IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

Case No. 8:24-cv-879-CEH-TPB-ALB

KÉTO NORD HODGES, *et al.*,

Plaintiffs,

v.

BEN ALBRITTON, *etc., et al.*,

Defendants.

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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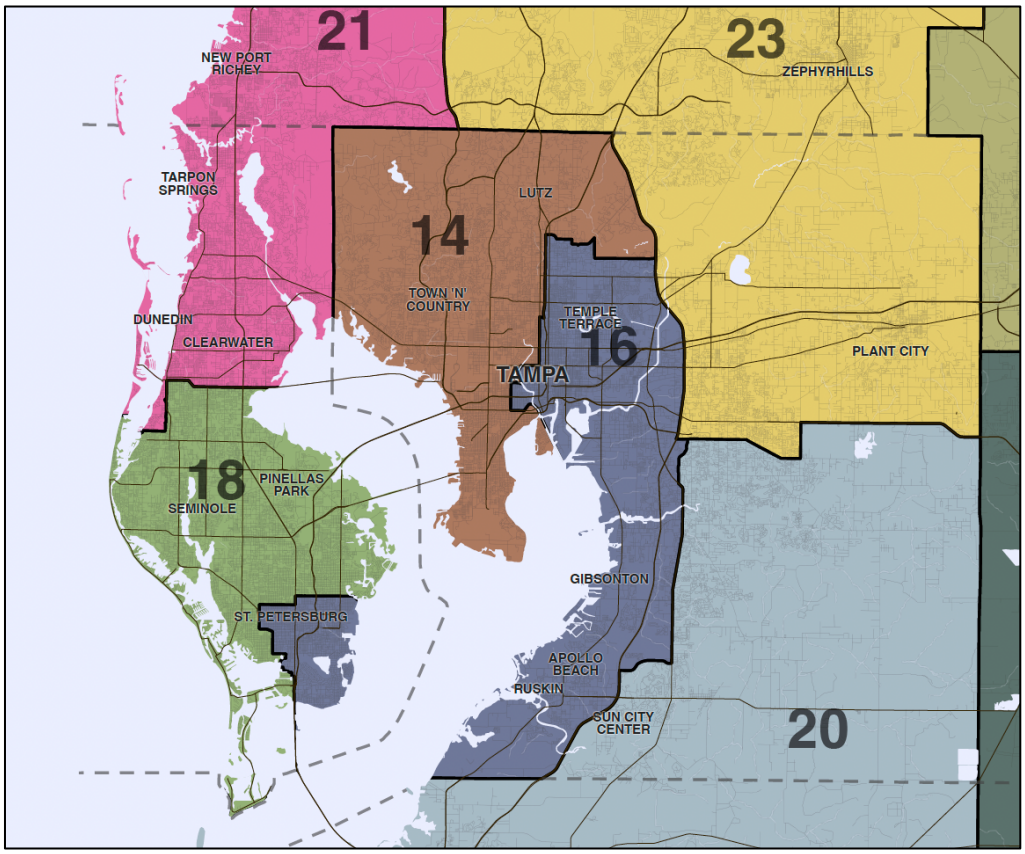
I. INTRODUCTION

Plaintiffs challenge Florida Senate District 16 in the Tampa Bay area as racially gerrymandered in violation of the Fourteenth Amendment. District 16 stretches across the waters of Tampa Bay to connect disparate and distinct Black communities in Tampa and St. Petersburg, packing more than half of the region's Black residents into one district. As a result, Black residents are artificially stripped from adjacent District 18, diminishing their influence and voice in elections there. In crafting District 16, the State focused predominantly on racial considerations and ignored the major geographical divide between the two unconnected portions of District 16:



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The Equal Protection Clause requires the State's use of race both to be narrowly

tailored and to serve a compelling interest, but the State failed to narrowly tailor its use of race. The Florida Constitution requires the State to avoid diminishing Black voters' ability to elect representatives of their choice in District 16, but the State unnecessarily used race to disregard traditional, race-neutral redistricting considerations. Far from advancing representation, District 16 sorts Black voters with disparate needs on either side of Tampa Bay into one district. The State could have drawn District 16 to both avoid the diminishment of Black voting power and respect traditional redistricting criteria. Instead, the State engaged in racial gerrymandering that unconstitutionally abridges Plaintiffs' rights to equal protection of the laws.

II. LEGAL STANDARDS

A. Standing

1. To have Article III standing, Plaintiffs must demonstrate an injury-in-fact, causation, and redressability. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

2. "Where a plaintiff resides in a racially gerrymandered district, [] the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria, and therefore has standing to challenge the legislature's action." *United States v. Hays*, 515 U.S. 737, 744–45 (1995) (cleaned up).

3. The injury-in-fact inheres in the use of race to draw legislative districts. An individual who lives in a racially gerrymandered district is injured because she is "subjected to a racial classification, as well as being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group." *Ala. Legis. Black Caucus v. Alabama* (*ALBC I*), 575 U.S. 254, 263 (2015) (cleaned

up); *see also Miller v. Johnson*, 515 U.S. 900, 911–12 (1995) ("When the State assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, 'think alike, share the same political interests, and will prefer the same candidates at the polls.'" (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993))).

4. Plaintiffs' injuries are redressed when they are no longer subject to a racial classification—when they live in districts that are not drawn predominantly based on race, or where the use of race is narrowly tailored to a compelling interest. *GRACE, Inc. v. City of Miami* (*GRACE III*), No. 1:22-cv-24066-KMM, 2023 WL 8856325, at *7–8 & n.9 (S.D. Fla. Dec. 21, 2023).

5. Beyond the racial classification, racial gerrymandering can cause other types of harm that "are more than just theoretical." *Jacksonville Branch of NAACP v. City of Jacksonville* (*Jacksonville I*), 635 F. Supp. 3d 1229, 1273 (M.D. Fla. 2022). Such harms can include impaired constituent-representative relationships, less responsiveness on the part of elected officials to the communities that compose their districts, and difficulty in advocating around shared interests. *Id.* at 1271–73.

B. Racial Gerrymandering

6. "The Equal Protection Clause prohibits a State, without sufficient justification, from 'separat[ing] its citizens into different voting districts on the basis of race.'" *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017) (quoting *Miller*, 515 U.S. at 911).

7. Racial gerrymandering claims involve "a two-step analysis": (1) that race

was the predominant factor in drawing the districts; and (2) if so, the districts must withstand strict scrutiny. *Cooper v. Harris*, 581 U.S. 285, 291 (2017).

1. Racial Predominance

8. First, plaintiffs must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.* (quoting *Miller*, 515 U.S. at 916).

9. To show racial predominance, "a plaintiff must prove that the State 'subordinated' race-neutral districting criteria such as compactness, contiguity, and core preservation to 'racial considerations.'" *Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1, 7 (2024) (quoting *Miller*, 515 U.S. at 916). The consideration of the role race played requires a "holistic analysis." *Bethune-Hill*, 580 U.S. at 192. A showing of predominance can therefore "be made through some combination of direct and circumstantial evidence." *Alexander*, 602 U.S. at 8 (citation omitted).

10. "Direct evidence often comes in the form of a relevant state actor's express acknowledgment that race played a role in the drawing of district lines." *Alexander*, 602 U.S. at 8; *see also Jacksonville Branch of NAACP v. City of Jacksonville* (*Jacksonville II*), No. 22-13544, 2022 WL 16754389, at *4 (11th Cir. Nov. 7, 2022) (concluding "relevant, contemporaneous statements of key legislators are to be assessed when determining whether racial considerations predominated in redistricting processes"). "Such concessions are not uncommon because States often admit to considering race for the purpose of satisfying [ ] precedent interpreting"—for example—"the Voting Rights Act of 1965." *Alexander*, 602 U.S. at 8.

11. A plaintiff can also point to indirect evidence, such as the challenged district's lack of "conformity to traditional districting principles, such as compactness and respect for county lines." *Cooper*, 581 U.S. at 308.

12. Minimizing changes to districts from the prior plan, commonly referred to as "core preservation," is one race-neutral redistricting principle legislatures can sometimes follow. *Alexander*, 602 U.S. at 7. But "[r]ace may predominate even when a reapportionment plan respects traditional principles." *Bethune-Hill*, 580 U.S. at 179 (cleaned up). The possibility "that other considerations may have played a role in . . . redistricting does not mean that race did not predominate." *Clark v. Putnam Cnty.*, 293 F.3d 1261, 1270 (11th Cir. 2002). Thus, even if a state does follow the core-preservation principle, it cannot "immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." *Allen v. Milligan*, 599 U.S. 1, 22 (2023).[1]

13. There is no "special evidentiary prerequisite" for proving racial predominance. *Cooper*, 581 U.S. at 318; *see also Cubanos Pa'lante v. Fla. House of Representatives*, 766 F. Supp. 3d 1204, 1211 n.6 (S.D. Fla. 2025) ("[T]he courts do not force 'plaintiffs to submit one particular form of proof to prevail' in equal protection cases." (quoting *Cooper*, 581 U.S. at 319)). Plaintiffs need not show actual "conflict or

[1] *See also Bethune-Hill v. Va. State Bd. of Elections*, 141 F. Supp. 3d 505, 545 (E.D. Va. 2015) ("'That's the way we've always done it' may be a neutral response, but it is not a meaningful answer."), *aff'd in part, vacated in part*, 580 U.S. 178; *Polish Am. Congress v. City of Chicago*, 226 F. Supp. 2d 930, 937 (N.D. Ill. 2002) ("Adherence to established boundary lines . . . may or may not be a legitimate redistricting objective, depending in part on how the lines were drawn originally . . . ." (citations omitted)).

inconsistency" between district design and traditional race-neutral districting principles: "Race may predominate even when a reapportionment plan respects traditional principles . . . if 'race was the criterion that, in the State's view, could not be compromised,' and race-neutral considerations 'came into play only after the race-based decision had been made.'" *Bethune-Hill*, 580 U.S. at 189–90 (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996)) (alteration in original omitted). "[P]arties may rely on evidence other than bizarreness to establish race-based districting." *Miller*, 515 U.S. at 913.

14. Alternative district configurations that satisfy race-neutral criteria can be probative of racial predominance. *GRACE, Inc. v. City of Miami* (*GRACE IV*), 730 F. Supp. 3d 1245, 1283 (S.D. Fla. 2024) (rejected alternative plans constitute evidence of racial predominance).

15. Because being classified on the basis of race is itself the harm of racial gerrymandering, an alternative plan (or remedy) need not reflect different racial demographics than the challenged plan. *GRACE, Inc. v. City of Miami* (*GRACE II*), 702 F. Supp. 3d 1263, 1278 (S.D. Fla. 2023) ("Defendant's assertion that the districts are not racially gerrymandered because they reflect the demographic reality of the city is inapposite."); *see also Perez v. Texas*, slip op. at 1–2, No. 5:11-cv-360 (W.D. Tex. May 28, 2019), ECF No. 1631 (ordering remedy that "eliminates the changes that led this Court to find racial gerrymandering" despite "maintain[ing] [the district's] majority [Hispanic] status"); *Jacksonville Branch of NAACP v. City of Jacksonville*, No. 3:22-cv-493, 2022 WL 17751416, at *2, *20 (M.D. Fla. Dec. 19, 2022) (summarizing earlier order

finding racial gerrymandering in predominantly Black protected districts resulted in "stripping" Black voters from surrounding districts, even where the court-ordered remedy did not yield an additional Black-performing seat), *stay denied*, No. 22-14260, 2023 WL 119425 (11th Cir. Jan. 6, 2023).

16. That said, an alternative map is not *required* to prove racial predominance, especially where, as here, the state does not assert a partisan-gerrymandering defense (*i.e.*, argues that partisan considerations, not racial ones, drove mapping decisions). *Alexander*, 602 U.S. at 9–10; *Easley v. Cromartie*, 532 U.S. 234, 249 (2001); *Cubanos Pa'lante*, 766 F. Supp. 3d at 1211 n.6 ("The existence of an alternative map is not a substantive requirement of a racial-gerrymandering claim . . . .").

17. Splitting of cities, precincts, and other geographic subdivisions along racial lines "strongly suggests" racial predominance. *Covington v. North Carolina* (*Covington I*), 316 F.R.D. 117, 145, 160 (M.D.N.C. 2016), *aff'd*, 581 U.S. 1015 (2017); *Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 148 (E.D. Va. 2018); *Jacksonville I*, 635 F. Supp. 3d at 1275 (discussing racial patterns in how precincts were split); *GRACE, Inc. v. City of Miami* (*GRACE I*), 674 F. Supp. 3d 1141, 1193–94, 1210–11 (S.D. Fla. 2023), *appeal dismissed*, No. 23-11854-D, 2023 WL 5624206 (11th Cir. July 13, 2023). But so can *following* geographic subdivisions if doing so tracks a racial pattern. *Jacksonville I*, 635 F. Supp. 3d at 1284 (finding precinct demographic data was "strong evidence that the borders of the Challenged Districts follow racial lines" and

noting city failed to explain "how such consistent racial sorting would result if the border lines were not drawn on the basis of race").

18. Respect for political subdivisions, "contiguity[,] and other traditional districting principles are 'important not because they are constitutionally required,' but rather 'because they are objective factors' courts may consider in assessing racial gerrymandering claims." *Page v. Va. State Bd. of Elections*, No. 3:13-cv-678, 2015 WL 3604029, at *11 (E.D. Va. June 5, 2015) (quoting *Shaw*, 509 U.S. at 647), *appeal dismissed*, 578 U.S. 539 (2016). "To show that race predominated, Plaintiffs need not establish that the legislature disregarded every traditional districting principle." *Id.* (citing *Miller*, 515 U.S. at 917).

19. Racial predominance is analyzed "district-by-district." *ALBC I*, 575 U.S. at 262. But "[t]his is not to suggest that courts evaluating racial gerrymandering claims may not consider evidence pertaining to an area that is larger or smaller than the district at issue." *Bethune-Hill*, 580 U.S. at 192. "[A] legislature's race-based decisionmaking may be evident in a notable way in a particular part of a district. It follows that a court may consider evidence regarding certain portions of a district's lines, including portions that conflict with traditional redistricting principles." *Id.*; *see also Abbott v. Perez*, 585 U.S. 579, 620–622 (2018) (finding impermissible racial gerrymander where legislature increased district's Latino population to compensate for adding in a single predominantly Black neighborhood).

20. "Although race-based decisionmaking is inherently suspect, until a claimant makes a showing sufficient to support that allegation the good faith of a state

legislature must be presumed." *Miller*, 515 U.S. at 915 (citing *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 218 (1995), and *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 318–19 (1978) (opinion of Powell, J.)) (internal citations omitted). In other words, courts presume the legislature was engaged in policymaking without regard to race unless the plaintiff meets their burden of proving racial predominance. *See Ga. State Conf. of the NAACP v. Georgia*, No. 1:21-cv-5338, 2023 WL 7093025, at *8 (N.D. Ga. Oct. 26, 2023); *GRACE IV*, 730 F. Supp. 3d at 1293–94.

2. Strict Scrutiny

21. "Second, if racial considerations predominated over others, the design of the district must withstand strict scrutiny. The burden thus shifts to the State to prove that its race-based sorting of voters serves a 'compelling interest' and is 'narrowly tailored' to that end." *Cooper*, 581 U.S. at 292 (quoting *Bethune-Hill*, 580 U.S. at 193) (internal citation omitted).

22. The Court need not address the compelling interest prong to hold that a challenged district is inadequately tailored to that interest. In an unbroken line of cases, "[The Supreme] Court has long assumed that one compelling interest is complying with operative provisions of the Voting Rights Act of 1965." *Cooper*, 581 U.S. at 292; *see Hunt*, 517 U.S. at 915; *Bush v. Vera*, 517 U.S. 952, 977–79 (1996); *Miller*, 515 U.S. at 921; *ALBC I*, 575 U.S. at 279; *Bethune-Hill*, 580 U.S. at 193; *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 401 (2022) (per curiam); *Abbott*, 585 U.S. at 587. In *LULAC v. Perry*, 548 U.S. 399 (2006), eight justices announced that they agreed—not just assumed—that compliance with Section 5's non-diminishment provision is a

compelling state interest. *See id*. at 518 (Scalia, J., joined by Roberts, C.J., Thomas & Alito, J.J., concurring); *id*. at 475 n.12 (Stevens, J., joined by Breyer, J., concurring); *id*. at 485 n.2 (Souter, J., joined by Ginsburg, J., concurring). Because the Fair Districts Amendment codifies "the principles enumerated in Sections 2 and 5 of the VRA," *In re Senate Joint Res. of Legis. Apportionment 1176* (*Apportionment I*), 83 So. 3d 597, 619 (Fla. 2012), federal courts can similarly assume that compliance with the Fair Districts Amendment is a compelling interest.

23. When a state invokes the VRA to justify race-based districting, the narrow tailoring standard gives legislatures "breathing room." *Cooper*, 581 U.S. at 293 (quoting *Bethune-Hill*, 580 U.S. at 196). But that breathing room affords only a "limited degree of leeway," *Vera*, 517 U.S. at 977; *see id.* at 978 ("Strict scrutiny remains, nonetheless, strict."). To satisfy narrow tailoring, the state must show "that it had 'a strong basis in evidence' for concluding that the statute required its action"—*i.e.*, "'good reasons' to think that it would transgress the Act if it did *not* draw race-based district lines." *Cooper*, 581 U.S. at 292–93 (quoting *ALBC I*, 575 U.S. at 278).

24. This requires "evidence or analysis supporting [the] claim that the VRA required" the race-based measures, "much more" than "uncritical" assumptions and "generalizations." *Wis. Legislature*, 595 U.S. at 403–04; *see also Abbott*, 585 U.S. at 621 (requiring "a strong showing of a pre-enactment analysis with justifiable conclusions"); *Bethune-Hill*, 580 U.S. at 194–95 (finding proper tailoring where "informed bipartisan consensus" relied on "careful assessment of local conditions and

structures," including "functional analysis" of proposed district). When a state takes race-based measures to draw a district, the state must prove it had "good reasons for thinking that the Act *demanded* such steps," not just "that the VRA *might* support race-based districting." *Wis. Legislature*, 595 U.S. at 403–04 (emphasis in original) (quotations omitted).

25. A state fails to clear strict scrutiny when the law does not require the state's race-based measures "under a correct reading of the statute," *Miller*, 515 U.S. at 921, when the state follows an interpretation of the law that courts had "rejected" and which "fell short of [judicial] standards," *Wis. Legislature*, 595 U.S. at 403–04, or when the state's use of race "went well beyond what is necessary to avoid retrogression." *Clark*, 293 F.3d at 1278.

26. States have a duty to narrowly tailor their use of race every time they redraw a district, even when they inherit a court-ordered plan. *See Clark*, 293 F.3d at 1267 n.16 (holding that map failed strict scrutiny even where it "preserved as much as possible" court-ordered predecessor districts); *Johnson v. Mortham*, 926 F. Supp. 1460, 1492 (N.D. Fla. 1996) (finding congressional district failed strict scrutiny in racial-gerrymandering challenge to redistricting plan which had been ordered by that same district court four years prior); *Ala. Legis. Black Caucus v. Alabama* (*ALBC II*), 231 F. Supp. 3d 1026, 1085 (N.D. Ala. 2017) ("[T]he legislature drew new lines in 2012 that must be evaluated on their own merit.").[2]

[2] *See also id.* at 1065 (striking down district that "maintained . . . core" of previous one); *Navajo*

27. As at the racial predominance step, an alternative map can undermine the state's strict-scrutiny burden, but courts "do not need to see an alternative plan to conclude that a district fails strict scrutiny" in every instance. *ALBC II*, 231 F. Supp. 3d at 1063 (putting "no weight on the argument of Alabama that its plans satisfy strict scrutiny because the plaintiffs have not offered any alternative plans that comply with the Committee guidelines").

28. The Court asked at trial whether the relaxed "breathing room" standard applies when a state engages in race-based districting to comply with a *state* requirement, as opposed to a *federal* requirement like the VRA. Although the phrase "breathing room" originates in *Bethune-Hill*, the Supreme Court articulated going back to *Vera* that "the 'narrow tailoring' requirement of strict scrutiny allows the States a limited degree of leeway in furthering" VRA compliance. 517 U.S. at 977. On one hand, this lessened standard could be seen as reflecting comity between the judicial and legislative branches. The Supreme Court has long recognized that "[r]edistricting constitutes a traditional domain of state legislative authority." *Alexander*, 602 U.S. at 7; *see also Colegrove v. Green*, 328 U.S. 549, 556 (1946) (plurality opinion) ("Courts ought not to enter this political thicket."), *overruled by Baker v. Carr*, 369 U.S. 186 (1962). In that case, a less-strict form of strict scrutiny might apply, even where a state

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Nation v. San Juan Cnty., 162 F. Supp. 3d 1162, 1177 (D. Utah 2016) (striking down district where "the overriding consideration . . . was to preserve [it] without any modification"), *aff'd*, 929 F.3d 1270 (10th Cir. 2019); *cf. Singleton v. Merrill*, 582 F. Supp. 3d 924, 1016 (N.D. Ala. 2022) (explaining in Section 2 context that core-preservation defense "would turn the law upside-down, immunizing states from liability under Section Two so long as they have a longstanding, well-established map"), *aff'd sub nom. Milligan*, 599 U.S. 1.

implements its own state requirements.

29. On the other hand, the laxer standard could be seen as motivated by federalism concerns—the idea being that the states should get some slack when navigating external, federal requirements that can be in tension. Indeed, that is how *Shaw*'s author articulated it in her *Vera* concurrence: "[F]undamental concerns of federalism mandate that States be given some leeway so that they are not 'trapped between the competing hazards of liability.'" 517 U.S. at 992 (O'Connor, J., concurring) (quoting *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 291 (1986) (O'Connor, J., concurring)). Similarly, Justice O'Connor's *Wygant* concurrence discussed two competing federal requirements in the employment context: Title VII and equal protection. 476 U.S. at 290–91.

30. Further support for this view comes from the Supreme Court's first articulation of a "strong basis in evidence" standard for race-based remedial action, in the *Wygant* plurality. 476 U.S. at 277 (plurality opinion). That opinion discussed competing federal mandates, "two interrelated constitutional duties" in tension: taking remedial action to eliminate vestiges of racial discrimination, and "do[ing] away with all governmentally imposed discriminations based on race." *Id.* (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984)); *see also City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 494, 510 (1989) (applying "strong basis in evidence" standard to government's race-based remedial action and explicitly rejecting "relaxed standard of review" for "race-conscious classifications designed to further remedial goals" proposed by dissent); *Black Voters Matter Capacity Bldg. Inst. v. Sec'y, Fla. Dep't of State* (*BVM*), --- So.

3d ---, No. SC2023-1671, 2025 WL 1982762, at *10 (Fla. July 17, 2025) (discussing how race-predominant district drawn to achieve Tier One compliance would have to survive a "daunting" form of strict scrutiny without mentioning laxer "breathing room" standard (quoting *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206–07 (2023))).

31. After further reflection, Plaintiffs take no position on the question of whether "breathing room" applies here.

C. Remedy

32. "Relief in redistricting cases is fashioned in the light of well-known principles of equity. A district court therefore must undertake an equitable weighing process to select a fitting remedy for the legal violations it has identified, taking account of what is necessary, what is fair, and what is workable." *North Carolina v. Covington* (*Covington II*), 581 U.S. 486, 488 (2017) (quotations and citations omitted).

33. "[I]ndividuals . . . whose constitutional rights have been injured by improper racial gerrymandering . . . are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan." *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (cleaned up), *aff'd sub nom. Cooper*, 581 U.S. 285. "[I]t would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under" a map held to be constitutionally invalid. *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

34. "When a federal court declares an existing apportionment scheme unconstitutional, it is . . . appropriate . . . to afford a reasonable opportunity for the

legislature to . . . adopt[ ] a substitute measure." *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978).

D. Laches

35. "To establish a laches defense, '[t]he defendant must show a delay in asserting a right or claim, that the delay was not excusable and that there was undue prejudice to the party against whom the claim is asserted.'" *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng'rs*, 781 F.3d 1271, 1283 (11th Cir. 2015) (quoting *Ecology Ctr. of La., Inc. v. Coleman*, 515 F.2d 860, 867 (5th Cir. 1975)).

36. "[T]here is a strong presumption that a plaintiff's suit is timely if it is filed before the statute of limitations has run." *Id.* at 1286 (quoting *Peter Letterese & Assocs., Inc. v. World Inst. of Scientology Enters.*, 533 F.3d 1287, 1320 (11th Cir. 2008)).

37. In Florida, 42 U.S.C. § 1983 claims are subject to a four-year statute of limitations. *McGroarty v. Swearingen*, 977 F.3d 1302, 1307 (11th Cir. 2020).

III. FINDINGS OF FACT

A. Plaintiffs and Harms of the Enacted Plan

38. Plaintiff Meiko Seymour is a Black resident of the Pinellas County portion of District 16. Day 1 Tr. 23:21–22, 24:22–25:9, 35:6–7.[3] He has lived in St. Petersburg for nearly ten years, and in that decade has lived on both sides of the District 16/18 border that splits the city. *Id.* 25:12–26:5. By occupation, Seymour is a pastor and church planter who has ministered in Pinellas County since he moved

[3] The four trial transcripts are cited herein as "Day 1 Tr.", "Day 2 Tr.", etc.

there. *Id.* 24:1–7, 26:8–14. His community engagement has included service on the city's Charter Review Commission, Public Arts Commission, and Housing Authority. *Id.* 26:19–27:2. He is a registered voter for whom exercising his right to vote is deeply important. *Id.* 30:21–32:3.

39. Plaintiff Jarvis El-Amin is a Black resident of the Hillsborough County portion of District 16. *Id.* 14:17–18, 16:5–8. He is a longtime Tampa voter, having first registered to vote in Florida in 1978 and having lived at his home in East Tampa since 1989. *Id.* 14:2–11, 16:1–4. He currently works in community engagement at EnVision Resolution Foundation, is an active member of the civic organizations Florida Rising and Emgage, and sits on the Hillsborough County NAACP's executive committee. *Id.* 14:19–23, 15:3–18. Through these organizations, El-Amin is involved in election-related activities including candidate forums, canvassing, and voter education. *Id.* 15:19–25.

40. Plaintiff Kéto Nord Hodges is also a Black resident of the Hillsborough County portion of District 16. *Id.* 182:15–16, 183:2–6. By profession, he is an educator, working as an ESE math instructor in Hillsborough County Public Schools. *Id.* 180:22–181:8. He has lived in Tampa since 1991, registered to vote when he became a U.S. citizen in 1999, and has voted in every local and national election since. *Id.* 182:17–183:1, 184:15–16. Nord Hodges is active in numerous civic organizations in Tampa, including the Hillsborough County NAACP, Ybor City Rotary Club, and is a board member for two anti-poverty and anti-homelessness organizations, the

Corporation to Develop Communities of Tampa and Metropolitan Ministries. *Id.* 181:21–182:14. He previously served as a Tampa City Council appointee to the East Tampa Community Redevelopment Agency (CRA). *Id.* 187:16–21.

41. Each plaintiff testified to how the Enacted Plan does not fairly represent their community, and why. *Id.* 18:8–12 (El-Amin), 32:17–19 (Seymour), 184:23–185:2 (Nord Hodges).

42. Seymour, who defines his community as the entire City of St. Petersburg, explained that he does not consider Hillsborough County to be part of his community and testified to what separates St. Petersburg from Hillsborough County—not just Tampa Bay, but also different cultures and interests. *Id.* 28:23–29:8, 29:14–30:20, 43:16–44:9. He testified to the importance of voting and elections to himself personally and to his community. 31:5–32:16. He explained how the Enacted Plan does not fairly represent his community because it splits it by race, cuts off the Black population of the city from the rest, and lumps those residents together with disparate communities across Tampa Bay, resulting in impaired representation. *Id.* 32:17–34:18, 41:15–42:1, 44:20–45:13. He thinks the Enacted Plan has been detrimental, was not drawn with common sense, and appears race-motivated based on his knowledge of the racial makeup of the local area. *Id.* 34:19–35:5, 35:8–15.

43. Although El-Amin is familiar with the portion of District 16 in Pinellas County and knows it to be predominantly African American, he does not consider that portion of the district to be part of the same community as where he lives. *Id.* 17:10–18:1. He testified to the different issues and concerns between residents of South St.

Petersburg and his own community in East Tampa. *Id.* 18:2–7. He further testified that enacted District 16 does not afford his community fair representation because constituents in both pieces of the district lack a whole senator—whoever is elected has to split their attention between the different communities on each side of Tampa Bay. *Id.* 18:8–22.

44. Nord Hodges testified to the cultural and other differences between the South St. Petersburg and Hillsborough County sides of District 16, including the different issues and problems the separate communities face. *Id.* 185:19–187:15. He explained how it is difficult for a senator, even a well-intentioned one, to adequately represent the concerns of both the South St. Pete and Tampa/Hillsborough County sides of District 16, and how the districts' constituents suffer as a result. *Id.* 187:23–189:15.

45. The Plaintiffs contrasted the Enacted Plan with their alternative proposals, under which Seymour and his neighbors could vote alongside the rest of his St. Petersburg community, *id.* 35:16–23 (Seymour), constituents on both sides of the Bay would get a whole senator to represent each area, *id.* 21:16–22 (El-Amin), and Black residents of the region would no longer be subject to a racial classification and would not have to share a senator across the different sides of the Bay, *id.* 189:16–190:2, 192:14–193:2 (Nord Hodges).

46. The Plaintiffs' testimony about the harm the Enacted Plan inflicts on them, other Black residents of the region, and their communities as a whole, is bolstered by the testimony of two other community leaders. Hillsborough County

NAACP President Yvette Lewis lives in Tampa and has lived in Hillsborough all her life. *Id.* 197:16–23, 198:11–13. Lewis testified to the differences between Hillsborough and Pinellas Counties and how those differences are reflected in the work of their separate NAACP branches. *Id.* 200:6–202:21. Echoing the Plaintiffs, she explained how it is very difficult for District 16's senator to adequately represent both halves of the district—regardless of whether that person is from the Tampa or St. Petersburg side. *Id.* 203:3–205:25. 208:13–209:11, 211:1–16, 213:2–4. Based on her familiarity with the region, Lewis described how District 16 followed racial populations and included the predominantly Black South St. Petersburg area. *Id.* 209:24–210:23.

47. Underscoring the stark political divisions between the two sides, Lewis discussed the last Democratic primary in the district, when two candidates from Hillsborough faced two candidates from Pinellas. *Id.* 206:1–208:12. The two Hillsborough candidates (Betty Reed and Ed Narain) garnered 72.4% of the Hillsborough votes, while the two Pinellas candidates (Augie Ribeiro and winner Sen. Darryl Rouson) combined for 79.9% of the Pinellas votes. ECF No. 151 at 2.

48. Jacqueline Azis, Board President for the League of Women Voters of the St. Petersburg Area, testified to how the Enacted Plan divides her community, impairs the St. Petersburg area's representation, and pulls part of her community to join completely separate communities across the Bay. Day 1 Tr. 216:7–8, 220:3–18. She testified in detail about the shared concerns of St. Petersburg on both sides of the District 16/18 dividing line, and the differences between that area and Hillsborough County. *Id.* 220:19–222:5.

B. Defendants

49. Defendant Ben Albritton, sued in his official capacity, is President of the Florida Senate. ECF No. 101 (Pretrial Stmt.) at 5, ¶ 1. The Senate over which he presides is, along with the House of Representatives, responsible for enacting legislation redrawing legislative districts after each decennial census. Fla. Const. art. III, § 16. State senators are elected from the enacted districts. Fla. Const. art. III, § 1; Fla. Stat. § 10.203.

50. Defendant Cord Byrd, sued in his official capacity, is Florida's Secretary of State. Pretrial Stmt. at 6, ¶ 2. His Department of State has "general supervision and administration of the election laws," including the Enacted Plan, administers Senate candidate qualifying, receives Senate election returns from the county canvassing boards, and issues certificates of election to successful Senate candidates. *Id.*; Fla. Stat. §§ 15.13, 99,061, 102.112, 102.151, 102.155.

C. Florida Senate Redistricting Background

51. The Florida Senate is comprised of forty members elected from districts in the state. Compl. ¶ 31.[4]

52. Legislative redistricting (or reapportionment) is the duty of the Legislature, which is tasked with adopting redistricting plans for both the House and Senate after each decennial census. Compl. ¶ 32; *see* Fla. Const. art. III, § 16.

53. The Legislature's discretion in redistricting is cabined by several key legal

[4] For concision, citations to the Complaint (ECF No. 1) encompass the corresponding paragraphs that admit those allegations in the Answers (PX 178–179), unless a specific Answer is cited.

requirements, including the Fourteenth Amendment's Equal Protection Clause and the Florida Constitution's Fair Districts Amendment. Compl. ¶ 33.

54. The Fair Districts Amendment sets forth two tiers of requirements for legislative redistricting. Compl. ¶ 34; Fla. Const. art. III, § 21.[5]

55. So-called "Tier One" contains four requirements, which take precedence over the so-called "Tier Two" requirements. Compl. ¶ 35; Fla. Const. art. III, § 21(a).

56. ***First***, Tier One prohibits redistricting plans and individual districts from being "drawn with the intent to favor or disfavor a political party or an incumbent"—banning partisan and incumbency gerrymandering. Fla. Const. art. III, § 21(a).

57. ***Second***, Tier One incorporates the vote dilution standard of Section 2 of the VRA, prohibiting districts from being "drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process." *Id.*; *Apportionment I*, 83 So. 3d at 619.

58. ***Third***, Tier One incorporates the "diminishment" or "retrogression" standard from Section 5 of the VRA, 52 U.S.C. § 10304(b), prohibiting districts drawn "to diminish [racial or language minorities'] ability to elect representatives of their choice." Fla. Const. art. III, § 21(a). This requirement "attempts to eradicate impermissible retrogression in a minority group's ability to elect a candidate of choice." *Apportionment I*, 83 So. 3d at 620.

59. ***Fourth***, Tier One mandates that districts be contiguous. Fla. Const. art.

[5] Article III, Section 20 lays out identical requirements for congressional redistricting.

III, § 21(a).

60. Tier Two sets out three more requirements, which are subordinate to the Tier One requirements. Fla. Const. art. III, § 21(b); *Apportionment I*, 83 So. 3d at 615. The Tier Two requirements enshrine in the Florida Constitution several race-neutral "traditional districting principles." *Apportionment I*, 83 So. 3d at 618; *see Miller*, 515 U.S. at 916.

61. Tier Two requires that districts (1) "be as nearly equal in population as is practicable"; (2) "be compact"; and (3) "where feasible, utilize existing political and geographical boundaries." Fla. Const. art. III, § 21(b).

62. The Legislature must adhere to the Tier Two requirements, unless doing so would violate a Tier One requirement. *Id.*; *Apportionment I*, 83 So. 3d at 615.

63. The Legislature can deviate from the Tier Two requirements "only to the extent necessary" to comply with Tier One's minority-protection provisions. *Apportionment I*, 83 So. 3d at 626 (relying on "illustrative plans . . . that make the least departure from [Florida's] stated redistricting criteria needed to prevent retrogression (alterations in original, citation omitted)), *see also id.* at 640 ("It is critical that the requirement to protect minority voting rights when drawing district lines should not be used as a shield against complying with Florida's other important constitutional imperatives . . . .").

D. Historical Background

64. Challenged District 16 has its origins in the 1990 redistricting cycle.[6] Day 1 Tr. 270:6–10, 14–15; Day 2 Tr. 11:6–9, 272:14–17. During that cycle, the U.S. Department of Justice denied preclearance to the proposed Senate map because it lacked a majority-minority district in Hillsborough County—at that time a "covered" county subject to the VRA's Section 5 preclearance regime. *In re Constitutionality of Sen. Joint Resol. 2G*, 601 So. 2d 543, 545 (Fla. 1992).

65. As a result, the Florida Supreme Court redrew the map to accede to the DOJ's demand, selecting from different submissions the option with the highest Black population in the new majority-minority district. *Id.* at 546; *see also id.* at 548 (Overton, J., dissenting).

66. That court-drawn district then faced a racial gerrymandering challenge, which the state ultimately settled. *Scott v. Dep't of Justice*, 920 F. Supp. 1248, 1256 (M.D. Fla. 1996) (approving settlement over one plaintiff's objection), *aff'd sub nom. Lawyer v. Dep't of Justice*, 521 U.S. 567 (1997). As a result of the 1996 settlement, the Protected District included portions of Hillsborough, Pinellas, and Manatee Counties. PX 104; Day 2 Tr. 92:4–93:17 (discussing PX 104).

67. After the Fair Districts Amendment was adopted in 2010, that district (as

[6] Plaintiffs use the term "the Protected District" to refer to this and similar districts across multiple proposed or enacted plans. This district is numbered 16 in the Enacted Plan and 19 in the plan in effect from 2016–2022 (the "Benchmark Plan"). The "benchmark plan" is the last legally enforceable redistricting plan in force or effect. Day 1 Tr. 230:11–14. A proposed redistricting plan is compared to the benchmark plan to analyze its compliance with protections for racial and language minorities under Florida's non-diminishment provision. Day 1 Tr. 259:5–8.

redrawn minimally in 2002) became the benchmark against which diminishment in Black voters' ability-to-elect was measured for the 2010 redistricting cycle. PX 104; *see Apportionment I*, 83 So. 3d at 655 (comparing minority districts in proposed 2012 plan to 2002 benchmark plan). It was again redrawn minimally in 2012. PX 104.

68. In 2015, the Senate stipulated to liability in a lawsuit challenging its 2012 map as an impermissible partisan and pro-incumbent gerrymander under the Fair Districts Amendment. ECF No. 156-3 at 3–4 (*League of Women Voters of Fla. v. Detzner* (*Benchmark Case*), No. 2012-CA-2842 (Fla. 2d Jud. Cir. Dec. 30, 2015)). The Legislature then undertook a remedial remapping process, during which legislators in both chambers proposed configurations with a Protected District that did not cross Tampa Bay. *Id.* at 4; PX 41 at 1;[7] Day 1 Tr. 60:6–20.

69. For example, Republican Rep. Matt Caldwell proposed a plan with a Protected District wholly within Hillsborough County, and a South Pinellas district sitting compactly on the other side of the Bay. PX 41 at 1, 4; Day 1 Tr. 173:20–174:3

70. Sens. Jeff Clemens and Oscar Braynon proposed their own plans with a Protected District on the Tampa side of the Bay and another district that united South Pinellas and St. Petersburg. PX 41 at 1.

71. Rep. Caldwell, Sen. Clemens, and Sen. Braynon filed their plans during the 2015 special session. *Id.*; HJR 5-C (2015); Ams. 142266, 185554, and 758946 to

[7] Although the Secretary noted that he is not a signatory to PX 41 ("Stipulation re 2015 Plans"), Day 3 Tr. 15:20–23, it was admitted without objection, Day 1 Tr. 7:13–20. In fact, the Secretary's counsel agreed in writing that the Secretary had no objections to Plaintiffs offering the stipulation when the Senate and Plaintiffs entered into it, on November 15, 2024.

CS for SJR 2-C (2015).

72. In the end, the Senate agreed to reconfigure the Protected District somewhat—removing its Manatee County portion—but the Protected District's configuration was not disputed in the remedial-phase litigation. PX 104; Day 2 Tr. 92:19–93:8. "[I]n order to narrow the issues for trial," the plaintiffs in the litigation specifically withdrew two alternative proposals that "contained a configuration of [Protected] District 19 that was wholly within Hillsborough County and did not cross Tampa Bay" even though they believed "there is a likelihood that the Hillsborough-only district would retain African Americans' ability to elect candidates of choice." ECF No. 156-1 at 1–2. The only contested minority protected districts in that litigation were in South Florida. ECF No. 156-2 at 1–2. The court made no comment on the Protected District's configuration in its order adopting a remedial plan. *See generally* ECF No. 156-3.

73. The map the court adopted—first implemented in the 2016 elections—became the Benchmark Plan for the 2020 redistricting cycle ("Benchmark Plan"). Day 1 Tr. 230:15–20. Although that plan contained a Protected District (District 19) straddling Tampa Bay, the Florida courts never addressed the constitutionality of the specific district.[8]

74. The Protected District's origins and history outlined here—which the

[8] The courts' only mention of the Protected District during the 2010 cycle was while discussing the Senate Reapportionment Committee chair's explanation for why the Committee split the City of Lakeland: because "the Senate's *first consideration* was creating two minority districts in Orlando and one minority district in Tampa . . . ." *Apportionment I*, 83 So. 3d at 683 (emphasis added).

Senate invokes to justify perpetuating its preexisting configuration—support the case that enacted District 16 was drawn in a racially predominant manner. *See supra* p. 8 ¶ 12; *cf. BVM*, 2025 WL 1982762, at *4–5, *14 (discussing similar origins and evolution of North Florida congressional district, and finding that maintaining benchmark configuration to comply with Tier One non-diminishment requirement would violate equal protection).

E. The 2020 Redistricting Cycle

1. Redistricting Process Begins

75. Following the 2020 Census, the Legislature embarked on its redistricting process. Each chamber deferred to the other in drawing the map for its own body, with the Senate developing the Senate plan. Compl. ¶ 44.

76. Senate redistricting proceeded through seven committee and subcommittee meetings. JX 1–21. The full Committee on Reapportionment (the "Committee") met on September 20, October 11, and October 18, 2021, for presentations on the law and technical aspects of redistricting. JX 1–9; Compl. ¶ 45; Sen. Answer ¶ 45.[9]

77. During the **September 20, 2021,** meeting, Committee Staff Director Jay

[9] Allegations in the Complaint which only one Defendant admitted are admissible against both Defendants, since both Answers were admitted into evidence without a "timely request" to restrict their use. FRE 105; *see, e.g., United States v. Smith*, 459 F.3d 1276, 1297 (11th Cir. 2006); *United States v. Miranda*, 197 F.3d 1357, 1360 (11th Cir. 1999); *United States v. Smith*, 283 F.2d 760, 764 (2d Cir. 1960) ("[T]he objecting party must call the attention of the judge specifically to any limitations which he believes should be imposed upon [the evidence's] application to the issues[.]" (citation omitted)).

Furthermore, the Senate's admissions about the legislative process are appropriately admissible against the Secretary because he disclaimed knowledge of the redistricting process and deferred to the Senate's knowledge on those subjects. PX 48 at 1–11, 13–16; Day 4 Tr. 90:5–9, 90:23, 91:22–23.

Ferrin gave a presentation on census data, the redistricting timeline, and other basics of redistricting. Compl. ¶ 46; Sen. Answer ¶ 46; JX 1–3.

78. In particular, Ferrin explained the Fair Districts criteria, including an explanation of Tier One's "[p]rotections against diminishment, or reduction in the ability of racial or language minorities to elect representatives of their choice" and the Tier Two requirements. Compl. ¶ 47; Sen. Answer ¶ 47; JX 1 at 31:20–24, 36:5–38:7.

79. Throughout the redistricting process, legislators, their attorneys, and their staff used the terms "Tier One" and "Tier Two" as a shorthand to refer to the requirements contained within those tiers. This included using "Tier One" as a shorthand to refer to the minority-protection provisions of Article III, Section 21(a). A "Tier One protected district" or simply "protected district" refers to a district in which minority groups' ability to elect candidates of choice is protected from diminishment, dilution, or both. Compl. ¶ 48; Sen. Answer ¶ 48; Day 1 Tr. 231:4–11, 231:20–232:8.

80. The Senate considered Black voters' ability to elect candidates of their choice in District 19 (the "Benchmark District") to be protected under Tier One's non-diminishment standard. Day 1 Tr. 257:7–19. In other words, the Benchmark District was (and is) a Tier One protected district. *Id.* 257:14–15.

81. Ferrin's presentation also defined key terminology. His presentation explained that diminishment "[o]ccurs when a redistricting plan eliminates a majority-minority district, or potentially weakens a historically performing minority district where doing so would actually reduce the ability of racial or language minority groups to elect candidates of their choice when compared to the benchmark plan." JX 1 at

43:18–24.

82. Ferrin defined "geographic boundaries" and "political boundaries" as "[e]asily ascertainable and commonly understood features, such as rivers, railways, and primary and secondary roads. Primary and secondary roads . . . include interstates, U.S. highways, and state highways;" and "county or incorporated municipality boundaries, so [] cities, town, villages, etcetera," respectively. *Id.* 43:25–44:8, 44:12–16.

83. The Senate relied on all these commonly understood definitions in its redistricting process. Compl. ¶ 54; Sen. Answer ¶ 54.

84. At the Committee's **October 11, 2021,** meeting, the Senate's redistricting counsel Daniel Nordby gave a presentation on redistricting law. Compl. ¶ 55; Sen. Answer ¶ 55; JX 4–6.

85. Nordby's presentation included an explanation of the Fourteenth Amendment's prohibition on racial gerrymandering and the Fair Districts' minority-protection provisions. Compl. ¶ 56; Sen. Answer ¶ 56.

86. Quoting *Apportionment I*, Nordby noted: "The anti-retrogression provisions of the Florida Constitution provides that the Florida Legislature 'cannot eliminate majority-minority districts or weaken other historically performing minority districts where doing so would actually diminish [a] minority group's ability to elect its preferred candidates.'" JX 4 at 61:24–62:6.

87. Further explaining *Apportionment I*, Nordby noted: "In order to determine whether there has been a retrogression or a diminishment, the Legislature must

perform a 'functional analysis' to evaluate retrogression and to determine whether a district is likely to perform for minority candidates of choice." *Id.* 62:13–18. This "requires consideration of minority population in the districts, minority voting-age population in the districts, political data, turnout data, voter registration data, how a minority group has voted in the past. There is no predetermined or fixed demographic percentage used at any point in that functional analysis." *Id.* 62:19–25.

88. Nordby further explained: "Under the Florida Constitution, the Tier Two requirements of compactness and adherence to political and geographic boundaries standards give way to the extent necessary to avoid retrogression." *Id.* 63:10–14.

89. Finally, Nordby explained that Tier One's non-diminishment requirements "apply to the entire state and they remain enforceable" notwithstanding the U.S. Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013). *Id.* 63:22–23.

90. Over the past thirteen years, Florida courts have definitively interpreted what Tier One's non-diminishment requirement means. *BVM*, 2025 WL 1982762, at *2, 7–9 (citing *Apportionment I*, 83 So. 3d 597; *In re Sen. Joint Resol. of Legis. Apportionment 2-B* (*Apportionment II*), 89 So. 3d 872 (Fla. 2012); *League of Women Voters of Fla. v. Detzner* (*Apportionment VII*), 172 So. 3d 363 (Fla. 2015); and *League of Women Voters of Fla. v. Detzner* (*Apportionment VIII*), 179 So. 3d 258 (Fla. 2015)).

91. Assessing whether a minority group's ability-to-elect in the Benchmark District is diminished in a proposed new district requires comparing the minority

group's ability in the benchmark district with the group's ability in the proposed district, to determine whether the minority group is as likely, more likely, or less likely to elect their preferred candidates. Day 2 Tr. 15:11–23. It is the minority group's ability in the district as a whole that is protected. It is irrelevant whether the district contains portions of different counties or cities, or whether a portion of a particular county or city is removed from the protected district during redistricting, because unlike Section 5 of the VRA, Florida's non-diminishment requirement extends statewide. *Apportionment I*, 83 So. 3d at 624. In other words, the non-diminishment requirement does not operate county-by-county. *Apportionment II*, 89 So. 3d at 882–883, 887, 891 (declaring valid two minority protected districts and rejecting a challenge that one of them diminished Black voters' ability-to-elect—despite the fact that both districts shed counties from the protected benchmark). Florida courts and the Senate's own historic practice accords with this principle. Day 2 Tr. 88:11–94:1; PX 104–105, 107–109; *BVM*, 2025 WL 1982762, at *3, *7 (summarizing and reaffirming "the retrogression analysis we established" and applied in the *Apportionment* cases). Moreover, "a slight change in percentage of the minority group's population in a given district does not necessarily have a cognizable effect on a minority group's ability to elect its preferred candidate of choice[,]" "because a minority group's ability to elect a candidate of choice depends upon more than just population figures. *Apportionment I*, 83 So. 3d at 625; *see* Day 1 Tr. 259:14–16.

2. Committee Staff Development of the Enacted Plan

92. On **October 18, 2021**, the Committee discussed the map-drawing process

and gave general directives to Committee staff to guide the development of draft maps, reduced to writing in a memorandum from the Committee Chair Sen. Ray Rodrigues to Ferrin (PX 16, "Directives Memo"). Compl. ¶ 61; Sen. Answer ¶ 61; JX 7–9.

93. The Directives Memo directed staff to draw districts in conformity with federal and state legal requirements. PX 16. In particular, in drawing districts to comply with Tier Two, staff were directed, in part:

- "to draw districts that are visually compact in relation to their shape and geography, and to use mathematical compactness scores where appropriate," *id.* at 1;
- "to examine the use of county boundaries where feasible," *id.* at 2;
- "to explore concepts that, where feasible, keep districts wholly within a county in the more densely populated areas," *id.*;
- "to explore concepts that, where feasible, keep cities whole while also considering the impermanent and changing nature of municipal boundaries," *id.*; and
- "to examine the use of existing geographic boundaries where feasible. Specifically railways, interstates, federal and state highways, and large water bodies such as those that were deemed to be easily recognizable and readily ascertainable by Florida's Supreme Court," *id.*

94. Ferrin and other Committee staff followed the criteria outlined in the Directives Memo when drawing maps, and no other criteria. Day 1 Tr. 233:13–22, 236:3–6.

95. In particular, the Senate's mapmaker stated that when drawing maps, the Senate did *not* in any way attempt to:

- Favor or disfavor a political party, *id.* 236:7–9; Day 3 Tr. 53:14–19,

113:20–22, 114:3–19; *see also* PX 42 ¶¶ 7, 9, 11;[10]

- Favor or disfavor an incumbent, Day 1 Tr. 236:10–12; Day 3 Tr. 53:20–22; *see also* PX 42 ¶¶ 8, 10, 12;
- Preserve the cores of pre-existing districts, Day 1 Tr. 236:13–237:4; *see also* JX 22 at 22:18–19 (Sen. Rodrigues: "In the drawing of the map, we started with a blank map . . . ."");
- Consider metropolitan statistical areas (MSAs), Day 1 Tr. 238:17–19;
- Consider unincorporated places like census-designated places (CDPs), *id.* 238:7–16; Day 3 Tr. 50:13–17;
- Consider communities of interest, Day 1 Tr. 238:20–22; Day 3 Tr. 50:10–12; or
- Connect population centers within a region, Day 1 Tr. 238:23–239:1.

96. To draw districts, Committee staff started with a blank map of the state and implemented the Committee's directives. *Id.* 242:1–3. They performed functional analyses of protected districts to make conclusions about whether draft protected districts continued to perform for a protected minority group. *Id.* 247:3–17. Committee staff sought to apply the Tier One and Tier Two criteria, as interpreted by the Directives Memo, in a consistent manner throughout the state. *Id.* 239:2–9.

97. To identify the protected districts in the Benchmark Plan, Committee staff worked with the Senate's redistricting counsel. *Id.* 258:9–11. The Senate's counsel provided a list of ten protected districts, but the Senate asserts privilege over what analysis went into determining which districts were protected. *Id.* 258:12–25.

[10] The Senate's admissions that partisanship did *not* motivate the Enacted Plan and District 16 are "conclusively established," FRCP 36(b), and "cannot be rebutted by contrary testimony or ignored by the district court," *AAA v. AAA Legal Clinic of Jefferson Crooke, P.C.*, 930 F.2d 1117, 1120 (5th Cir. 1991); *see also Williams v. City of Dothan*, 818 F.2d 755, 762 (11th Cir. 1987).

98. For each of those ten districts, Committee staff considered race and were aware that they would have to redraw those areas of the state in a manner that did not diminish. *Id.* 257:20–24; Day 3 Tr. 108:10–16. And Senate staff were already familiar with the areas of the state where the ten protected districts were and where they would start to consider race directly in map-making. Day 3 Tr. 109:5–110:1.

99. It was important to the Senate that it redraw District 19 to avoid diminishing Black voters' ability-to-elect. Day 1 Tr. 257:14–19, 258:3–8.

3. Workshopping the Enacted Plan in Committee

100. The Select Subcommittee on Legislative Reapportionment (the "Subcommittee") convened for the first time on **November 17, 2021**, to workshop four draft plans Ferrin presented. Compl. ¶ 62; Sen. Answer ¶ 62; JX 10–12.

101. All four plans (8010, 8012, 8014, and 8016) featured a configuration for the Protected District similar to the eventual Enacted Plan, grouping Black population centers in Tampa and St. Petersburg, crossing the Bay to do so. Compl. ¶ 63; Sen. Answer ¶ 63; PX 67; PX 75; PX 79; Day 2 Tr. 200:3–8, 272:18–20.

102. At that meeting, Nicholas Warren appeared in the Subcommittee to speak about a proposed redistricting plan he submitted as a private citizen, P000S0042 or Plan 42, which altered six discrete districts from the staff-drawn plans. JX 10 at 30:5–31:16; Day 1 Tr. 62:20–63:8.

103. Warren told the Subcommittee that Plan 42 "tries to solve . . . one issue with Tier Two compliance, which is in Tampa Bay, and seeks to avoid having a district that crosses Tampa Bay." JX 10 at 30:8–9. He cited Plan 42's improvements to

compactness, the number of cities and counties split, and geographic-boundary utilization, and concluded:

> I'm assuming that crossing the Bay in Senate District 19 was done in order to ensure no diminishment of Black ability-to-elect in that district. So obviously, a Tier One requirement. But whereas maybe last decade it wasn't possible to draw a district wholly in Hillsborough that maintained that ability and didn't diminish, I think the statistics bear out that it is now possible, and the key statistics in that functional analysis are actually all comparable or higher than the statistics in the Benchmark District, including the Black and Hispanic share of registered voters, the Black and Hispanic share of Democratic primary electorate in 2020 and in 2018, the Hispanic share of registered Democrats; and the Black share of registered Democrats, which only differs from the benchmark by two-tenths of one percentage point.

Id. 31:2–10.

104. Sen. Randolph Bracy, a Black senator from Orlando, then asked Ferrin why the Protected District crossed the Bay in the staff-drawn plans, "what was the motivation for doing that when it didn't seem necessary? We could comply with all the requirements." *Id.* 31:22–23.[11]

105. Ferrin responded: "That was to comply with the Tier One non-diminishment standards." *Id.* 32:2–3.

106. Sen. Bracy followed up, "could it still be done without violating the diminishment requirement?" *Id.* 32:5–6.

107. After Ferrin replied that he hadn't reviewed the statistics for that, Sen. Bracy asked him to look into it, and Ferrin confirmed he would. *Id.* 32:8–12.

[11] Sen. Bracy's colloquy with Ferrin at the November 17, 2021 meeting is recorded on video at JX 12 at 1:04:23–1:05:26.

108. But Ferrin did not do as he stated. After the November 17 meeting, Ferrin did not investigate the possibility of drawing a Tier One protected district that did not cross Tampa Bay. He testified that "nobody ever asked [him] to analyze that fully as an alternative," despite Sen. Bracy's explicit request. Day 1 Tr. 269:14–15.

109. After the November 17, 2021 meeting, Committee staff took the initial draft maps and sought to make improvements on their compliance with Tier Two metrics (compactness and respect for major political and geographic boundaries), seeking consistent application of the Directives Memo. *Id.* 250:2–251:4; Day 3 Tr. 80:21–81:2, 81:14–82:5.

110. This yielded four new staff-drawn maps (8026, 8028, 8030, and 8034), which the Subcommittee workshopped on **November 29, 2021**. Compl. ¶ 70; Sen. Answer ¶ 70; JX 13–15.

111. All four plans made small changes to the initial four plans, and all four featured a configuration for the Protected District that crossed the Bay, similar to the Enacted Plan. Compl. ¶ 71; Sen. Answer ¶ 71.

112. Following the November 29 meeting, Committee staff again sought to make improvements to the draft plans' Tier Two metrics, yielding a final round of draft plans. Day 1 Tr. 252:24–253:6; Day 3 Tr. 82:13–17.

113. The Subcommittee held its final meeting on **January 10, 2022**, when it recommended advancing what would become Plan 8058[12] to the full Committee.

[12] The *map* the Subcommittee approved was identical to Plan 8058; only the district *numbers* changed. Day 1 Tr. 255:5–13.

Compl. ¶ 72; Sen. Answer ¶ 72; JX 16–18; Day 1 Tr. 254:10–18.

114. At this meeting, Sen. Bracy referenced his earlier request for Senate staff to look at the treatment of the Tampa Bay area, saying, "I talked to staff about the Tampa Bay area and . . . I wanted to see if you could explain the reason . . . for crossing the Bay in all of the configurations that we see, as opposed to not crossing the Bay in that Tampa-area seat." JX 16 at 7:10–13.[13]

115. Subcommittee Chair Sen. Danny Burgess immediately responded: "[M]y understanding is staff did look at those options. However, there was a significant number of [] potential voters that would be disenfranchised under not crossing the Bay. And so in order to avoid that potential diminishment, there was just no way to make that work practically." *Id.* 7:15–18.

116. Sen. Burgess deferred to Ferrin for further explanation, who stated:

> I think in looking at a configuration like that, it was likely that diminishment would occur based on the fact that in order to draw a minority district solely within Hillsborough County, it begins to look like a fairly spidery, non-compact configuration there, it does some damage to the surrounding districts and their metrics as well. In addition to, as Senator Burgess mentioned, potentially disenfranchising the [] Black voters in Pinellas County that have had the ability to elect the candidate of their choice since about 1992 when the courts ordered a configuration that resulted in a district that did cross the Bay between Hillsborough and Pinellas County.

Id. 7:20–8:1.

117. Sen. Bracy pressed Ferrin on the impact of the alternative configuration

[13] Sen. Bracy's discussion with Sen. Burgess and Ferrin at the January 10, 2022 meeting is recorded on video at JX 18 at 10:05–14:21.

Ferrin had just described on the minority functional analysis and Black voters' share of the relevant statistics, asking: "What would be the percentage that it would have dropped if we didn't cross the Bay? . . . [W]hat would be the Black percentage now in that district? What would it have been if it didn't cross the Bay?" *Id.* 8:5–7.

118. Ferrin answered Sen. Bracy with the Black percentage of the district he had purportedly[14] looked at that did not cross the Bay: "My recollection from having looked at it was [] somewhere close to 30% either just shy of it or just above," and contrasted that with the configurations in the staff-drawn plans before the Subcommittee: "The configurations we're looking at today are a little bit higher." *Id.* 8:9–11.

119. Sen. Bracy continued to inquire, "how much it would have diminished the ability for Black voters to vote for their candidate of their choice . . . . I guess I'm trying to measure how much diminishment that would have been." *Id.* 8:14–18.

120. Ferrin concluded:

> So it's not currently a majority-minority district. It's currently an effective minority district. And the question of diminishment is less about how much diminishment, but is it diminished. Because I think the courts have been clear that diminishment, any diminishment, is diminishment. And so the way we've drawn it, the Black voters within District 19[15] are able to effectively control the Democratic primary in a district that performs for Democrats. If we look at drawing it differently, I think we're looking at a situation where the Black voters would

[14] As noted *infra* ¶¶ 121–123, Ferrin did not actually look at a district that did not cross the Bay and instead imagined one in his mind. Moreover, Ferrin's response outlined in ¶ 118 did not in fact answer Sen. Bracy's question of how much the Black percentage would decline in a district that did not cross the Bay. Instead, Ferrin provided the Black share of the *Benchmark* district.

[15] The Protected District was numbered 19 in the Benchmark Plan and in drafts maps. Day 1 Tr. 230:25–231:3, 255:18–256:1.

> not be able to control the primary numerically, not make up a majority of the primary turnout, and that would potentially constitute diminishment.

Id. 8:20–9:4.

121. This assertion was based not on any actual attempt to draw the Protected District wholly within Hillsborough County, but was rather Ferrin's supposition of what a "hypothetical district" would look like, imagining in his mind how a district there might be drawn. Day 2 Tr. 9:22–10:8, 11:10–16, 12:3–9.

122. Although Ferrin told the January 10 Subcommittee that, when "draw[ing] a minority district solely within Hillsborough County, it begins to look like a fairly spidery, non-compact configuration," he never actually drew such a district, nor did he ever conduct a functional analysis on such a district. Day 1 Tr. 269:10–15; Day 2 Tr. 10:9–13.

123. Instead, Ferrin testified at trial that the opinion he gave the Subcommittee was based solely on his "familiarity with the area and where the population is." Day 2 Tr. 9:5–9. Based on Ferrin's "hypothetical review of the population there," he concluded that a district solely within Hillsborough County "might" not be compact. *Id.* 17:24–25.

124. Although Sen. Bracy stated at the January 10 meeting that he "talked to staff about the Tampa Bay area" in addition to having "brought this question up in the last committee" (referring to November 17), Ferrin testified at trial that Bracy never talked to him about Tampa Bay specifically, never asked him to do anything differently with Tampa Bay, and never followed the Senate's protocol for asking to draft or

analyze anything. Day 1 Tr. 266:7–15, 268:17–25.

125. Sen. Bracy and Ferrin *did* have at least one subsequent conversation after the November 17, 2021 meeting concluded, during which they at least discussed what a functional analysis includes. *Id.* 264:8–10. Although Ferrin said at trial that the conversation "was not specific to any district," at his deposition he testified that he and Sen. Bracy "walked through the functional analysis for the districts that we were at the time, I think, considering," and suggested the conversation with staff Sen. Bracy referenced at the January 10 Subcommittee meeting could have occurred after the November 17 Subcommittee meeting. *Id.* 263:17–264:11, 267:24–268:4.

126. At trial, Ferrin said he was neither aware nor unaware that Sen. Bracy spoke with Nordby about Tampa Bay. *Id.* 269:1–3. He said he could not speak to whether, if a senator talked to Nordby about redistricting, Ferrin would typically be made aware of that. *Id.* 269:4–9. Ferrin was unable to explain how Sen. Burgess was prepared to respond to Sen. Bracy's questions about Tampa Bay during the Subcommittee meeting, nor did Ferrin know how Sen. Burgess knew that "staff did look at those options," referring to configurations that did not cross the Bay. Day 2 Tr. 20:20–24. Ferrin does not know how Sen. Burgess would have reached the conclusion he stated unless Ferrin had prepped him for it, but Ferrin does not remember doing so. *Id.* 24:1–6. Besides Ferrin, the Senate called none of its staff, agents, or officers.[16]

[16] Although Plaintiffs properly sent Sen. Bracy a subpoena by certified mail, confirmed in a conversation that he was aware of the subpoena, and called him at trial, he refused to attend court. Day 1 Tr. 196:15–21; Day 2 Tr. 50:6–15; *see SEC v. Rex Venture Grp.,* No. 5:13-mc-4-WTH-PRL, 2013

127. On **January 13, 2022**, the Reapportionment Committee considered what became Plan 8058 (after district renumbering) and approved it by a 10-2 vote. Compl. ¶ 77; Sen. Answer ¶ 77; JX 19–21; Day 1 Tr. 254:10–18, 255:5–13.

4. Passage of the Enacted Plan

128. On **January 19, 2022**, the full Senate took up Plan 8058. Compl. ¶ 78; Sen. Answer ¶ 78. Sen. Rodrigues explained the Committee's approach to drawing the map in each of the areas with a Tier One-protected district: "We started with a blank map, pulled in the demographics, and then drew until we had a Tier One-protected district." JX 22 at 22:18–19.

129. Sen. Rodrigues continued:

> The benchmark map identifies what the existing Tier One districts are. Those are the districts that we cannot diminish. So once we've identified the Tier One districts, we then start with a blank map, highlight the data we've received from the U.S. Census Bureau by race, and then the staff began drawing around the population distribution in order to ensure we had not diminished the opportunity for minorities to participate or elect a voter of their choice. . . . Once we highlighted the racial population, we began drawing from there."

Id. 23:4–9, 24:3–4.

130. "Once we had assured that we were Tier One-compliant, which trumps all the other Tier Two metrics," Sen. Rodrigues explained, the Senate looked at

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WL 1278088, at *2 (M.D. Fla. Mar. 28, 2013). Because Plaintiffs called Sen. Bracy and he was not under their control, the "missing witness inference" cannot be drawn against Plaintiffs for his failure to testify. *In re Mayer*, 235 F. App'x 730, 734 (11th Cir. 2007) (summarizing the inference as applying when "a party has it peculiarly within his power to produce witnesses" and finding it inapplicable where party did not have an opportunity to call the witness (citation omitted)); *cf. Creel v. Comm'r*, 419 F.3d 1135, 1142 (11th Cir. 2005) (finding missing witness inference proper where the government failed to call its employees); *Coyle Lines v. United States*, 195 F.2d 737, 741 (5th Cir. 1952) (same).

"which map is the most Tier Two compliant among the Tier One choices." *Id.* 24:8–10. "The one we put forth is the most Tier Two compliant of the multiple Tier One choices that we had." *Id.* 24:10–11.[17]

131. The full Senate passed Plan 8058 as part of Senate Joint Resolution 100 (SJR 100) on **January 20, 2022**, and sent it to the House. Compl. ¶ 81; JX 23.

132. The House debated SJR 100, including Plan 8058 along with the House's plan for its own chamber, on **February 2, 2022**. Compl. ¶ 87.

133. Rep. Andrew Learned of Brandon objected to District 16, explaining that "it is splitting part of eastern Hillsborough County and putting it in with downtown St. Petersburg," and commented on the lengthy amount of time it takes to drive between those two areas. PX 12 at 6:13–15, 6:18–23.

134. Rep. Learned continued: "We're doing it because we say it's contiguous across water, which is a concept that I understand makes sense mathematically in a

[17] Sen. Rodrigues asserted legislative privilege to prevent his deposition and trial testimony, as did every other senator from whom Plaintiffs sought to elicit testimony, except for Sen. Bracy. Day 3 Tr. 20:2–10, 22:11–23:2. "[W]hen a party has relevant evidence within his control which he fails to produce," the adverse inference rule leads to an "inference that the evidence is unfavorable to him." *Callahan v. Schultz*, 783 F.2d 1543, 1545 (11th Cir. 1986) (internal citations omitted). Such inferences are impermissible depending on the circumstance. *See, e.g.*, *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (adverse inference upon assertion of Fifth Amendment privilege permitted in civil, but not criminal cases). Plaintiffs have found no controlling authority on whether an adverse inference may be drawn from the assertion of legislative privilege. In at least one case, a district court opted to rely on legislators' contemporaneous statements rather than draw an adverse inference from their assertion of legislative privilege. *Florida v. United States*, 885 F. Supp. 2d 299, 353 n.65 (D.D.C. 2012).

This Court need not decide whether it can draw adverse inferences from assertions of legislative privilege. Since the "key legislators" refused to testify at trial, the best evidence of legislative intent remains their "contemporaneous statements" from the legislative record. *Jacksonville II*, 2022 WL 16754389, at *4. At the strict scrutiny step, Defendants bear the burden of proving the use of race in the drawing of District 16 was narrowly tailored. Legislative privilege cannot excuse their failure to meet that burden. *See, e.g.*, *City of Greensboro v. Guilford Cnty. Bd. of Elections*, 251 F. Supp. 3d 935, 946–49 (M.D.N.C. 2017).

formula, but it doesn't make sense to anyone who actually lives there. . . . Crossing the Bay is a problem. It means that people will be underrepresented." *Id.* 6:15–18, 6:23.

135. He concluded: "I would stand before any court and say it is not constitutionally contiguous to say that these two communities have anything to do with each other, other than manatees in the middle." *Id.* 7:1–2.

136. The House passed SJR 100 by a 77-39 vote. Compl. ¶ 91.

137. On **February 3, 2022**, the Senate passed the final version of SJR 100, with Plan 8058 combined with the plan for the House. Compl. ¶ 92.

F. Direct Evidence of Racial Predominance and Failure to Tailor

138. The legislative record establishes "relevant state actor[]s[']' express acknowledgement[s] that race played a role in the drawing of district lines," crossing the threshold from "consciousness" to "predominance." *Alexander*, 602 U.S. at 8.

139. The Senate considered Benchmark District 19 a "Tier One-protected district" under the non-diminishment standard, meaning "Black voters' ability to elect candidates of their choice could not be diminished from an ability that existed in Benchmark District 19. Day 1 Tr. 257:14–19.

140. Walking through the Senate's first draft maps, Ferrin introduced the Protected District as "an effective minority district protected under Tier-One," noting its BVAP. JX 10 at 26:20–22. Sen. Rodrigues used the same language when the Committee took up what would become the Enacted Plan. JX 19 at 25:7–13.

141. On the Senate floor, Sen. Rodrigues explained the race-predominant method for drawing Tier One-protected districts like District 16:

> So once we've identified the Tier One districts, we then start with a blank map, highlight the data we've received from the U.S. Census Bureau by race, and then the staff began drawing around the population distribution in order to ensure we had not diminished the opportunity for minorities to participate or elect a voter of their choice. . . . Once we highlighted the racial population, we began drawing from there.

JX 22 at 23:5–9, 24:3–4.

142. At trial, Ferrin testified that in his view, Sen. Rodrigues' statements on the Senate floor do not accurately state the Senate's map-drawing process. Day 1 Tr. 240:17–20. Even though Sen. Rodrigues was the one who drafted the directives for Ferrin to follow, and even though he spoke in general terms about drawing "the Tier One districts," Ferrin's testimony is that Sen. Rodrigues "was struggling to explain to Senator Gibson"—a Black senator from Jacksonville—"how we drew in the Jacksonville area." *Id.* 240:25–241:2; Day 2 Tr. 20:5–7. Although Ferrin previously stated that he tried to consistently apply the Committee directives—and did so, Day 1 Tr. 239:2–9—he testified that Sen. Rodrigues' description of the map-drawing in Jacksonville was about a "unique" situation and *not* the process used for drawing other districts. *Id.* 241:2–11, 241:23–242:3.

143. But even Ferrin's own description of how he drew Tier One protected districts illustrates how the Senate subordinated race-neutral criteria in their drawing. Ferrin testified that information about what minority populations and districts should be "protected" came from the Senate's redistricting counsel, Nordby. *Id.* 228:22–229:1. In the drawing process, when he got to areas with those Tier One protected districts including Tampa, the focus shifted to include racial demographics. *Id.* 244:20–245:3;

Day 3 Tr. 108:10–16.

144. He explained how the fact that there was a Tier One protected district in the Tampa area factored into the map-drawing: "[W]e knew that, when we came time to draw a district [] that would prevent against diminishment in the Tampa Bay region, we'd have to account for that." Day 3 Tr. 61:7–10. Even as Ferrin explained it at trial, the choice to connect southern Pinellas County with Tampa was informed by "knowing that we're going to have to draw a minority district" and knowing the Protected District's historical configuration. *Id.* 72:23–73:4. Knowing that, staff decided to "put the remaining population [of southern Pinellas County] back with the folks in Tampa, and that will be the district that would cross the bay and be the minority access district." *Id.* 73:5–8. Throughout the drawing of the Protected District, he had "an eye towards the fact that this is going to be the Tier 1 district in this region and we're going to have to draw it in a manner that doesn't diminish in order to be constitutionally compliant." *Id.* 74:6–9.[18] In other words, Ferrin's trial testimony is that South St. Petersburg was included in the Protected District, as opposed to a different district, for Tier One—*i.e.*, racial—reasons.

145. The Senate's approach to drawing Tier One-protected districts was different from how it drew other districts. The "focus shifted" in areas with a protected

[18] Ferrin's testimony here and elsewhere that certain mapmaking decisions were made to equalize populations, rather than for racial reasons, do nothing to undermine the evidence that race predominated. This is because "an equal population goal is not one factor among others to be weighed against the use of race to determine whether race 'predominates.' Rather, it is part of the redistricting background, taken as a given, when determining whether race, or other factors, predominate in a legislator's determination as to *how* equal population objectives will be met." *ALBC I*, 575 U.S. at 272.

district, and while preserving existing districts was *not* a consideration for non-Tier One-protected districts, the Senate *did* refer to historical configurations—and even relied on them—when it drew protected districts. Day 1 Tr. 236:13–237:4, 244:20–245:3; Day 3 Tr. 72:23–73:4, 108:10–16. In other words, residents of protected districts were treated differently as the Senate drew the map.

146. The reasons the Senate did *not* draw—or even try to draw—the Protected District wholly within Hillsborough County were that doing so could (1) potentially diminish Black voters' ability-to-elect in the area; and (2) might require drawing a spidery, noncompact district based on a "hypothetical review." JX 16 at 7:16–8:4; Day 2 Tr. 17:20–18:4. Relatedly, Ferrin explained the Senate was motivated by "[b]eing risk-averse to litigation." Day 2 Tr. 18:8.

147. Expanding on that first reason, Ferrin testified that he never analyzed a Hillsborough-only Protected District because he believed doing so would have raised questions about whether even *St. Petersburg's* Black voters would have "potentially" had their ability-to-elect diminished, and thus "you might have created a situation in which [they] may then have standing to bring a diminishment claim . . . ." Day 1 Tr. 269:16–270:5; Day 2 Tr. 12:11–22; Day 3 Tr. 110:22–111:4 (agreeing he "thought the Black community in St. Pete might at least feel as if their opportunity to elect a candidate of choice had been diminished").

148. Ferrin admitted his conclusions were not based on an actual functional analysis of a Hillsborough-only Protected District; he did not and could not have performed a functional analysis since he did not draw a district that stayed on one side

of the Bay. Day 2 Tr. 13:16–14:1.

149. When asked whether he literally believed what Sen. Burgess said to Sen. Bracy on January 10—that there was no practical way to draw a district that did not cross the Bay while also satisfying the Florida Constitution—Ferrin said, "That's not something I specifically evaluated." *Id.* 14:14–25.

150. Additionally, Ferrin testified that, "in the back of [his] mind" when deciding to continue crossing the Bay, was the fact that "that had been a longstanding configuration all the way back to '92." Day 1 Tr. 270:9–10, 271:8. At his deposition, he testified that his understanding of the history—the Protected District including parts of Pinellas County and Tampa—made him "think we can start with the conclusion that it's okay to do that." *Id.* 271:15–20; Day 2 Tr. 11:6–9 ("Q: But you had already decided not to do so since it had crossed Tampa Bay since 1992, correct? A: That was a factor in how we drew the [] initial staff submissions, among others."). In Committee, Sen. Rodrigues likewise linked the Protected District's configuration to how it was "historically drawn since 1992." JX 19 at 25:12–13.

151. Contrasting with his awareness of the district's configuration going back to 1992, Ferrin—who worked on the 2015 remedial redistricting process in the Senate—did not recall whether someone challenged the Protected District in 2015, or whether the plaintiffs in that case asserted that a certain configuration for Tampa Bay was unconstitutional. Day 2 Tr. 19:6–10, 19:19–24; Day 3 Tr. 25:2–8.

152. Conversely, the reason the Senate drew the Protected District to connect portions of Hillsborough and Pinellas Counties was because it believed doing so was

necessary to avoid diminishing Black voters' ability-to-elect. JX 10 at 32:2–3; JX 16 at 7:16–18, 9:1–4. In other words, "'[r]ace was the criterion that, in the State's view, could not be compromised' in the drawing of district lines." *Alexander*, 602 U.S. at 7–8 (quoting *Hunt*, 517 U.S. at 907).

153. Legislators and staff expressly acknowledged that District 16 deviated from traditional race-neutral criteria due to racial considerations, and that those Tier Two criteria had to be subordinated to accommodate District 16's Tier One status. *See, e.g.*, JX 10 at 12:22–23, 13:10–11 (Ferrin explaining that adjacent district's boundaries "departs from geographic boundaries where necessary to maintain the ability to elect in a neighboring Tier-One protected district" and the Protected District's "boundary departs from these geographic features where necessary to maintain the ability to elect in this Tier-One protected district"); JX 16 at 19:23–20:2 (explaining same thing at January 10, 2021 meeting); JX 19 at 25:1–2, 25:4–8 (explaining how Protected District's borders with adjacent districts, and those districts' shapes, were affected by the Protected District's Tier One protected status).

154. When Sen. Bracy first asked why the Protected District crossed Tampa Bay, despite it apparently not being necessary, Ferrin replied simply: "That was to comply with the Tier One non-diminishment standards." JX 10 at 32:2–3.

155. Later in the process, Sen. Bracy again asked why the Protected District crossed the Bay. JX 16 at 7:10–13. Sen. Burgess's answer pointed to the race-based non-diminishment requirement: "there were a significant number of [] potential voters that would be disenfranchised under not crossing the Bay." *Id.* 7:16–17.

156. Ferrin agreed: "If we look at drawing it differently, I think we're looking at a situation where the Black voters would not be able to control the primary numerically . . . and that would potentially constitute diminishment." *Id.* 9:1–4.

157. At the final Committee meeting, Sen. Rodrigues explained his view of why the Protected District "includes the minority populations of St. Petersburg and Tampa:" "[t]o ensure this configuration does not result in the denial or abridgement of the equal opportunity [of African Americans] to participate in the political process." JX 19 at 25:10–13.

158. This view was shared by other Committee members. For example, Sen. Kelli Stargel (a member of both the Committee and Subcommittee) told a reporter, "We're required to have that district," referring to the Protected District, "So I definitely think it's important." Day 2 Tr. 45:18–23.[19]

159. In sum, the explanations the Senate gave at the time for why it drew District 16 as it did all point to a single reason: race. The Legislature's stated predominant goal in drawing District 16 was to avoid diminishing Black voters' ability-to-elect. At no point did the Legislature consider options that would have accomplished these anti-diminishment goals while avoiding drawing the district predominantly based on race.

160. Likewise, the Senate pointed to race when explaining why it did *not*

[19] While the news article itself is not in evidence, the reporter testified that Sen. Stargel told him the quoted statement, so *the fact that Sen. Stargel made the statement* is thus in evidence as the reporter's testimony.

endeavor to subordinate race-neutral criteria to a lesser extent (by, for example, respecting the "major geographic boundary" of Tampa Bay, the "major political boundary" of the Hillsborough-Pinellas County line, and the St. Petersburg city limits). PX 42 ¶¶ 20, 22; *see also* PX 48 ¶¶ 19, 21.

161. Granted, Ferrin testified at trial to "a multitude of reasons" why he believed it inappropriate to redraw District 16 wholly within Hillsborough County. Day 2 Tr. 17:20–23, 18:10–24. While these may have been Ferrin's private motivations, they are not the reasons he shared with the Senate at the time it adopted the Enacted Plan, and they are not the reasons Sens. Burgess, Bracy, Rodrigues, and others discussed when debating what configuration to adopt. "The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not." *Bethune-Hill*, 580 U.S. at 189–90. In any event, Ferrin's own trial testimony was that the "*primary* factor" was "being risk-averse to litigation" that "might" be brought by Black voters who "may then have standing to bring a diminishment claim" if they were moved out of the Protected District. Day 2 Tr. 18:8–9; Day 1 Tr. 269:25–270:3; *cf. Walen v. Burgum*, 700 F. Supp. 3d 759, 769 (D.N.D. 2023) (finding factual dispute as to predominance where "VRA compliance and avoiding litigation from Native American voters was a motivating factor" in redistricting), *aff'd in part, appeal dismissed in part*, 145 S. Ct. 1041 (2025) (mem.). That "primary factor" points back to racial considerations.

162. Ferrin was already familiar with the racial distribution of the populations

in the Tampa Bay region. Day 2 Tr. 10:5–8. So familiar, in fact, that he was "comfortable looking at the racial layers in the area and assessing what [he] thought it might take" to draw a Hillsborough-only Protected District. *Id.* 11:17–18; Day 3 Tr. 110:2–10.

163. In some circumstances, Committee staff determined there were multiple Tier Two-compliant ways to draw a region, and *sua sponte* opted to present those options to the Committee to decide. Day 1 Tr. 247:18–21; Day 3 Tr. 80:15–17. This included at least one instance, in South Florida, where Committee staff presented different options for how to draw a protected minority district. Day 1 Tr. 247:22–25, 248:12–16. Another instance presented a choice of whether to keep the City of Crestview whole, or instead to split it by following a river and roads. Day 3 Tr. 83:15–84:16.

164. But when it came to Tampa Bay, despite Sen. Bracy's questions and requests to Committee staff, staff did not investigate or present any alternative configurations for the Protected District. Day 1 Tr. 269:10–15. That is this case despite the fact that the Committee's directives did not *require* crossing the Bay, and there was never any instruction to cross the Bay. *Id.* 272:5–7; Day 2 Tr. 25:9–11.

165. In Ferrin's words, "because we found something that worked, we didn't necessarily feel compelled to go exploring other things on our own." Day 2 Tr. 11:3–5.

166. Even so, Ferrin acknowledged that he "maybe" would have drawn a Hillsborough-only Protected District if it complied with the Committee's directives.

Id. 25:12–21.[20]

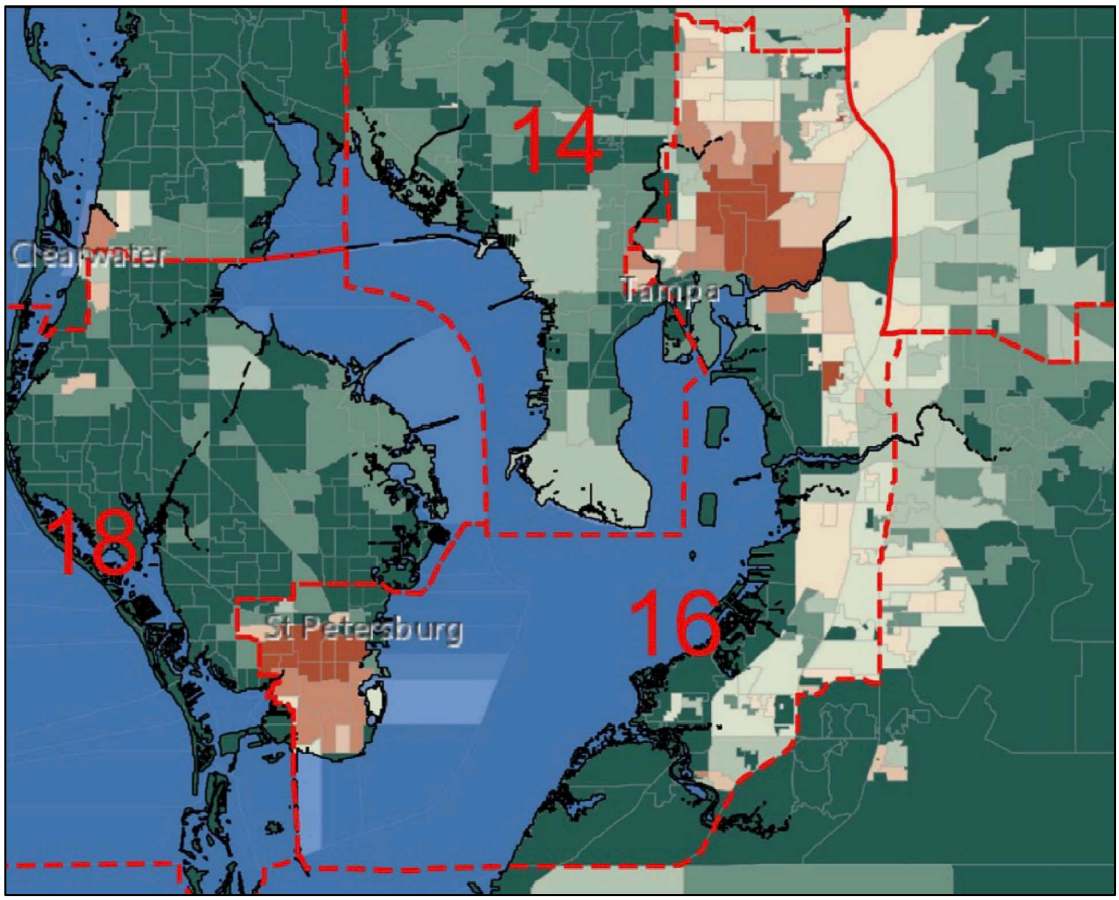
G. Circumstantial Evidence of Racial Predominance

167. Besides the direct evidence of racial predominance, "circumstantial evidence of [the] district[s'] shape and demographics" point to racial predominance as well. *Miller*, 515 U.S. at 916.

168. District 16 is noncompact, consisting of two distinct areas of land separated by the largest geographic feature in the region—Tampa Bay. PX 97; PX 42 ¶ 20 (Senate admission "Tampa Bay is a major geographical boundary"). No bridge connects these two pieces directly; it is impossible to drive or walk from one part of the district to another without passing through another district. Compl. ¶ 98. The district traverses the major geographic feature that defines the region to group together far-flung Black residents. *E.g.*, Day 2 Tr. 199:22–200:14; PX 79 (below, mapping the Black share among registered Democrats).

[20] It is not (yet) in evidence, *see* ECF No. 164 at 2, 5, but the fact that Florida's congressional map includes a district (Congressional District 14) with portions of both Hillsborough and Pinellas Counties does nothing to undermine the bevy of direct and circumstantial evidence of racial predominance in Senate District 16. CD 14 has entirely different origins, having been proposed by Governor DeSantis rather than developed as part of the Senate's redistricting process. In contrast to the Senate's admittedly race-conscious drafting of SD 16, the Governor's congressional map was drawn on an explicitly race-blind basis. ECF Nos. 164-4, 164-6, 164-7; *Common Cause Fla. v. Byrd*, 726 F. Supp. 3d 1322, 1347 (N.D. Fla. 2024) (Governor's mapmaker testifying he drew the map "without considering race at all"), *id.* at 1387 (Winsor, J., concurring in part) ("the Governor went to great lengths to oppose race-based redistricting"). Objectively, CD 14 divides the region differently from SD 16. ECF 164-5. Most significantly of all, it does not divide Hillsborough and Pinellas Counties along racial lines.

In contrast to SD 16's history, the relevance (or irrelevance) of race in drawing CD 14 is discussed in *Apportionment VII*, 172 So. 3d at 406–09. It is *that* background—very different from SD 16's—which informed the Governor's race-blind drawing of CD 14, including his first congressional map proposal released January 16, 2022, and which Warren discussed the following day. ECF No. 164 at 3; Day 1 Tr. 161:8–14.



169. District 16 splits political subdivisions along racial lines: it splits St. Petersburg unnecessarily, contrary to the Senate's directive that staff explore concepts that "keep cities whole." PX 16 at 2; JX 11 at 5.[21] It splits Pinellas County into more districts than necessary and prevents Hillsborough from hosting a second district entirely within it, contrary to the directive to "keep districts wholly within a county in the more densely populated areas." PX 16 at 2; PX 42 ¶ 22 (Senate admission

[21] While Ferrin tried to minimize the degree to which keeping municipalities whole was a criterion in the Senate's process, Day 3 Tr. 58:21–59:19, he admitted it was "a metric that was reported on and was relevant," and that the Senate did try to keep cities whole, *id.* 60:6–8. In fact, between the initial draft plan presented on November 17, 2021, and the final Enacted Plan, *14* cities were made whole and the aggregate number of city splits dropped by *28*. *Compare* JX 11 at 13 *with* JX 20 at 640. But no effort was made to apply that race-neutral criterion to St. Petersburg, despite Ferrin's testimony that the Senate sought "consistent application" of the Tier Two criteria as it refined the map. Day 1 Tr. 251:3; *see also id.* 239:7–9.

"boundary between Pinellas and Hillsborough Counties is a major political boundary"). Indeed, of Florida's five largest counties which each have sufficient population to host two Senate districts, Hillsborough is the *only* one where the Senate chose *not* to draw two whole districts—again, despite Ferrin's testimony that the Senate sought to apply its "directives in a consistent manner throughout the state." Day 1 Tr. 239:7–9; JX 20 at 639, 641 (showing Miami-Dade, Broward, Palm Beach, and Orange Counties hosting two or more whole districts).

170. These divisions of counties and cities are not race-blind, but rather accomplished along racial lines. Day 2 Tr. 200:3–14, 201:5–8, 203:17–21; 205:7–12. Predominantly Black areas of St. Petersburg and Pinellas County are assigned to District 16, with whiter areas assigned to the adjacent District 18. *Id.* 205:7–12. In Hillsborough, the dividing line also tracks racial populations. *Id.* 200:20–203:21.

171. Dr. Matthew Barreto's qualitative walk-through of how racial patterns track onto District 16's shape and borders provides compelling circumstantial evidence of racial predominance. *See Jacksonville I*, 635 F. Supp. 3d at 1273–76, 1284 (similar expert analysis concluding "district lines are consistently drawn in a manner such that the precincts in [protected Black districts] have higher BVAP than the neighboring precincts on the other side of the line" was "strong evidence" of predominance); *GRACE I*, 674 F. Supp. 3d at 1193–94 & n.15, 1209–11 (crediting similar analysis and finding predominance); *see also McClure v. Jefferson Cnty. Comm'n*, No. 2:23-cv-443-MHH, 2025 WL 88404, at *16 (N.D. Ala. Jan. 10, 2025) ("Expert witnesses may offer opinions regarding the role race played in redistricting.").

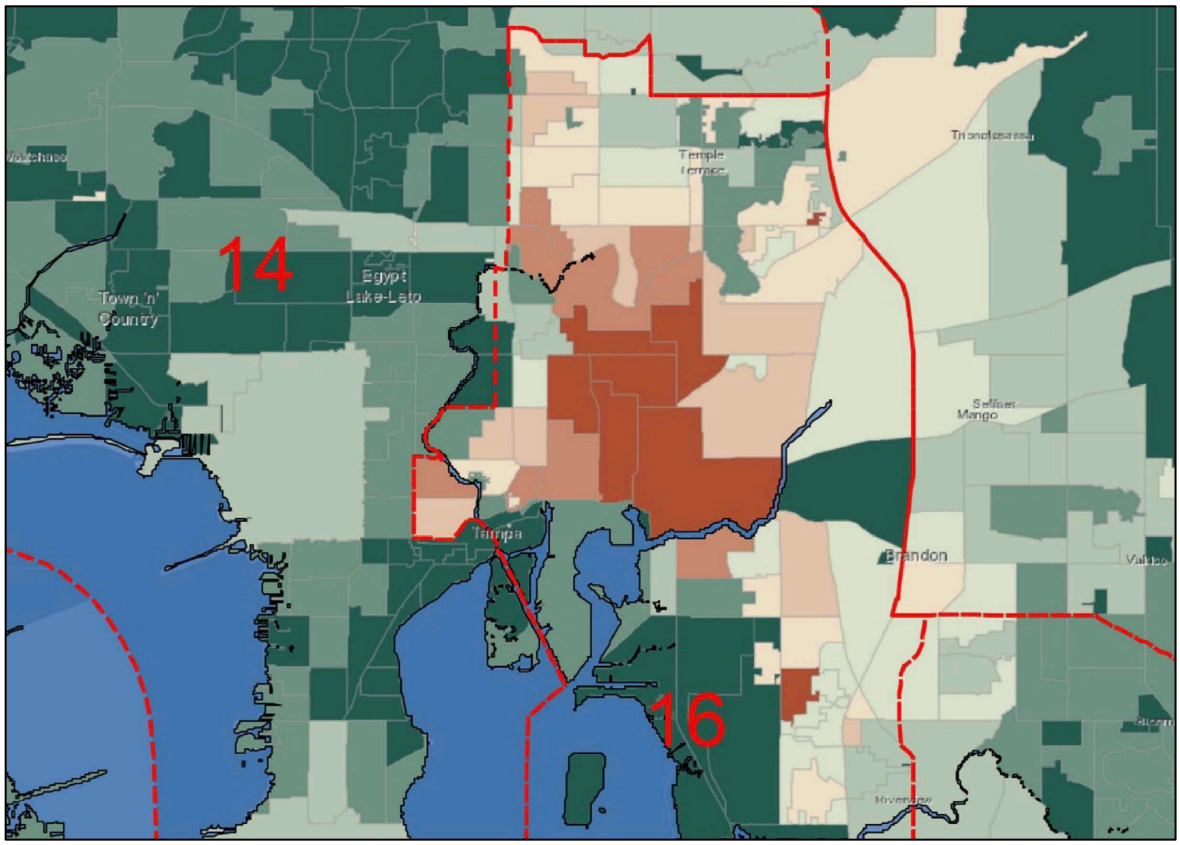
172. Barreto's quantitative "adjacency analysis," examining the racial composition on either side of the district line, found an extraordinary statistical pattern—an "overwhelming tendency"—whereby more-Black areas are consistently placed inside District 16 and less-Black areas are excluded from it. Day 2 Tr. 208:6–213:4. The probability of this consistent racial pattern occurring by chance is exceedingly small—a 1 in 190,000 chance for the Pinellas portion of District 16's boundary, and a 1 in 61,000 chance for the Hillsborough portion. *Id.* 213:18–214:9.[22]

173. The Legislature has developed a "boundary analysis" to measure the "coincidence of a district's border with easily recognizable and identifiable boundaries, including political and geographic features." JX 5 at 53; *see also* JX 5 at 53. Not all political and geographic boundaries are "eligible" for inclusion in this analysis. Day 3 Tr. 46:9–13. Instead, the analysis includes categories of boundaries selected and defined by legislative staff. JX 5 at 53. For example, it includes "primary and secondary roads," which is defined to include only interstates, U.S. highways, and State highways, and "significant water bodies." *Id.* Thus, the boundary analysis excludes some major roads. *See, e.g.,* Day 3 Tr. 77:7–9, 25–78:2. A district boundary that followed a "six-lane divided highway" which happened to be a county road, for

[22] Defendants fault Barreto for analyzing racial patterns among voting tabulation districts (VTDs), when the Senate did not draw maps using that unit of geography. Day 2 Tr. 224:14–226:10. The *Jacksonville I* court rejected an identical argument, where the plaintiffs' expert political scientist examined racial patterns among the similar geographic unit of precincts. 635 F. Supp. 3d at 1275 ("However, that the City did not use precincts to guide its redistricting process does little to undermine the fact that the lines selected appear to result in the consistent racial patterns reflected in the precinct data. While the Court draws no particular inference from the fact that a precinct was split, what is significant is the data showing that where the precinct was split moved an area with a higher BVAP into [predominantly Black] District 7, and left an area with a lower BVAP in [adjacent] District 2.").

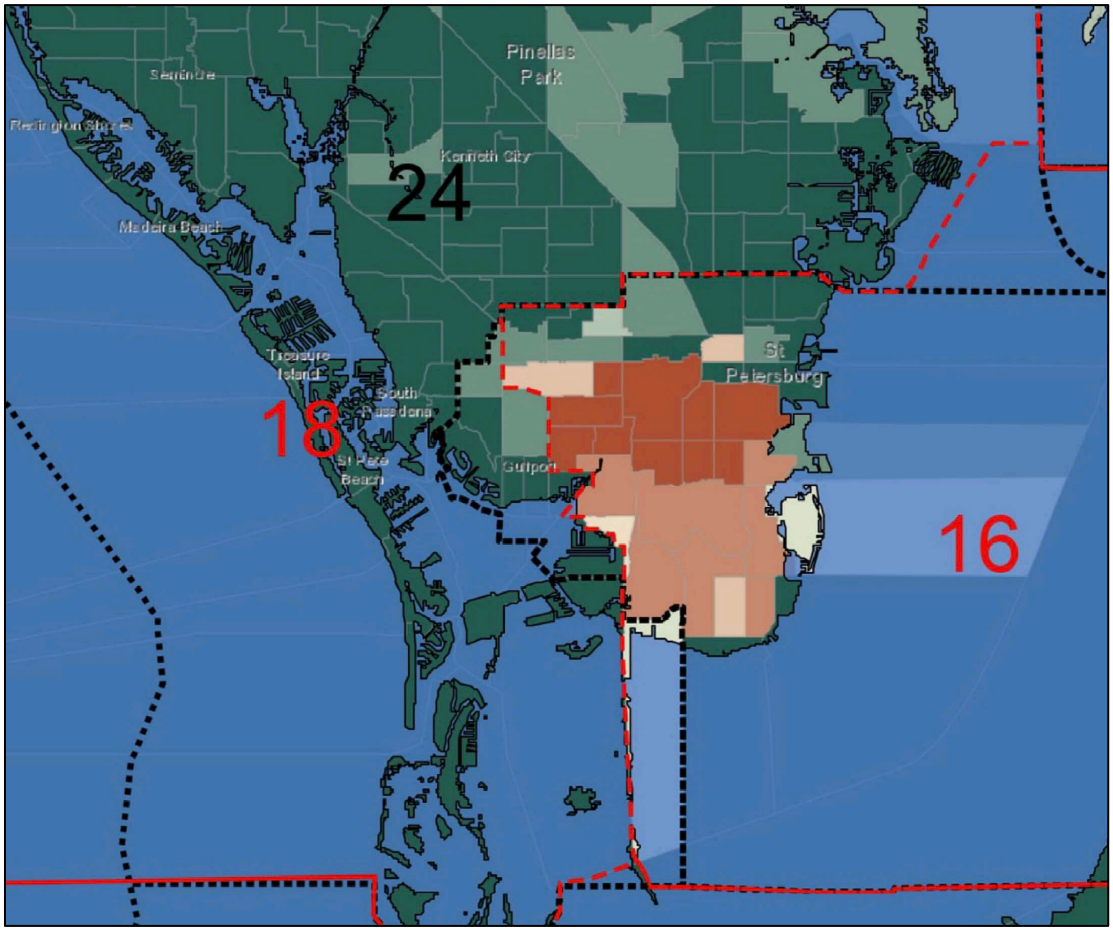
example, would not be reflected in the boundary analysis as utilizing a geographic boundary. *Id.* 49:6–14. The Legislature's boundary analysis is also influenced by whether a boundary follows the "east bank of the river or the midline of the river or the west bank" or whether the boundary "consistently [follows] the northbound lane or the southbound lane of I-75 or another interstate". Day 1 Tr. 251:19–252:1. As to water bodies, crossing a body of water like Tampa Bay *actually improves* the boundary analysis score. Day. 2 Tr. 83:2-11. The metric originated in the 2010 redistricting cycle, when a Florida's state court discussed its "failings" and rejected it as "of limited use as a reliable way of measuring tier-two compliance." ECF No. 156-3 at 7–8.

174. Barreto's analysis illustrates both how "eligible" boundaries under the Legislature's metric were selectively chosen to advance racial separation, and also how the district lines depart from recognizable boundaries to track racial lines. For example, District 16's western boundary in Tampa starts by following the Hillsborough River, zigs west to scoop up heavily Black neighborhoods on the west side of the river, joins the river again for a brief bit, then zags in the opposite direction to exclude heavily white areas on the river's east side. Day 2 Tr. 201:22–203:9; PX 82 (depicted below). Similarly, the Senate made use of I-275 only where the interstate tracks a preexisting racial divide. Day 2 Tr. 203:10–21; PX 82. Ultimately, even using the Legislature's own flawed boundary metric, District 16 has the *worst* score among all 40 districts in the enacted Senate map. Day 2 Tr. 83:24–84:10; PX 193 at 28–29.



175. This pattern is even more pronounced when one compares the Enacted Plan to the Benchmark Plan: whiter areas of the Benchmark District in Pinellas County were excised from District 16 to even more closely align the district border with racial populations. Day 2 Tr. 205:3–12; PX 81 (depicted below). The entire City of Gulfport, along with whiter areas of St. Petersburg, were moved *out* of the Benchmark District into enacted District 18. Day 2 Tr. 205:14–206:3. The total area moved out (including both Gulfport and portions of St. Petersburg) is just 7% Black, while the adjacent areas on the *inside* of the new district line are majority Black. *Id.* 206:4–9. Meanwhile, an area of St. Petersburg was moved *into* District 16. That area was higher-density Black than the area moved *out* of District 16, with Black voters constituting about 40% of the Democratic electorate there—over five-and-a-half times

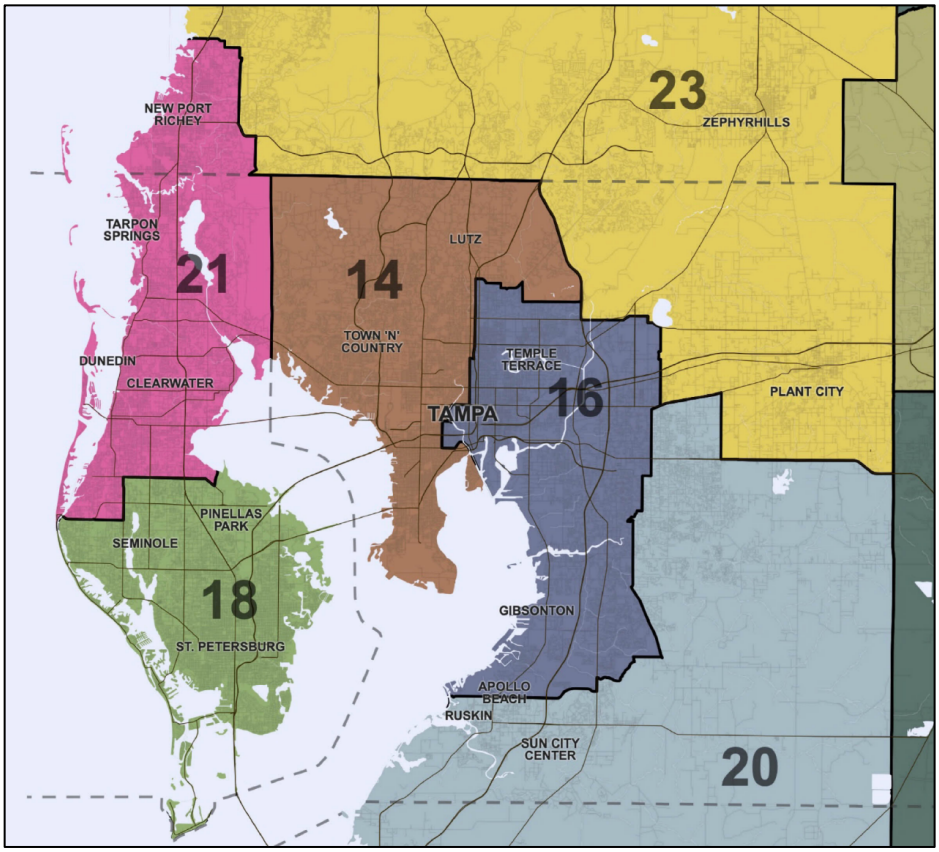
the Black concentration of the area moved *out* of District 16. Day 2 Tr. 206:10–22. Collectively, these population swaps enhanced racial separation and suggest the new line was driven by racial considerations. Day 2 Tr. 206:23–207:4; PX 81.



176. Additional circumstantial evidence of racial predominance comes from Plaintiffs' three alternative maps, drawn by Dr. Cory McCartan, which achieve the Senate's interest in avoiding diminishment in District 16 while employing race in a much more tailored fashion. McCartan employed the same directives that Committee staff purported to follow to draw plans that feature a Protected District sitting compactly on one side of Tampa Bay, wholly within Hillsborough County, rather than connecting the region's two far-flung Black population centers separated by miles of

open water into a single district. PX 66; Day 2 Tr. 57: 14–58: 11.

177. McCartan produced a more visually compact district that uses the existing Hillsborough-Pinellas County and Tampa Bay boundaries. PX 98, 99, 100 (below). Doing so eliminates the unnecessary split of Pinellas County and unites all of St. Petersburg in a compact, naturally occurring district at the southern end of the peninsula—satisfying the Senate's own race-neutral directives to, where feasible, use county boundaries, keep districts wholly within a county in more densely populated areas, and keep cities whole. PX 16 at 2; Day 2 Tr. 70:7–14, 85:10–18; *see* Day 3 Tr. 65:2–6 (Ferrin: "[B]ecause we're a peninsula, if you were to start drawing at the top and go down, you might have a pretty significant population i[m]balance in some of the districts at the south end of the state and have to kind of rebalance that going up.").



178. McCartan's visually compact Protected District and surrounding area adheres to the Senate's own mandate to "draw districts that are visually compact in relation to their shape and geography[.]" PX 16 at 1; *see* JX 1 at 39:22–25 (Ferrin explaining to Committee the use of the "Int[er]ocular Test, which is just a visual review for compactness"). Further, McCartan's plans have mathematical compactness scores comparable to the other districts in the Enacted Plan. Day 2 Tr. 81:11–16, 88:6–10; PX 101–103; *see* PX 16 at 1 (Senate directives to "use mathematical compactness scores where appropriate").

179. Rather than carve the region along racial lines, McCartan only consulted racial demographic data to the extent required to ensure that Black voters' ability to elect representatives of their choice was not diminished. He initially acquainted himself with Hillsborough County's general demographic patterns to avoid making changes that would obviously diminish Black voters' ability to elect their representatives of choice, then confirmed he had not dramatically changed the district's demographics by running a demographic report on the illustrative plans in the Legislature's software. Day 2 Tr. 58:15–59:10. Rather than selectively following major roads to achieve a desired racial division of St. Petersburg or connecting Tampa and St. Petersburg's Black communities by tracking the highways that lie between them, McCartan followed and respected major boundaries irrespective of race. *See, e.g., id.* 73:18–24, 93:15–17; *cf. Milligan*, 599 U.S. at 31 (discussing how plaintiffs' mapmaker "testified that while it was necessary for him to consider race, he also took several other factors into account, such as compactness, contiguity, and population

equality").

180. Emphasizing how the Enacted Plan divides Pinellas County along racial lines, McCartan's approach results in *doubling* the Black population in adjacent District 18. Day 2 Tr. 77:13-15. McCartan's approach to redrawing District 16 is consistent with how the Florida Legislature and courts have drawn other areas of the state with protected districts.[23] *Id.* 93:18–94:3.

181. Barreto's functional analysis of McCartan's illustrative maps confirmed that there was no diminishment in Black voters' ability to elect. *Id.* 196:4–9. Examining the same statewide elections from 2012–20 that the Legislature uses for its functional analyses, in *every* election in which the Black-preferred candidate prevailed under the Benchmark District, the Black-preferred candidate would also prevail under McCartan's alternative configurations of the Protected District. *Id.* 195:17–196:3.[24]

182. In sum, both direct and circumstantial evidence demonstrate race predominated in the Senate's design of District 16.

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[23] Defendants attack Plaintiffs' alternative plans, and the general concept of the Protected District sitting compactly in Hillsborough County, as a partisan gerrymander to bolster Democrats' chances in neighboring District 18. This argument fails for multiple reasons. ***First***, McCartan did not consider partisanship and was not even aware of the partisan results of his plans, outside confirming that Black voting strength was not diminished in District 16 using the same functional analysis data as the Senate. Day 2 Tr. 70:23–71:2. ***Second***, as discussed further *supra* pp. 48–52, the Senate explained why it rejected the Hillsborough-only configuration on the record during the legislative process. Fear of adopting a Democratic gerrymander was not the reason.

[24] Defendants have suggested that McCartan's alternative plans fail to reverse some "erosion" of Black voting strength that the Protected District experienced from 2012–2020, but Florida law does not require a new plan to return minority voters to the position they were in a decade prior. *See BVM*, 2025 WL 1982762, at *3; *In re Senate Joint Resol. of Legis. Apportionment 100*, 334 So. 3d 1282, 1289 (Fla. 2022). Indeed, it makes no sense to refer to Black voters' power in Benchmark District 19 in 2012, because the Benchmark Plan did not exist until 2016. Day 1 Tr. 230:15–20.

H. Laches

183. The Enacted Plan was passed on February 3, 2022. Compl. ¶ 92. Senators elected from the Enacted Plan took office upon election in November 2022. Fla. Const. art. III, § 15(d). District 16 was last on the ballot in 2022 and will next be up in 2026. *Id.* art. III, § 15(a).

184. Plaintiffs filed this case on April 10, 2024. Compl.

185. The only way in which the Senate claims it has been prejudiced by any delay on Plaintiffs' part is that "people's memories fade over time". Day 4 Tr. 101:2.

IV. CONCLUSIONS OF LAW

A. Plaintiffs have standing to sue.

All three Plaintiffs have standing to challenge District 16 because they reside there. *Hays*, 515 U.S. at 744–45. In particular, District 16's deviations from traditional districting principles "cause constitutional harm insofar as they convey the message that political identity is, or should be, predominantly racial." *Vera*, 517 U.S. at 980. Plaintiffs' injuries are traceable to Defendants' enforcement of the Enacted Plan and redressable by this Court. *See GRACE III*, 2023 WL 8856325, at *7 (finding redressability "unequivocally simple").

B. District 16 fails strict scrutiny because it is not narrowly tailored.

Because the facts demonstrate that race predominated in the design of District 16, it must survive strict scrutiny. *See Cooper*, 581 U.S. at 292. Defendants bear the burden to prove that the use of race in the design of District 16 was narrowly tailored to the state's asserted interest in complying with the non-diminishment requirement.

Id. Based on the evidence presented at trial, Defendants come up short. The Florida Supreme Court's recent *BVM* decision rejected Defendants' asserted interest in complying with the Florida Constitution's non-diminishment provision and applies strict scrutiny to any race-predominant districts. 2025 WL 1982762, at *11. As *BVM* demonstrates, the narrow tailoring analysis is necessary and exacting. *Id.* at *10.

1. The Senate's use of race fails to clear the Constitution's "limited degree of leeway".

When a state invokes the VRA to justify the use of race-based districting, the narrow tailoring requirement gives legislatures "breathing room," *Cooper*, 581 U.S. at 293 (quoting *Bethune-Hill*, 580 U.S. at 196), to comply with the statute's requirements. But that breathing room only affords States a "limited degree of leeway," *Vera*, 517 U.S. at 977; *see id.* at 978 ("Strict scrutiny remains, nonetheless, strict."). To satisfy narrow tailoring, the state must still show "that it had 'a strong basis in evidence' for concluding that the statute required its action"—*i.e.*, "'good reasons' to think that it would transgress the Act if it did not draw race-based district lines." *Cooper*, 581 U.S. at 292–93 (quoting *ALBC I*, 575 U.S. at 278). This requires "evidence or analysis supporting [the] claim that the VRA required" the race-based measures, "much more" than "uncritical" assumptions and "generalizations." *Wis. Legislature*, 595 U.S. at 403–04. As discussed *supra* pp. 15–17 ¶¶ 28–30, the relaxed "breathing room" standard may not apply here. *See BVM*, 2025 WL 1982762, at *10 (explaining, in context of drawing race-predominant district to comply with Tier One non-diminishment requirement, that strict scrutiny is "a 'daunting' examination that asks whether a 'racial

classification is used to further compelling governmental interests' and then 'whether the government's use of race is narrowly tailored—meaning necessary—to achieve that interest.'" (quoting *Students for Fair Admissions*, 600 U.S. at 206–07). Plaintiffs believe the State has failed to meet its strict scrutiny burden whether or not "breathing room" applies.

Even assuming the State is afforded breathing room, Defendants fail to meet their burden of proving that District 16 is narrowly tailored in its use of race. The Senate could have achieved its compelling interest in complying with Tier One's non-diminishment standard without subordinating traditional race-neutral redistricting criteria as dramatically as it did (or even at all). Rather than exploring obvious viable options, the Senate "start[ed] with the conclusion" that it needed to connect Black population centers from Tampa to St. Petersburg, split Pinellas County and St. Petersburg along racial lines, and cross Tampa Bay—the largest geographic feature in the region—to avoid diminishment. Day 1 Tr. 271:19–20. The Senate did so without presenting any evidence or conducting any analysis that compliance with non-diminishment actually required such dramatic violation to so many race-neutral redistricting criteria.

And when multiple sources alerted the Senate that Tier-One-compliant districts could be drawn without subordinating those criteria at all—from legislators during the process, amendments from the most recent cycle, and public submissions—the Senate dismissed these proposals out of hand. Rather than investigate the possibility of more closely aligning District 16 with the region's political and geographical boundaries, the

Senate relied on vague and indiscriminate speculation that grouping Black voters from two far-flung cities together was necessary to comply with the non-diminishment requirement. But "[n]onretrogression is not a license for the State to do whatever it deems necessary to ensure continued electoral success." *Vera*, 517 U.S. at 983; *see also Shaw*, 509 U.S. at 655 (holding that VRA does not "give covered jurisdictions *carte blanche* to engage in racial gerrymandering in the name of nonretrogression. A reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression."). The Senate's reasoning fails to clear the "limited degree of leeway" the Constitution affords. *ALBC II*, 231 F. Supp. 3d at 1063 (quoting *Vera*, 517 U.S. at 977).

2. The Senate erroneously presumed the law required the Protected District to include Black communities in both Tampa and St. Petersburg.

To justify why it took a cross-Bay district as "a given element," the Senate claimed to be concerned about the "potential" that drawing a Hillsborough-only Protected District would diminish the voting power of Black voters in *Pinellas County*, which (they reckoned) could "potentially" violate Tier One, because Pinellas residents "might at least feel as if their opportunity to elect a candidate of choice had been diminished." JX 16 at 7:16–18, 8:1–4; Day 3 Tr. 110:15–111:4; Day 1 Tr. 271:9–21.

For one, those tentative suppositions are not enough to justify the use of race-based districts. *See Wis. Legislature*, 595 U.S. at 403–04 (holding that it is not enough to "conclude only that the VRA *might* support race-based districting;" the state must

have "'good reasons' for thinking that the Act *demanded* such steps"). For another, the Legislature's own past actions and the Florida Supreme Court's decisions reflect that Tier One's anti-diminishment requirement does not operate on a county-by-county basis as the Senate suggests. For example, the Senate itself agreed to remove the Manatee County portion of the Protect District in 2015 without claiming that Manatee Black voters would have their votes diminished. *See supra* p. 28 ¶ 72. The Florida Supreme Court has reaffirmed that the non-diminishment requirement applies to districts, not portions of counties that make up districts. *Apportionment I*, 83 So. 3d at 656–57, 665–66, 673–76; *Apportionment II*, 89 So. 3d at 882–83, 887, 891. The Senate's decision to draw the Protected District was thus based on an interpretation of the non-diminishment standard that Florida courts previously "rejected" and so "fell short of [judicial] standards." *Wis. Legislature*, 595 U.S. at 403–04; *cf. Miller*, 515 U.S. at 921 (rejecting race-based redistricting plan since it "was not required by the Act under a correct reading of the statute"). "[A] State may have a compelling interest in complying with the properly interpreted Voting Rights Act." *Hunt*, 517 U.S. at 908 n.4. "It has no such interest in avoiding meritless lawsuits." *Id.* (rejecting as justification for race-based districting "the interest in avoiding the expense and unpleasantness of § 2 litigation regardless of the possible outcome of that litigation" (internal marks omitted)).

3. The Senate refused to adequately investigate a more tailored use of race.

The Senate's contemporaneous justification for drawing a cross-Bay district combining distinct Black populations also rested on the assumption that a

Hillsborough-only district would require "a fairly spidery, non-compact configuration." JX 16 at 7:22–23. As Plaintiffs' alternative plans demonstrate, this assumption was utterly unfounded. And the record shows the Senate had ample reason to question the validity of its assumption.

Despite multiple requests by legislators and the public to explore district lines that did not cross the Bay, the Senate made no attempt to investigate whether doing so was possible. On at least three occasions, Sen. Bracy questioned Senate mapmakers, requesting that they attempt to draw the Hillsborough-only version or provide analyses to show they could not. A House lawmaker raised similar questions when that body voted to approve the Enacted Plan. During the 2015 redistricting process, bipartisan legislators in both chambers proposed maps that kept to one side of Tampa Bay as well. And Warren—acting then as a private citizen—submitted a proposal that did not cross the Bay.

Rather than testing the Senate's assumption by drawing a Hillsborough-only option and performing an actual functional analysis of such a district, the Senate's mapmaker based his conclusions on only how he "imagined" a "hypothetical" district might have to be drawn, which he thought "might need" "tentacles and appendages and fingers." Day 2 Tr. 9:22–10:8, 11:10–16, 12:3–9. The Senate lacked any basis in evidence—let alone a strong one—to conclude that the non-diminishment requirement required drawing District 16 in the way that it did. Indeed, as Plaintiffs' alternative plans show, if the Senate had complied with Sen. Bracy's request, it would have found that it was easy to draw a Hillsborough-only Tier Two-compliant district that

subordinated no race-neutral redistricting criteria at all, while also avoiding diminishment.

4. Post-hoc rationalizations cannot negate direct, contemporaneous evidence of the Senate's intent.

These revelations show that the Senate could and should have done more to investigate whether a Hillsborough-only district could avoid diminishment while narrowly tailoring the use of race to that purpose. In an attempt to distract from this straightforward failure, Defendants craft a post-hoc narrative that the Senate rejected a Hillsborough-only district to avoid an alleged taint of partisan influence from Warren. But as the Northern District explained when it limited the scope of Warren's deposition, "the private motivations of an outside map-drawer, unknown to the legislature," cannot "be imputed to the legislature." *Nord Hodges v. Passidomo*, No. 4:24-mc-139, 2024 WL 4810385, at *3 (N.D. Fla. Nov. 15, 2024) "Whether his map provided a valid alternative configuration depends on what the legislature knew, believed, and intended at the time, not Warren." *Id.* at *4.

Defendants presented no evidence to show that *at the time of redistricting* the Senate actually rejected the concept of a Hillsborough-only configuration on the basis of partisan influence.[25] There was no evidence at trial—*none*—indicating that Warren's map submission, presentation to the Subcommittee, or other private activities played

[25] In fact, no evidence even indicates that the Senate was aware of any partisan motivations Warren might have had. Sen. Rodrigues' memorandum does not mention Warren's partisan affiliation or motivation, only the fact he did not affirmatively disclose his employment with a non-partisan organization. PX 164. In any event, there is evidence the Senate knew of Warren's employment at the time he submitted his map, undermining Rodrigues' stated justification for ignoring it. Day 1 Tr. 72:11–79:3; PX 156.

any part in the Senate's decision to adopt the Enacted Plan and reject a Hillsborough-only configuration. Ferrin testified unequivocally that Warren had no impact on his development of the Enacted Plan, and that he is unaware of any impact on any senators' decisions, either. Day 3 Tr. 104:24–106:12.

To the contrary, the consistent and sole justification the Senate provided for drawing District 16 to cross the Bay was to avoid diminishing Black voting power. On January 10, 2022, nearly two months after Warren submitted his proposed map, Sen. Bracy asked whether District 16 could be drawn to avoid crossing the Bay. Sen. Burgess and Ferrin stated that it could not be done because of the Florida Constitution's non-diminishment requirement. Those were the reasons given at the time for why District 16 is shaped the way it is.[26] The best evidence of legislative intent are the statements from the legislators and the staff they relied on at the time the Legislature made its mapmaking decisions, "not *post hoc* justifications that the legislature in theory could have used but in reality did not." *Bethune-Hill*, 580 U.S. at 189–90 ("The racial predominance inquiry concerns the *actual* considerations that

[26] *See, e.g.*, JX 10 at 31:22–23, 32:2–3 (Bracy: "[W]hat was the motivation for doing that when it didn't seem necessary?" Ferrin: "That was to comply with the Tier One non-diminishment standards."); JX 16 at 7:10–13, 7:15–18 (Bracy: "I wanted to see if you could explain the reason . . . for crossing the Bay[?]" Burgess: "[T]here was a significant number of [] potential voters that would be disenfranchised under not crossing the Bay. And so in order to avoid that potential diminishment, there was just no way to make that work practically."), 7:20–8 (Ferrin: "I think in looking at a configuration like that, it was likely that diminishment would occur . . . . In addition to, as Senator Burgess mentioned, potentially disenfranchising the [] Black voters in Pinellas County . . . ."), 8:20–9:4 (Ferrin: "If we look at drawing it differently, I think we're looking at a situation where the Black voters would not be able to control the primary numerically, not make up a majority of the primary turnout, and that would potentially constitute diminishment."); JX 19 at 25:10–13 (Rodrigues: "To ensure this configuration does not result in the denial or abridgement of the equal opportunity to participate in the political process, District 19 includes the minority populations of St. Petersburg and Tampa, as historically drawn since 1992.").

provided the essential basis for the lines drawn . . . ." (emphasis added)); *see also Jacksonville II*, 2022 WL 16754389, at *4 ("[R]elevant, *contemporaneous* statements of key legislators are to be assessed when determining whether racial considerations predominated." (emphasis added)).

In any event, separate from Warren, multiple legislators and past map proposals independently pointed the Senate to the viability of redrawing the Protected District to avoid diminishment while not crossing the Bay and subordinating other race-neutral criteria. Defendants have not shown that any alleged improper influence by Warren extended to these other sources or that a Hillsborough-only district constitutes a partisan gerrymander under Florida law. *See Apportionment I*, 83 So. 3d at 617, 642 (holding that it is drawing districts with partisan *intent*—not merely effects—that is unconstitutional).

In sum, Defendants have failed to meet their strict-scrutiny burden. Although the Senate has an interest that can justify using race to draw District 16, "[t]he means chosen to accomplish the State's asserted purpose must be specifically and narrowly framed to accomplish that purpose[.]"*Hunt*, 517 U.S. at 915 (quoting *Wygant*, 476 U.S. at 280 (plurality opinion)). The Senate's use of race to avoid retrogression in District 16 was neither specifically nor narrowly framed. The employment of race to drive District 16's shape, including the subordination of race-neutral principles (*e.g.*, connecting two disparate Black population centers, unnecessarily splitting St. Petersburg, dividing Pinellas County into more districts than necessary, and departing from major features to accomplish racial division) "went beyond what was reasonably

necessary to avoid retrogression." *Shaw*, 509 U.S. at 655. Rather than being based on an "informed bipartisan consensus, *Bethune-Hill*, 580 U.S. at 194, supported by "justifiable conclusions," *Abbott*, 585 U.S. at 621, the Senate's decisions rested on ill-informed assumptions and suppositions contradicted by the readily available evidence before it. Moreover, in framing its redistricting around how it could maintain the Protected District's historic configuration, the Senate "asked the wrong question with respect to narrow tailoring." *ALBC I*, 575 U.S. at 279 (affirming that tailoring asks whether "the race-based action taken was *reasonably necessary* to achieve a compelling interest" but faulting district court and legislature for asking, "How can we maintain present minority percentages in majority-minority districts?" (quotations omitted)).[27]

Accordingly, this Court should enjoin the use of the enacted District 16. Doing so ensures that the Senate's use of race in complying with Florida's non-diminishment provision accords with federal equal-protection rights and is properly bounded by the limits of the U.S. Constitution.

C. Plaintiffs' claims are not barred by laches.

The Senate has not met its burden to prove its laches affirmative defense. Plaintiffs brought this case just over two years after the Enacted Plan was passed, and a year and a half after the first election at which it was implemented. Assuming a four-

[27] In *ALBC* and *GRACE*, the government's tailoring failure was in maintaining a particular numerical target for the minority share of the district without "a strong basis in evidence in support of the (race-based) choice that it has made." *ALBC I*, 575 U.S. at 275–279 (quotation omitted); *GRACE IV*, 730 F. Supp. 3d at 1299–1300. Here, the government's race-based choice is not setting a particular numerical BVAP target, but rather configuring District 16 to maintain its preexisting shape, connecting Black population centers in Tampa and St. Petersburg, and subordinating the race-neutral Tier Two criteria to do so. These race-based choices, too, must withstand strict scrutiny.

year statute of limitations ran from either the Enacted Plan's enactment or implementation, Plaintiffs filed suit well within the period.[28] There is therefore a "strong presumption" of timeliness, *Black Warrior Riverkeeper*, 781 F.3d at 1286 (quotation omitted), which the Senate fails to rebut.

That Plaintiffs did not inexcusably delay in filing suit is further supported by the timing of District 16's elections. It would have been impossible for Plaintiffs to file suit in time to secure relief in the last election, in 2022. It was therefore reasonable that Plaintiffs would aim to secure relief by the next election, in 2026. *See Clarke v. Wis. Elections Comm'n*, 998 N.W.2d 370, 391 (Wis. 2023) (finding no unreasonable delay in plaintiffs' decision "to request relief in time for . . . the soonest elections for which relief could be granted" even where plaintiffs filed suit a year and a half after the districts were adopted); *Kelley v. Bennett*, 96 F. Supp. 2d 1301, 1305 (M.D. Ala.) (finding "no cognizable delay" because plaintiffs could not have filed in time to secure relief for the first election after the map's adoption), *vacated on other grounds sub nom. Sinkfield v. Kelley*, 531 U.S. 28 (2000).

Moreover, to Plaintiffs' knowledge, no court has found that a redistricting case's request for a permanent injunction was laches-barred when it was filed as quickly as Plaintiffs' suit. *See, e.g.*, *Blackmoon v. Charles Mix Cnty.*, 386 F. Supp. 2d 1108, 1115 (D.S.D. 2005) (suit filed three years after refusal to redistrict); *Kelley*, 96 F. Supp. 2d at 1305 (suit filed four years after both map's adoption and *Shaw*). In contrast, courts

[28] If the constitutional violation is a continuing one, the statute of limitations would not run as long as the Enacted Plan is in effect. Regardless, the statute has not yet expired.

uphold laches defenses in redistricting cases filed late in a decade, when the next census is around the corner. *See, e.g.*, *Sanders v. Dooly Cnty.*, 245 F.3d 1289 (11th Cir. 2001) (in suit filed eight years after census, affirming district court's determination that request for injunctive relief was laches-barred, but reversing with respect to declaratory relief); *Chestnut v. Merrill*, 377 F. Supp. 3d 1308 (N.D. Ala 2019) (suit filed eight years after census was laches-barred); *Fouts v. Harris*, 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999) (same), *aff'd sub nom. Chandler v. Harris*, 529 U.S. 1084 (2000) (mem.).

D. The constitutional violation should be remedied for the 2026 elections.

"[I]ndividuals . . . whose constitutional rights have been injured by improper racial gerrymandering have suffered significant harm. Those citizens are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan." *McCrory*, 159 F. Supp. 3d at 627 (cleaned up).

Here, the Court should exercise its equitable power and impose a post-trial remedial-phase schedule to ensure a constitutional map is implemented in the 2026 elections. *North Carolina v. Covington* (*Covington IV*), 585 U.S. 969, 976 (2018) (finding district court properly retained jurisdiction over post-trial remedial phase).[29] This Court has "its own duty to cure illegally gerrymandered districts," *id.* at 977, and thus must assess any proposed legislative remedy "to ensure that [the] remedy 'so far as

[29] *See also, e.g.*, *McCrory*, 159 F. Supp. 3d at 627 (permanently enjoining map and giving legislature 14 days to propose remedy); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1380–81 (N.D. Ga. 2023) (permanently enjoining map, giving legislature 43 days to propose remedy, and retaining jurisdiction "for oversight and further remedial proceedings, if necessary"), *appeal filed*, No. 23-13914 (11th Cir. Nov. 28, 2023); *Milligan v. Allen*, No. 2:21-cv-1530 (N.D. Ala. June 20, 2023), ECF No. 168 (after Supreme Court affirmed preliminary injunction, giving legislature 31 days to propose remedy).

possible eliminate[s] the discriminatory effects of the past as well as bar[s] like discrimination in the future.'" *Covington v. North Carolina* (*Covington III*), 283 F. Supp. 3d 410, 424 (M.D.N.C. 2018) (quoting *Louisiana v. United States*, 380 U.S. 145, 154 (1965)), *aff'd in part, rev'd in part*, 585 U.S. 969. The Court should therefore set a remedial schedule that ensures a court-approved remedial plan is in place by April 2026 (the Secretary of State's target deadline for election administrators, ECF No. 116-1 at 56:11–57:18).[30]

E. The Court need not address the Secretary's constitutional arguments.

Finally, Plaintiffs discuss two constitutional questions the Secretary has raised throughout this case. Both arguments share a theme: that the Fair Districts Amendment's non-diminishment requirement is incompatible with the Equal Protection Clause. The Plaintiffs' and parties' presentation of the issues to be decided at trial, however, foreclose the Court reaching these questions. As framed in the Final Pretrial Statement, the legal issue is "[w]hether, if the Court finds that race was the predominant factor in the design of District 16, the use of race in the design of District 16 was narrowly tailored to compliance with the non-diminishment requirement of Fla. Const. art. III, § 21(a)." Pretrial Stmt. at 9. The Final Pretrial Statement "control[s] the course of the trial," ECF No. 124 at 1, and all pleadings merge into it, ECF No. 37 at 9. The Secretary's unilateral request for the Court to render advisory

[30] In the unlikely event they cannot secure effective relief for 2026, Plaintiffs will renew the request for a special election pleaded in their Complaint, so they and their neighbors do not have to wait until 2030 to live and vote under constitutional lines.

opinions on unnecessary issues is improper. Indeed, the Secretary himself conceded that the compelling interest prong is not at issue and has thus waived any arguments as to compelling interest. Day 4 Tr. 92:14–16. Moreover, federal courts must be cautious when asked to strike down state election laws beyond specific applications where state and federal laws are shown to conflict. *See Shelby Cnty.*, 570 U.S. at 543 ("Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives.").

In any event, the Florida Supreme Court's *BVM* decision resolves the Secretary's questions, so the Court need not address them. *BVM* found that the non-diminishment requirement does not "of its own force" provide a compelling interest to justify race-predominant districts. 2025 WL 1982762, at *11. *BVM*'s reasoning is consistent with Plaintiffs' claim. Race predominated in the drawing of District 16; the Senate failed to narrowly tailor their use of race in that process; and thus this Court should grant Plaintiffs' requested injunction.

The Secretary further asks the Court to opine on "whether a remedial plan, if one is required at the end of trial, satisfies the Equal Protection Clause of the Fourteenth Amendment." Pretrial Stmt. at 10; *see also* ECF No. 114 at 5 (asserting Plaintiffs' requested remedy is unconstitutional). As the Court has noted, remedial questions are premature. Day 3 Tr. 8:15–9:3. But "it is obvious that [the] Court can redress the injury Plaintiffs allege, namely, that they were subject to a racial classification . . . . Plaintiffs' injury will be redressed when they are no longer subject to a racial classification." *GRACE III*, 2023 WL 8856325, at *7. Moreover, should the

Court enjoin District 16 and then offer the Legislature its opportunity to propose a constitutional remedy, this Court will have no occasion to review a proffered remedy beyond "ensur[ing] that the racial gerrymanders at issue in this case were remedied," *Covington IV*, 585 U.S. at 979, and that any other federal mandates are respected, *Upham v. Seamon*, 456 U.S. 37, 41 (1982). This Court in that circumstance will be unable to adjudicate any alleged violations of the Florida Constitution. *Covington IV*, 585 U.S. at 978–79; *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984).

In any event, the Secretary's assertion that the Equal Protection Clause precludes Florida from imposing *any* non-diminishment requirement is meritless. *See* Pretrial Stmt. at 3; ECF No. 114 at 5. Strict scrutiny applies only to districts drawn predominantly on the basis of race. As the Supreme Court recently reaffirmed, "[w]hen it comes to considering race in the context of districting, we have made clear that there is a difference 'between being aware of racial considerations and being motivated by them.'" *Milligan*, 599 U.S. at 30. As *Milligan* itself explains, a mapmaker's compliance with the VRA or other analogous statute does not itself show that race predominated in the redistricting process. *Id.* at 29–31 (race did not predominate even though "it was necessary for [mapmaker] to consider race" to meet VRA requirements). This is consistent with *BVM* as well. 2025 WL 1982762, at *11 ("[T]his case boils down to whether it is possible to grant the plaintiffs their requested relief without requiring the Legislature to draw a race-predominant district."); *see also id.* at *6, 14 (refusing to "decide whether every district intentionally drawn to comply with this Court's interpretation of the Non-Diminishment Clause is necessarily race-

predominant and therefore subject to strict scrutiny, even if the district satisfies the FDA's race-neutral standards.").

The trial evidence demonstrates that numerous maps can be and have been drawn that include a Black-performing district within Hillsborough County without being drawn predominantly based on race. And while Plaintiffs disagree that District 16 of the Enacted Plan is such a district, both Defendants argue that it is. The fact that all parties agree it is possible to comply with the non-diminishment provision without running afoul of equal protection should resolve any hypothetical facial challenge to Article III, Section 21. This Court should decline the Secretary's invitation to render an advisory opinion on this hypothetical question not properly before it.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter judgment in their favor and: (1) declare Florida Senate District 16 to be unconstitutional in violation of the Fourteenth Amendment as a racial gerrymander; (2) permanently enjoin Defendants and their agents from calling, conducting, supervising, or certifying any elections under District 16; (3) enter a remedial decree that ensures Plaintiffs live and vote in constitutional districts as soon as practicable; and (4) award Plaintiffs reasonable attorneys' fees and costs of suit.

Respectfully submitted July 21, 2025,

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