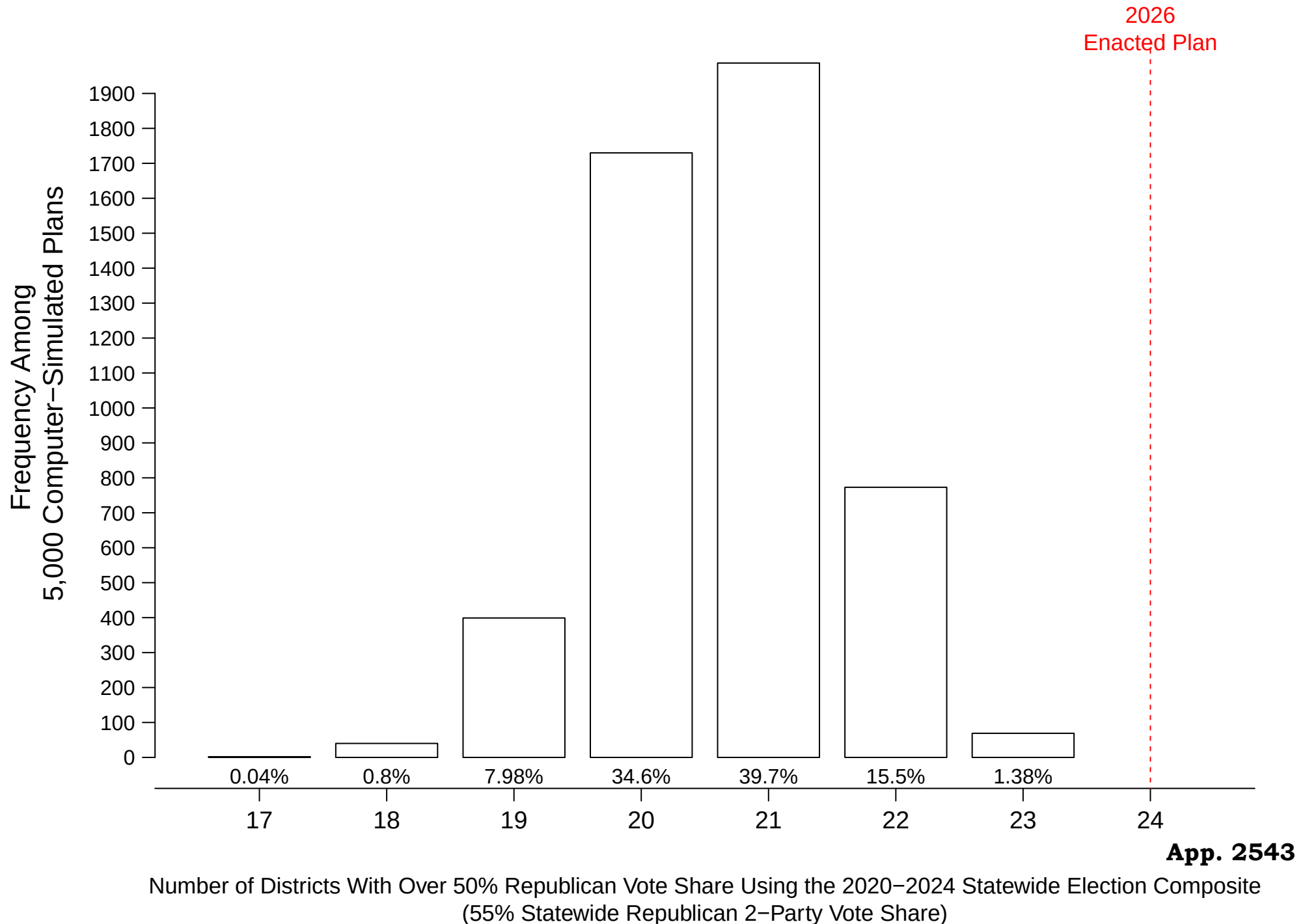


**Figure 5B: Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Number of Safe Republican Districts**

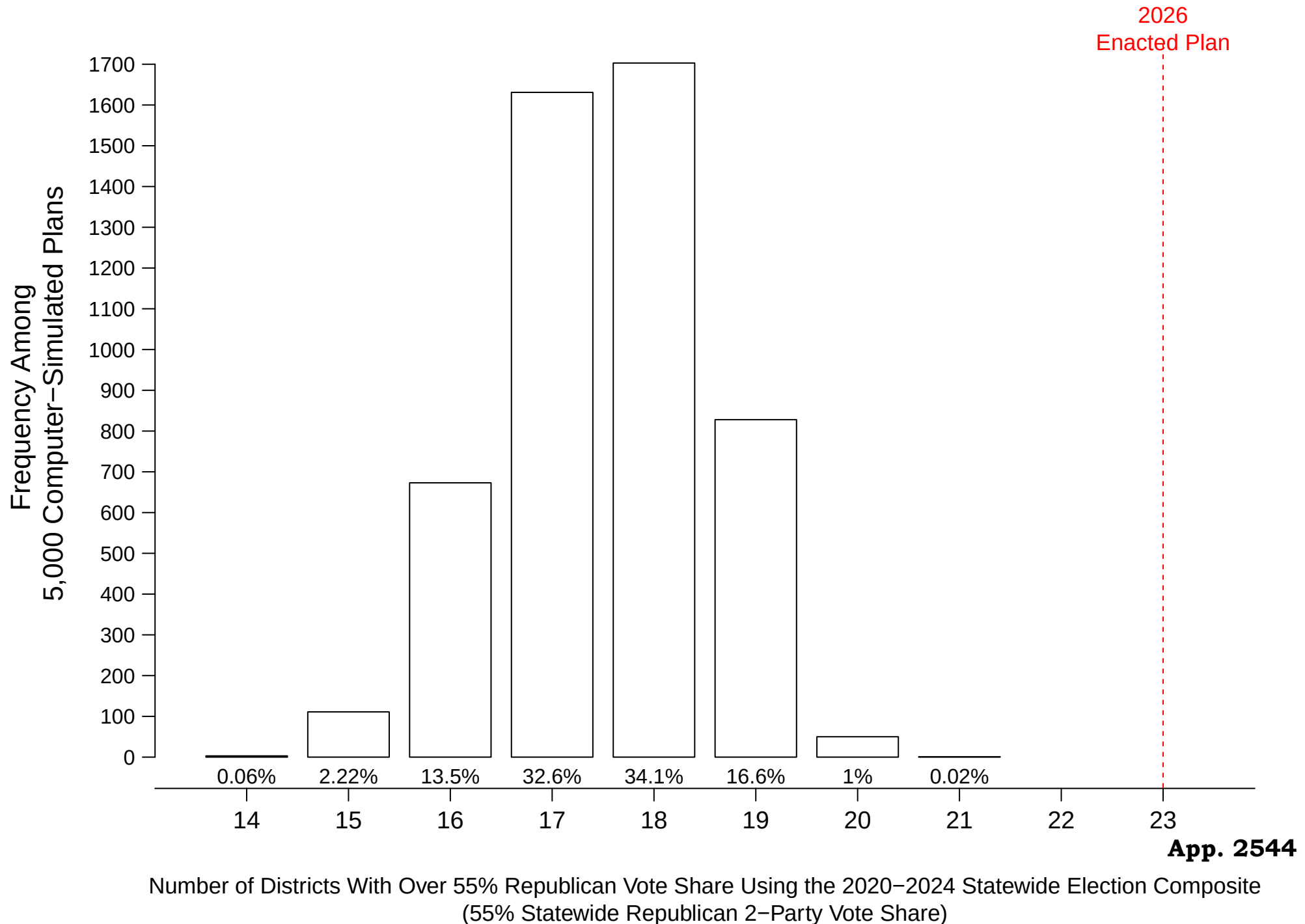
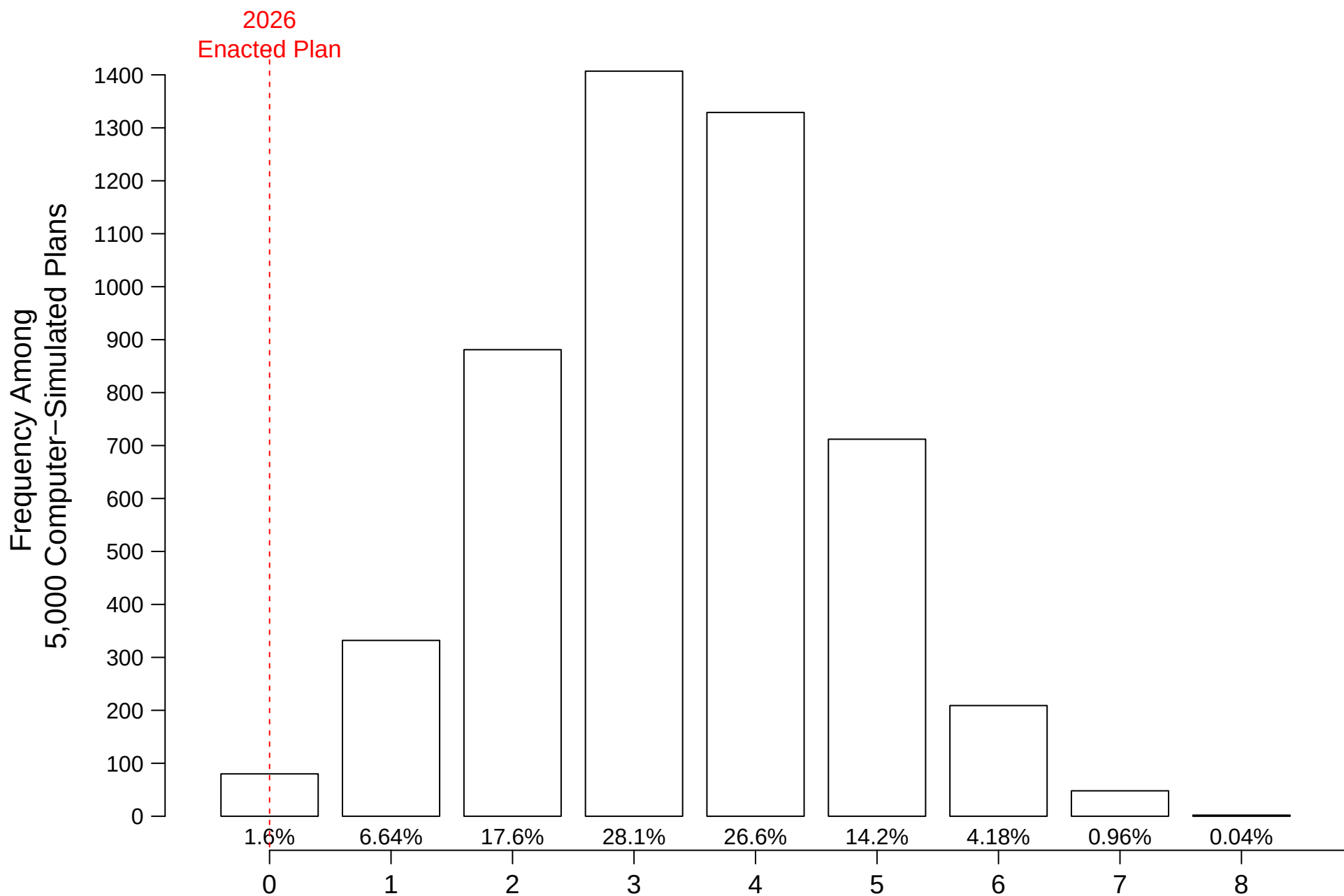


**Figure 6B: Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Number of Electorally Close Districts**



App. 2545
Number of Electorally Close Districts With 47.5% to 52.5% Republican Vote Share
Using the 2020–2024 Statewide Election Composite (55% Statewide Republican 2–Party Vote Share)

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

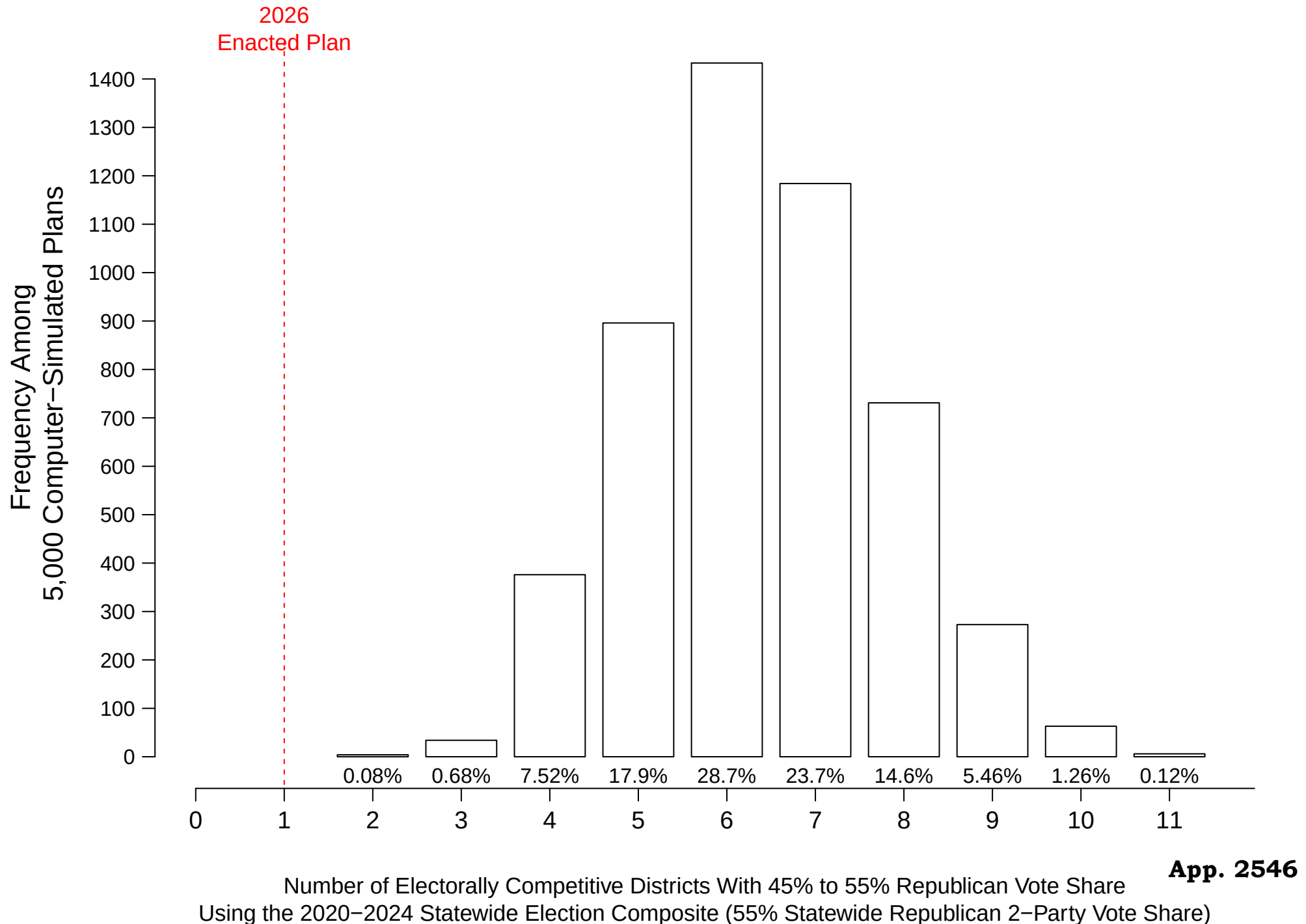


Figure 8B:
Comparisons of 2026 Enacted Plan Districts to 5,000 Computer-Simulated Plans' Districts

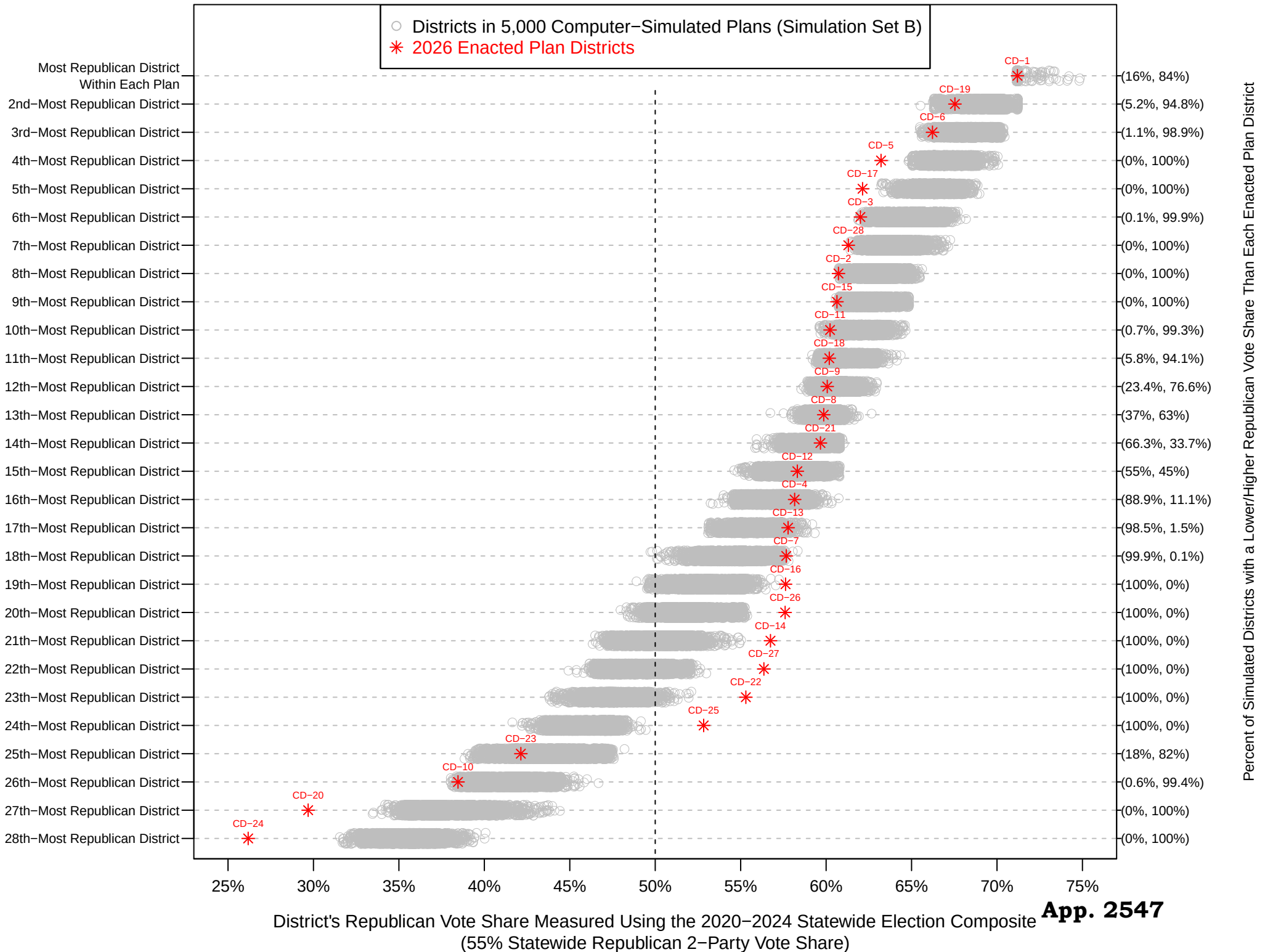


**Figure 9B: Efficiency Gap:
Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)**

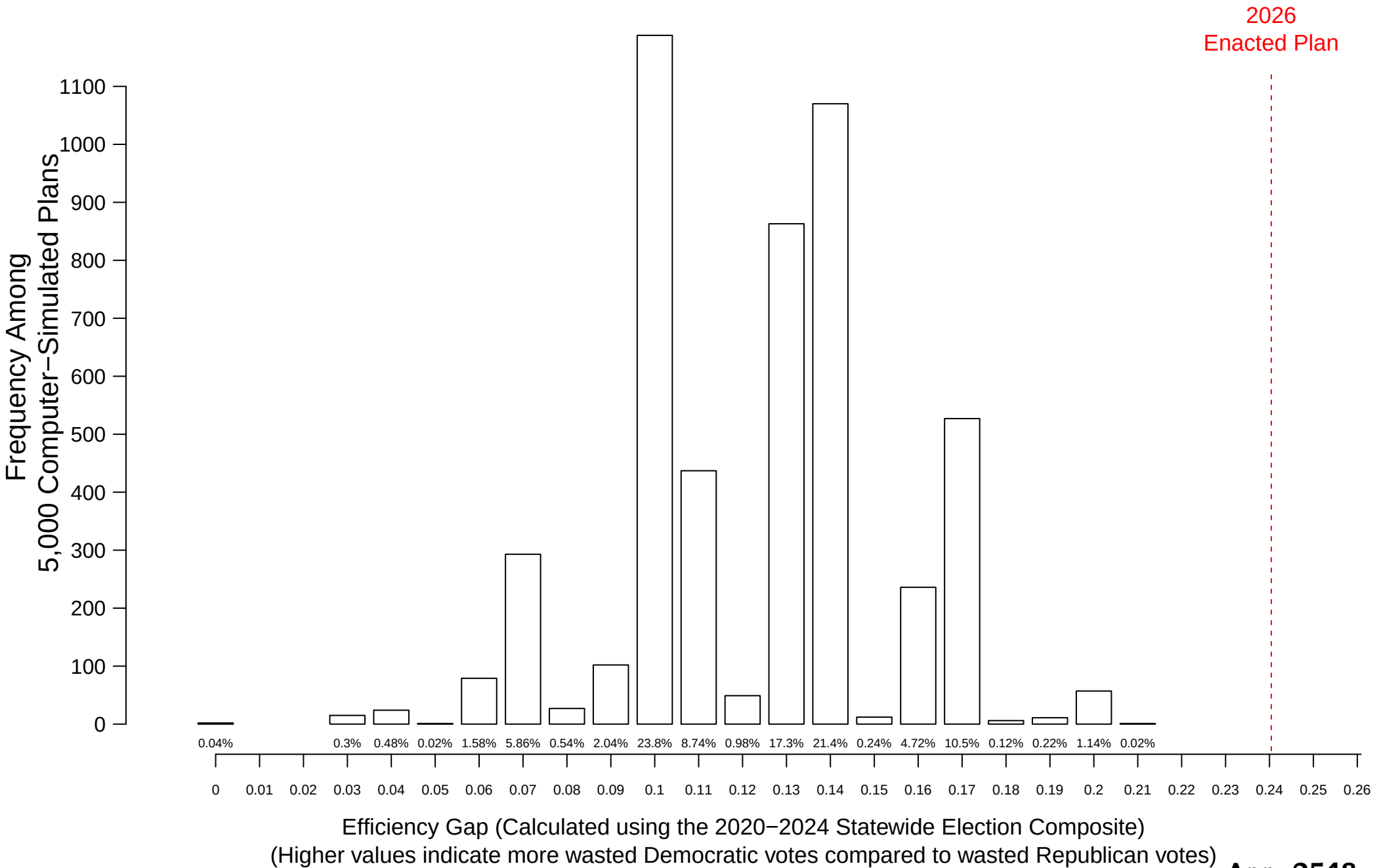


Figure 10B:
Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Vote Margins in Democratic versus Republican-Favoring Districts

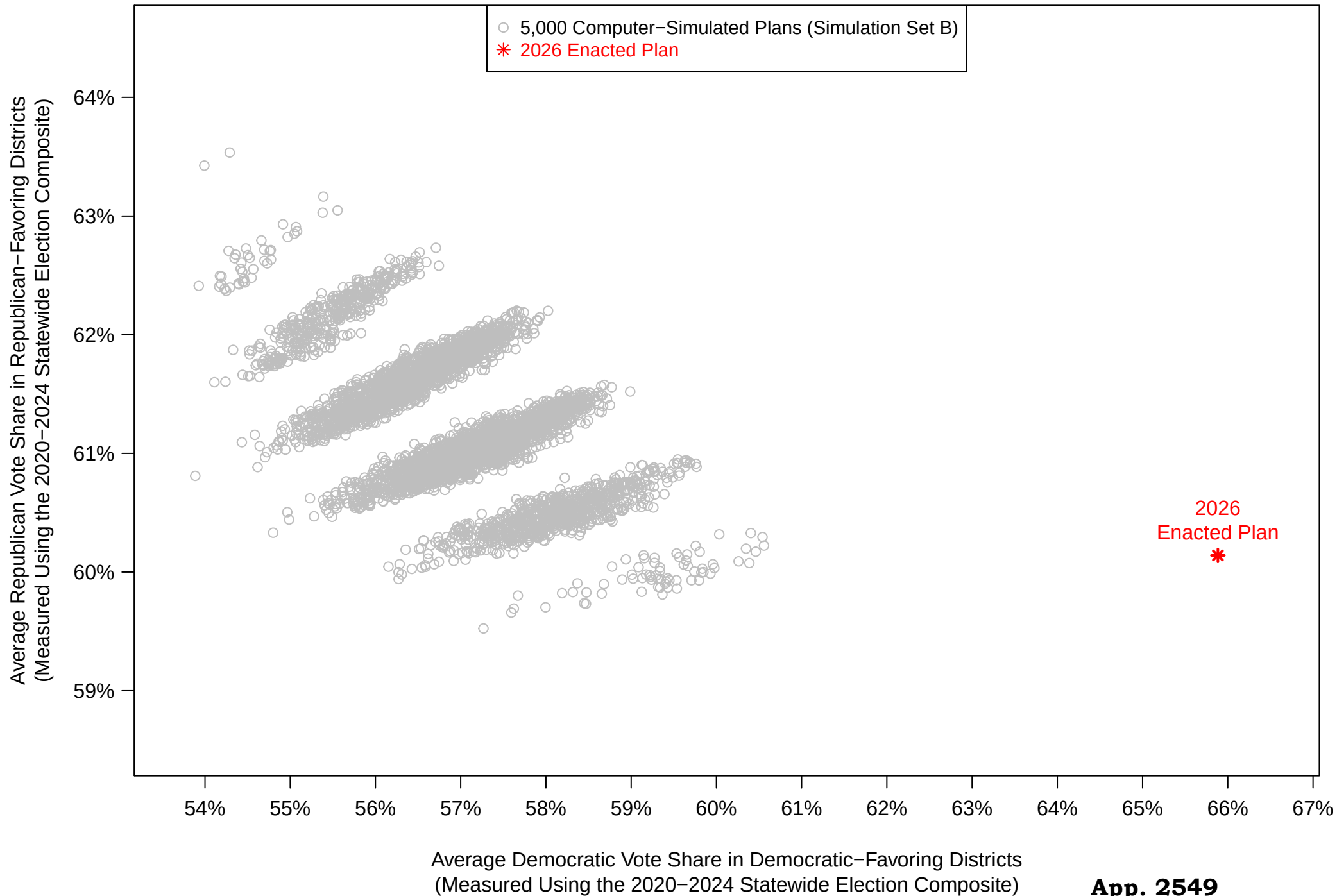


Figure 11B:
Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
on Lopsided Margins Measure and Compactness

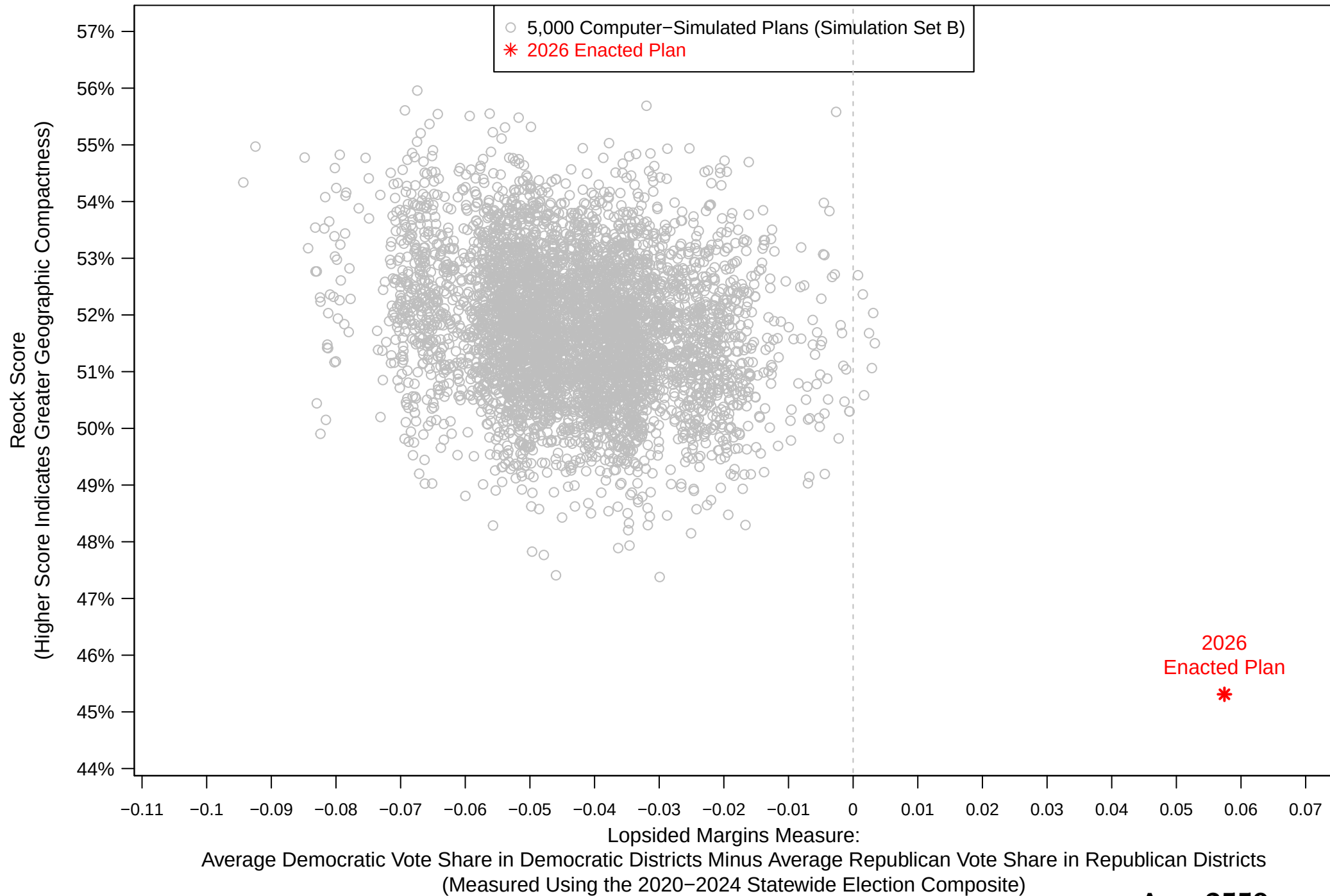


Figure 12B:
Comparisons of 2026 Enacted Plan to 5,000 Computer-Simulated Plans (Simulation Set B)
On Partisan Symmetry Based on Uniform Swing

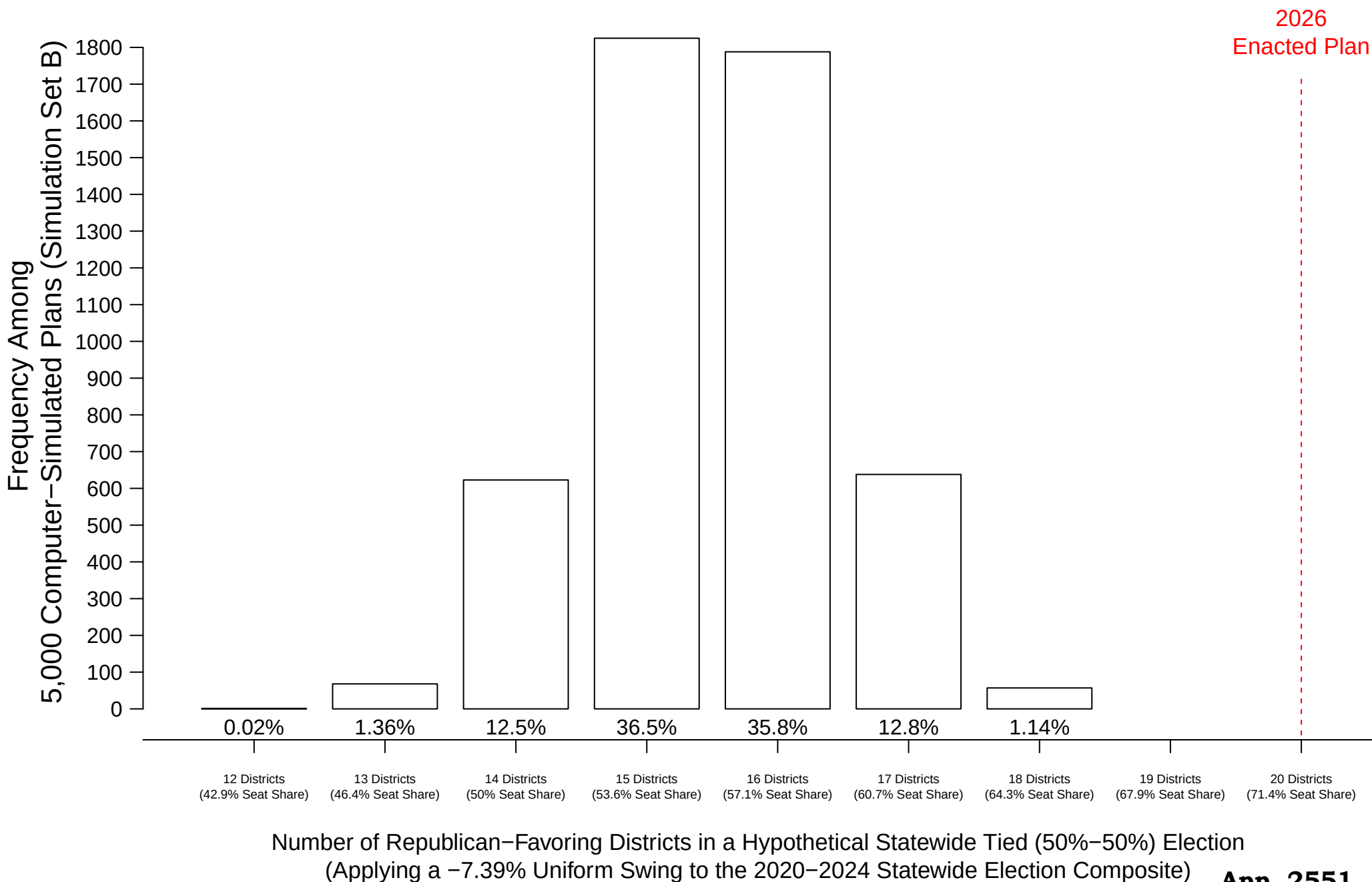


Exhibit 75

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.

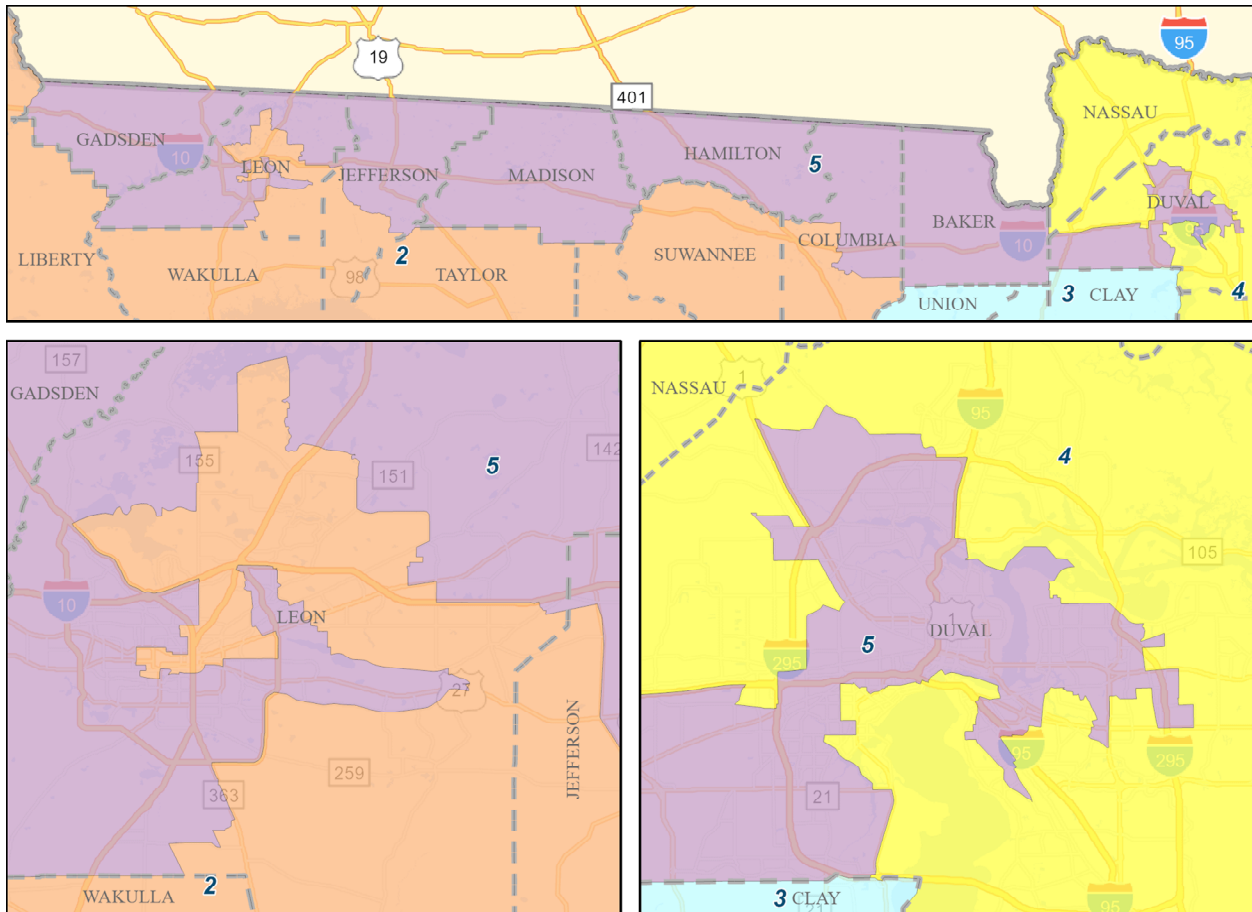
II. The Equal Protection concerns raised by the application of the non-diminishment requirement are limited to Benchmark Congressional District 5.

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

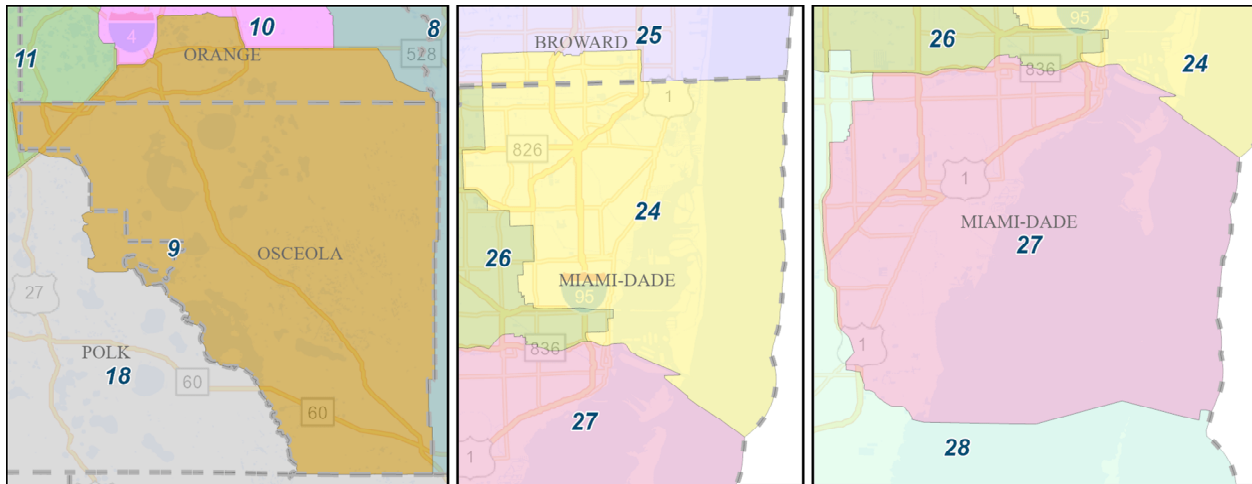
² Florida’s five “covered counties” were Collier, Hardee, Hendry, Hillsborough, and Monroe—none of which are in North Florida. *Apportionment I*, 83 So. 3d at 624.

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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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

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

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

Plaintiffs,

v.

Case No. 2026-CA-000914

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

Defendants.

**DEFENDANT SECRETARY OF STATE'S NOTICE OF FILING SUPPELEMENTAL EX-
HIBIT IN SUPPORT OF THE SECRETARY'S RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION**

The Florida Secretary of State gives notice of filing Supplemental Exhibit 14, attached hereto, to the Secretary's Response in Opposition to Plaintiffs' Motion for Temporary Injunction.

Exhibit 14	Supplemental Declaration of Maria Matthews, dated May 15, 2026

Dated: May 15, 2026

Respectfully submitted,

/s/ Mohammad O. Jazil
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EXHIBIT 14

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

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

Plaintiffs,

v.

Case No. 2026-CA-000914

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

Defendants.

SUPPLEMENTAL DECLARATION OF MARIA MATTHEWS

I, Maria Matthews, consistent with section 92.525, Florida Statutes (2026), hereby state:

1. I am over 18 years of age, am competent to testify, and declare the following facts based on my own personal knowledge.

2. This Declaration supplements my previous Declaration dated May 12, 2026, to provide more detail as to why May 25, 2026, is the Department's "drop-dead" date to have congressional districts in place for the 2026 election cycle.

3. As Director of the Division of Elections of the Department of State, I am responsible for overseeing candidate qualifying with the Division of Elections pursuant to sections 99.061, Florida Statutes.

4. While the official qualifying period in Florida for congressional candidates is set to begin at noon on Monday, **June 8, 2026**, and to close at noon on Friday, **June 12, 2026**, the Division will begin accepting qualifying items on **May 25, 2026** (even though that Monday is the Memorial Day Holiday). § 99.061(9), Fla. Stat. (2026). In addition to congressional candidates, candidates for the Florida House of Representatives, half of the Florida Senate, Governor, Attorney

General, Chief Financial Officer, Commissioner of Agriculture, and various multidistrict offices will also be qualifying during the same period.

5. In 2022, the redistricting maps and consequently, district office numbers, were in flux. This caused candidates for the U.S. House of Representatives and the Florida House and Senate to constantly redesignate their district office number or race as they saw opposing candidates jumping in and out of districts and between offices changing the competition. The work involved in redesignating candidates was in addition to the Division receiving, processing, and reviewing multiple times, qualifying items from over 787 candidates who sought to qualify during that qualifying period and contacting those candidates where missing or incomplete items were discovered (which is required by section 99.061(7)(b)). During all of that, the Division failed to catch that two congressional candidates had filed oaths for state office instead of oaths for the federal offices they sought. Litigation ensued. *See Judge v. Byrd*, No.: 2022 CA 001094 (Fla. 2d Jud. Cir.); *Moore v. Byrd*, No.: 2022 CA 001097 (Fla. 2d Jud. Cir.).

6. The Division expects to again receive, process, and review multiple times, qualifying items from hundreds of candidates and contact those candidates where missing or incomplete items are discovered. Five hundred seventy-nine (579) candidates for federal office, state House and Senate, and Governor and Cabinet have already indicated they intend to qualify in the upcoming June period and the 194 candidates for U.S. House have indicated a district number. You can find the list on the Division's Candidate Listing for the 2026 Election available at: <https://dos.elections.myflorida.com/candidates/CanList.asp>.

7. HB 991 also created additional qualifying criteria for candidates which necessitated emergency rulemaking to incorporate those requirements into the qualifying forms. *See* Ch. 2026-26, Laws of Fla.; 1SER26-02, Fla. Admin. Code; available at: <https://dos.fl.gov/elections/laws->

rules/rules/. Specifically, congressional candidates now have to also check multiple boxes to swear or affirm their dual citizenship and intention to trade stocks and past stock trading. Therefore, candidates are facing new substantive requirements (that if incorrect could result in disqualification *see* § 11, Ch. 2026-26, Laws of Fla.) and forms for the first time. And, the Division is consequently receiving more inquiries and spending more time communicating with candidates and reviewing qualifying items for completeness.

8. The Division will receive qualifying items from these candidates during the pre-qualifying period that begins on May 25, 2026—and, frankly, that extra time is necessary considering the volume of work required even if the districts didn’t fluctuate. The deadline by which my office needs to have a definitive answer on the maps being used is therefore Monday, **May 25, 2026**. This date also provides the 67 Supervisors of Elections time to perform their tasks, including obtaining approval from their respective county commissions for any precinct changes occasioned by redistricting.

Under penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true.

Executed this 15th day of May, 2026.

/s/ Maria Matthews
Maria Matthews
Director of the Division of Elections, Florida
Department of State

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

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 000914

GINO VACCARI, *et al.*,
Plaintiffs,

v.

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

Case No. 2026 CA 000925*

COMMON CAUSE, *et al.*,
Plaintiffs,

v.

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

Case No. 2026 CA 000928*

PLAINTIFFS' NOTICE OF FILING TRANSCRIPT OF HEARING ON MAY 15, 2026

Plaintiffs file this Notice of Filing the attached Transcript of Proceedings for the May 15, 2026 hearing on Plaintiffs' Motion for Temporary Injunction.

Dated: May 18, 2026

Respectfully submitted,

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* Consolidated under Case No. 2026 CA 0000914, per Order of Consolidation, dated May 14, 2026.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 18, 2026 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to all counsel of record.

/s/ Frederick S. Wermuth

Frederick S. Wermuth
Florida Bar No. 0184111

Counsel for Plaintiffs

IN THE CIRCUIT COURT OF 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.

GINO VACCARI, et al.,
Plaintiffs,

Case No. 2026-CA-000925

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

COMMON CAUSE, et al.,
Plaintiffs,

Case No. 2026-CA-000928

v.
RON DESANTIS, Florida
Governor, et al.
Defendants.

TRANSCRIPT OF PROCEEDINGS
(Plaintiffs' Motion for Temporary Injunction)

DATE TAKEN: May 15, 2026
TIME: 10:00 a.m. to 12:08 p.m.
PLACE: Via Zoom
BEFORE: HONORABLE JOSHUA HAWKES

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were stenographically reported by:

SANDRA L. NARGIZ
RPR, CM, CRR, CRC, CCR

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26 ALSO PRESENT:

27 (84 Participants on Zoom link)

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1 Proceedings began at 10:00 a.m.:

2 THE COURT: Ms. Nargiz, are you ready to
3 begin?

4 THE STENOGRAPHER: Yes, I am. Thank you.

5 THE COURT: All right. So we are going to
6 get started, going on the record, Case
7 2026-CA-942. It's a consolidated case, three
8 set of Plaintiffs, and the various Defendants.

9 I am going to start with the Plaintiffs'
10 appearances on record. We'll start with the
11 lowest case number, original case number.

12 MS. FORD: Good morning, Your honor, my
13 name is Christina Ford. I represent the Equal
14 Ground Plaintiffs. I am joined with multiple
15 co-counsel today, but I will be speaking this
16 morning.

17 THE COURT: All right. And next set is
18 Thompson-Wynn. Go ahead.

19 MS. LEEPER: Yes, Your Honor, Simone
20 Leeper, representing Thompson-Wynn Plaintiffs.
21 I am joined with co-counsel, but I will be the
22 one speaking today.

23 THE COURT: You said you will be?

24 MS. LEEPER: Yes, Your Honor.

25 THE COURT: All right. And the Common

1 Cause case?

2 MS. THELUSSM: Good morning, Your Honor,
3 Jennifer Thelussma representing Plaintiffs in
4 the Common Cause. Chris Shenton, who is my
5 co-counsel, will be speaking this morning. We
6 are also joined by multiple co-counsel.

7 THE COURT: Mr. Jazil.

8 MR. JAZIL: Thank you, Your Honor,
9 Mohammad Jazil for the Florida Secretary of
10 State.

11 THE COURT: And Florida Senate, is that
12 Shutts & Bowen?

13 MR. NORDBY: It is, Your Honor. Good
14 morning. Daniel Nordby and others for the
15 Florida Senate.

16 THE COURT: We have the Florida House.
17 You want to put your appearance?

18 MR. BARDOS: Good morning, Your Honor.
19 Andy Bardos for the Florida House. I'm joined
20 by my co-counsel, Carmen Manrara Cartaya.

21 THE COURT: We have had some other
22 Defendants in the Common Cause case. Are any
23 of those individuals represented separately?

24 MR. JAZIL: Your Honor, I have not entered
25 an appearance for the other Defendants, but I

1 will be representing the Governor and the
2 Attorney General in that case.

3 THE COURT: Okay.

4 MR. NORDBY: And Your Honor, I have not
5 entered an appearance in that case either for
6 the individual Senate defendants, but I will be
7 representing them.

8 THE COURT: Same, I guess, for you,
9 Mr. Bardos, and the House?

10 MR. BARDOS: Yes, Your Honor, I entered an
11 appearance on both cases.

12 THE COURT: All right. So what I kind of
13 wanted to start with was the evidentiary
14 issues, if any. So I guess I'll start with the
15 Defendants.

16 The Plaintiffs submitted a bunch of
17 exhibits. I was wondering if there are any
18 objections to any of those to be considered at
19 the preliminary injunction phase as evidence
20 and what evidence your record is going to look
21 like.

22 I will start with any objections from the
23 Defendants.

24 MR. JAZIL: Your Honor, Mohammad Jazil for
25 the Secretary of State.

1 Your Honor, I am aware of at least one DCA
2 case from Florida that adopts the Levi Strauss
3 test from the 11th Circuit, which allows for
4 hearsay to be considered so long as it has
5 sufficient indicia of reliability.

6 That said, if we follow that chain of case
7 law, it's inappropriate to have hearsay within
8 hearsay. So to the extent that there is
9 hearsay within hearsay in the materials that's
10 submitted, we would object to that.

11 Also, Your Honor, it is our position that
12 the expert reports do not have a sufficient
13 indicia of reliability, because I have not had
14 the opportunity to test the methodology; I have
15 not had an opportunity to assess whether or not
16 this material is appropriate.

17 And so for that reason, on the expert
18 material, I would object to its consideration
19 at this point. However, I am happy to address
20 the issues that come up as well, Your Honor.
21 Thank you.

22 THE COURT: Moving on to the Senate,
23 any --

24 MR. NORDBY: Nothing additional, Your
25 Honor.

1 THE COURT: Mr. Bardos, for the House?

2 MR. BARDOS: Nothing additional. Thank
3 you, Your Honor.

4 THE COURT: So I didn't really hear a
5 specific objection, other than the expert
6 reports. So that's more of, I guess, a Daubert
7 challenge, just for lack of time?

8 MR. JAZIL: Yes, sir, it's a Daubert
9 challenge and it's a hearsay within hearsay
10 challenge because the experts are being used to
11 essentially bring hearsay into the record,
12 which is appropriate so long as they are
13 appropriate experts. And we haven't gotten to
14 that point. So it's a Daubert and hearsay
15 within hearsay issue.

16 THE COURT: Ms. Ford, you want to respond
17 to anything?

18 MS. FORD: Sure, Your Honor. As I think
19 Your Honor is suggesting, the Rules of Evidence
20 are obviously relaxed in this proceeding. I
21 will note that Defendants had our expert
22 reports for a week before they responded to
23 them and their experts did have an opportunity
24 to weigh in on the conclusions that the experts
25 reached. And those expert reports were

1 submitted as sworn affidavits.

2 And I think this Court can absolutely
3 consider them. But as I will get into my
4 presentation, I think this case could also be
5 decided without the expert reports, if this
6 Court ended with any fundamental questions
7 about them.

8 THE COURT: Okay. So we have ninety
9 minutes. I am a little bit flexible on the
10 time, understanding that after the time was set
11 we consolidated two additional cases.

12 But I do want to give everybody equal
13 time. It seems we have three sets of
14 Plaintiffs, three sets of Defendants. So
15 that's obviously 45 minutes per side,
16 15 minutes per set.

17 Does anybody think that that time would be
18 insufficient or does everyone want to lump
19 their time in with somebody else?

20 I'm sorry, Ms. Ford, were you planning on,
21 I guess, something to say?

22 MS. FORD: You are correct, Your Honor,
23 that the Plaintiffs do intend to argue
24 sequentially in the order the cases were filed.
25 I think that 15 minutes is sufficient, Your

1 Honor, and would just ask for a little bit of
2 time in rebuttal at the end.

3 THE COURT: Okay. Is that fair for
4 defense then?

5 MR. JAZIL: Thank you, Your Honor. We
6 defer to the Plaintiffs on their division of
7 the time.

8 The Defendants have conferred, and because
9 the arguments overlap, Mr. Bardos, Mr. Nordby
10 and I have jointly agreed to me taking the bulk
11 of the time, but I would, however, like to
12 reserve five minutes for Mr. Nordby and
13 five minutes for Mr. Bardos.

14 So if we are going 45 minutes total, that
15 would be 35 for me, and the remainder for my
16 friends and colleagues for the House and
17 Senate.

18 THE COURT: All right. Sounds very
19 doable.

20 Ms. Ford, do you want to begin?

21 MS. FORD: Yes, thank you, Your Honor.

22 Once again, I represent the Equal Ground
23 Plaintiff, and we want to first thank the Court
24 for understanding the time sensitive nature for
25 this dispute and for swiftly setting the

1 hearing. We sincerely appreciate it.

2 Your Honor, this is a highly unusual case
3 with a simple solution. This case is unusual
4 because the map drawer admitted on the public
5 record that the districts were drawn with
6 partisan data and without the need to comply
7 with the Fair Districts Amendment.

8 This case is also unusual because in the
9 face of staggering evidence of partisan intent,
10 Defendants do not meaningfully attempt to rebut
11 that evidence. They do not defend how a single
12 line was drawn.

13 And this case is unusual because the
14 public officials who are tasked with defending
15 Florida's Constitution have decided not to
16 defend the Constitution at all, and instead to
17 argue that the voter-enacted amendment must
18 fall, even though there are obvious ways to
19 preserve it, ways that Florida courts are
20 required to employ here before striking down
21 laws, let alone a piece of the Constitution.

22 But for all of those reasons, this case is
23 also remarkably simple. This case is simple
24 because the violations of the Fair District
25 Amendment were announced in live legislative

1 session for everyone to see.

2 This case is simple because Defendants do
3 not attempt to justify the lines and the
4 districts that they drew. This does not end up
5 being a real battle of the facts or the
6 experts, and that makes it easy for the Court
7 to decide.

8 This case is simple because there are
9 obvious ways to preserve the amendment under
10 long-standing severability doctrine, even if
11 the Court were to decide that the amendment's
12 race provisions were not susceptible to a
13 saving construction as we show they are.

14 And finally, this case is a simple one
15 because there is a simple solution, and that is
16 to maintain the status quo by reverting to the
17 2022 plan, which is something that the Byrd v.
18 Black Voters Matter case explicitly endorsed.

19 And because there is, as I just mentioned,
20 three Plaintiff groups who will speak today, I
21 will focus my presentation on three topics,
22 although, of course, I am ready and willing to
23 address any specific topic the Court would like
24 to hear on.

25 But the three topics I plan to address

1 today are, one, Plaintiffs' evidence of
2 partisan intent, and specifically what evidence
3 Defendants do not rebut; two, why the amendment
4 is severable, even if a separate portion of the
5 amendment were somehow invalidated; and three,
6 why the Court has the authority to enter the
7 temporary injunction relief that Plaintiffs are
8 seeking.

9 So first on partisan intent, the evidence
10 here is staggering and Defendants barely
11 attempt to rebut it. I'd like to start with
12 the Secretary's suggestion that the 2026 plan
13 is entitled to a presumption of validity.

14 No such presumption should attach when the
15 plan's map drawer admitted before the
16 Legislature that he drew the plan, quote, not
17 having to comply with the Fair Districts
18 Amendment. That's Plaintiffs' Exhibit 12 at
19 23.

20 THE COURT: Doesn't that just overcome the
21 presumption? I mean, the presumption is still
22 there and then you have to overcome it, right?

23 MS. FORD: Yes, Your Honor, I would
24 contend that that is exactly what overcomes
25 that presumption; that presumption no longer

1 attaches when the map maker and the Governor's
2 Office have announced this map was drawn not in
3 compliance with the Fair Districts Amendment,
4 not having to comply with it.

5 If that does not break the presumption, I
6 don't know what would from the get-go.

7 THE COURT: Well, in context, do you think
8 maybe that Mr. Poreda was saying that he
9 doesn't have to comply with the Tier One race
10 base, so the majority/minority districts part
11 of Fair Districts?

12 There's a whole presentation, then there's
13 a question-and-answer portion. And your point
14 to the question-and-answer portion where he
15 says he didn't comply with Fair Districts.

16 But in the presentation portion, he kind
17 of lays out what he did, especially with the
18 Tier Two stuff, moving around the state and
19 starting on Congressional District 20,
20 correcting what he said were the race-based
21 parts of that district.

22 So doesn't, in context when he's saying I
23 didn't comply with Fair Districts, was meaning
24 I wasn't doing the Fair -- the
25 majority/minority aspect of that?

1 MS. FORD: Your Honor, I think the record
2 is clear that he went much further than that.
3 So the full quote on page number 23 of
4 Exhibit 12 is, when a Senator asks: How does
5 this comply with the Fair Districts Amendment,
6 he says: First, it doesn't have to. And he
7 says: So not using race and not having to
8 comply with the Fair Districts Amendment, the
9 entire suite of redistricting criteria that are
10 available to other states I used here,
11 including partisan data.

12 So that is an acknowledgment that partisan
13 data would not have been available to him as a
14 map maker in Florida, had he complied with the
15 amendment.

16 And I do think, to your point, on the
17 traditional redistricting criteria, like
18 compactness and boundary usage, there is a fine
19 distinction between Poreda acknowledging he was
20 aware of those other criteria, such as
21 compactness or following city or county lines,
22 and actually attempting to comply with them.
23 And I think the record would show quite
24 convincingly that the map maker did not
25 actually attempt to follow the mandate to draw

1 compact districts and to minimize boundary
2 splits where feasible.

3 I would like to return, though, to the
4 direct evidence in this case, just to
5 crystalize it for the Court, which is Poreda's
6 admission to using partisan data.

7 So in the response, Defendants gesture to
8 this idea that the use of partisan data doesn't
9 necessarily translate to partisan intent. But
10 none of the Defendants offer an alternative
11 explanation for what it would have been used
12 for other than ensuring one party has an
13 advantage.

14 Of course, the Governor's office, months
15 before the plan was even released, the Governor
16 himself explained that map makers are not
17 allowed to use partisan data. This was a
18 well-known thing, and there is just no other
19 credible explanation for what it could have
20 been used for.

21 And Your Honor, we contend that Poreda's
22 admission as well as the Governor's release of
23 this map as a color-coded victory lap for the
24 Republican party right before the legislative
25 session make this an open-and-shut case, for

1 the circumstantial evidence is staggering too.

2 Our complaint lays out seven -- our
3 motion, I should say, lays out seven categories
4 of circumstantial evidence and Defendants do
5 not actually contest any of them.

6 The first is the effects of the 2026 plan.
7 Plaintiffs' experts show that the 2026 plan
8 will demolish half of the existing seats that
9 can be expected to elect Democrats, from eight
10 to just four. Defendants don't contest that.

11 And Plaintiffs' experts showed that on
12 traditional measures of partisan bias, the 2026
13 plan is more extreme than 99 percent of all
14 plans enacted nationwide over the past 50
15 years. Defendants also don't contest that. At
16 most, Defendants say that some partisan bias
17 measures are better than others, but here they
18 all point in the same direction.

19 The second category is the shape of
20 district lines. If the Court just reads
21 through our memo or skims through the expert
22 reports, the Court will see in stark colors how
23 the 2026 plan is designed to pack and crack
24 Democrats.

25 I think the most visually striking example

1 of this is in South Florida where Districts 20
2 and 24 are blue islands that are surrounded by
3 Republican territory; and specifically
4 District 25, which is created as a coastal
5 district, that darts inland only to pick up
6 Republican territory, and it recedes when it
7 hits Democratic territory.

8 The most Defendants say here in response
9 to Plaintiffs' walk-through the packing and
10 cracking in every region of the map is that the
11 color coding of their map is misleading.

12 So Plaintiffs' expert, Dr. Rodden, used
13 the color coding that Defendants preferred and
14 we put that in the record yesterday. If
15 anything, the correspondence between District
16 boundaries and partisanship is even clearer
17 with the new maps.

18 The third criteria is the disregard for
19 Tier Two principles. And here Plaintiffs
20 showed how the decreases in compactness and
21 boundary usage are altered most dramatically --
22 decreased most dramatically in the specific
23 regions where partisanship has been altered the
24 most.

25 A sure fire example of this is CD 9, which

1 goes from a compact district in Central Florida
2 to a district that now spans from Orange County
3 all the way to Lake Okeechobee.

4 Another is the CD 25 district I just
5 mentioned that spans from Boca to Miami Beach,
6 that darts in and out of the coast to avoid
7 Democratic areas, and it is the least compact
8 district in the map.

9 Defendants do not address any of these
10 districts or even attempt to justify the
11 choices they made. Instead, they argue issues
12 of compactness and boundary usage are too fact
13 intensive for this Court to evaluate in this
14 proceeding. But, of course, the Florida
15 Supreme Court has done just that in expedited
16 facial reviews in Apportionment 1, for example.

17 The fourth category is alternate plans.
18 So Plaintiffs' expert Dr. Chen produced 5,000
19 computer-simulated plans that are race blind,
20 partisan blind, and comply with the Fair
21 District Amendment criteria.

22 Courts routinely find that computer
23 simulations are powerful evidence of partisan
24 intent, and Dr. Chen finds that the 2026 plan
25 is a partisan outlier on every measure that he

1 looks at.

2 And here Defendants attempted to have
3 someone evaluate Dr. Chen's simulations, but
4 their expert does not claim to have experience
5 in redistricting -- evaluating redistricting
6 simulations or algorithms, and consequently he
7 is not able to understand Dr. Chen's work or
8 substantively critique it. But of course, many
9 courts have relied on Dr. Chen's analysis.

10 The next factor is the sequence of events.
11 I will do this very briefly, but they are hard
12 to ignore, a nationwide tit-for-tat mid-decade
13 redistricting spree like this country has never
14 seen before, with a year of Republican national
15 and state leaders calling on Florida to join
16 the fray, and especially to respond to
17 Virginia. It is impossible to believe that a
18 partisan neutral map came out of this process.
19 And indeed, it did not.

20 Defendants act like this background is
21 wholly irrelevant, but they do not actually
22 dispute it.

23 Six is departure from normal procedure.
24 This cycle had multiple departures from the
25 normal course: The decision to redistrict

1 mid-decade in the first place, the fact that
2 there was no iterative map-drawing process for
3 the legislature or the public to weigh in on,
4 no real committee hearings to develop or
5 consider maps. The Defendants don't dispute
6 any of these facts or contest that they are
7 actually unusual.

8 And the last category of circumstantial
9 evidence are the pretextual explanations for
10 the 2026 plan. The Governor's office offered
11 two explanations.

12 The first is the need to address
13 population growth since 2020. But as
14 Plaintiffs' expert showed, that explanation
15 makes no sense. The 2022 plan and the 2026
16 plan use the 2020 census data to divide
17 population; it's therefore not possible for the
18 2026 plan to reflect population growth. Nor
19 did the 2026 plan's changes to districts
20 correlate at all with districts in areas that
21 have seen the most population growth. And once
22 again, Defendants don't defend the
23 justification at all.

24 The second explanation for the 2026 plan
25 is the need to have a race-neutral plan. But

1 neither Tampa Bay nor Central Florida had any
2 districts that would have been drawn
3 considering race in the 2022 plan, and yet
4 those regions were changed drastically, while
5 the South Florida Hispanic districts that the
6 Secretary suggests might be problematic were
7 left virtually untouched.

8 And, of course, as Dr. Chen's simulation
9 showed a race-neutral plan does not produce the
10 extreme partisan consequences the 2026 plan
11 creates, and Defendants once again do not
12 attempt to explain why a race-neutral plan
13 necessitates the 2026 plan's districts and its
14 extreme partisan consequences, and that's
15 because there is no justification for that.

16 Now, Your Honor, I would like to turn
17 quickly to why the amendment is severable. And
18 that would be true even if the Court were to
19 take the drastic measure of holding the race
20 provisions unconstitutional and all of their
21 applications, which as we explained in our
22 brief would be a dramatic departure from
23 Florida precedent requiring this Court to adopt
24 a saving construction when one is available.

25 Even if the Court were to disagree with us

1 on that, Defendants have a very heavy burden to
2 show the rest of the amendment is nonseverable.
3 And the presumption in favor of severability,
4 of course, applies to voter enacted amendments,
5 which we know from Ray v. Mortham.

6 THE COURT: I am just kind of struggling
7 on how we ever get to that. So I'd have to
8 find the partisan intent at the temporary
9 injunction stage and then, I guess, not issue
10 the injunction because I strike the whole Fair
11 Districts Amendment all at the temporary
12 injunction stage?

13 MS. FORD: Yes, Your Honor.

14 THE COURT: But by finding it
15 nonseverable -- it seems like a lot to do this
16 early in the case.

17 MS. FORD: Well, Your Honor, it's
18 Defendants, I think, who are asking you to do
19 something extraordinary, to strike an entire
20 amendment.

21 I think what is easy in this case is to
22 find that there are violations of the Fair
23 Districts Amendment and then the difficult
24 question -- or the difficult holding to reach,
25 I contend, would be to find, in fact, that the

1 entire amendment is unconstitutional and
2 nonseverable.

3 I agree that would be going quite far, and
4 it's simply not necessary under long-standing
5 presumptions of severability here.

6 I would like to address very quickly how
7 the Court should think about severability.

8 So Ray v. Mortham described the single
9 bottom line inquiry as whether the taint of the
10 illegal provision has affected the entire
11 enactment, requiring the whole unit to fall.
12 And I would like to be clear about what would
13 remain in the amendment without the race
14 provisions: A contiguity requirement, a
15 prohibition on favoring a political party or
16 incumbent, and equal population requirement, a
17 requirement to draw compact districts, and a
18 requirement to utilize political and geographic
19 boundaries. And there is just no credible
20 argument that those provisions can't
21 standalone. And here's how we know that.

22 One is that many other states have
23 requirements, like partisan gerrymandering
24 prohibitions and compactness and boundary
25 requirements, without any corresponding racial

1 protection. And those provisions work just
2 fine in those states.

3 The second is that the Florida
4 Supreme Court has invalidated districts solely
5 based on partisanship or Tier Two violations
6 without any need to interpret or apply the race
7 provision. And the Florida Supreme Court did
8 that in Apportionment 1 where it found
9 violations of the compactness and boundary
10 requirements in majority-like districts, for
11 example.

12 And third, this case itself is evidence of
13 it. Plaintiffs are only bringing partisanship
14 and Tier Two claims, and there would be no need
15 to discuss race at all if Defendants had not
16 brought race into this case to try to destroy
17 the amendment.

18 Next, Your Honor, very briefly I would
19 like to discuss why the Court can grant a TI
20 here. So this case comes to the Court in a
21 very different posture than the Plaintiffs came
22 to the Court in Byrd v. Black Voters Matter.
23 The difference in posture and the difference in
24 what the plaintiffs are seeking here as opposed
25 to four years ago makes all the difference.

1 The Plaintiffs in the Byrd case in 2022
2 did not have the option of proposing the former
3 Congressional plan as an option for temporary
4 relief. And that was because the plan was
5 drawn based on 2010 census data, and no party
6 contended it could actually be used. So the
7 Byrd plaintiffs proposed as a remedy a plan
8 that the legislature had considered but never
9 enacted. And Byrd obviously rejected that
10 proposal.

11 But Byrd teaches a few important lessons
12 that are applicable here. There are two.

13 The first, Byrd confirms that in this
14 litigation the 2022 plan is the status quo.
15 Byrd says the status quo is the condition that
16 existed before the subject matter of the center
17 of the present controversy arose, before the
18 challenged plan became law. That is the 2022
19 plan.

20 THE COURT: So I have a couple questions
21 on that.

22 So what happens if I just enjoin the 2026
23 map; I'd have to also order them to use the
24 2022 map? Or like, are they just in a state of
25 limbo and we have no Congressional districts

1 for this election?

2 MS. FORD: Your Honor, so what you would
3 do is you would restrain the Defendants from
4 implementing the 2026 plan, correct; and you
5 would order a temporary injunction requiring
6 the use of the 2022 plan. But that is not a
7 mandatory injunction.

8 THE COURT: That gets to my next question,
9 because it kind of feels like it is.

10 MS. FORD: So Byrd, I think, makes the
11 distinction quite clearly the difference
12 between a mandatory injunction, which would be
13 requiring a new plan, and maintaining the
14 status quo, which would be reverting to the
15 former Congressional plan.

16 So to the extent the Court has any concern
17 about that, I think Byrd resolves it, that in
18 this posture, reverting to the former
19 Congressional plan, is simply maintaining the
20 status quo. It is not a mandatory injunction.

21 I wanted to explain to Your Honor --

22 THE COURT: I do have to order the two
23 things, right? So I'd have to order one, the
24 2026 map can't used, and then two, that they
25 also must use the 2022 map?

1 MS. FORD: For clarity, Your Honor, I
2 think that would be appropriate. But I think
3 Byrd is clear that that is not a mandatory
4 injunction; it is a prohibitory one at its
5 fundamental nature.

6 The last thing I want to say, Your Honor,
7 is that the key to reading Byrd v. Black Voters
8 Matter from the First DCA is to understand just
9 how carefully it's making the distinction
10 between the appropriate relief in a TI
11 proceeding, which is a temporary injunction
12 maintaining the status quo, versus an
13 affirmative remedy, which is a new plan.

14 And all of the precedent that Defendants
15 invoke from Byrd to argue why the Plaintiffs
16 here are not entitled to a TI are simply quotes
17 from Byrd explaining why the Plaintiffs there
18 were not entitled to a remedy, a new plan.

19 So if the Court reads Byrd with that
20 understanding, that whenever Byrd uses the word
21 "remedy," it is distinguishing it from a
22 temporary injunction maintaining the status
23 quo, Byrd is easy to understand and it supports
24 the Court's authority here to issue the
25 temporary relief that Plaintiffs are seeking.

1 And Your Honor, I suspect I have used my
2 time.

3 THE COURT: I interrupted a couple of
4 times, but you did pretty well.

5 So I will move on to the Thompson-Wynn,
6 it's Ms. Leeper.

7 MS. LEEPER: Yes, Your Honor.

8 THE COURT: Go ahead.

9 MS. LEEPER: Your Honor, I agree with my
10 colleague before me that the matter before the
11 Court today is ultimately a simple one. There
12 is clear text and clear precedent set out by
13 the Florida Supreme Court. And when that
14 precedent and text is applied to the voluminous
15 evidence that has been presented by Plaintiffs
16 in the matter, it becomes clear that the 2026
17 plan violates the Fair Districts Amendment.

18 Now, Your Honor, we have limited time here
19 today, so I am not going to get into the full
20 arguments and all of the evidence that's in
21 Plaintiffs' briefing and supporting exhibits,
22 but I would like to highlight a few points for
23 you.

24 First is I would like to talk, as my
25 colleague did, about the use of partisan data

1 in the creation of the 2026 plan. When we are
2 considering the intent as relevant for the FDA,
3 the Florida Supreme Court has made clear that
4 you look at the intent of the map drawer. Tier
5 was adopted in whole by the Legislature.

6 The map drawer here disclaimed any need to
7 comply with the Fair Districts Amendments and
8 then openly admitted to using partisan data in
9 the creation of each and every district in the
10 plan.

11 The Florida Supreme Court has been clear
12 that there is a single permissible reason to
13 look at partisan data, which would be the use
14 of partisan data to evaluate compliance with
15 the race-related Tier One requirement. But
16 here the map drawer explicitly disclaimed any
17 such purpose.

18 What's left then is the consideration of
19 partisan data with no justification. And the
20 Florida Supreme Court has been clear that there
21 is no acceptable level of improper intent.

22 Your Honor, zooming in on some of the
23 specific districts here and looking
24 particularly at what the usage of that partisan
25 data ended up creating, if we look at the

1 cities of Tampa and Orlando, the map drawer
2 admitted that they're the only two large cities
3 in the entire state which are split into three
4 pieces. The effect of that splitting, Your
5 Honor, is the cracking of the sole Democratic
6 district that remained in the Tampa Bay region
7 and the cracking of one of the two Democratic
8 districts in Central Florida.

9 Looking at Tampa, the Tampa Bay area that
10 was previously joined in CD 14 has been split
11 across five new Congressional districts. Look
12 at one of them. CD 15 now reaches all the way
13 up from in Citrus and Hernando counties,
14 through Pasco, into Hillsborough County, to
15 take its slice of the Tampa city core.

16 Looking at the Secretary of State's own
17 briefing, they highlight how claims that have
18 hook-like shapes like this, districts that have
19 hook-like shapes are constitutionally suspect
20 and often indicative of racial and partisan
21 gerrymandering.

22 Here it's not just indicative, we know
23 that the map drawer was looking at that data
24 and then it had the intended outcome.

25 This isn't just true in the Tampa Bay

1 area. It's true across the entire plan where
2 there was a statewide dismantling of Democratic
3 districts, paired with a statewide preservation
4 to the greatest extent possible of Republican
5 districts.

6 The Tier Two requirements, rather than
7 providing any sort of reasoning for these
8 dismantling and preservations, instead it
9 provided additional evidence of partisan intent
10 as well as being their own standalone
11 violation.

12 So Your Honor, with the voluminous
13 evidence of direct and circumstantial evidence
14 indicating partisan intent, the burden then
15 shifts to the Defendants to justify the
16 configuration of the districts in this plan.

17 But nowhere in any of their briefs do
18 Defendants provide any proactive justifications
19 for the redistricting or for the configurations
20 of the specific challenged districts.

21 Your Honor, looking at the justifications
22 that were offered by the map drawer before the
23 legislature and echoed by the Legislature on
24 the floor, looking to the first justification
25 of a perceived malapportionment potentially as

1 a result of the 2020 census.

2 As required by Florida law, the 2026 plan
3 uses the same 2020 census data as the 2022 plan
4 and is equally apportioned, equally population
5 using that data.

6 But even when you look at the updated 2024
7 census American Community Survey data, the 2026
8 plan's deviation is actually higher than the
9 deviation in the 2022 plan, showing that this
10 justification cannot explain the configuration
11 of these districts.

12 Turning Your Honor to the second offered
13 justification, which is the concept that there
14 needed to be a reconfiguration of some
15 districts that previously considered race.
16 Your Honor, no state or federal court has found
17 that the 2020 plan violates state or federal
18 law. In fact, Defendants have been and are
19 still in Court defending the constitutionality
20 of the plan.

21 The 2022 plan does have a presumption of
22 validity, and the burden here would be on the
23 challengers of any district in that plan to
24 make the burdensome showing required to argue
25 racial gerrymandering. Here that burden has

1 certainly not been met.

2 Regardless, Your Honor, any justification
3 related to the redrawing of districts that
4 consider race would provide no justification
5 for the redrawing of the districts in the Tampa
6 Bay and Central Florida areas, which the 2022
7 map maker explicitly disclaimed the usage of
8 race in their creation.

9 Your Honor, having presented robust
10 evidence of unlawful partisan intent and the
11 Defendants having provided no sufficient
12 justification, it's clear that the equities
13 here favor a temporary injunction.

14 Plaintiffs and Florida voters will face
15 irreparable harm if the 2026 election goes
16 forward under unlawful districts, and the
17 public interest here, Your Honor, is a
18 vindication of their self-secured
19 constitutional rights.

20 Here, Your Honor, the Legislature has
21 unclean hands to claim any injury for the
22 timing of this redistricting because that
23 timing is of their own making. And we know
24 that all election Supervisors were instructed
25 to maintain the 2022 plan in the event that a

1 Court ordered the return to it.

2 Your Honor, I would like to turn now and
3 briefly address the severability of the FDA.
4 Your Honor, you do not need to reach the
5 question of whether the FDA is severable to
6 decide the matter that is in front of you
7 today. No Plaintiffs have brought any claims
8 under the race-related provision of the FDA.

9 And Your Honor, looking to recent
10 Supreme Court precedent, Callais did not
11 invalidate section two; instead interpreting it
12 to be in line with the Federal Constitution.

13 Here in Florida, courts have an obligation
14 to do the same, to interpret a law in a way
15 that preserves its constitutionality and to
16 interpret in particular the race-related
17 provision of the FDA in line with federal
18 precedent.

19 So there is no reason to believe -- you do
20 not need to reach the question, and there is no
21 reason to believe that if you did, it would
22 fall in its favor, in the Defendants' favor.

23 If you choose to reach this question, the
24 burden is on the party claiming the provisions
25 are not severable. The Defendants here have

1 not come close to meeting that burden.

2 The Plaintiffs have presented voluminous
3 evidence about the intent of the voters in
4 passing the FDA. This came from Plaintiffs'
5 expert as well as from Defendants' own expert
6 in prior proceedings.

7 The animating purpose for voters in
8 passing the FDA, Your Honor, was to outlaw
9 partisan gerrymandering. Defendants have
10 presented the statement of the sponsor of
11 initiative campaign at a single legislative
12 hearing and the statements of a single
13 endorsing organization. But they have done
14 nothing to refute the voluminous evidence of
15 the statements of proponents for the FDA in
16 public clearly declaring the purpose.

17 And in addition, Your Honor, they have not
18 even addressed the robust evidence that
19 editorials from newspapers across the entire
20 state, which I know, as a Florida voter, often
21 find myself turning to to look at the matter of
22 whether or not a provision -- what it's
23 covering, what it means.

24 That's where voters look and those
25 editorials uniformly address the fact that the

1 FDA was meant to end partisan gerrymandering.

2 Your Honor, to the extent even that the
3 purpose was, as Defendants claim, to create
4 standards for Congressional redistricting, that
5 too can be realized without the FDA's race
6 related provisions. And it makes sense then
7 that the Senate sponsor of the 2026 plan
8 disclaimed the concept that the FDA was not
9 severable.

10 Your Honor, it is clear here that the
11 Plaintiffs have met their burden to show that
12 the requested relief is appropriate and is
13 justified. And in contrast, every time in
14 which the burden has shifted to Defendants,
15 they have failed to meet that burden.

16 And for that reason, Your Honor, we
17 request that you grant the Plaintiffs' motion.

18 I will reserve the remainder of my time
19 for rebuttal, unless you have any questions.

20 THE COURT: Okay. Thank you. And then
21 Mr. Shenton.

22 MR. SHENTON: Yes, Your Honor. Thank you.
23 I want to echo my colleague's comment to the
24 Court for making itself available on this
25 timeline to hear this matter. We know that's a

1 lot of work and we appreciate it.

2 I'm going to do my best to try not to
3 repeat my colleagues or go over ground that
4 we've already covered, but there are a couple
5 of things I want to pull out.

6 First, we have heard a lot about the map
7 drawer's testimony and the legislature and the
8 circumstantial evidence of improper partisan
9 intent. And I want to take a step back and
10 apply that to the standard that the Florida
11 Supreme Court has laid out for applying Article
12 III, Section 20. And my colleague, Ms. Leeper,
13 touched on it at the end of her presentation.

14 It's that idea any level of improper
15 partisan intent is too much to avoid
16 constitutional scrutiny. That does not end the
17 inquiry. The Florida Supreme Court has not
18 said if you can show any indicia of
19 partisanship anywhere in the plan, that that
20 therefore means the plan is automatically
21 unconstitutional under Article III, Section 20.
22 But what it does do is trigger the burden
23 shifting process.

24 If you can show even an indicia of
25 partisan intent, because any improper intent is

1 too much, the burden shifts to the proponents
2 of the challenged plan in order to justify that
3 plan's configuration in neutral, nonpartisan,
4 permissible terms.

5 If there is not much partisan intent in
6 the plan, that won't be a difficult thing to do
7 because there will be readily available, clear,
8 obvious explanations for the configurations of
9 the districts that are sufficient to pass
10 muster under Article III, Section 20.

11 That's not the case here. As you heard my
12 colleagues talk about, there is no real attempt
13 to defend any particular configuration of the
14 challenged plan, particularly in the areas that
15 the plan makes amendments to the 2022
16 Congressional districts that were in place for
17 the last two elections.

18 So you don't have to find that the
19 Legislature had an overriding purpose; you
20 don't have to find that the map drawer had an
21 overriding partisan purpose. All you need to
22 do is find partisan purpose showed up somewhere
23 in this map drawing process sufficient to
24 trigger that constitutional scrutiny.

25 And the reason for that is important.

1 It's because the voters of Florida, when they
2 enacted the Fair Districts Amendments in 2010,
3 made a clear proclamation that any level of
4 partisan unfairness in the redistricting plan
5 was too much to tolerate. They did not want it
6 in their challenged plans. They did not want
7 it in their redistricting. They were tired of
8 it. They had seen it happen over and over
9 again.

10 My clients worked hard to pass those
11 amendments and to defend those amendments in
12 the immediate litigation that followed,
13 specifically because they were so tired of that
14 process. They're so tired of seeing the
15 partisan favoritism over and over again. That
16 is why these amendments are in the State
17 Constitution.

18 And so pursuant to that command, that
19 limitation that the voters of Florida placed on
20 the legislature, the Florida Supreme Court has
21 said that any level of improper intent is too
22 much.

23 And that doesn't end the inquiry. Like I
24 said, it just requires the Legislature to
25 justify their choices in terms that are

1 permissible under Article III, Section 20. But
2 as we have seen, they cannot do that.

3 You've heard a lot about the
4 configurations of various districts in the
5 three parts of the plan that changed
6 dramatically, so I won't go super into detail
7 into those. I will like to instead talk about
8 those neutral justifications that have been
9 offered by the map drawer and the Legislature
10 in the legislative process for the 2026 plan.

11 None of those rationales hold weight when
12 you look at the challenged plan itself. As my
13 colleagues have discussed, they have some shaky
14 tendencies with respect to whether they hold up
15 as a theoretical matter; but even beyond those,
16 it's clear that the challenged plan doesn't
17 actually do those things, it doesn't serve the
18 purposes that were offered.

19 Let's start with the population example.

20 Mr. Poreda testified that the challenged
21 plan was designed to better account for
22 population growth within the state that has
23 occurred since the 2020 census. He testified
24 that the plan uses 2020 census data because
25 that is required under federal

1 one-person/one-vote principles.

2 But he also testified that while
3 equalizing with that 2020 data, he made some
4 effort to account for where population growth
5 had occurred in the state using two sources of
6 updated population estimates: The U.S. Census
7 Bureau American Community Survey, which is
8 issued every two years, and then and state EDR
9 estimates that give population growth estimates
10 for different counties within the state.

11 But if you apply those population
12 estimates to the challenged plan, you see that
13 the challenged plan doesn't actually make any
14 attempt to account for them. As our expert
15 Dr. Duchin explains, if you apply the ACS
16 estimate, which are the only estimates that you
17 can apply at a district level, to the 2026 plan
18 and the 2022 plan, what you would expect to see
19 is that the 2026 plan, if it's really taking
20 into account these updated population metrics,
21 equalizes districts using those estimates; it
22 gets closer. So it's not going to be perfect
23 because it has to use 2022 data, but it gets
24 closer, it's making some effort to account for
25 those population changes and trying to

1 equalize, smooth things out.

2 But instead you see it get worse. The
3 disparity actually grows in the 2026 plan using
4 those estimates as compared to the 2022 plan.
5 This shows that the challenged plan is not
6 accounting for smoothing out population growth,
7 it's exacerbating that population growth.

8 And this is clear when we pull out
9 examples. Mr. Poreda was asked about St. Johns
10 County in Northeast Florida, which he
11 identified in his testimony to the Legislature
12 as the fastest growing county in the state.
13 But the Congressional districts for St. Johns
14 County don't change at all. And he was asked
15 about this: How are you accounting for
16 population growth if you are not making any
17 changes in St. Johns County?

18 And Mr. Poreda testified: Well, St. Johns
19 is absolutely growing quickly but we wanted to
20 make as few changes as possible, and it wasn't
21 worth changing St. Johns and not knowing how it
22 would affect the surrounding counties which may
23 not have grown as fast.

24 That explanation falls apart on multiple
25 levels.

1 First, a neighboring county of St. Johns,
2 Duval, was also growing quite quickly; it also
3 saw no change between 2022 and 2026.

4 Conversely, another county that Mr. Poreda
5 identified as growing quickly, Hillsborough
6 County, does see changes both in itself and in
7 its neighbor, including its neighbor of
8 Pinellas County, which is one of the slowest
9 growing counties in the state. So if St. Johns
10 was not changed so it didn't impact
11 slow-growing neighbors, why was Hillsborough
12 changed and impacting its slow-growing neighbor
13 in Pinellas County?

14 The reason is because in Northeast
15 Florida, there is no Congressional district
16 held by a Republican and, therefore, no need
17 for a map drawer who is trying to partisan
18 gerrymander to tweak those districts even a
19 little bit.

20 THE COURT: You may have misspoke. You
21 said not held by a Republican. You meant not
22 held by a Democrat?

23 MR. SHENTON: Yes, Your Honor. Thank you.
24 There's no district in Northeast Florida held
25 by a Democrat, so there is no reason to change

1 those districts if your goal is to favor
2 Republicans.

3 Whereas in the Tampa area, there is a
4 Congressional district held by a Democrat.
5 It's anchored in Hillsborough County, and there
6 is plenty of reason for a partisan gerrymander
7 to target that district if its goal is to
8 disfavor Democrats and favor Republicans as the
9 challenged plan does.

10 So even on its own terms, taking into
11 account that population data doesn't hold up as
12 an explanation for the challenged plan.

13 The second explanation offered, the need
14 to draw race-neutral, also does not hold up.
15 Setting aside entirely whether such a move was
16 justified or necessary under federal or state
17 law, it does not explain what the challenged
18 plan does.

19 In the transmittal letter submitting the
20 challenged plan to the Legislature, the map
21 drawer identifies one district in particular,
22 Congressional District 20, as in need of
23 redrawing for race-neutral -- to make it
24 race-neutral. It says the shape is weird; we
25 would suggest it shows racial predominance.

1 They don't actually go so far as to say it
2 shows racial predominance, but they say we
3 needed to redraw.

4 And Mr. Poreda testified to the
5 Legislature that this resulted in a whole wave
6 of changes in South Florida. But this is the
7 only reason that he offered for redrawing the
8 South Florida area.

9 As my colleague, Ms. Leeper, explained
10 there is no justification for redrawing in
11 Central Florida or in Tampa Bay, because none
12 of those districts were contended to have been
13 drawn with the consideration of race
14 whatsoever. But in South Florida, we see that
15 explanation again fall apart on multiple
16 levels.

17 If Mr. Poreda's true intention was simply
18 to make Congressional District 20 more Tier Two
19 compliant, to have a better respect for
20 political subdivision boundaries, to make it
21 more compact, he could have done so. Our
22 expert, Mr. Bill Cooper, shows that if your
23 true goal is to change Congressional District
24 20 and, as Mr. Poreda testified, to make as few
25 changes as possible throughout the map, that

1 you could do so, and you could do so modifying
2 only three districts.

3 Mr. Cooper put in his report that this is
4 the easiest redistricting task that he's ever
5 undertaken, and Mr. Cooper has been working on
6 redistricting litigation for over 30 years.
7 He's engaged in dozens of cases, has been
8 appointed by courts to draw remedial plans in a
9 variety of contexts, including race-neutral
10 contexts, and he said: This is quite easy.
11 I've never had an ask quite so simple, and it
12 doesn't require me to change very much at all.

13 So the fact that Mr. Poreda chose not to
14 make minimal changes but instead to wholesale
15 redraw South Florida indicates that something
16 more was going on.

17 Additionally, Mr. Poreda expressly
18 declined to reconfigure at least two districts
19 that were concededly drawn with race
20 consciousness in South Florida in the 2022
21 plan. That's specifically Congressional
22 Districts 27 and 28, which the legislature
23 relied on race to draw in 2022, and remained
24 virtually unchanged in the 2026 plan.

25 If your true goal is a race-neutral

1 redraw, you would expect to see changes in
2 these areas because you'd want to remove the
3 consideration of race.

4 Again, that's not what the challenged plan
5 does. The reason the challenged plan does that
6 is because its goal is to target Democrats and
7 favor Republicans.

8 And the last point that I want to hit on
9 before I reserve some time for rebuttal is we
10 hear how there are four Democratic districts
11 that are targeted for flips between the 2022
12 and 2026 plans. And I want to talk a little
13 bit about the mechanism by which the plan
14 achieves that.

15 If you look at the cores of the districts
16 that are retained, a goal that Mr. Poreda said
17 was important to him, to try and minimize the
18 changes as much as possible between the 2022
19 and 2026 plan, you see a huge partisan
20 imbalance between the core retention rates of
21 districts held by Republicans, which are held
22 largely stable, as compared to the core
23 retention rates of districts held by Democrats,
24 which are majorly disrupted.

25 You see 82 percent of voters who were in

1 Republican-held districts in the 2022 plan are
2 in the same Republican-held districts in the
3 2026 plan. But half that number, 41 percent of
4 those voters, voters in Democratic-held
5 Congressional districts are in the same
6 district between 2022 and 2026.

7 What does this show? It shows that
8 Democratic districts are being targeted for
9 reconfiguration. And why? To favor
10 Republicans and disfavor Democrats.

11 That is unconstitutional under Article
12 III, Section 20, and that is what we are here
13 today respectfully seeking the Court's issuance
14 of a temporary injunction to prevent.

15 I want to touch very briefly, before I
16 reserve the rest of my time for rebuttal, on
17 the availability of the temporary injunction
18 here.

19 The temporary injunction Plaintiffs seek
20 is available here pursuant to Article V,
21 Section 5B of the Florida Constitution. That
22 section allows for the issuance of a writ of
23 injunction, a temporary injunction, to maintain
24 the Court's jurisdiction during the pendency of
25 the litigation.

1 And here, Plaintiffs ask for nothing more
2 than the maintenance of the status quo. The
3 Byrd case talks at length about what the status
4 quo is in a redistricting case. And it makes
5 clear, the status quo is the previously enacted
6 redistricting plan that was in effect before
7 the challenge enactment.

8 Now if the Court grants the temporary
9 injunction here, because this came up earlier,
10 I want to be clear. This is a pure prohibitory
11 injunction because all the Court needs to do is
12 enjoin the bill that gives the challenged plans
13 boundaries. The reason for that is because
14 that bill amends the previous plan to use the
15 updated boundaries.

16 So enjoining that bill would necessarily
17 enjoin those amendments and thus revert to the
18 challenged plan's boundary -- or the 2022
19 plan's boundaries.

20 Second, and more importantly here, the
21 temporary injunction can only be issued if the
22 status quo is constitutionally available. This
23 is what the Byrd Court talked at length about.

24 Here, the status quo is undeniably
25 constitutionally available. It has been used

1 in the last two Congressional elections. It
2 uses the most updated federal Decennial Census
3 data, and it has survived multiple legal
4 challenges under both the state and federal
5 constitutions.

6 There is no reason to think that that
7 status quo could not be lawfully used, and
8 there is every reason to think that that status
9 quo should be maintained during the pendency of
10 this litigation.

11 I'll end by concluding or noting, rather,
12 that the issuance of a temporary injunction
13 does not require this Court to adjudicate
14 anything definitively. It is a writ issued in
15 furtherance of this Court's jurisdiction to
16 hear the challenge.

17 This Court does not have to decide any
18 merits issued definitively in order to issue a
19 temporary injunction. All this Court needs to
20 find is that the status quo should be
21 maintained during the pendency of this
22 litigation. In other words, the Defendants
23 will have their opportunity to prove that the
24 Fair Districts Amendments are unconstitutional
25 in all applications and inseverable. But they

1 are not entitled to do so without a final Court
2 determination proving that. They have that
3 opportunity to show that.

4 But the people of Florida enacted these
5 standards into their constitution for a reason,
6 and they are entitled to have those standards
7 enforced until such time as the merits -- a
8 Court of competent jurisdiction declares on the
9 merits that those amendments are inseverable
10 and unconstitutional in all applications.

11 At this point, I would like to reserve the
12 rest of my time for rebuttal.

13 Thank you, Your Honor.

14 THE COURT: I have just have one question.
15 The prior litigation, does that -- did it ever
16 challenge or defend Congressional District 20
17 specifically or is it around other things?

18 MR. SHENTON: I would have to go back to
19 the papers to be sure, Your Honor.

20 My recollection is that those districts
21 were at least talked about in that litigation,
22 but I could not speak to the certainty of what
23 was finally adjudicated, because I know those
24 challenges were narrowed in an effort to obtain
25 final resolution, and I couldn't speak for

1 sure.

2 THE COURT: Okay. Mr. Jazil, you ready
3 now?

4 MR. JAZIL: Thank you, Your Honor. And
5 may it please the Court, Mohammad Jazil for the
6 Secretary of State.

7 To first answer Your Honor's question,
8 Congressional District 20 was never challenged
9 in State or Federal Court, not in The Common
10 Cause case, not in Black Voters Matter, not in
11 the Cubano's case in the Southern District. So
12 it was never subject to a challenge in any of
13 the cases that have happened so far.

14 Next, Your Honor, to level set, I note
15 that the Legislature is the one that is the
16 first judge of the proper exercise of its
17 constitutional powers, including its superior
18 obligation to ensure that the legislation that
19 passes is consistent with the Federal
20 Constitution.

21 Second, Your Honor, I'd like to reorient
22 the Court and discuss the BVM decision and --
23 from the First DCA and the BVM decision from
24 the Florida Supreme Court to talk about what
25 this Court can and cannot do.

1 Your Honor, the BVM 1 decision made clear
2 that in a declaratory judgment action, which is
3 what all of these cases are, the declaration is
4 the relief; it's the final relief, it's the one
5 that the Court can issue only after a full
6 trial on the merits and after issuing the
7 declaration, and only after issuing the
8 declaration can the Court issue an injunction.

9 So when we are talking about dec
10 judgments, we have to go through a trial, we
11 have to have a declaration, then we get an
12 injunction. Now --

13 THE COURT: Let me pause you on that.
14 Let's make it a little more obvious. Let's say
15 on this redraw they put 24 seats up in the
16 Panhandle and they save four for the rest of
17 the state; and because they like the
18 Everglades, they give the Everglades one, too.
19 So that leaves three for Orlando, Tampa and
20 Miami.

21 Clearly unconstitutional, a lot of people
22 in the state aren't going to get to vote.

23 Are you saying there is no intermediate
24 relief for that? You'd have to go through the
25 trial process before you enjoin and go back to

1 the last maps?

2 MR. JAZIL: No, Your Honor, that's not
3 quite what I am saying.

4 Now I would like to move on to the
5 remainder of BVM 1. So BVM 1, if we cabin the
6 dec judgments discussion, then there is a
7 discussion of the Court's all-writ
8 jurisdiction, which is what my friend
9 Mr. Shenton brought up earlier. Under the
10 all-writt jurisdiction, the Court can go back
11 to a status quo if the status quo is an
12 appropriate status quo.

13 So if we are doing a mid cycle
14 redistricting, in the example Your Honor, gave,
15 we draw a district like that, you can try to
16 revert back to the preexisting map as the
17 status quo, but BVM 2 says that because the
18 preexisting map, the status quo map, the 2022
19 map in this instance, is the alternative that's
20 being pushed, BVM 2 puts the burden on the
21 Plaintiffs to show that the alternative plan,
22 in this instance the 2022 plan, is an
23 appropriate viable status quo, that it's an
24 appropriate map.

25 And that was part of the problem in 2022.

1 When the Circuit Court decided that it was
2 going to impose a new map, it wasn't going back
3 to the status quo; that was one problem. The
4 other was there was another plan in place.
5 That plan had one-person/one-vote problems.
6 And if there was going to be a reversion back
7 to the status quo, i.e., the prior map, the
8 Circuit Court needed to assess whether or not
9 that prior map was constitutional.

10 Now BVM 1, again, Your Honor -- and this
11 is on page 198 of the Florida Supreme Court's
12 decision; BVM 2 the Florida Supreme Court's
13 2025 decision talks about how, if we're going
14 to throw out an alternative plan, it's the
15 Plaintiffs who have to show that it's
16 constitutional.

17 The Plaintiffs are the ones who have to
18 show the 2022 map complies with both state and
19 federal law. The Plaintiffs are the ones who
20 have to show that the 2022 map's use of race is
21 appropriate. And the Plaintiffs have to show
22 that if the use of race is inappropriate, then
23 the use of partisanship is still fine because
24 the racial provisions are severable.

25 So again, Your Honor, if we are talking

1 about the 2022 map, the map that is no longer
2 in place, the map that the legislature replaced
3 and the Plaintiffs are putting it forward as
4 the alternative, the Plaintiffs bear the
5 burden, if we are talking about this Court's
6 all-writ jurisdiction, revert back to the
7 status quo, to show that it's a viable
8 alternative.

9 They have not done that here, Your Honor.
10 So if we are going through the all-writs power,
11 the Plaintiffs haven't carried their burden.
12 If we are going through the dec judgment route,
13 there has been no trial. And so the Plaintiffs
14 can't show that the 2022 map or any other map
15 is the map that we should revert back to.

16 Now, Your Honor, there's some discussion
17 about how this might not be a mandatory
18 injunction because we are talking about simply
19 striking through some language and somehow
20 resurrecting language that no longer exists.

21 That is a lot of mental gymnastics to get
22 to the point that this Court is not mandating
23 the use of something that the Legislature did
24 not enact.

25 So, Your Honor, if the Court is issuing an

1 order to tell the State of Florida to use a map
2 that is not the one that its Legislature most
3 recently enacted, that is a mandatory
4 injunction. And for a mandatory injunction to
5 issue, there must be a clear right in the rare
6 case where that mandatory relief is available.

7 This is not that rare case, there is no
8 clear right, because the Plaintiffs' case at
9 bottom, Your Honor, rises and falls on a series
10 of fact specific arguments. Fact specific
11 matters.

12 I'd like to take the partisan issue first,
13 Your Honor. Plaintiffs' partisan argument is
14 that they have shown, without a doubt, clearly
15 that there is improper partisan intent. And
16 the material they rely on to do that is
17 statements by nonparticipants, the President of
18 the United States, the legislators from other
19 states, tweets from accounts. Tweets, by the
20 way, are not self-authenticating, so I don't
21 know where we are going with that.

22 They have got a statement from Mr. Poreda
23 saying that he used partisan data among all the
24 other factors. There was no followup from
25 members of the Legislature asking what data in

1 particular, how it was used, whether it
2 affected the lines anywhere on the map.

3 They then ignore the bulk of Mr. Poreda's
4 testimony before both the House and the Senate.
5 Mr. Poreda was up there for hours explaining in
6 painstaking detail how he drew the map. He
7 talked about, for instance, if you are taking
8 the map from south to north, from The Keys on
9 up, there are only so many configurations you
10 can come up with for the map, because of
11 geographic necessity.

12 Certain other districts, like 27 and 28,
13 their shapes just end up becoming more or less
14 like the ones that you see in the map now. And
15 they are not identical, 27 and 28. They're
16 slightly different. But that's how he
17 explained it.

18 He also talked about geographic necessity
19 in the northern part of the state, how St.
20 Johns, Duval and Nassau County are cabined in
21 by the ocean on one side, Georgia on the other
22 side. He talked about how when you start
23 making changes in South Florida, they have
24 effects all throughout the center part of the
25 state, which then cascade into changes in the

1 Tampa region.

2 Plaintiffs want to ignore all of that,
3 focused on one statement that talks about
4 partisan awareness -- one statement that talks
5 about partisan awareness.

6 Senior Gaetz, the sponsor of the
7 legislation in the upper chamber of the Florida
8 Legislature, talked about how this was no
9 different, this one statement from Mr. Poreda,
10 to his estimation, was no different than how
11 partisanship had been used in the past.

12 Now that brings me to another point. The
13 Plaintiffs want to say that Mr. Poreda's
14 statement and what Mr. Poreda did can be
15 imputed to the Legislature. This kind of Cat's
16 Paw theory does not work. We can't simply say
17 that if one branch of government had bad
18 intent, which we don't contend it did, that it
19 is automatically imputed into another branch.

20 And, Your Honor, it's critical for
21 Plaintiffs to show improper partisan intent on
22 the part of the Legislature as well. Why?
23 Let's take a look at the structure of our
24 Constitution.

25 The provisions that we are talking about,

1 Article III, Section 20, exist in Article III,
2 the legislative power. The Legislature's
3 intent becomes sort of a vital component to
4 this whole process. And the Plaintiffs are
5 offering little, if any, evidence about
6 improper intent on the Legislature's part.

7 THE COURT: Well, I mean, doesn't the way
8 kind of it went down suggest that Mr. Poreda's
9 intent would inform the Legislature's intent,
10 so the Governor's maps, they're introduced to
11 the Legislature and Mr. Poreda claims that he
12 was the sole drafter of those maps. And then
13 they are voted on, you know, shortly after
14 introduction.

15 I mean, at least some of the -- so most
16 legislators probably didn't have any particular
17 intent one way or the other, but did they kind
18 of, therefore, adopt Mr. Poreda's report as the
19 chief drafter?

20 MR. JAZIL: Your Honor, that's difficult
21 to say. Did they adopt Mr. Poreda's intent as
22 the chief drafter? I would suggest no, because
23 in part, what you also have are questions from
24 the other legislators talking about their
25 perspective. You also have then what the

1 legislators glean from Mr. Poreda.

2 And if we accept for a moment, Your Honor,
3 that Mr. Poreda's intent can be adopted by the
4 Legislature, the next question becomes, okay,
5 you've got to take Mr. Poreda's words at face
6 value and not take anything beyond what
7 Mr. Poreda said.

8 So Mr. Poreda's testimony in full at the
9 House and Senate that comes sort of a cabined
10 set of materials that the Legislature had from
11 which to glean intent. Right? And so we can't
12 go beyond the four corners of Mr. Poreda's
13 testimony before the Legislature on that.

14 Your Honor, I'd also like to then move on
15 to the expert witness materials. Frankly, Your
16 Honor, the expert evidence is contested and
17 it's untested. We haven't had an opportunity
18 to assess whether or not Mr. Rodden --
19 Dr. Rodden, Dr. Chen and the other experts are
20 appropriately providing points that they are
21 providing using appropriate methodology. We
22 have several methodological concerns, for
23 example, with Dr. Warshaw that Dr. Trende
24 highlighted.

25 And Dr. Rodden, in my reading of his

1 rebuttal report that was filed, he backs away
2 from some of his thoughts on improper partisan
3 intent. He seems to acknowledge that every
4 line drawn on a map either packs or cracks
5 someone. So gleaning intent from just whether
6 or not a particular line is packing someone or
7 a particular line is unpacking someone is hard.

8 Also, I am terribly confused by what
9 happens with these compactness metrics. If you
10 look at compactness metrics, the '22 map and
11 '26 map, they are pretty much on par. They are
12 off by hundredths of a point in some instances.
13 And the question I have is, okay, so if
14 something fills up 1 percent more of a circle,
15 what is that telling us about compactness?
16 Very little.

17 And if compactness, the Tier Two standards
18 are being used to inform us about the Tier One
19 standards, you start getting a feel for the
20 fact and sense of milieu that's at issue here.

21 Your Honor, I also note that my friends go
22 through the seven-part Arlington Heights Test
23 the Florida Supreme Court adopted from federal
24 law. The Arlington Heights Test is inherently
25 fact intensive.

1 So to take a step back, Your Honor, the
2 Plaintiffs are trying to show improper partisan
3 intent by relying on all sorts of facts in a
4 fact-intensive test, to then shift the burden
5 on to the Legislature and the Secretary of
6 State to prove that they did not have an
7 improper intent.

8 The only time this test has actually been
9 applied to a Congressional plan, it took a
10 12-day trial and it took a series of facts
11 about how political operatives infiltrated the
12 map-drawing process and made a travesty of that
13 process.

14 We don't have those facts here. We also
15 don't have a trial, and we are being asked to
16 do burden shifting based on a less than fulsome
17 record without a trial.

18 And I think all that is inappropriate,
19 especially because the burden shifting happened
20 last time after a trial, after a 12 day-trial.
21 And so I think we are putting the cart before
22 the horse there, Your Honor, on these fact
23 intensive tests. And I think that is
24 inappropriate.

25 Your Honor, I would like to then go on to

1 the constitutional issues and the severability
2 issues.

3 My friend, Ms. Ford, said that we are
4 asking the Court to do something extraordinary.
5 Taking a step back, we are not the ones asking
6 for something extraordinary; it's my friends
7 for the other side who are asking for
8 extraordinary relief, a temporary injunction to
9 undo a duly enacted law of the Florida
10 Legislature.

11 Now, if the Court can get past the
12 threshold issues raised by BVM 1 and BVM 2, if
13 the Court can get past whether or not this is
14 the rare case where the Plaintiffs have
15 established a clear right to a mandatory
16 injunction, then we come back to, okay, and
17 then what?

18 Then are we going to be telling the
19 Florida Legislature to put into place a map
20 that it may believe is not a proper map? And
21 there the constitutional issues come into play,
22 Your Honor. We briefed them in our papers. We
23 talk about how at the end of the day, the Fair
24 Districts Amendment on their face are making
25 race-based distinctions.

1 Any time you apply these amendments, you
2 are being asked to take racial data into
3 account, assess whether or not Black
4 communities or Hispanic communities are acting
5 in a way where they can elect candidates of
6 their choice, and then draw districts or
7 reframe from drawing districts that protect the
8 electoral prospects of certain people when
9 sorted based on race.

10 And this isn't me saying that this is how
11 the race-based provisions apply. This is
12 Apportionment 1 laying out how the race-based
13 provisions apply.

14 In sum, the race-based provisions as
15 interpreted by the Florida Supreme Court and
16 Apportionment 1, 4, 8 seemingly apply to every
17 district, everywhere, and at all times. There
18 are no temporal limits.

19 Those are problems, Your Honor. Those are
20 problems that the U.S. Supreme Court case law,
21 as the law has evolved on equal protection,
22 says is unconstitutional.

23 We look at the Students for Fair
24 Admissions versus Harvard case, that provides
25 us the background principles. If we're doing

1 race-based sorting, race-based sorting is
2 incredibly odious. It is the most odious kind
3 of distinction that the law can make. Those
4 distinctions can only be justified if there is
5 a compelling reason and the remedy that's being
6 used is narrowly tailored.

7 We know from BVM 2 that the race-based
8 provisions do not provide a compelling reason.
9 We also know from background principles that at
10 the end of the day, if they provide a
11 compelling reason, then they must still be
12 narrowly tailored, i.e, there must be some kind
13 of temporal limit. There isn't one that's
14 built into the Fair District Amendments.
15 That's a problem, your Honor.

16 My friends, Ms. Leeper and others, have
17 said that the Court should take on a
18 construction of the Fair Districting Amendments
19 that attempts to save the amendments from
20 unconstitutionality. There are several
21 problems with that approach, Your Honor.

22 First and foremost, what we are doing is
23 we are saying that the Court should interpret
24 the Fair District Amendments in a way other
25 than the way that they were interpreted in 2010

1 when originally put into the Constitution.

2 In 2010, when originally put into the
3 Constitution, they were modeled after Section 2
4 and Section 5 of the Voting Rights Act. They
5 brought that old soil with them.

6 Now we are being told that we should just
7 superimpose onto the 2010 era Fair Districting
8 Amendments the 2026 interpretation of Section 2
9 of the Voting Rights Act. That's
10 inappropriate.

11 Second, Your Honor, even if we do this
12 after the fact rejiggering of the Fair District
13 Amendments, what do you do about the
14 nondiminishment provision, which is the analog
15 to Section 5? Section 5 hasn't been around for
16 years. Section 5 wasn't the one that the U. S.
17 Supreme Court saved by a, quote, proper
18 construction in Callais. Section 5 has no
19 answer.

20 Also, Your Honor, the problem with the
21 Fair Districting Amendments is more than just,
22 hey, they track the VRA. The Fair Districting
23 Amendments, as the Florida Supreme Court
24 pointed out in BVM 2, do not have a voluminous
25 record that justifies their use of a race-based

1 solution to tackle a race-based problem.

2 And as the Florida Supreme Court pointed
3 out in BVM 2 in 2025, the Fair Districts
4 Amendments were not enacted pursuant to
5 Congress' exclusive authority under Section 2
6 of the 15th Amendment to come up with some kind
7 of race-based remedy to solve a state created
8 race-based problem.

9 Right? Fifteenth Amendment,
10 Reconstruction Era amendment, it was designed
11 to curtail the states. It gave Congress the
12 power to pass legislation to keep states from
13 doing bad things. Now we're being told that
14 the state can wield that power without a
15 record. And we have been told the state can
16 wield that power in such a way there are no
17 temporal limits. That, Your Honor, with due
18 respect, is incorrect.

19 Finally, Your Honor, severability.
20 Severability is a problem for the Plaintiffs
21 because again, Your Honor, if we are going with
22 my BVM 1 and BVM 2 framework, the Plaintiffs
23 have the burden to show that the 2022
24 alternative that they are pushing now is a
25 constitutional one.

1 And as part of that analysis, when you
2 work your way through, and the Plaintiffs are
3 trying to tell you that the 2022 map is the
4 appropriate map, it's the Plaintiffs who have
5 to show that everything or something in Article
6 III, Section 20 survives, and they can't do
7 that.

8 They, I am glad, are fans of newspaper
9 editorials. However, Your Honor, let's take a
10 look at the text of Article III, Section 20.
11 Let's take a look at what the lawyers who are
12 the proponents of Article III, Section 20, were
13 telling the Florida Supreme Court. And let's
14 take a look at what the Florida Supreme Court
15 said about Article III, Section 20.

16 Starting with the text, Your Honor, the
17 text shows an interlocking framework between
18 Section A, Section B and Section C of Article
19 III, Section 20 of the Florida Constitution.

20 We have in Section A a series of Tier One
21 standards. We know they are Tier One standards
22 because Subsection B tells us they are Tier One
23 standards.

24 Subsection B also tells us what happens in
25 the event of a conflict between these

standards.

Subsection C goes on to tell us that everything is a packaged deal, that the requirements of Subsection A are on an equal footing with one another; that the requirements of Subsection B are on an equal footing with one another.

So when you take a look at the text and structure of Article III, Section 20, it is intertwined, it is interlocked, it is interwoven. It is not unlike the Murphy versus NCAA case where the U.S. Supreme Court threw out a series of laws concerning gambling. Why? Because those were intertwined, interlocked.

The Florida Supreme Court in Ray versus Mortham, Your Honor, distinguished a Nebraska case saying that they didn't need to follow the Nebraska cases example. Why? Because there, the provisions were, quote, intertwined, to borrow from the Florida Supreme Court's language.

So, Your Honor, textually and functionally, these things are connected.

Then let's focus on the intent requirements. Your Honor, we provided in our

1 papers language from the proponents who talked
2 about how these provisions were one unified
3 whole, all of them work together. The Florida
4 Supreme Court in its opinion saying that this
5 provision can make it on to the ballot as part
6 of the Article 11, Section 3 requirements said
7 that these are all a single unified whole.

8 The NAACP -- and this is the further
9 context. The NAACP material, Your Honor, we
10 cite was provided to the federal government as
11 part of Florida's preclearance package from the
12 era when preclearance was still required. That
13 NAACP paper shows that it was important for the
14 leading African-American advocacy group in the
15 state, for these things to work together so
16 they, the NAACP and the Black community, could
17 ensure that Congressman Corrine Brown and
18 Congressman Alcee Hastings would not lose their
19 seats because of the, quote, problematic
20 compactness issues.

21 Finally, Your Honor, severability needs to
22 be considered from Ray versus Mortham in the
23 context in which that case arose. In that
24 case, you had a piece of citizen initiative
25 language that included an expressed

1 severability clause. And that expressed
2 severability clause was very clear about what
3 it was telling the people.

4 It said, and I quote: If any portion of
5 this measure is held invalid for any reason,
6 the remaining portion of this measure, to the
7 fullest extent possible, shall be severed from
8 the void portion and given the full possible
9 force and application. The people of Florida
10 declare their intention, the persons elected to
11 offices of public trust will continue
12 voluntarily to observe the wishes of the people
13 as stated in this initiative in the event any
14 provision of this initiative is held invalid.

15 The Florida Supreme Court found that
16 severability clause language would be
17 persuasive, incredibly persuasive. Why?
18 Because the severability concept is different
19 than an ordinary piece of legislation. People
20 are not legislators. They do not understand
21 the background, severability principles.

22 So for the Florida Supreme Court to adopt
23 the statutory severability test into the
24 citizen initiative process, a question of first
25 impression in Ray versus Mortham that has not

1 come up in a Florida court since, the
2 severability clause was a crucial element of
3 the analysis. The severability clause was the
4 trigger that was pulled before the four factor
5 test for statutory severability could apply.

6 And even then, Justice Lewis talked about
7 intention and taking something that is supposed
8 to be a single unified whole under Article 11,
9 Section 3, the single subject requirement is
10 more tightly wound than the single subject
11 requirement for the legislature.

12 And only with the severability clause,
13 which gave people notice that this is what was
14 going to happen, could you go about and apply
15 the test and say that: Look, we are going to
16 go ahead and sever this legislation.

17 THE COURT: Can you pause on severability
18 for a moment?

19 So to rule in your favor on severability,
20 I'd have to rule against you on the injunction
21 power, on the intent, partisan intent,
22 basically go all the way up to the point I
23 think the injunction should issue, but then say
24 well, none of that matters because the Fair
25 District Amendment should be struck down; and

1 not only should it be struck down, but it's not
2 severable, so the whole thing, all of it goes,
3 right?

4 MR. JAZIL: Not quite, Your Honor.

5 THE COURT: I am trying to understand.

6 MR. JAZIL: Sure. So, Your Honor, for you
7 to rule for the Plaintiffs, it's my contention
8 you have to go through this process, because
9 for the Plaintiffs to prevail and for the
10 Plaintiffs to say that the 2022 map is an
11 appropriate status quo, they have to show that
12 the 2022 map is constitutional.

13 So how are they going to show that? They
14 are going to show that by saying that race
15 either wasn't a factor or race was
16 appropriately considered.

17 If they can't show that, or they move
18 beyond that point, and then they get to the
19 partisanship discussion, then Your Honor, you
20 would have to deal with the severability
21 question.

22 So I framed it in two different ways,
23 where if the Plaintiffs are the ones pushing
24 the 2022 map, they bear the burden. If
25 ultimately we lose on everything along the way

1 that they argued and you accept their
2 framework, that you can just plop down the 2022
3 map, under that circumstance, you have to get
4 to our constitutionality and severability
5 arguments. So there are two routes.

6 THE COURT: I kind of feel like we're
7 saying the same thing, but I guess another way
8 to say it would be the constitutional
9 avoidance -- I shouldn't reach the
10 constitutional question if the case can be
11 resolved on some other issue.

12 But I guess what you are saying, in order
13 to rule for the Plaintiffs, I have to address
14 the constitutional issue.

15 MR. JAZIL: Your Honor, in order for you
16 to rule for the Plaintiffs, because they are
17 putting forward the 2022 map as a valid status
18 quo, you have to access whether or not that's a
19 valid status quo. And then you get to the
20 constitutional issues of is the 2022 map valid
21 constitutionally? Did the 2022 map
22 appropriately take race into account? And if
23 so, how?

24 And that's where you get to the
25 constitutional issues. For you to rule for the

1 Plaintiffs and put forward the alternative
2 plan, BVM 1 says the Plaintiffs bear the burden
3 of showing that the 2022 map is constitutional.

4 And that necessarily, in my mind, triggers
5 the racial issues. They can't run away from
6 them. If they want the 2022 map to be the one
7 that's put forward as the alternatives, they
8 have to grapple with those issues.

9 THE COURT: So that means basically you
10 can't say the 2022 map is validated because
11 it's done the two elections, it's done all the
12 litigation.

13 You are saying, well, because the
14 Legislature found that Congressional District
15 20 was racially drawn, they ought to show that
16 it wasn't racially drawn. Am I saying that
17 right?

18 MR. JAZIL: Yes, Your Honor, I think so.
19 And I think they bear the burden of showing all
20 of that.

21 And, Your Honor, I got one final point,
22 unless Your Honor has additional questions.

23 THE COURT: No, go ahead.

24 MR. JAZIL: Your Honor, our final point is
25 the Purcell point and the Purcell analog under

1 Florida law.

2 We are getting pretty close to the
3 election. We have a declaration from the
4 director of the Division of Elections talking
5 about how May 25th is our prequalification
6 date. And in her supplemental declaration that
7 we filed this morning, she talks about how we
8 are expecting a lot of candidates, there is
9 going to be a lot of work. There is a separate
10 statute that requires the Department of State
11 to help candidates perfect their qualification
12 papers.

13 So if we take apart the May 25 decline or
14 truncate it, it creates all sorts of problems
15 from a timing perspective.

16 Also, Your Honor, we have some materials
17 from the supervisors that talk about how we are
18 getting pretty close to the elections and
19 changes this late are not a great idea,
20 especially because, Your Honor, set aside the
21 2022 map and whether or not you program it into
22 systems, you've got the UOCAVA deadline for
23 overseas and uniform voters, and that deadline
24 is 45 days before the election.

25 You also need to make sure that you have

1 your ballots proofed and printed. You've got
2 to mail them something, and that takes time to
3 figure out who your printer is going to be, who
4 is going to send out the mail, et cetera. And
5 you need the deadlines before then.

6 So you've got two Purcell-related issues,
7 concerns. One is the qualifications deadlines.
8 The other is the practical deadlines to meet to
9 try to get things out into the mail to our
10 service members overseas.

11 THE COURT: I guess I have got two
12 questions on that point.

13 So Purcell seems to be more of a Federal
14 Court prudential rule. I looked at Purcell, I
15 didn't see any Florida case, but you said there
16 is a Florida analog. But there is no Florida
17 case citing Purcell, that's more how the
18 Federal Courts say, like Federal Courts should
19 not be interfering in state elections close to
20 elections. That's the way I read Purcell.
21 Maybe I am wrong.

22 What was the Florida analog for Purcell?

23 MR. JAZIL: Sure, Your Honor.

24 If you look at our papers, on page 27, we
25 have a State, ex rel. Haft versus Adam case

1 from 1970, and a Walker versus Best Case from
2 1935, both Florida Supreme Court cases that
3 stand for the proposition that, quote: To
4 interfere with the election process at a late
5 day, even if a clear, legal right were shown,
6 would result in confusion and injuriously
7 affect the rights of third persons.

8 And one of the rationales for Purcell is
9 that there is a possibility of confusion if you
10 make late-breaking changes to the election
11 code. And here, as a practical matter, if we
12 go beyond May 25, we would be making changes
13 not just to the Congressional plan but our
14 qualification statutes as well. And --

15 THE COURT: It seems like the State
16 legislature could, like in August or September,
17 change the maps if they want to, right?

18 MR. JAZIL: Yes, Your Honor.

19 So I would like to address this point. So
20 let's say the State legislature passes a law in
21 August or September. Instead of changing maps,
22 Your Honor, let's say the State legislature
23 says that women can't vote; that would be very
24 clearly violate the 19th Amendment and someone
25 could come into Court and get a final

1 resolution very quickly, or get an injunction
2 from this Court, because that is a very clear
3 legal violation. It's not a fact-intensive
4 multifactor, burden shifting test, et. cetera.

5 Same thing with someone putting a poll tax
6 in place at the last minute.

7 Congressional plans aren't that obvious,
8 Your Honor, and so if we are talking about
9 changes to Congressional plans, we are talking
10 about Plaintiffs having to do a lot of work on
11 the front end to show that there is a
12 violation.

13 In the 19th Amendment or 24th Amendment
14 examples I just gave you, you could maybe
15 accelerate trial. We can have a final hearing
16 within 24 hours, and you can issue a final
17 order after a dec judgment action is filed to
18 resolve the matter, and you would have all the
19 powers you need under BVM 1 to do just that.

20 And, Your Honor, finally I would like to
21 end with this. It's also important to remember
22 the context that the First DCA provided in BVM
23 1. It talked about how in 2012, when we passed
24 a map that turned out to be a bad map, that bad
25 map was in place for two cycles. Right?

1 That just underscores the point that this
2 isn't as clear as the poll tax or women can't
3 vote. That bad map was in place two cycles and
4 remained in place until the Florida
5 Supreme Court ultimately decided it was
6 unconstitutional.

7 And, Your Honor, there is no need to rush
8 in this instance either. There should be a
9 trial. There should be a proper assessment of
10 the facts, all of the facts, a testing of the
11 evidence, a testing of the expert witnesses,
12 before another plan is imposed other than the
13 one that the Florida Legislature enacted.

14 Your Honor, with that, I defer to my
15 colleagues.

16 THE COURT: All right. Mr. Nordby.

17 MR. NORDBY: Thank you, Your Honor. The
18 Secretary's Counsel has addressed a number of
19 procedural and constitutional issues. I would
20 like to focus on just a few narrow issues where
21 the Senate's position independently matters.

22 The central question for Your Honor to
23 decide is whether the Plaintiffs have actually
24 shown a substantial likelihood of proving that
25 the Legislature enacted this plan with

1 constitutionally prohibited intent.

2 The answer, we submit, is that they have
3 not carried their burden of proof.

4 The first point I would like to address is
5 the fact that the Plaintiffs are improperly
6 conflating a map drawer with the Legislature.
7 The Plaintiffs repeatedly attempt to conflate
8 the intent of Mr. Poreda and the constitutional
9 intent of the Legislature itself.

10 This distinction matters because Article
11 III vests the legislative power in the
12 Legislature. Article III, Section 20,
13 regulates the enactment of districts through a
14 law making process. And Plaintiffs now tell
15 the Court that they need not establish the
16 intent of the legislators at all.

17 That position creates a serious
18 constitutional problem.

19 Under that theory, statements by one
20 executive branch staffer become attributable to
21 the Legislature as a whole. Statements by the
22 President of the United States become
23 attributable to the Legislature. Statements or
24 even retweets by anonymous social media
25 accounts become attributable to the

1 Legislature.

2 Suddenly the legislative enactment itself
3 disappears from the analysis.

4 Your Honor, there are dozens, if not
5 hundreds, of cases standing for the principle
6 of the floor debate or comments by one member
7 of the Legislature should not be attributed to
8 the Legislature as a whole in evaluating
9 legislative intent.

10 If that is true, how much more is it true
11 that the comments or the subjective intent of a
12 staffer in another branch of government should
13 not be attributable to the Legislature as a
14 whole?

15 Now, to be sure, Your Honor --

16 THE COURT: I had a question as I was
17 reading your materials. I mean, isn't this
18 always kind of the way you prove intent; you
19 look at things surrounding the circumstances,
20 because you're really going to get a direct
21 statement of this is what I meant when I did
22 that.

23 MR. NORDBY: Absolutely, Your Honor. I am
24 not saying that the testimony of Mr. Poreda in
25 committee is irrelevant to the question of

1 legislative intent.

2 The point that I am trying to make here is
3 that whatever intent should be attributed to
4 the Legislature should be limited to the
5 legislative record in front of them.

6 We know the legislators had access to
7 Mr. Poreda's committee testimony. They had
8 access to the legislative language itself.
9 That's what they had, and that was appropriate
10 in considering what their intent was.

11 To the extent Mr. Poreda had subjective
12 intent unexpressed in his heart that the
13 Legislature was never provided, that can't be
14 used to establish what the intent of the
15 Legislature itself was, and much less any of
16 these other outside political commentators or
17 members of Congress or others who weren't
18 involved in the legislative process.

19 Constitutional intent cannot simply be
20 transferred from one participant in the
21 law-making process to an entire coordinate
22 branch of government. And none of the
23 Plaintiffs here have even offered a single
24 shred of evidence, hearsay evidence or
25 anything, suggesting what the intent of any

1 member of the Legislature was in passing this
2 legislation.

3 Like Mr. Jazil, I would distinguish
4 Apportionment 7, the factual evidence in that
5 case, after a two-week trial, included evidence
6 that political consultants were meeting and
7 communicating with legislators and legislative
8 staff about partisan preferences, sharing
9 copies of draft maps, commenting on them, and
10 what the Court called a second shadow process;
11 that is a legislative process in the shadows.

12 Here we have no comparable record, no
13 trial findings, no evidence at all that any
14 member of the Legislature considered anything
15 other than the language of the legislation and
16 the committee presentation.

17 The second point I would like to make is
18 that even Mr. Poreda's testimony does not
19 establish the clear violation required for an
20 emergency temporary injunction. The Plaintiffs
21 portray Mr. Poreda's testimony as a
22 constitutional confession.

23 It was not. Their presentation
24 selectively isolates statements while omitting
25 others.

1 Mr. Poreda testified in committee for more
2 than half an hour that he considered numerous
3 criteria; he testified about the boundaries he
4 used; he testified about his
5 district-by-district drawing process. He
6 responded to a question by stating that
7 partisan data was part of a broader universe of
8 information that was available to him. But he
9 repeatedly denied drawing the map with partisan
10 intent.

11 That's what the legislators were told
12 before they passed their votes.

13 Now the Plaintiffs characterized these
14 later statements as, quote, self-serving
15 rehabilitation. At this procedural stage, that
16 only underscores the problem for them.

17 There are disputed facts and competing
18 inferences, and you have not heard live
19 testimony from anyone here -- you heard
20 arguments of counsel -- in order to evaluate
21 and weigh which of those competing inferences
22 are correct.

23 Temporary injunctions are not designed to
24 resolve contested intent questions through
25 selective transcript readings.

1 That's not what happened in 2022, that's
2 not what happened in 2012. The Court is being
3 asked to decide at this limited record and
4 early stage motive questions that are normally
5 reserved for trial.

6 The key point is this: The Plaintiffs
7 don't merely need some evidence supporting
8 their position. They have the burden to show a
9 substantial likelihood that their
10 interpretation of the record evidence is the
11 correct interpretation.

12 Where competing inferences exist and
13 intent remains disputed, emergency statewide
14 relief is improper.

15 My third point is that the Plaintiffs'
16 theory here erases the constitutional
17 distinction between intent and effect. The
18 Plaintiffs lean heavily on simulations and
19 statistical evidence for the reasons explained
20 by Mr. Jazil. Much of that evidence is
21 contested and has not had the opportunity at
22 this stage to be tested.

23 But that still confuses partisan effects
24 with constitutional intent.

25 The Florida Supreme Court has recognized

1 that Article III prohibits intent and not
2 outcomes. The Plaintiffs' evidence asks this
3 Court to infer that partisan effects, plus the
4 simulations in their hearsay expert reports,
5 equals unconstitutional motivation.

6 The Florida Constitution does not require
7 partisan symmetry or proportional
8 representation or conformity with
9 computer-generated simulations that employ the
10 policy preferences of their experts.

11 And most again, the Plaintiffs' experts
12 may create disputed factual questions, they
13 don't create a clear entitlement to relief.

14 And my final point is that Plaintiffs here
15 still seek the functional equivalent of final
16 relief.

17 To go back to a question Your Honor asked
18 earlier about the relief that's being sought
19 here. It's clear that Plaintiffs are asking
20 for two different things: A prohibitory
21 injunction to prevent the Secretary of State
22 from employing the 2026 plan and a mandatory
23 injunction requiring this State to employ the
24 2022 plan.

25 The redistricting legislation that passed

1 the Legislature in the last few weeks did two
2 things. It repealed the 2022 plan and it
3 instituted a new plan. Those are two separate
4 asks by the Plaintiffs here, and they have to
5 carry their burden to establish entitlement to
6 both of those.

7 Plaintiffs are not merely seeking
8 preservation of the status quo. They're asking
9 for two separate things. That's statewide
10 remedial relief.

11 The Plaintiffs attempt to distinguish the
12 Byrd/BVM 1 case by emphasizing that the 2022
13 plan they asked for here previously existed,
14 but that still misses the broader principle.

15 Byrd reaffirmed that temporary injunctions
16 are preservative and not adjudicative. The
17 Plaintiffs here don't attempt to carry their
18 burden under BVM 2 to prove that the
19 alternative they ask the Court to impose is
20 valid.

21 So in brief conclusion, Your Honor, at the
22 end of the day, the Plaintiffs asked the Court
23 to make a constitutional finding of statewide
24 legislative misconduct via an emergency
25 injunction, without discovery, without testing

1 the experts, without credibility
2 determinations, without trial findings, and
3 based principally on selective excerpts and
4 disputed inferences.

5 That's what some of these same Plaintiffs
6 asked one of your colleagues to do in 2022 and
7 that decision was reversed. That's not how
8 redistricting litigation occurred in 2023, 2024
9 or from 2012 to 2015.

10 Those latter ones occurred after full
11 trials or a final hearing on a stipulated
12 factual record.

13 Temporary injunction standards require
14 something more than unresolved factual
15 disputes. The Plaintiffs here have not shown a
16 clear entitlement to the relief they're
17 seeking, and the motion should be denied.

18 I would be happy to address your
19 questions, Your Honor. Otherwise, I will cede
20 my time to my colleague.

21 THE COURT: Mr. Bardos.

22 MR. BARDOS: Thank you, Your Honor. Andy
23 Bardos for the Florida House in its response to
24 the temporary injunction motions and that's the
25 question of the constitutionality of the Fair

1 Districts Amendment.

2 THE COURT: Mr. Bardos, you are a little
3 soft. Is there a way you could select maybe a
4 different microphone? You might be using your
5 computer's microphone instead the web cam.

6 MR. BARDOS: Thank you, Your Honor.

7 So the Florida House, Your Honor,
8 addressed one issue in its response to the
9 temporary injunction motions and that's the
10 question of the constitutionality of the Fair
11 Districts Amendments. The other issues have
12 been fully and ably briefed by Mr. Jazil and
13 Mr. Nordby. We'd like to address the
14 constitutional issue.

15 And I would like to start with the
16 question that Your Honor raised early on and
17 that the Plaintiffs addressed, which is, is
18 this something that even needs to be considered
19 at this stage, or can we simply reserve this
20 issue for the merits stage? This seems like a
21 lot to do at this stage.

22 And the answer is yes, it must be
23 considered at this stage. And that's because
24 the temporary injunction is unavailable unless
25 the Court addresses each affirmative defense

1 that the Defendants present.

2 Salazar versus Hometeam Pest Defense,
3 230 So. 3rd 619, is a Second DCA case from
4 2017, that's an example in which the Court
5 reversed the entry of a temporary injunction
6 because the temporary injunction did not
7 address all of the affirmative defenses that
8 the Defendants had raised.

9 And beyond that, at the temporary
10 injunction stage, the ultimate burden is on the
11 Plaintiffs to demonstrate that the Defendants
12 will ultimately be unsuccessful on their
13 affirmative defenses. So the burden is
14 different at the temporary injunction stage.

15 I will cite for the Court Bradley versus
16 Health Coalition, 687 So. 2d, 329, a Third DCA
17 case from 1997 which said: Plaintiff must
18 demonstrate likelihood of success on the merits
19 as to asserted affirmative defenses as well as
20 elements of Plaintiff's prima facie case.

21 So that means the burden here is on the
22 Plaintiffs to demonstrate a substantial
23 likelihood that later, at the merits stage, the
24 Defendants will not be able to demonstrate or
25 establish their affirmative defenses.

1 So that makes it very difficult for the
2 Plaintiffs, as it should; it's by design. The
3 Courts don't just hand out temporary
4 injunctions. The Plaintiffs have to
5 demonstrate a substantial likelihood of
6 success, not only each on element of their own
7 claim, but a substantial unlikelihood of
8 success on the Defendant's part, on the
9 affirmative defenses.

10 And so what that means, Your Honor, is
11 unless the Plaintiffs are able to demonstrate
12 now that there is a substantial likelihood that
13 the Defendants will be unable to show
14 nonseverability, for example, then the
15 Plaintiffs lose.

16 It's not the Defendant who loses at the
17 temporary injunction stage, if the Plaintiffs
18 are unable to address all of the issues in a
19 one week or two-week proceeding; it's the
20 Plaintiff who loses in that case. And that's
21 by design. Temporary injunctions are hard to
22 get.

23 So let's discuss the constitutional issue.
24 And what really stands out to me and where I'd
25 like to begin, Your Honor, is what the

1 Plaintiffs don't talk about. And if Your Honor
2 looks at the reply that Equal Ground filed in
3 support of their motion for a temporary
4 injunction, on this constitutional issue, you
5 won't even see the words "compelling interest."

6 And what that means is the Plaintiffs are
7 not advancing any justification for the
8 expressed racial classifications in the Fair
9 Districts Amendments. It's not in there.

10 The first thing they talk about is let's
11 put a saving construction on this provision.
12 You only get to a saving construction if there
13 is already a determination of invalidity.

14 There is no argument being advanced, and
15 we didn't hear it today either, that there is
16 any compelling interest that justifies the
17 expressed racial classifications that are in
18 Article III, Section 20. They want to skip
19 over that and say, okay, but if it's
20 unconstitutional, there is a way we can save
21 it.

22 So let's go to that. Let's treat it as
23 admitted, that this is unconstitutional, and
24 let's go to the saving construction and see
25 whether that's available to them.

1 And there are three points I want to make
2 on that, Your Honor.

3 Number one, and Mr. Jazil alluded to this,
4 we are not writing on a blank slate. These
5 provisions have already been interpreted by the
6 Florida Supreme Court. Those interpretations
7 are binding on this Court.

8 This Court can't simply say, okay, the
9 Florida Supreme Court might have said X, Y, and
10 Z about these provisions, but I am going to
11 reinterpret it now in this case.

12 So if there is going to be a saving
13 construction, it has to be done by the Court,
14 the Supreme Court that initially placed the
15 construction on these provisions. It can't be
16 done here --

17 Second, they point to the Callais decision
18 by the U.S Supreme Court and say the U.S.
19 Supreme Court placed a saving construction on
20 Section 2 of the Voting Rights Act; this Court
21 should simply adopt the very same saving
22 construction.

23 -- but there are a couple of problems with
24 that. Number 1, the Voting Rights Act exists
25 only because the Federal Constitution and the

1 15th Amendment confers on Congress the power to
2 enforce the reconstruction amendments, the
3 post-Civil War amendments. It authorizes
4 Congress to enact those provisions, such as the
5 VRA. And what the Court did in Callais is it
6 calibrated the Section 2 interpretation, the
7 interpretation of the Voting Rights Act, to
8 Congress' power under the 15th Amendment. And
9 it said if this Voting Rights Act provision is
10 going to be consistent with the 15th Amendment,
11 which grants Congress power to pass such
12 legislation, it needs to be interpreted in such
13 and such way.

14 But here, the 15th Amendment has no
15 applicability. The 15th Amendment doesn't say
16 that Florida can enact express racial
17 classifications dividing people into different
18 racial groups. It doesn't authorize Florida to
19 do that.

20 And so what is the saving construction
21 tied to? It doesn't apply. There is no 15th
22 Amendment that can guide how we save this
23 provision, because the 15th Amendment doesn't
24 even authorize this provision. The Fair
25 Districts Amendment is not the same thing as

1 the Voting Rights Act.

2 In fact, the whole point of the 15th
3 Amendment, as well as the 13th and 14th, is to
4 take race out of the hands of states and to
5 transfer that, to the extent necessary, to the
6 federal government so that Congress can enforce
7 the protections in those provisions.

8 So there is no way to adopt a saving
9 construction if we don't even know what is the
10 provision that authorizes this and how can we
11 save it. So that's another problem.

12 And then Mr. Jazil alluded to the other
13 problem, which is even if the vote dilution
14 provision in the Florida Constitution can be
15 saved in the manner than suggested by Callais,
16 because the Federal Voting Rights Act
17 provision, there is a counterpart to our vote
18 dilution provision. There is no mention in
19 Callais of any like the nondiminishment
20 provision that exists in our Florida
21 Constitution. So Callais gives us no guidance
22 about how to save that provision.

23 And the Plaintiffs don't articulate a
24 saving construction for that provision. They
25 don't tell us how to save that provision.

1 And so that brings us to the final point
2 on the savings construction. Florida courts
3 recognize that, yes, we want to save provisions
4 if we can, but we can only do it if there is
5 something in the text that suggests the saving
6 construction. We can't simply rewrite it. We
7 can't simply go in and redline what's written.

8 And so the Plaintiffs have to show that
9 there is something textually both in the vote
10 dilution provision and in the nondiminishment
11 provision that authorizes the reinterpretation
12 that they suggest.

13 And first of all, they don't suggest a
14 reinterpretation, at least for one of the
15 provisions; second, they don't tie it to the
16 text and say: This interpretation that we are
17 advancing is rooted in and justified by and
18 supported by the text.

19 So it's not there. So the savings
20 construction argument, Your Honor, fails.

21 And so we ultimately come to severability.
22 And the key for severability, in my opinion,
23 Your Honor, is we really need to understand
24 what is the legal standard for severability,
25 because we heard a lot of discussion about

1 newspaper editorials, or whether it would be
2 possible to draw compact districts in the
3 absence of the racial provisions in Tier One.

4 Neither of those is the proper standard
5 under severability. The question under
6 severability -- and there are several factors,
7 but the one I'd like to focus on is, are these
8 provisions, both the ones that are
9 unconstitutional and the ones that remain, are
10 they functionally interconnected in such a way
11 that they form an integrated whole; because if
12 they do, the Court is not going to take out one
13 piece and leave the rest.

14 So are they functionally connected? And
15 we see absolutely they are, because the only
16 reason there is even a tiered structure to the
17 Fair Districts Amendments is because of the
18 relationship between those standards. The only
19 reason that those provisions in Tier One are
20 elevated above Tier Two is because the
21 provision itself tells us that the Tier One
22 provisions prevail over Tier Two provisions in
23 case of conflict.

24 So already what the amendment is telling
25 us is these standards work together and they

1 are related to each other, there are
2 relationships between them and how they work.
3 And once that happens, once that we have
4 interconnected provisions that function as a
5 whole, and the functioning of which is
6 dependent on the other provisions, you can't
7 have severability; you can't take it out
8 because then you are changing the scheme. You
9 are changing what the voters enacted.

10 And the one way to look at that, Your
11 Honor, is these standards are the ingredients
12 that go into drawing districts. If you take
13 one ingredient out, if you take out -- for
14 example, if you're baking a cake and you take
15 out sugar, or you take out flour, that cake is
16 going to be different at the end of the day.
17 When it comes out of the oven, it's going to be
18 different from what you expected.

19 Same thing here. If you have a set of
20 standards that voters have approved and said,
21 okay, this is the combination of standards that
22 we want producing our districts and you take
23 one out, you are going to get different
24 districts from what the voters wanted when they
25 voted for these provisions.

1 They all work together, they produce a
2 single product. So there is no way to separate
3 them from each other.

4 And finally, Your Honor, on the
5 severability issue, we cite a couple of cases
6 in our response for the proposition that when
7 you have a general rule, and you have an
8 exception to that rule, and the exception is
9 found unconstitutional, then the general rule
10 can't survive, because that would take that
11 general rule and convert it into an absolute
12 rule.

13 And that's what would be happening here,
14 because these racial provisions in Tier One
15 functionally are an exception to the standards
16 that are in Tier Two.

17 The Tier Two standards say districts
18 should be compact, districts should utilize
19 political and geographical boundaries. And
20 what Tier One says is if there is a conflict,
21 we have an exception to that.

22 If you are drawing districts to comply
23 with these racial provisions, you don't have to
24 comply with that general rule that districts
25 must be compact. You don't have to comply with

1 the general rule that districts must utilize
2 political and geographical boundaries. It's an
3 exception to the general rule.

4 And in the cases that we cite, if you take
5 an exception and the exception is
6 unconstitutional, what that does is it converts
7 the general rule into an absolute rule. And
8 now suddenly, the requirement of compactness
9 becomes an absolute rule, it applies to every
10 district in every situation. And that's not
11 what the voters voted for.

12 So in that situation, you are expanding
13 the breadth of the statute, you are expanding
14 the breadth of the remaining provisions.

15 And in the cases we cite, the Courts say
16 no, that's not how it works.

17 So I think, Your Honor -- and I think
18 obviously this is a lot of information, there
19 is a lot to resolve in terms of redistricting,
20 which is a very arcane topic, a lot of
21 constitutional issues. I actually think that
22 there is a very simple solution to all of this.
23 And that is a resolution of the motions based
24 on the burdens and who bears the burdens at
25 this stage of the temporary injunction stage.

1 And I think it's very clear that at this
2 stage, under the cases that I cited, the
3 Plaintiffs bear the burden to demonstrate that
4 that there is no substantial likelihood that
5 the Defendants will ultimately prevail on their
6 defenses.

7 And I don't think they have demonstrated
8 that, Your Honor. I don't think they have
9 demonstrated that there is a substantial
10 likelihood that the Defendants will be unable
11 to prove severability at the merit stage, or I
12 don't think they have demonstrated that there
13 is a compelling interest. They don't even use
14 the word in their reply. I haven't heard any
15 argument about it. And they certainly haven't
16 demonstrated that this is narrowly tailored.
17 They haven't demonstrated a substantial
18 likelihood that they will be able to establish
19 saving constructions, limiting constructions.

20 So frankly, Your Honor, I think there is a
21 very simple basis or ground to deny these
22 motions, and that is the failure of the
23 Plaintiffs to carry their burden to demonstrate
24 a substantial likelihood that the Defendants at
25 the merits stage will be unable to carry their

1 affirmative defenses.

2 So for those reasons and the reasons
3 expressed by counsel for the other Defendants,
4 we ask that the Court deny the motion for
5 temporary injunction.

6 THE COURT: All right. And Ms. Ford, are
7 you going to do the rebuttal?

8 MS. FORD: Your Honor, I think all
9 Plaintiffs groups would probably appreciate
10 just a few moments, if that is okay with Your
11 Honor. I don't speak for all the plaintiffs.

12 THE COURT: Okay.

13 MS. FORD: Thank you, Your Honor.

14 I want to emphasize once again that
15 granting the relief Plaintiffs are seeking is
16 not a mandatory injunction.

17 So here the Court can follow the exact
18 path that the Byrd Court laid out to issue one
19 TI order that would both enjoin the 2026 plan
20 and would automatically reinstate the 2022
21 plan.

22 As Mr. Shenton pointed out, I believe HB1D
23 is the act by which its own terms repeals and
24 replaces the 2022 plan. So enjoining it
25 automatically revives that plan.

1 And as a practical matter, the record
2 shows that the preexisting 2022 plan is the
3 status quo in the State's system. Good
4 evidence of that is the Secretary of State's
5 instruction to the Supervisors telling them
6 exactly how this would work in operation if
7 this Court were to issue an order. That's
8 Plaintiffs' Exhibit 17.

9 And in the supplemental declaration that
10 the Secretary filed today from Maria Matthews
11 reflects that absent a TI from this Court, the
12 Supervisors would be changing precincts to
13 implement the 2026 plan.

14 So stopping implementation would leave you
15 with the current natural state of things, which
16 are the current districts.

17 And next, Your Honor, Defendants are
18 attempting to give you frankly what are excuses
19 to not find a likelihood of success. But to do
20 so would mean a few things.

21 One, it would be casting aside the
22 presumption of validity that applies to the
23 2022 map.

24 Two, it would include not even attempting
25 to apply the binding savings requirement to the

1 race provisions.

2 Three, it would require casting aside
3 binding Florida Supreme Court precedent that
4 says there is no acceptable level of partisan
5 intent.

6 And then in sort of Defendants' final
7 flourish, it would be to apply the presumption
8 of validity to a plan that was passed in
9 explicit violation of the Florida Constitution.

10 I'd like to concentrate of those for a
11 moment on the sort of hypocrisy here of the
12 government asking for a presumption of validity
13 on the 2026 plan but not the 2022 plan. And to
14 be clear, only the Secretary has actually
15 suggested or argued that the 2022 plan might be
16 unlawful. The House and the Senate did not
17 join that argument, nor did they actually
18 assert that.

19 And the Secretary's evidence that the 2022
20 plan is unlawful is a single paragraph of a
21 legal memorandum from the Governor's Office.
22 That is not evidence. And beyond the one
23 sentence in the Secretary's memo about CD 20,
24 the Secretary does not even bother to identify
25 precisely which specific districts he maintains

1 have constitutional concerns.

2 The Secretary has not developed the record
3 evidence to support what is ultimately a
4 drive-by contention that the 2022 plan is
5 unlawful. That, along with the presumption of
6 validity, should really end the matter.

7 The Court has asked a couple of questions
8 about CD 20 today, so I want to put any
9 concerns that the Court has about this matter
10 to rest.

11 To be clear, the long-standing racial
12 gerrymandering precedent is quite demanding.
13 It would require the Secretary to show that
14 mapmakers subordinated traditional race neutral
15 principles to race, such as by showing the
16 district is so irrational on its face that it
17 can only be understood as an effort to
18 segregate voters on the basis of their race.

19 But the only evidence that is actually in
20 the record before the Court about CD 20 is
21 evidence that Plaintiffs submitted that show
22 the Legislature's commitment to making this
23 district more compliant with the state's Tier
24 Two criteria. That includes statements from
25 the House redistricting chair that CD 20

1 attempts to comply with the preservation of
2 political and geographic boundaries, that
3 includes evidence as well about CD 20's
4 compactness that we put in the record.

5 CD 20 is just not as noncompact as the
6 Governor's Office claims. CD 20's total
7 mathematical compactness score is more compact
8 than six districts in the 2022 plan. And CD 20
9 just does not resemble the districts that have
10 been struck down as racial gerrymanders for
11 their odd shape.

12 We have pictures in our reply brief to
13 give the Court context for what that kind of
14 district would actually look like.

15 And then last, Your Honor, I would like to
16 just speak briefly on legislative intent.

17 The legislators were not unsuspecting
18 dupes to this whole process. They are adults
19 with eyes and ears who watched this whole thing
20 play out, and they still signed onto it.

21 And here the Secretary asked you to
22 compare this process to the 2012 process that
23 was found to be unlawful. And to be clear,
24 there is no requirement that Plaintiffs put
25 forward matching factual evidence.

1 But it's notable that in that case, most
2 of the Legislature, and even some of the
3 mapmakers, appeared unaware of the backroom
4 dealing and partisan intent. Here it was on
5 full display. We cannot credibly say the
6 Legislature did not know what was happening
7 with the admissions that were on the record.

8 And I'd like to end with addressing
9 Mr. Nordby's contention about Poreda's
10 statement at the end of the Senate hearing that
11 he didn't have partisan intent.

12 I would encourage the Court to read the
13 full statement that Poreda makes there
14 attempting to disclaim partisan intent, because
15 when you do, it becomes clear what Poreda was
16 attempting to say is that partisan intent was
17 not his predominant motivation.

18 But that is the wrong issue as a matter of
19 law. The Court can find this exchange at
20 Plaintiffs' Exhibit 12 at 54. And I will read
21 a snippet.

22 The Senator asked: You used partisan data
23 when you drew the map, isn't that correct?

24 And Poreda responds: I used it along with
25 all the other traditional redistricting

1 criteria. It was not at the exclusion of
2 everything else and it was not predominant over
3 anything else. But it was considered balancing
4 all of the other standards.

5 The same thing goes on and he ends with:
6 It was not my intent to create or draw a
7 partisan map.

8 It's plain that Poreda believes that his
9 use of partisanship just doesn't count as
10 intent if it didn't predominate. But that is
11 not the law. Apportionment 1 says we don't ask
12 when partisan intent has gone too far; any
13 partisan intent is unlawful.

14 And Your Honor, out of respect for the
15 co-plaintiffs group, I will let them address
16 any other issues.

17 THE COURT: Ms. Leeper.

18 MS. LEEPER: Thank you, Your Honor.

19 I think it's worth level setting at this
20 point about just how backwards this whole
21 process of these arguments are.

22 The people passed a constitutional
23 amendment. It is up to the Courts to interpret
24 that constitutional amendment, and then it is
25 up to the Executive and the Legislature to

1 follow the commands of the Constitution.

2 Here the Defendants have attempted to do
3 the inverse of this and are trying to force
4 this Court to reach a constitutional question
5 which is not before it, because no Plaintiffs
6 have raised race-related claims.

7 There is no need for this Court to rule on
8 the constitutionality of the 2022 plan. That
9 plan has a presumption of constitutionality.
10 No one has ever successfully challenged it or,
11 as my colleague just said, CD 20, and the
12 Governor and Legislature had themselves
13 asserted and defended that plan in Court as
14 constitutional.

15 And here no Defendant has even attempted
16 to show that there is an unlawful racial
17 classification in that plan.

18 Your Honor, moving on to another point,
19 there's also been no evidence presented that
20 changes in Southeast Florida required changes
21 in the Tampa Bay and Central Florida regions.
22 This is obvious from the information that's
23 been presented by some of Plaintiffs' experts
24 showing that it is possible to change Southeast
25 Florida without impacting these districts in

1 the different parts of the state.

2 It's obvious through the 2022 process
3 itself, in which the Governor's map drawer
4 froze the 10 districts in Southeast Florida and
5 made changes to the 18 districts that were to
6 the north and the west, with no need to impact
7 those districts impacting one another.

8 And, Your Honor, it's also just clear
9 through common sense. I grew up many, many
10 times, taking trips from St. Pete to Miami to
11 visit my family, and I can tell you anyone who
12 made that drive knows that these are far-flung
13 parts of the state with no need to impact one
14 another.

15 Your Honor, plaintiffs have shown a
16 likelihood of success with or without expert
17 reports. But we will note the Defendants have
18 said nothing about the Thompson-Wynn
19 Plaintiffs' expert reports, including the
20 report of Dr. Rush, which included evidence of
21 packing, cracking and a lack of justifications
22 for the plan.

23 Your Honor, if you are to decide that it
24 is the intent of the Legislature that matters,
25 Plaintiffs have offered evidence of the intent

1 of the Legislature. And the question before
2 this Court is an easier one than in 2012. It's
3 not a question of whether political operatives'
4 intent infected the plan through public input;
5 rather, there is one map drawer who has openly
6 declared what he considered, we have an open
7 effect of that plan, and that map was wholly
8 adopted by the Legislature, who also repeatedly
9 on the floor adopted the reasoning provided by
10 that map drawer.

11 Your Honor, two final points, which is
12 that it is not Plaintiffs that are asking this
13 Court to interpret the FDA in line with federal
14 precedent. That was the Florida Supreme Court
15 in BVM that said that that is how this ought to
16 be done; and not because of the 15th Amendment,
17 but because that is the way to interpret
18 Florida constitutional law according to our
19 highest Court.

20 And it was also our highest Court, the
21 Florida Supreme Court, which said the primary
22 purpose of the FDA was to ban partisan
23 gerrymandering. That is something that has
24 been made clear time and time again.

25 Finally, Your Honor, it cannot be that

1 Plaintiffs can never get temporary injunctive
2 relief against a map. If the Secretary of
3 State's best argument about why temporary
4 relief isn't available here is because the 2022
5 plan is not a poll tax or doesn't prohibit
6 women from voting; and so therefore, even if it
7 is unconstitutional, it has to be used until a
8 full trial.

9 That has no basis in Florida law and it
10 simply isn't the standard for temporary
11 injunctive relief.

12 Here we know that there will be
13 irreparable harm if this plan moves forward.
14 And Plaintiffs made their showing, as they have
15 to, to justify this kind of relief.

16 I will now pass to the other Plaintiffs'
17 group.

18 THE COURT: Mr. Shenton.

19 MR. SHENTON: Thank you, Your Honor, just
20 a few points very briefly.

21 First, I want to talk about the question
22 of whose intent matters. I think the best way
23 to answer that, we've heard a lot of different
24 suggestions and the best way to answer that
25 question is to go to the text of Article III,

1 Section 20.

2 I will read from it very briefly, the very
3 first line: No apportionment plan or
4 individual district shall be drawn with the
5 intent to favor or disfavor a political party
6 or an incumbent.

7 The focus there is on the district and the
8 drawing of it. So the question about whose
9 intent matters, when we know from the record
10 who drew the plan and what their intent was,
11 what the factors that went into that
12 consideration were. We don't need to go
13 further than that.

14 The amendment prohibits the drawing of a
15 district with partisan favoritism. We know who
16 drew the plan and we know that person
17 considered improper partisan intent.

18 That's what the text of the amendment
19 requires, and that's what matters.

20 The other thing I would point out is that
21 Mr. Nordby advanced the position that the kind
22 of Legislative intent should be determined
23 solely from the face of the legislative record
24 and the things that were available to them in
25 open legislative testimony.

1 I think those are very probative,
2 sometimes the most probative sources of
3 evidence for that determination.

4 But I would also note that that
5 formulation would exclude all of the evidence
6 of the shadow process that the Apportionment 7
7 Court found rose to the violation of Article
8 III, Section 20.

9 So I don't think that's where the inquiry
10 has to end. I certainly agree that it should
11 start there, as it does in every such case, but
12 it can't be limited to that because then
13 Apportionment 7 would not be good law.

14 Very briefly on whether or not the 2022
15 plan is the status quo.

16 I think two points are really important
17 here. First, the Florida Supreme Court just
18 last year upheld the 2022 plan under a
19 challenge brought under the State Constitution.
20 That seems to me to be pretty powerful evidence
21 that it is available as a constitutionally
22 permissible option here for preserving the
23 status quo.

24 And second, I will point to the Bolling
25 case which the Byrd court heavily relied on in

1 2022 which day says: Sometimes preserving the
2 status quo requires going back to the last
3 peaceable state, requires the Defendant to
4 change something in order to return to that
5 status quo.

6 That's what we are contending needs to
7 happen here. The last peaceable state between
8 the parties is the 2022 plan, a plan that was
9 affirmed under the Florida Constitution by the
10 Florida Supreme Court just last year.

11 Bolling says you can go back to that in
12 certain circumstances on a temporary
13 injunction. That's what we are requesting
14 would happen here.

15 And finally, I want to talk about the
16 severability arguments. I agree with
17 Mr. Bardos that Plaintiffs have to show that
18 those severability arguments are substantially
19 unlikely to prevail.

20 But I would also point out that the first
21 step of our argument under that is to note that
22 the burden is on the challengers of the
23 amendment to show that it is inseverable. So
24 there is a nested burden there.

25 In order for the Legislature to prevail,

1 they must take on that burden in order to show
2 that the amendment is inseverable. That is
3 necessary to the affirmative defense.

4 And the last thing I will note is that
5 here we are talking about the settled state of
6 Florida constitutional law. These amendments
7 were passed by the voters of Florida as
8 substantive limitations on the exercise of the
9 redistricting powers given to the Legislature
10 and, with respect to the Congressional
11 districts, the Governor in the exercise of the
12 veto.

13 Those amendments have been construed by
14 the Florida Supreme Court at length and in
15 clear terms that lay out how they are meant to
16 be applied and giving effect to the intent of
17 the Florida voters who passed it.

18 In this case, Plaintiffs are asking that
19 that status quo, that body of law be applied
20 and enforced during the pendency of the
21 litigation. We are asking that the law not be
22 allowed to change in this preliminary rushed
23 posture.

24 My friend, Mr. Jazil, says there is no
25 rush and I agree. There is no rush to throw

1 out the Fair Districts Amendments. There is no
2 rush to overturn the will of the people by
3 saying that that just doesn't apply here in a
4 theory that has been untested and certainly not
5 been subject to any final adjudication by a
6 Court.

7 We would respectfully request that this
8 Court honor the will of the voters of Florida,
9 maintain the status quo, and issue a temporary
10 injunction preventing the use of the 2026
11 Congressional plan.

12 If Your Honor has no further questions,
13 that is the end of my time. Thank you.

14 THE COURT: So I was going to issue a
15 written ruling. I would like the benefit of
16 the transcript. Do the parties think they can
17 get that to me in a timely fashion?

18 MS. FORD: Of course, Your Honor, we can
19 do that.

20 THE COURT: I am not sure who has
21 ordered --

22 MS. FORD: Equal Ground Plaintiffs
23 arranged for a reporter to be here today, and
24 we would order a transcript just as fast as
25 Ms. Nargiz is able to do.

1 THE COURT: Okay. Sounds good. Any else
2 for today?

3 Thank you. We'll be off the record.

4 (Proceedings concluded at 12:08 p.m.)
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1 CERTIFICATE OF REPORTER
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6 STATE OF FLORIDA)

7 COUNTY OF LEON)
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9

10 I, SANDRA L. NARGIZ, RPR, CM, CRR, CRC,
11 CCR, certify that I was authorized to and did
12 stenographically report the foregoing proceedings,
13 and that the transcript is a true and complete
14 record of my stenographic notes.

15 DATED on May 16, 2026.
16
1718 
19

20
21 SANDRA L. NARGIZ
22 RPR, CM, CRR, CRC, CCR-GA
23 snargiz@comcast.net
24
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MR. NORDBY: [5] 6/13 7/4 8/24 83/17 85/23		
MR. SHENTON: [4] 38/22 45/23 53/18 116/19	THE STENOGRAPHER : [1] 5/4	
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104/6 116/7	uniform [1] 79/23	19/5 31/25 32/13
unconstitutionality	uniformly [1] 37/25	40/22 42/14 46/11
[1] 68/20	unit [1] 25/11	46/14 51/9 55/15
undeniably [1]	United [2] 59/18	56/9 60/5 60/9 60/10
51/24	84/22	60/13 64/14 70/6
under [27] 13/9	universe [1] 88/7	75/1 75/22 112/23
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39/21 40/10 42/1	35/16 108/16 108/20	updated [5] 34/6
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usage [5] 16/18 19/21 20/12 31/24 35/7	valid [4] 77/17 77/19 77/20 91/20	vindication [1] 35/18
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	veto [1] 120/12	vital [1] 62/3
		VOGEL [1] 3/3
		void [1] 74/8
		voluminous [5] 30/14 33/12 37/2 37/14 69/24
		voluntarily [1] 74/12

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29/13 31/13 32/3	85/14 99/2 101/11	within [7] 8/7 8/9
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102/5 104/20 106/23	29/15 29/17 41/16	witnesses [1] 83/11
107/15 108/25 113/5	45/11 50/9 61/22	women [3] 81/23
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who [27] 6/4 12/14	will [40] 5/15 5/21	word [2] 29/20
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**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

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

vs.

Case No.: 2026 CA 914

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

ORDER ON MOTIONS FOR PRELIMINARY INJUNCTION

THIS CAUSE came before the Court for hearing on May 15, 2026, upon Plaintiffs' Motions for a Preliminary Injunction (the "Motions").¹ At the hearing, no testimonial evidence was offered, but each of the Plaintiffs submitted their own evidence packet, with affidavits, expert reports, and committee reports and testimony from the associated legislative proceedings. The Equal Ground Plaintiffs submitted approximately 1900 pages of evidence, comprising 75 exhibits.² The Thompson-Wynn Plaintiffs submitted approximately 220 pages of evidence, comprising 21 exhibits. The Common Cause Plaintiffs submitted approximately 1250 pages of evidence, comprising 18 exhibits.³ The Court has reviewed the Motions, the exhibits, the Defendants' responses in opposition and evidence, the arguments offered at the two-hour hearing, and is otherwise fully advised in the premises. Accordingly, the Court FINDS as follows:

¹ The case is a consolidated group of Plaintiffs against mostly the same Defendants, with each set of Plaintiffs filing their own preliminary injunction motion and associated evidence packet. The last-filed case, the Common Cause Plaintiffs, sued various individuals, but the representation is conveniently expected to be the same (*e.g.*, Florida Senate counsel representing individual senators, etc.).

² The Court will use the parties' exhibit numbers, with the following prefixes: EG-Exh. --, TW-Exh. --, and CC-Exh. -- (for Equal Ground, Thompson-Wynn, and Common Cause, respectively). Similarly, for Defendants' exhibits, with prefixes of CB-Exh. --, S-Exh. --, and H-Exh. -- (for Secretary Cord Byrd, the Florida Senate, and the Florida House, respectively).

³ The Common Cause Plaintiffs referenced a deposition of Jason Poreda from 2025 as Exhibit 11 that was not in the court file, that the Court can find.

I. POSITIONS OF THE PARTIES

Plaintiffs take the position that this case is unusual because the maps were redrawn mid-cycle, with a sole map drawer, who admitted on the public record that the Congressional Districts (CD) were drawn with partisan data and without the need to comply with the Fair Districts Amendment (FDA).

Defendants resist the temporary injunction both procedurally and substantively. Procedurally, Defendants contend that the injunction could only realistically be put in place after a trial. Substantively, Defendants contend that improper intent has not been shown with the available evidence and that Plaintiffs' improperly impute legislative intent from numerous outside sources.

Both parties spend considerable time arguing the constitutionality of the FDA and whether it must be struck down not at all, in part, or in whole. The Court will note at this preliminary stage, and especially with the way the Motions are resolved herein, the question of the FDA's continued constitutional viability is premature.

II. FINDINGS OF FACT

Findings of fact are necessary at this stage, but the Court is mindful that they are made on an incomplete record. Thus, the Court's initial perceptions could change given more robust factual development after discovery, testing of experts, the parties solidify their positions, and credibility determinations that are expected after trial.

1. The Governor's office requested that the Congressional maps be redrawn in a special session he convened before the regular legislative session, to take place after the regular session. EG-Exh. 6.

2. The Governor submitted proposed maps for the special session, citing two primary criteria considered in their construction: removing the racial components of CD-20 and adjusting for lopsided population growth in Central Florida while still using 2020 Census Data as required. TW-Exh. 13.

3. Each house of the Legislature held a committee meeting to hear from the Governor's office regarding his legal position on the redrawing of maps and a description of how the maps were drawn. *See generally* EG-Exh. 11; EG-Exh. 12.

4. The consensus at this stage of the litigation is that Mr. Jason Poreda was the sole drawer of the maps. EG-Exh. 12 at 23 (Mr. Poreda answering that "I am the only one that drew

the map.”). Mr. Poreda gave a presentation to each chamber to explain his process and then answered questions. *See generally* EG-Exh. 11; EG-Exh. 12.

5. The thrust of his presentation and method that he claimed to use was that once he changed CD-20, in South Florida, it has cascading effects all throughout the center part of the state. In addition he sought to account for population growth while complying with “traditional redistricting criteria” of compactness, etc.

6. The maps were voted out of committee and then debated on the floor, where they were passed and signed by the Governor.

7. The Secretary of State estimates that May 25, 2026, is the cutoff for implementation of maps. CB-Exh. 14 at 3.

III. LEGAL STANDARD

A. *Injunctive relief.*

Under Florida law, a party seeking a preliminary injunction must prove four elements with competent, substantial evidence: (1) substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm; (3) the unavailability of an adequate remedy at law; and (4) that the injunction serves the public interest. The failure to establish even one of these elements is fatal to the request for injunctive relief.

The Court is bound by recent cases on this very issue, in a very similar posture. The First District Court of Appeal explained that the constitutional writ of a temporary injunction is “to preserve the status quo [and] will not support [the trial court] going further to grant a remedy on a provisional basis.” *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1076 (Fla. 1st DCA 2022) (*Byrd I*). Further, “the Legislature clearly eschewed the availability of a provisional remedy in a chapter 86 action.” *Byrd I* at 1077. Thus, to succeed on their motion, Plaintiffs must find the balance of preserving the status quo without a provisional remedy. *Byrd I* at 1079 (“Thus, a temporary injunction, if warranted, could only reinstate the former congressional map.”).

B. *Constitutional issue.*

Plaintiffs challenge is under the FDA, which is reproduced below:

Standards for establishing congressional district boundaries.—In establishing congressional district boundaries:

(a) [*Tier I criteria*] No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and

districts shall not be drawn 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; and districts shall consist of contiguous territory.

(b) [*Tier 2 criteria*] Unless compliance with the standards in this subsection conflicts with the standards in subsection 1(a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(c) The order in which the standards within subsections 1(a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

Art. III, § 20, Fla. Const. (italicized annotations added).⁴

IV. ANALYSIS

A. *Improper Use of Injunctive Power*

A preliminary injunction is an extraordinary and drastic remedy that is the exception, rather than the rule. The parties argue extensively about the scope of this Court's injunctive power. Defendants point to *Byrd I* to argue that the Court has no power to issue a preliminary injunction in a declaratory action (*i.e.*, without a final hearing), because the declaratory judgment is the relief. Plaintiffs counter that the Court still has all writs power to enjoin and maintain the status quo during litigation. This contention seems right. Indeed, Defendants seem to concede that if the map were obviously deficient, some interim relief would be warranted. However, Defendants then counter that for Plaintiffs to receive a mandatory injunction under this Court's all writ power, they must show that the plan they propose is also constitutional.

Plaintiffs make several compelling points in support of the 2022 map. First, the 2022 map had the same presumption of constitutionality as all legislative acts. Second, the 2022 map was heavily litigated for several years and has been in operation for two election cycles (2022 and 2024). Third, the same process produced that map (*i.e.*, a Governor-called special session), with the same principal map drawer.

However, Defendants have the better of this argument. The 2022 map litigation did not question the constitutionality of potential race-based district lines present in CD-20. Thus, the prior litigation is not an endorsement of CD-20 or the 2022 map in toto. The earlier litigation just

⁴ The FDA is broadly understood to include a very similar provision for state legislative districts (*i.e.*, Art. III, § 21), but that section is not at issue in this litigation.

addressed Plaintiffs’ challenges, which focused on the prior majority-minority district of what was known as CD-5. Further, the 2022 map was declared unconstitutional when the Governor and Legislature replaced it with the 2026 map challenged in this litigation. The political branch’s position was in anticipation of a changing legal landscape with the Supreme Court’s pending ruling in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026).⁵ Plaintiffs’ evidence focuses on challenging the constitutionality of the 2026 map, but does not sufficiently challenge the political branches’ finding that CD-20 in the 2022 map was drawn with impermissible racial intent.

Plaintiffs’ evidence at this stage is insufficient to support the permissibility of this Court forcing the 2022 map onto the electorate in contravention of the duly enacted 2026 map. Indeed, if Plaintiffs prevail it seems the proper remedy is not for the Court to order a particular map, but for it to order the Legislature to redraw the map in a constitutional manner. *Byrd I* at 1083 (“The supreme court in fact repeatedly recognized that the Legislature, not the courts, has the prerogative to redraw the lines where the first lines were found wanting.”). It would seem presumptive on a limited evidentiary record and rushed proceedings to overturn both the Legislature’s 2026 map while also overturning their finding that the 2022 map is unconstitutional. This is especially so where, if the Legislature and the Governor are correct that the 2022 map has racial classifications, Plaintiffs would have to provide this Court with sufficient evidence under strict scrutiny to justify the Court ordering its use again. *See, e.g., Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007) (“when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny”). To the extent the Court has to balance Florida’s FDA prohibition of improper partisan intent and the United States Constitution’s Equal Protection guarantees, it seems clear that the potential partisan intent in the 2026 map is the lesser of the two evils.

In that way, the Court’s ruling on the preliminary injunction is understandably frustrating given the timeline⁶ of this case and the short-fused call to action. Assuming Plaintiffs ultimately

⁵ Indeed, the dissent described *Callais*’ effect as the “now-completed demolition of the Voting Rights Act.” *Callais*, 146 S. Ct. at 1166 (Kagan, J., dissenting). Add to that demolition the understanding in Florida law that the FDA’s race-based criteria “follow almost verbatim the requirements embodied in the Federal Voting Rights Act.” *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 619 (Fla. 2012) (*Apportionment I*) (citations omitted).

⁶ Looking ahead to the merits, and assuming similar case-processing times as the last challenge, after this Court’s final ruling, it would take three months for the District Court to complete its

prevail in challenging the maps, there likely will be additional elections held on maps that violate the FDA, as has happened in the past. *See, e.g., Byrd I* at 1083 (“two congressional elections went forward under a redistricting plan that was challenged as—and later determined to be—violative of the FDA, with the tacit or express approval of the circuit court and supreme court”).

Although finding that the extraordinary measure of a temporary injunction is improper in this case, the Court goes on to analyze the traditional elements of a temporary injunction.

B. Substantial Likelihood of Success on the Merits

A substantial likelihood of success requires more than a disputed claim. The most important issue in this litigation is whether the maps were drawn with impermissible partisan intent. The intent of the map drawer is not as apparent as Plaintiffs argue, nor is the applicability of imputing Mr. Poreda’s intent (if any) to the entire Legislature established on this record.

Plaintiffs argue that there is direct evidence that Mr. Poreda drew with impermissible partisan intent, which is to say with the intent to favor or disfavor an incumbent or political party. The evidence they chiefly rely on is an answer from the question-and-answer period from Mr. Poreda’s presentation to the Florida Senate. EG-Exh. 12 at 23. First, this statement is not direct evidence of impermissible intent. That is, Mr. Poreda did not say that he drew district lines to favor or disfavor an incumbent or party. Rather, one must infer that because he used partisan data (along with all other data available), that he then used it with impermissible intent. Once an inference is required, evidence moves into the circumstantial category.

Second, the Court does not accord the same weight to this statement that Plaintiffs do, at least not on a cold record at this stage in the litigation. It was one of two presentations that Mr. Poreda gave that day. In both presentations, his message was consistent and clear: he removed the race-based aspects of CD-20, which required him to redraw the surrounding districts that then cascaded to changes throughout the state. The level of questions he received fell well short of what one would expect in an adversarial cross-examination from a skilled advocate.⁷

review. *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 375 So. 3d 335 (Fla. 1st DCA 2023) (*Byrd II*, decided December 1, 2023, from September 4, 2023, notice of appeal). If the Florida Supreme Court accepts jurisdiction, perhaps another 19.5 months for it to complete its review. *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, 415 So. 3d 180 (Fla. 2025) (decided July 17, 2025 from a December 4, 2023, certiorari petition). Thus, it seems this challenge is more geared toward the 2028 or 2030 election cycles than the 2026 election cycle.

⁷ For example, Mr. Poreda was asked at one point why he did not just draw an additional district. EG-Exh. 11 at 52 (“I noticed that we still have only 28 Congressional districts. Based on that

Plaintiffs point to additional facts. Notably, they present an array of experts with associated metrics for measuring districts. However, Defendants’ evidentiary objection to Plaintiffs’ numerous experts at the preliminary injunction stage without adequate chance at rebuttal is well taken. As one example, Plaintiffs’ expert indicated that he did not use Florida’s EDR data to measure mid-decade population shifts, while Mr. Poreda indicated that he did. *Compare* CC-Exh. 3 at 4-5 with EG-Exh. 11 at 54. Perhaps the expert’s data is better, but it would not support their position regarding intent if Mr. Poreda thought he was balancing population based on EDR data when, in fact, the districts became more out of balance looking at a different data set.

Thus, the Court concludes that from this record, there is insufficient evidence of impermissible intent to show substantial likelihood of success on the merits.

C. Irreparable Harm

The Executive and Florida House Defendants do not dispute the notion of irreparable harm. Plaintiffs cite cases for the notion that irreparable harm is per se when there is a constitutional violation. *Bd. of Cnty. Commissioners, Santa Rosa Cnty. v. Home Builders Ass’n of W. Fla., Inc.*, 325 So. 3d 981, 985 (Fla. 1st DCA 2021) (“[T]he law recognizes that a continuing constitutional violation, in and of itself, constitutes irreparable harm.”) (citations omitted). The Florida Senate argues that because Plaintiffs’ right to vote is not at issue, the precedent they cite is not as relevant in a map-drawing case. The Court need not decide that issue at this stage given the other points raised and decided.

D. Adequate Remedy at Law

Like the last prong, Defendants do not dispute that there is a lack of adequate remedy at law. Indeed, to the extent Plaintiffs show constitutional injury, they cannot be compensated through money damages.

E. Balance of Hardships and the Public Interest

Even if Plaintiff had established all of the other elements, the balance of hardships and the public interest weigh heavily against the issuance of an injunction. Stability before elections promotes “[c]onfidence in the integrity of our electoral processes,” which “is essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). While the

growth, as you were making decisions drawing the maps, was there any consideration to adding another Congressional district?”).

Court views *Purcell* as more of a federal prudential policy of restraint for federal courts not throwing state elections into disarray, it is a common-sense and sound principle.

However, the Florida Supreme Court also recognizes that “[t]o undertake to interfere with the election process at this late date, even if a clear legal right were shown, would result in confusion and injuriously affect the rights of third persons.” *State ex rel. Haft v. Adams*, 238 So. 2d 843, 845 (Fla. 1970); *see also State ex rel. Walker v. Best*, 163 So. 696, 697 (Fla. 1935) (“it is now too late for the town clerk to effectively and legally carry out the commands of the alternative writ, as the election has been called . . . is only fifteen days off”).

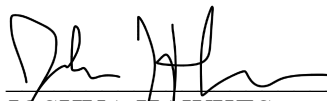
The election machinery of the state is already underway. CB-Exh. 14. Similar to the town election in *Walker v. Best*, it is more difficult for the much larger ship of statewide elections to change directions at this juncture. The primary is less than three months away, and the general less than six months. The public interest weighs more in favor of certainty than a haphazard judicial mandate of discarded maps.

V. RULING

It is hereby ORDERED AND ADJUDGED as follows:

- A. Plaintiffs’ Motions for a Preliminary Injunction are DENIED.
- B. This denial of preliminary injunctive relief does not preclude the entry of a final injunction at the conclusion of a trial on the merits.
- C. This is a non-final order reviewable under Florida Rule of Appellate Procedure 9.130.

DONE AND ORDERED in chambers at Tallahassee, Leon County, Florida on this 26th day of May, 2026.



JOSHUA HAWKES
Circuit Judge

Copies to:
Parties via e-filing portal

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 APPEAL

Notice is given, pursuant to Florida Rules of Appellate Procedure 9.030(b)(1)(B) and 9.130(a)(3)(B), that Equal Ground Education Fund, Inc., Marcos Vilar, Brandon Nelson, Lisa Barika, Kisha Linebaugh, Rochelle Reback, Elizabeth Wells, Susan Wilson, Andrea Davnier Hill, Emma Kurtz, Lynnelle Mays, Steven Licari, Anne Blanford, Sharon Lascola, Janet Wechter, Kerry Marie, Linda Rosenthal, Daniella Pierre, and Philip Fortman, Plaintiffs/Appellants, appeal to the First District Court of Appeal the order of this Court rendered on May 26, 2026. A copy of the order is attached to this notice of appeal as **Exhibit A**. The nature of the order is a nonfinal order denying temporary injunctive relief for Plaintiffs. *See* Fla. R. App. P. 9.130(a)(3)(B).

Dated: May 26, 2026

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 26, 2026 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to all counsel of record.

/s/ Frederick S. Wermuth

Frederick S. Wermuth

Florida Bar No. 0184111

Counsel for Plaintiffs

EXHIBIT A

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

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

vs.

Case No.: 2026 CA 914

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

ORDER ON MOTIONS FOR PRELIMINARY INJUNCTION

THIS CAUSE came before the Court for hearing on May 15, 2026, upon Plaintiffs' Motions for a Preliminary Injunction (the "Motions").¹ At the hearing, no testimonial evidence was offered, but each of the Plaintiffs submitted their own evidence packet, with affidavits, expert reports, and committee reports and testimony from the associated legislative proceedings. The Equal Ground Plaintiffs submitted approximately 1900 pages of evidence, comprising 75 exhibits.² The Thompson-Wynn Plaintiffs submitted approximately 220 pages of evidence, comprising 21 exhibits. The Common Cause Plaintiffs submitted approximately 1250 pages of evidence, comprising 18 exhibits.³ The Court has reviewed the Motions, the exhibits, the Defendants' responses in opposition and evidence, the arguments offered at the two-hour hearing, and is otherwise fully advised in the premises. Accordingly, the Court FINDS as follows:

¹ The case is a consolidated group of Plaintiffs against mostly the same Defendants, with each set of Plaintiffs filing their own preliminary injunction motion and associated evidence packet. The last-filed case, the Common Cause Plaintiffs, sued various individuals, but the representation is conveniently expected to be the same (*e.g.*, Florida Senate counsel representing individual senators, etc.).

² The Court will use the parties' exhibit numbers, with the following prefixes: EG-Exh. --, TW-Exh. --, and CC-Exh. -- (for Equal Ground, Thompson-Wynn, and Common Cause, respectively). Similarly, for Defendants' exhibits, with prefixes of CB-Exh. --, S-Exh. --, and H-Exh. -- (for Secretary Cord Byrd, the Florida Senate, and the Florida House, respectively).

³ The Common Cause Plaintiffs referenced a deposition of Jason Poreda from 2025 as Exhibit 11 that was not in the court file, that the Court can find.

I. POSITIONS OF THE PARTIES

Plaintiffs take the position that this case is unusual because the maps were redrawn mid-cycle, with a sole map drawer, who admitted on the public record that the Congressional Districts (CD) were drawn with partisan data and without the need to comply with the Fair Districts Amendment (FDA).

Defendants resist the temporary injunction both procedurally and substantively. Procedurally, Defendants contend that the injunction could only realistically be put in place after a trial. Substantively, Defendants contend that improper intent has not been shown with the available evidence and that Plaintiffs' improperly impute legislative intent from numerous outside sources.

Both parties spend considerable time arguing the constitutionality of the FDA and whether it must be struck down not at all, in part, or in whole. The Court will note at this preliminary stage, and especially with the way the Motions are resolved herein, the question of the FDA's continued constitutional viability is premature.

II. FINDINGS OF FACT

Findings of fact are necessary at this stage, but the Court is mindful that they are made on an incomplete record. Thus, the Court's initial perceptions could change given more robust factual development after discovery, testing of experts, the parties solidify their positions, and credibility determinations that are expected after trial.

1. The Governor's office requested that the Congressional maps be redrawn in a special session he convened before the regular legislative session, to take place after the regular session. EG-Exh. 6.

2. The Governor submitted proposed maps for the special session, citing two primary criteria considered in their construction: removing the racial components of CD-20 and adjusting for lopsided population growth in Central Florida while still using 2020 Census Data as required. TW-Exh. 13.

3. Each house of the Legislature held a committee meeting to hear from the Governor's office regarding his legal position on the redrawing of maps and a description of how the maps were drawn. *See generally* EG-Exh. 11; EG-Exh. 12.

4. The consensus at this stage of the litigation is that Mr. Jason Poreda was the sole drawer of the maps. EG-Exh. 12 at 23 (Mr. Poreda answering that "I am the only one that drew

the map.”). Mr. Poreda gave a presentation to each chamber to explain his process and then answered questions. *See generally* EG-Exh. 11; EG-Exh. 12.

5. The thrust of his presentation and method that he claimed to use was that once he changed CD-20, in South Florida, it has cascading effects all throughout the center part of the state. In addition he sought to account for population growth while complying with “traditional redistricting criteria” of compactness, etc.

6. The maps were voted out of committee and then debated on the floor, where they were passed and signed by the Governor.

7. The Secretary of State estimates that May 25, 2026, is the cutoff for implementation of maps. CB-Exh. 14 at 3.

III. LEGAL STANDARD

A. *Injunctive relief.*

Under Florida law, a party seeking a preliminary injunction must prove four elements with competent, substantial evidence: (1) substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm; (3) the unavailability of an adequate remedy at law; and (4) that the injunction serves the public interest. The failure to establish even one of these elements is fatal to the request for injunctive relief.

The Court is bound by recent cases on this very issue, in a very similar posture. The First District Court of Appeal explained that the constitutional writ of a temporary injunction is “to preserve the status quo [and] will not support [the trial court] going further to grant a remedy on a provisional basis.” *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1076 (Fla. 1st DCA 2022) (*Byrd I*). Further, “the Legislature clearly eschewed the availability of a provisional remedy in a chapter 86 action.” *Byrd I* at 1077. Thus, to succeed on their motion, Plaintiffs must find the balance of preserving the status quo without a provisional remedy. *Byrd I* at 1079 (“Thus, a temporary injunction, if warranted, could only reinstate the former congressional map.”).

B. *Constitutional issue.*

Plaintiffs challenge is under the FDA, which is reproduced below:

Standards for establishing congressional district boundaries.—In establishing congressional district boundaries:

(a) [*Tier I criteria*] No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and

districts shall not be drawn 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; and districts shall consist of contiguous territory.

(b) [*Tier 2 criteria*] Unless compliance with the standards in this subsection conflicts with the standards in subsection 1(a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(c) The order in which the standards within subsections 1(a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

Art. III, § 20, Fla. Const. (italicized annotations added).⁴

IV. ANALYSIS

A. *Improper Use of Injunctive Power*

A preliminary injunction is an extraordinary and drastic remedy that is the exception, rather than the rule. The parties argue extensively about the scope of this Court's injunctive power. Defendants point to *Byrd I* to argue that the Court has no power to issue a preliminary injunction in a declaratory action (*i.e.*, without a final hearing), because the declaratory judgment is the relief. Plaintiffs counter that the Court still has all writs power to enjoin and maintain the status quo during litigation. This contention seems right. Indeed, Defendants seem to concede that if the map were obviously deficient, some interim relief would be warranted. However, Defendants then counter that for Plaintiffs to receive a mandatory injunction under this Court's all writ power, they must show that the plan they propose is also constitutional.

Plaintiffs make several compelling points in support of the 2022 map. First, the 2022 map had the same presumption of constitutionality as all legislative acts. Second, the 2022 map was heavily litigated for several years and has been in operation for two election cycles (2022 and 2024). Third, the same process produced that map (*i.e.*, a Governor-called special session), with the same principal map drawer.

However, Defendants have the better of this argument. The 2022 map litigation did not question the constitutionality of potential race-based district lines present in CD-20. Thus, the prior litigation is not an endorsement of CD-20 or the 2022 map in toto. The earlier litigation just

⁴ The FDA is broadly understood to include a very similar provision for state legislative districts (*i.e.*, Art. III, § 21), but that section is not at issue in this litigation.

addressed Plaintiffs’ challenges, which focused on the prior majority-minority district of what was known as CD-5. Further, the 2022 map was declared unconstitutional when the Governor and Legislature replaced it with the 2026 map challenged in this litigation. The political branch’s position was in anticipation of a changing legal landscape with the Supreme Court’s pending ruling in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026).⁵ Plaintiffs’ evidence focuses on challenging the constitutionality of the 2026 map, but does not sufficiently challenge the political branches’ finding that CD-20 in the 2022 map was drawn with impermissible racial intent.

Plaintiffs’ evidence at this stage is insufficient to support the permissibility of this Court forcing the 2022 map onto the electorate in contravention of the duly enacted 2026 map. Indeed, if Plaintiffs prevail it seems the proper remedy is not for the Court to order a particular map, but for it to order the Legislature to redraw the map in a constitutional manner. *Byrd I* at 1083 (“The supreme court in fact repeatedly recognized that the Legislature, not the courts, has the prerogative to redraw the lines where the first lines were found wanting.”). It would seem presumptive on a limited evidentiary record and rushed proceedings to overturn both the Legislature’s 2026 map while also overturning their finding that the 2022 map is unconstitutional. This is especially so where, if the Legislature and the Governor are correct that the 2022 map has racial classifications, Plaintiffs would have to provide this Court with sufficient evidence under strict scrutiny to justify the Court ordering its use again. *See, e.g., Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007) (“when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny”). To the extent the Court has to balance Florida’s FDA prohibition of improper partisan intent and the United States Constitution’s Equal Protection guarantees, it seems clear that the potential partisan intent in the 2026 map is the lesser of the two evils.

In that way, the Court’s ruling on the preliminary injunction is understandably frustrating given the timeline⁶ of this case and the short-fused call to action. Assuming Plaintiffs ultimately

⁵ Indeed, the dissent described *Callais*’ effect as the “now-completed demolition of the Voting Rights Act.” *Callais*, 146 S. Ct. at 1166 (Kagan, J., dissenting). Add to that demolition the understanding in Florida law that the FDA’s race-based criteria “follow almost verbatim the requirements embodied in the Federal Voting Rights Act.” *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 619 (Fla. 2012) (*Apportionment I*) (citations omitted).

⁶ Looking ahead to the merits, and assuming similar case-processing times as the last challenge, after this Court’s final ruling, it would take three months for the District Court to complete its

prevail in challenging the maps, there likely will be additional elections held on maps that violate the FDA, as has happened in the past. *See, e.g., Byrd I* at 1083 (“two congressional elections went forward under a redistricting plan that was challenged as—and later determined to be—violative of the FDA, with the tacit or express approval of the circuit court and supreme court”).

Although finding that the extraordinary measure of a temporary injunction is improper in this case, the Court goes on to analyze the traditional elements of a temporary injunction.

B. Substantial Likelihood of Success on the Merits

A substantial likelihood of success requires more than a disputed claim. The most important issue in this litigation is whether the maps were drawn with impermissible partisan intent. The intent of the map drawer is not as apparent as Plaintiffs argue, nor is the applicability of imputing Mr. Poreda’s intent (if any) to the entire Legislature established on this record.

Plaintiffs argue that there is direct evidence that Mr. Poreda drew with impermissible partisan intent, which is to say with the intent to favor or disfavor an incumbent or political party. The evidence they chiefly rely on is an answer from the question-and-answer period from Mr. Poreda’s presentation to the Florida Senate. EG-Exh. 12 at 23. First, this statement is not direct evidence of impermissible intent. That is, Mr. Poreda did not say that he drew district lines to favor or disfavor an incumbent or party. Rather, one must infer that because he used partisan data (along with all other data available), that he then used it with impermissible intent. Once an inference is required, evidence moves into the circumstantial category.

Second, the Court does not accord the same weight to this statement that Plaintiffs do, at least not on a cold record at this stage in the litigation. It was one of two presentations that Mr. Poreda gave that day. In both presentations, his message was consistent and clear: he removed the race-based aspects of CD-20, which required him to redraw the surrounding districts that then cascaded to changes throughout the state. The level of questions he received fell well short of what one would expect in an adversarial cross-examination from a skilled advocate.⁷

review. *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 375 So. 3d 335 (Fla. 1st DCA 2023) (*Byrd II*, decided December 1, 2023, from September 4, 2023, notice of appeal). If the Florida Supreme Court accepts jurisdiction, perhaps another 19.5 months for it to complete its review. *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, 415 So. 3d 180 (Fla. 2025) (decided July 17, 2025 from a December 4, 2023, certiorari petition). Thus, it seems this challenge is more geared toward the 2028 or 2030 election cycles than the 2026 election cycle.

⁷ For example, Mr. Poreda was asked at one point why he did not just draw an additional district. EG-Exh. 11 at 52 (“I noticed that we still have only 28 Congressional districts. Based on that

Plaintiffs point to additional facts. Notably, they present an array of experts with associated metrics for measuring districts. However, Defendants’ evidentiary objection to Plaintiffs’ numerous experts at the preliminary injunction stage without adequate chance at rebuttal is well taken. As one example, Plaintiffs’ expert indicated that he did not use Florida’s EDR data to measure mid-decade population shifts, while Mr. Poreda indicated that he did. *Compare* CC-Exh. 3 at 4-5 with EG-Exh. 11 at 54. Perhaps the expert’s data is better, but it would not support their position regarding intent if Mr. Poreda thought he was balancing population based on EDR data when, in fact, the districts became more out of balance looking at a different data set.

Thus, the Court concludes that from this record, there is insufficient evidence of impermissible intent to show substantial likelihood of success on the merits.

C. Irreparable Harm

The Executive and Florida House Defendants do not dispute the notion of irreparable harm. Plaintiffs cite cases for the notion that irreparable harm is per se when there is a constitutional violation. *Bd. of Cnty. Commissioners, Santa Rosa Cnty. v. Home Builders Ass’n of W. Fla., Inc.*, 325 So. 3d 981, 985 (Fla. 1st DCA 2021) (“[T]he law recognizes that a continuing constitutional violation, in and of itself, constitutes irreparable harm.”) (citations omitted). The Florida Senate argues that because Plaintiffs’ right to vote is not at issue, the precedent they cite is not as relevant in a map-drawing case. The Court need not decide that issue at this stage given the other points raised and decided.

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growth, as you were making decisions drawing the maps, was there any consideration to adding another Congressional district?”).

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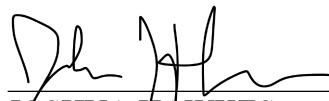
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V. RULING

It is hereby ORDERED AND ADJUDGED as follows:

- A. Plaintiffs’ Motions for a Preliminary Injunction are DENIED.
- B. This denial of preliminary injunctive relief does not preclude the entry of a final injunction at the conclusion of a trial on the merits.
- C. This is a non-final order reviewable under Florida Rule of Appellate Procedure 9.130.

DONE AND ORDERED in chambers at Tallahassee, Leon County, Florida on this 26th day of May, 2026.



JOSHUA HAWKES
Circuit Judge

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