

IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC22-139

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In Opinion of the Justices to the Governor Regarding Whether  
Article III, Section 20(a) of the Florida Constitution Requires the  
Retention of a District in Northern Florida, etc.

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**BRIEF OF MAYOR LENNY CURRY**

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## **STATEMENT OF INTEREST**

Lenny Curry is the Mayor of the City of Jacksonville. Located in Duval County, Jacksonville is the largest city by land area in the contiguous United States, as well as home to almost one million people. As of the 2020 census, 453,367 Duval County citizens, of which 344,386 are of voting age, are located within the current Congressional District 5. The portion of Duval County's citizens located within District 5 constitutes 60% of the District's population. By contrast, of the remaining seven counties partly or wholly within District 5, Leon County is the next largest with less than 23% of the District's population.

Mayor Curry submits this interested person brief, pursuant to his authority under section 6.04 of the Charter of the City of Jacksonville as the chief executive and administrative officer of the City, to explain why the Court should exercise its discretion to render an advisory opinion which may affect District 5 in its current form.<sup>1</sup> The boundaries of District 5 and whether it withstands constitutional

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<sup>1</sup> It should be noted that Mayor Curry takes no position on the validity or appropriateness of any of the proposed Congressional District maps.

scrutiny is an issue of great public importance to the citizens of Jacksonville and impacts their voting rights under both the United States and Florida Constitutions.

### **STATEMENT OF THE CASE**

The United States Constitution requires congressional apportionment to be based, in part, on a decennial census. U.S. Const. art. I, § 2. With the completion of the most recent census, the Florida Legislature will be presenting a bill to Governor DeSantis redrawing Florida's congressional districts based on this data. Each of the potential redistricting plans retains essentially the current District 5, which stretches over 150 miles from the westside of Jacksonville to Leon County and encompasses part or all of eight different Florida counties.

On February 1, 2022, the Governor requested this Court render an opinion on whether article III, section 20, subsection (a) of the Florida Constitution "requires the retention of a district in northern Florida that connects the minority population in Jacksonville with distant and distinct minority populations (either in Leon and Gadsden Counties or outside Orlando) to ensure sufficient voting strength, even if not a majority, to elect a candidate of their choice."

On February 2, 2022, this Court requested briefs from interested persons addressing whether the Governor's request for an advisory opinion on the redistricting issue was within the purview of article IV, section 1, subsection (c) of the Florida Constitution and whether the Court should exercise its discretion to provide an opinion in response to the request.

### **SUMMARY OF ARGUMENT**

City of Jacksonville Mayor Curry joins Governor DeSantis' request for two reasons. First, and most fundamentally, the Court's ruling on the Governor's redistricting questions encourages public confidence and finality in the upcoming election. Rendering an advisory opinion ensures the ability of Jacksonville's voters and qualified candidates to participate in the election in a manner consistent with Florida voters' rights to fair and effective representation. In short, Jacksonville citizens will know that the district in which they vote and the candidates for whom they vote will withstand constitutional scrutiny before their votes are cast.

Second, an advisory opinion provides the Court with the opportunity to announce a much-needed redistricting standard. This Court's prior redistricting jurisprudence does not provide appropriate

guidance for crafting redistricting maps that meet constitutional scrutiny. Given that the constitutionality of District 5 is uncertain, and that it is unclear whether a potential violation of the Florida Constitution's non-diminishment standard would require adoption of District 5 in its current form, an advisory opinion from this Court would reduce the possibility Jacksonville citizens will participate in an election that may face protracted legal challenges as to both federal and Florida voting standards.

### **ARGUMENT**

**A. This Court's exercise of its discretion to render an advisory opinion will provide certainty and finality to Jacksonville voters and potential political candidates.**

This Court has acknowledged the seriousness of its "obligation to provide certainty to candidates and voters regarding the legality of the state's congressional districts." *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 372 (Fla. 2015) ("*Apportionment VII*"). Providing this certainty at the advisory opinion stage is a "proper exercise of judicial power," *id.* at 424 (Canady, J., dissenting), as it provides a clear interpretation of the Florida Constitution so that the lawmaking branches may properly conduct their business.

As explained in Section B *infra*, Jacksonville citizens who reside in District 5 deserve confidence that District 5's apportionment plan complies with the Florida Constitution. Otherwise, voters face the prospect of electing a representative under uncertain circumstances.

This lack of certainty extends to qualified candidates and election staff, who cannot be sure that District 5 will survive a post-election challenge. Indeed, given its "unique history," District 5 very well may face such a challenge in the absence of clear constitutional standards. *See Apportionment VII*, 172 So. 3d at 402.

In light of these concerns, the fast-approaching election, and likely litigation concerning the District 5 lines, the Court's resolution of the Governor's questions is of paramount importance. In resolving these questions now, the Court ensures Jacksonville's residents may cast their votes with the requisite certainty and fairness mandated by Florida's Constitution, regardless of the decision it reaches. *See id.* at 416 ("[T]here can hardly be a more compelling interest than the public interest in ensuring that the Legislature does not engage in unconstitutional ... gerrymandering.").

Equally as important, the Court grants itself the opportunity to provide the Governor and Legislature "with the benefit of [its] guiding

construction” *before* enactment of an apportionment plan. See *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 684 (Fla. 2012) (commending the Legislature for its efforts to interpret article III, section 20 of Florida’s Constitution but acknowledging that it lacked the benefit of the Court’s guidance). In doing so, the Court also eliminates the possibility of several lower court actions and appeals—a prospect the Court previously observed would result in “an abdication of [its] responsibility under the Florida Constitution” and would “create uncertainty for the voters of this state, the elected representatives, and the candidates who are required to qualify for their seats.” *Id.* at 609.

Thus, by taking up Governor DeSantis’ request now, the Court provides efficiency and finality in the redistricting process, both of which ultimately benefit District 5’s residents.

**B. The Court should exercise its discretion to render an advisory opinion because the constitutionality of District 5 is uncertain, and this Court’s prior redistricting jurisprudence does not provide appropriate guidance for crafting redistricting maps that meet constitutional muster.**

This Court’s prior redistricting jurisprudence, coupled with the Supreme Court’s decision in *Cooper v. Harris*, 137 S. Ct. 1455 (2017),

render the constitutionality of the current District 5 uncertain at best. And issuing an advisory opinion here provides the Legislature with much-needed guidance on how to devise a redistricting map that satisfies Florida's constitutional requirements while advancing voters' right to fair representation.

When this Court held it was necessary for Florida's Legislature to redraw District 5 in an East-West orientation, it declined to define a standard for the redrawing. *See League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 271 (Fla. 2015) ("Although District 5 was required to be drawn from East to West, no specific configuration was mandated in *Apportionment VII*"). This Court also did not consider whether the current iteration of District 5 was *required* to prevent the diminishment of racial minorities' ability to elect representatives of their choice. *See id.* Complicating the controlling law further, in *Cooper v. Harris*, issued in 2017 after this Court's most recent redistricting cases, the United States Supreme Court made clear that race-centric redistricting is permissible only if a state can prove that it had "good reasons for concluding" that its action was "*required*" to

preserve minority voting rights. 137 S. Ct. at 1459.<sup>2</sup> The Governor's request specifically asks this Court to interpret whether a potential violation of Florida Constitution's non-diminishment standard would require the current District 5.

This recent federal precedent, coupled with the unsettled guidance in the Court's prior redistricting jurisprudence, creates uncertainty as to the constitutionality of District 5 in its proffered and current form, as well as muddles the standards the Legislature must meet to satisfy both the United States and Florida Constitutions. By answering the Governor's request for an advisory opinion, this Court affords itself the opportunity to address the appropriate legal standards governing redistricting.

Jacksonville's citizens are not well served by potentially voting in a District with increased prospects of being tossed out as invalid after several years of post-election litigation, and they may be better served without a District stretching from one region of the state to

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<sup>2</sup> Thus, according to *Harris*, a race-centric redistricting plan is not acceptable merely because it fails to diminish a minority constituencies' right to elect the candidate of its choice. Instead, the standard asks whether the Legislature was justified in concluding that race-centric redistricting was needed to prevent a such a diminishment. *See id.*

another. Giving a proper interpretation of the Florida Constitution at this stage will enhance the separation of powers as the lawmaking branches may appropriately act with “institutional independence and integrity” to avoid unnecessary litigation. *See Apportionment VII*, 172 So. 3d at 425 (Canady, J., dissenting). While this Court has previously sought to provide “clear guidance as to the specific deficiencies in the districts that the Legislature must redraw,” *id.* at 416, an advisory opinion will more appropriately provide interpretation of any *specific limitations* required in article III, section 20, subsection (a) of the Florida Constitution. This posture will better achieve proper deference to the lawmaking process and will better ensure the legal firmness of District 5 on behalf of the voters.

### **CONCLUSION**

In answering the Governor’s request, the Court will provide Jacksonville’s voters with enhanced confidence and certainty grounded in a proper interpretation of the Florida Constitution. An opinion will further moot certain constitutional questions likely to arise in potential post-election litigation. For these reasons, the Court should answer Governor DeSantis’ request.

Dated February 7, 2022.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY this brief complies with the type size and style requirements of Rule 9.45(b), Florida Rules of Appellate Procedure and has been prepared in Bookman Old Style, 14 Point Font. This brief complies with the type volume limitations set forth in Rule 9.210(a)(2)(B), Florida Rules of Appellate Procedure and this Court's February 2, 2022 Order. This brief contains 1,688 words, excluding the parts of the brief exempt by Rule 9.045(e).

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## CERTIFICATE OF SERVICE

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