

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Plaintiffs,

v.

Case No. 2022 CA 666

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

Defendants.

_____ /

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants the Florida House of Representatives, the Florida Senate, and Secretary of State Cord Byrd respectfully move the Court for partial summary judgment in their favor as to any claim asserted in Count III of Plaintiffs' Amended Complaint regarding Congressional Districts 1–3, 6, 8–9, 11–12, and 15–28 (the “Twenty-Two Districts”), as there are no genuine disputes of material fact regarding Plaintiffs' allegations of intentional partisan favoritism as to these Congressional Districts.

INTRODUCTION

In Count III of the Amended Complaint, Plaintiffs claim the Enacted Plan and individual districts within it—“including but not limited to CDs - 4, 5, 7, 10, 11, 13, 14, 15, 26, and 27”—violate the Florida Constitution's prohibition against intentional partisan gerrymandering. *See* Am. Compl. ¶ 138; Fla. Const. art. III, § 20(a) (prohibiting the drawing of congressional districts “with the intent to favor or disfavor a political party or an incumbent”). At trial, Plaintiffs will bear the heavy burden to overcome the presumption of validity and attempt to prove their claims. Because

the Enacted Plan was not drawn in violation of the Florida Constitution, Plaintiffs will be unable to carry their burden of proof at trial.

As to the Twenty-Two Districts, however, Plaintiffs are unable even to satisfy the more limited burden of demonstrating genuine disputes of material fact warranting a trial as to their Count III claims of intentional partisan gerrymandering. Some of these districts are not specifically challenged in the Amended Complaint at all. Many of them were incorporated wholesale into a “Demonstration Map” prepared by Plaintiffs’ own expert. Ten of the Twenty-Two Districts (the Western Panhandle and most of Southeast Florida) retained their exact configurations from the plan adopted by the Legislature during the Regular Session. None bears any direct or circumstantial evidence of improper partisan intent—such as a “bizarre shape” or “oddly shaped appendage” not justified by other legal requirements—let alone the “significantly probative” evidence that Plaintiffs must now produce to survive summary judgment. *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 309 So. 3d 192, 193 (Fla. 2020) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986)). To the contrary, the Twenty-Two Districts comply with the “Tier-Two” standards in article III, section 20(b) of population equality, compactness, and adherence to political and geographical boundaries, except where those requirements conflict with a Tier-One obligation. Finally, Plaintiffs have no direct evidence of improper partisan intent regarding the manner in which the Twenty-Two Districts were drawn.

To narrow the issues for trial, this Court should enter partial summary judgment in favor of Defendants on Count III of the Amended Complaint as it relates to Congressional Districts 1–3, 6, 8–9, 11–12, and 15–28.

STATEMENT OF UNDISPUTED FACTS

A. The Enacted Map

In August 2021, the United States Census Bureau released the census data required for redistricting. Am. Compl. ¶ 62. The data revealed that Florida's total population had increased to 21,538,187 people. U.S. CENSUS BUREAU, QUICKFACTS, FLORIDA, <https://www.census.gov/quickfacts/FL>. As a result, Florida was apportioned one additional congressional district, for a total of 28 districts. U.S. CENSUS BUREAU, QUICKFACTS, FLORIDA, <https://www.census.gov/data/tables/2020/dec/2020-apportionment-data.html>. To incorporate the new congressional district, the State had to enact a new congressional district map.

The Florida Legislature initially passed a redistricting plan on March 4, 2022, which the Governor vetoed on March 29, 2022. Am. Compl. ¶¶ 67, 70; *see* App. 4-11 (Veto Transmittal Letter and Accompanying Memorandum). On April 13, 2022, the Executive Office of the Governor transmitted a new proposed redistricting map to the Florida Legislature. The submission was accompanied by a letter from the Governor's General Counsel, Ryan Newman, explaining the adjustments that had been made and providing statistical data regarding compactness, boundary usage, and county and municipal splits. App. 12-19.

During a Special Session held in April 2022, both the Senate Committee on Reapportionment and the House Congressional Redistricting Subcommittee received testimony regarding the submission from the Executive Office of the Governor. J. Alex Kelly, Deputy Chief of Staff to the Governor, testified before both Committees on April 19, 2022. App. 28-56 ("EOG Committee Presentation"); App. 57-231 (J. Alex Kelly, Tr. Senate Committee on Reapportionment (Apr. 19, 2022) ("Senate Testimony"); App. 232-421 (J. Alex Kelly, Tr. House Congressional Redistricting Subcommittee) (Apr. 19, 2022) ("House Testimony"). Mr. Kelly testified that 10 of

the districts in the Governor's submission (Districts 1, 2, 20-25, 27-28) were identical, block-for-block, to districts in the map passed by the Legislature during the Regular Session. App. 29, 65-66, 240-41. Mr. Kelly further testified that he drew the other 18 districts, that no one directed him to favor or disfavor a political party or incumbent, and that he did not draw any districts or make any decisions with that intent. App. 61-63, 24749. Mr. Kelly testified that he "did not consider or even look at political data, including party registration and voting data" and "d[id] not know the voting history or party registration numbers" for any of the districts he drew. App. 63, 249. Instead, Mr. Kelly testified that the 18 districts he drew were intended to address the constitutional concerns expressed in the Governor's veto message and to make plan-wide improvements in compactness and the reduction of county and municipal "splits."

The Legislature adopted the submission from the Executive Office of the Governor as an amendment to Senate Bill 2-C, which passed the Senate on April 20 and the House on April 21. The Enacted Map was signed into law on April 22, 2022. *See* Ch. 2022-265, Laws of Fla.; App. 20-27.

Plaintiffs filed their initial complaint the same day the Enacted Map was signed into law. On February 8, 2023, Plaintiffs filed an Amended Complaint. Count III of the Amended Complaint alleges that the Enacted Plan and individual districts within the plan, "including but not limited to CDs-4, 5, 7, 10, 11, 13, 14, 15, 26, and 27, were drawn with the intent to favor the Republican Party and to disfavor the Democratic Party in violation of Article III, Section 20 of the Florida Constitution." Am. Compl. ¶ 138.

B. Maps and Statistics

The appendix to this motion contains maps of all 28 districts along with their population data, boundary analysis, and compactness scores. App. 20-27. For comparison, the appendix also

contains maps, population data, boundary analysis, and compactness scores associated with the map passed by the Legislature during the Regular Session and vetoed by the Governor. App. 1305-21. All population data and compactness scores presented in this motion and the appendix are derived from the web-based map-drawing application made available to the public by the Florida Legislature. See FLA. LEGISLATURE, FLA. REDISTRICTING, <https://www.floridaredistricting.gov/pages/get-involved>. The population data are based on the 2020 Census.

Moreover, geographical features such as roads and rivers, as well as Census population data, are textbook examples of facts of which courts may take judicial notice. See § 90.202(12), Fla. Stat. (authorizing judicial notice of “[f]acts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned”); *Bd. of Pub. Instruction of Orange Cnty. v. Budget Comm’n of Orange Cnty.*, 167 So. 2d 305, 306 (Fla. 1964) (census data); *Garver v. E. Airlines*, 553 So. 2d 263, 268 (Fla. 1st DCA 1989) (geography); *Henderson Sign Serv. v. Dep’t of Transp.*, 390 So. 2d 159, 160 (Fla. 1st DCA 1980) (roads).

LEGAL STANDARD FOR SUMMARY JUDGMENT

A party is entitled to summary judgment if the pleadings and summary judgment evidence on file show that there is “no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fla. R. Civ. P. 1.510(a). Rule 1.510 was amended in 2021 to adopt almost all of the text of Federal Rule of Civil Procedure 56. Indeed, subsection (a) of Rule 1.510 explains that the “standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.” *Id.* The Court Notes to Rule 1.510 explain that the “federal summary judgment standard” refers to principles announced in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and

Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), and more generally to case law interpreting Federal Rule of Civil Procedure 56.

Under this standard, courts must consider the substance of the evidence offered and ask whether “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 at 248 (1986). The question is whether the evidence in support of or against a motion for summary judgment “presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251–52. A moving party can prevail on a motion for summary judgment by “pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.” *Smith v. Westdale Asset Mgmt., Ltd.*, 353 So. 3d 108, 110 (Fla. 1st DCA 2022) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986) (internal quotations and citation omitted)). To meet its burden, the non-moving party must go beyond the pleadings and produce “significantly probative” evidence that creates a genuine dispute of material fact. *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 309 So. 3d 192, 193 (Fla. 2020) (quoting *Anderson*, 477 U.S. at 249–50).

ARGUMENT

A. The Twenty-Two Districts were not drawn with the intent to favor or disfavor a political party or an incumbent.

The Florida Constitution forbids the drawing of congressional districts “with the intent to favor or disfavor a political party or an incumbent.” Art. III, § 20(a), Fla. Const. In its recent review of Florida’s state legislative districts, the Florida Supreme Court described this provision as a prohibition on “intentional political favoritism.” *In re Senate Jt. Resol. of Legis. Apportionment 100*, 334 So. 3d 1282, 1288 (Fla. 2022) (“*Apportionment 2022*”). Although the Constitution permits “no acceptable level of improper intent,” the Court acknowledged that redistricting “will

inherently have political consequences” and emphasized that “the constitutional text ‘prohibits intent, not effect.’ ” *Apportionment 2022*, 334 So. 3d at 1290 (quoting *In re Senate Jt. Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 617 (Fla. 2012) (“*Apportionment P*”). Accordingly, the Court has “rejected a claim that an apportionment plan’s partisan imbalance alone demonstrated an overall intent to favor a political party.” *Id.*

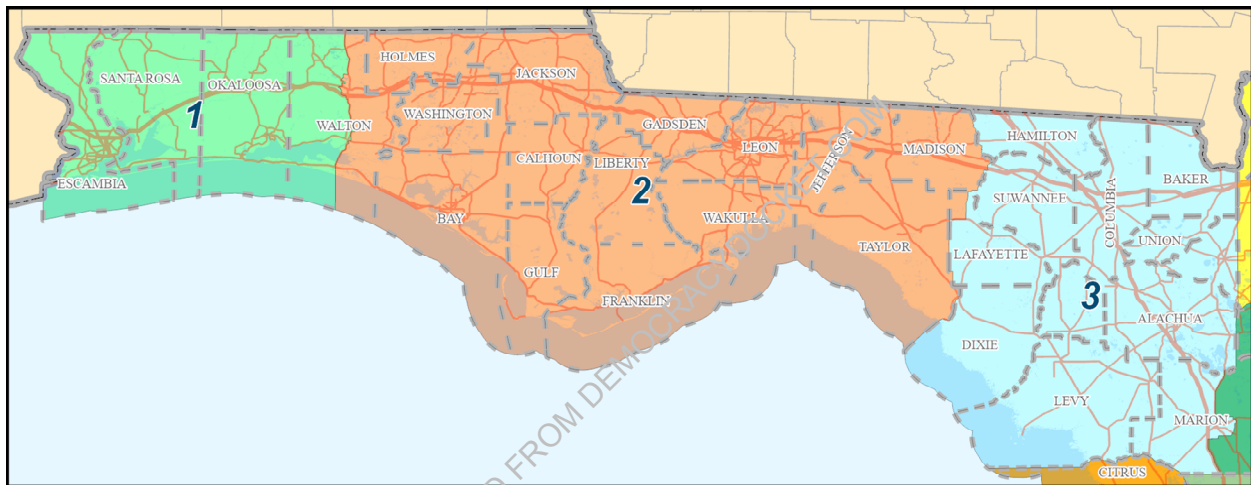
The “focus of the analysis must be on both direct and circumstantial evidence of intent.” *Apportionment I*, 83 So. 3d at 617; *see also id.* at 618 (noting that improper intent may be inferred from a district’s “highly irregular” shape). This analysis considers “the shapes of districts together with undisputed objective data . . . as well as any proffered undisputed direct evidence of intent.” *Id.* at 618. “[T]he intent of individual legislators and legislative staff members involved in the drawing of the redistricting plan is relevant in evaluating legislative intent.” *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 388 (Fla. 2015).

Strict compliance with Tier-Two criteria such as compactness and adherence to political and geographical boundaries “may serve to undercut or defeat any assertion of improper intent.” *Apportionment I*, 83 So. 3d at 618; *accord id.* at 645 (explaining that Tier-Two compliance makes “improper intent less likely”). Thus, although Plaintiffs have voluntarily dismissed all claims that the enacted districts violate Tier-Two criteria, *see* Pls.’ Notice of Dismissal of Count IV & Count V of Pls.’ Compl. for Injunctive & Declaratory Relief (Oct. 27, 2022), adherence to those criteria is evidence that the Twenty-Two Districts were not drawn with any partisan intent.

No direct or circumstantial evidence suggests that the Twenty-Two Districts were drawn in violation of this Tier-One standard. The circumstantial or “objective” evidence of record based on the districts’ compliance with Tier-Two criteria is described below. After initially seeking direct evidence as to the intent of legislators and legislative staff through deposition subpoenas—and

after obtaining partial relief from this Court—Plaintiffs voluntarily abandoned those efforts by withdrawing their subpoenas as to any legislator or legislative staff member who asserted legislative privilege. The direct testimony of J. Alex Kelly, the Governor’s Deputy Chief of Staff responsible for drawing certain districts in the Enacted Plan, also provides no evidence that the Twenty-Two Districts were drawn with the intent to favor or disfavor a political party. App. 422-1124.

a. Districts 1-3



The Amended Complaint contains no specific allegations that Districts 1–3 were drawn with the intent to favor or disfavor a political party or an incumbent. No direct or circumstantial evidence suggests they were.

Districts 1, 2, and 3 are visually and mathematically compact districts consisting largely of whole-county groupings (except where necessary to achieve equality of population) that demonstrate a high level of adherence to existing political and geographical boundaries. App. 20-23.

District 1 includes all of Escambia, Santa Rosa, and Okaloosa Counties and part of Walton County. District 1 uses recognized political and geographical boundaries for 97% of its perimeter.

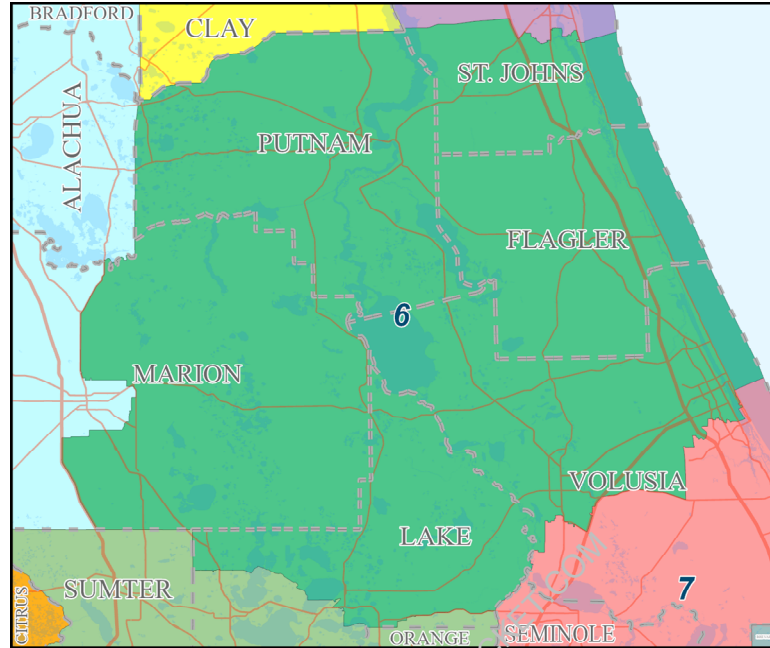
Id. District 2 includes all of Holmes, Jackson, Washington, Bay, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, Wakulla, Jefferson, Madison, and Taylor Counties and parts of Walton and Lafayette Counties. District 2 uses recognized political and geographical boundaries for 97% of its perimeter. *Id.* District 3 includes all of Hamilton, Suwannee, Dixie, Columbia, Gilchrist, Levy, Baker, Union, Bradford, and Alachua Counties and parts of Lafayette and Marion Counties. District 3 uses recognized political and geographical boundaries for 95% of its perimeter. *Id.* None of these three districts splits a municipality. *Id.*¹

Districts 1 and 2 in the Enacted Map are identical to Districts 1 and 2 in the original map passed by the Florida Legislature during its Regular Session. App. 66-67.

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¹ The Constitution does not directly require that counties and municipalities be kept whole, but rather that their boundaries (and geographical boundaries) be utilized where feasible. Political and geographical boundaries constitute a preexisting network of potential boundaries from which new districts may be assembled. Thus, a map-drawer’s decision to follow a highway that bisects a city is no less permissible than a legislative choice to follow a city boundary that crosses a highway. A decision to prioritize the integrity of counties and municipalities is one sensible way, however, to implement the boundaries standard. *See Apportionment I*, 83 So. 3d at 637, 646–47 (describing an attempt to avoid county splits as a “reasoned approach” to “balancing the tier-two standards”).

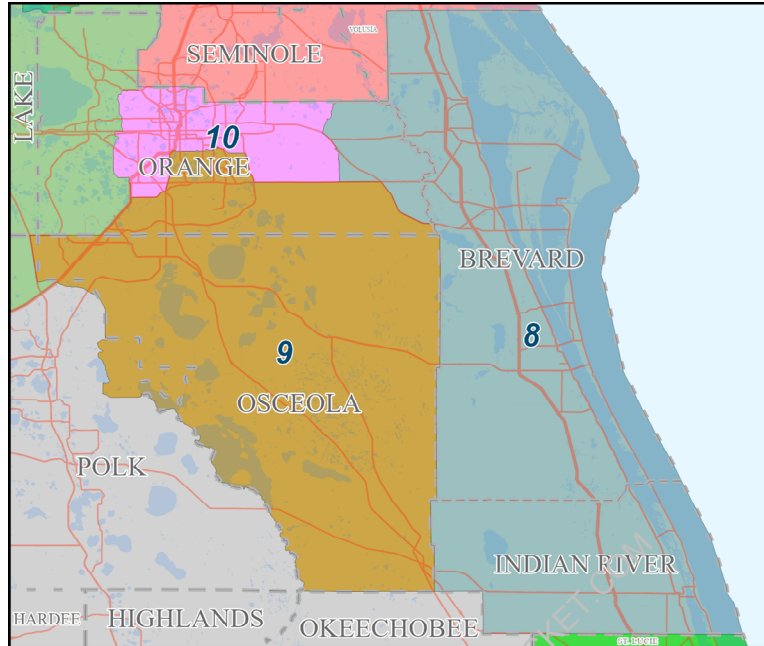
b. *District 6*



The Amended Complaint contains no specific allegations that District 6 was drawn with the intent to favor or disfavor a political party or an incumbent. No direct or circumstantial evidence suggests that it was.

District 6 is a visually and mathematically compact district that demonstrates a high level of adherence to existing political and geographical boundaries. App. 20-23. District 6 includes all of Putnam and Flagler Counties and parts of St. Johns, Volusia, Marion, and Lake Counties. *Id.* District 6 uses recognized political and geographical boundaries for 85% of its perimeter and does not split any municipalities. *Id.*

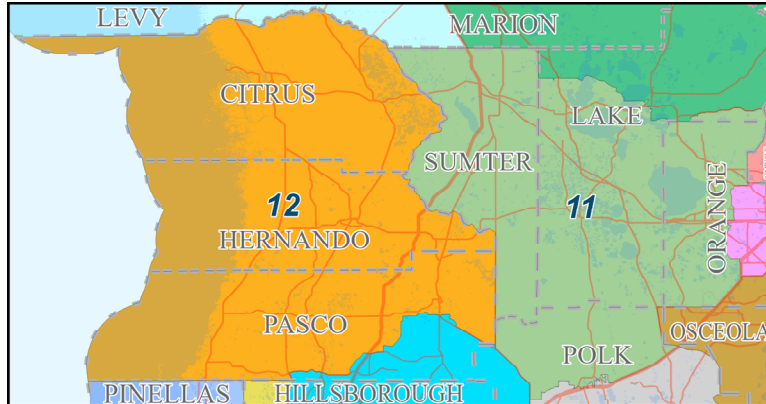
c. *Districts 8 and 9*



The Amended Complaint contains no specific allegations that Districts 8 or 9 were drawn with the intent to favor or disfavor a political party or an incumbent. No direct or circumstantial evidence suggests they were.

Districts 8 and 9 are visually and mathematically compact districts that demonstrate a high level of adherence to existing political and geographical boundaries. App. 20-23. District 8 includes all of Brevard and Indian River Counties and part of Orange County. *Id.* District 8 uses recognized political and geographical boundaries for 96% of its perimeter and splits no municipalities. *Id.* District 9 includes all of Osceola County and parts of Orange and Polk Counties. *Id.* District 9 uses recognized political and geographical boundaries for 88% of its perimeter and splits only one municipality. *Id.*

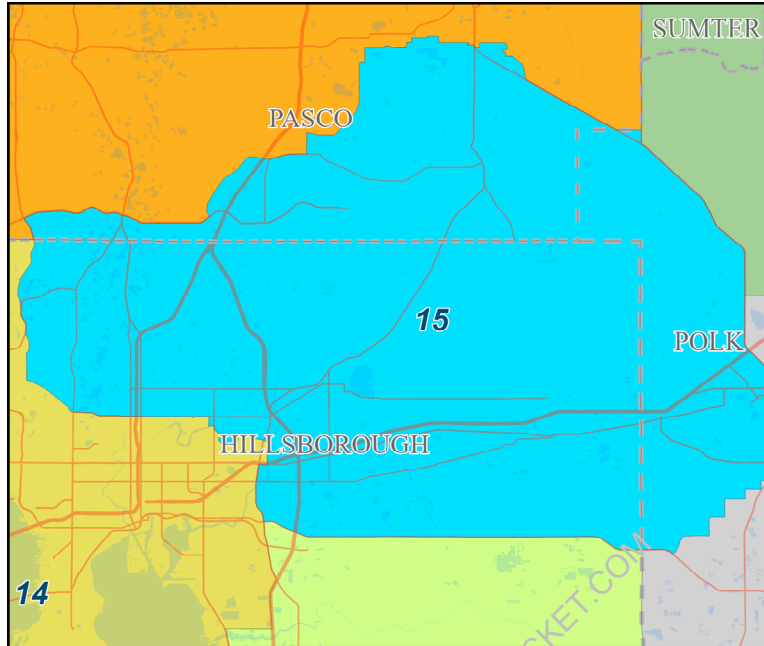
d. *Districts 11 and 12*



The Amended Complaint contains no specific allegations that Districts 11 or 12 were drawn with the intent to favor or disfavor a political party or an incumbent. No direct or circumstantial evidence suggests that they were.

Districts 11 and 12 are visually and mathematically compact districts that demonstrate a high level of adherence to existing political and geographical boundaries. App. 20-23. District 11 includes all of Sumter County and parts of Lake, Orange, and Polk Counties. *Id.* District 11 uses recognized political and geographical boundaries for 87% of its perimeter and splits only one municipality. *Id.* District 12 includes all of Citrus and Hernando Counties and part of Pasco County. *Id.* District 12 uses recognized political and geographical boundaries for 92% of its perimeter and splits no municipalities. *Id.*

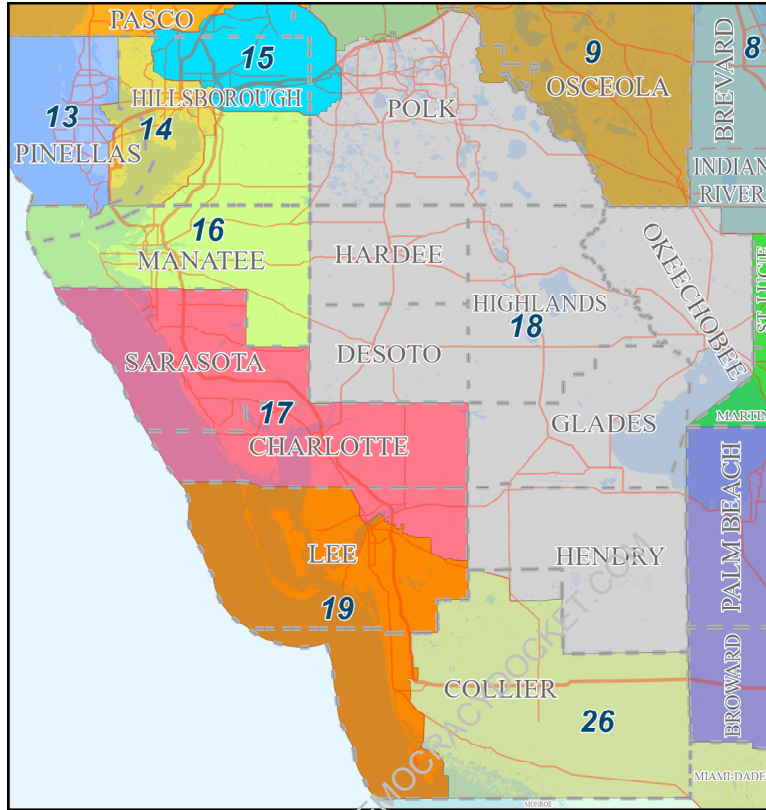
e. *District 15*



District 15 is a visually and mathematically compact district consisting of parts of Hillsborough, Pasco, and Polk Counties. App. 20-23. District 15 uses recognized political and geographical boundaries for 68% of its perimeter and splits only two municipalities. *Id.*

Although the Amended Complaint purports to challenge District 15 in Count III, *see* Am. Compl. ¶ 138, its ultimate allegations of fact for Count III address only the configurations of Districts 13 and 14, *see id.* ¶¶ 119–28. Accordingly, the Amended Complaint contains no specific allegations that District 15 was drawn with the intent to favor or disfavor a political party or an incumbent. No direct or circumstantial evidence suggests that it was.

f. Districts 16-19

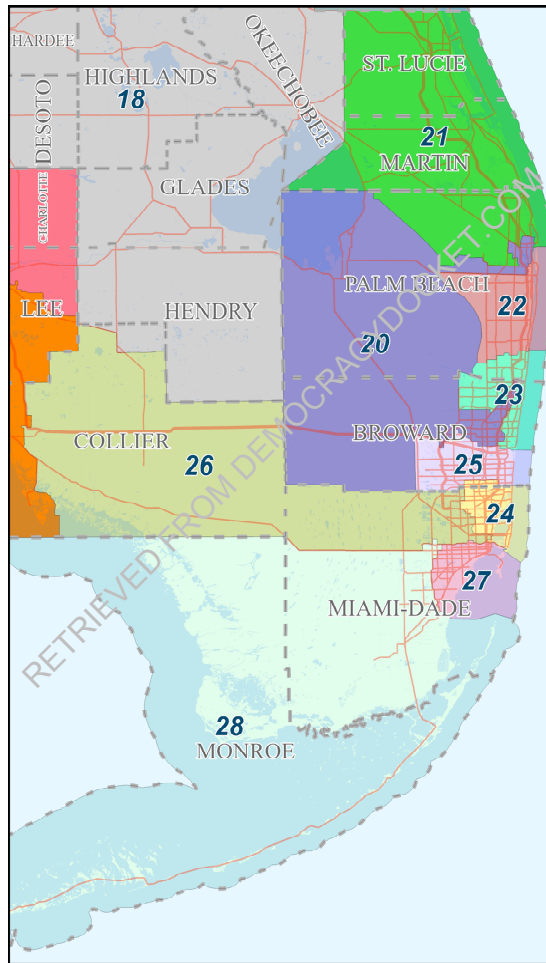


The Amended Complaint contains no specific allegations that Districts 16, 17, 18, or 19 were drawn with the intent to favor or disfavor a political party or an incumbent. No direct or circumstantial evidence suggests that they were.

Districts 16, 17, 18, and 19 are visually and mathematically compact districts consisting largely of whole-county groupings (except where necessary to achieve equality of population) that demonstrate a high level of adherence to existing political and geographical boundaries. App. 20-23. District 16 includes all of Manatee County and part of Hillsborough County. *Id.* District 16 uses recognized political and geographical boundaries for 98% of its perimeter and splits only one municipality. *Id.* District 17 includes all of Sarasota and Charlotte Counties and part of Lee County. District 17 uses recognized political and geographical boundaries for 94% of its perimeter and splits only one municipality. *Id.* District 18 includes all of Hardee, DeSoto, Highlands,

Okeechobee, Glades and Hendry Counties and parts of Polk and Collier Counties. *Id.* District 18 uses recognized political and geographical boundaries for 91% of its perimeter and splits only one municipality. *Id.* District 19 includes parts of Lee and Collier Counties. *Id.* District 19 uses recognized political and geographical boundaries for 90% of its perimeter and splits no municipalities. *Id.*

g. Districts 20-28



Districts 20, 21, 22, 23, 24, 25, 26, 27, and 28 are districts in Southeast Florida, many of which² are visually and mathematically compact and demonstrate a high level of adherence to

² The configuration of District 20 is based upon Tier-One considerations that have not been challenged by Plaintiffs.

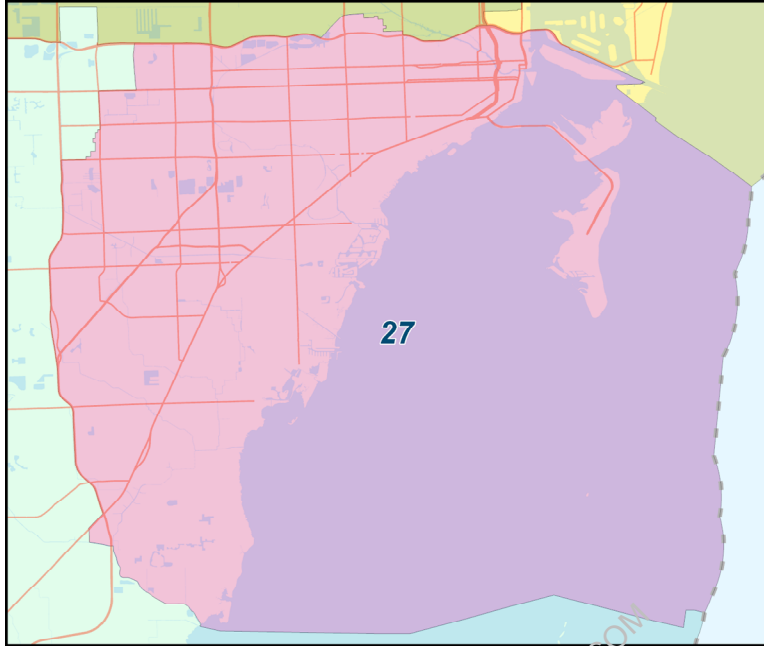
existing political and geographical boundaries. App. 20-23. District 20 includes parts of Broward and Palm Beach Counties. *Id.* District 21 includes all of St. Lucie and Martin Counties and part of Palm Beach County. *Id.* District 21 uses recognized political and geographical boundaries for 84% of its perimeter and splits only two municipalities. *Id.* District 22 is contained entirely within Palm Beach County. *Id.* District 22 uses recognized political and geographical boundaries for 76% of its perimeter and splits only one municipality. *Id.* District 23 includes parts of Broward and Palm Beach Counties. *Id.* District 23 uses recognized political and geographical boundaries for 80% of its perimeter. *Id.* District 24 includes parts of Miami-Dade and Broward Counties. *Id.* District 24 uses recognized political and geographical boundaries for 90% of its perimeter and splits only two municipalities. *Id.* District 25 is contained entirely within Broward County. *Id.* District 25 uses recognized political and geographical boundaries for 85% of its perimeter and splits only three municipalities. *Id.* District 26 includes parts of Miami-Dade and Collier Counties. *Id.* District 26 uses recognized political and geographical boundaries for 91% of its perimeter and splits only one municipality. *Id.* District 27 is contained entirely within Miami-Dade County. *Id.* District 27 uses recognized political and geographical boundaries for 93% of its perimeter and splits only one municipality. *Id.* District 28 includes Monroe County and part of Miami-Dade County. *Id.* District 28 uses recognized political and geographical boundaries for 99% of its perimeter and splits no municipalities. *Id.*

Districts 20, 21, 22, 23, 24, 25, 27, and 28 in the Enacted Map are identical to the corresponding districts in the original map passed by the Florida Legislature during its Regular Session. App. 66-67, 240, 577, 1074-77. Alex Kelly testified before the legislative committees and at his deposition that he drew District 26 in the Enacted Plan by modifying the southwestern portions of the district as originally passed by the Legislature to align with other Tier-Two

improvements that Mr. Kelly had made in districts to the north on the Gulf Coast. App. 276-78, 303, 1076.

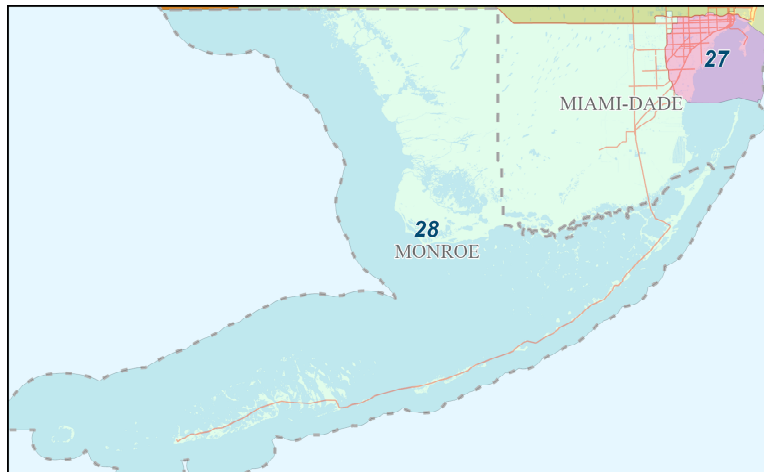
The Amended Complaint contains no specific allegations that Districts 20-25 were drawn with the intent to favor or disfavor a political party or an incumbent. Although the Amended Complaint purports to challenge Districts 26 and 27 in Count III, *see* Am. Compl. ¶ 138, its ultimate allegations of fact for Count III appear to address the configurations of Districts 27 and 28 rather than Districts 26 and 27, *see* Am. Compl. ¶ 129-30.

The objective evidence summarized above confirms that improper intent did not motivate the Legislature's drawing of Districts 27 or 28. District 27 is the most compact district in the Enacted Plan based upon the mathematical metrics, with a higher score than any other district on the Convex-Hull (0.95) and Polsby-Popper (0.73) measures and the second highest score on the Reock ratio (0.71, three-hundredths of a point shy of District 6's score). App. 20-23. Visually, District 27 resembles a circle—perhaps the most compact shape possible—and it does so while maintaining a high usage of existing political and geographical boundaries, maintaining population equality, and also splitting only one municipality. *Id.*



Plaintiffs’ suggestion that a Tier-Two maximizing District 27 should be modified to include an appendage extending to the northeast to include “Democratic-heavy portions of Miami-Beach,” Am. Compl. ¶ 130, reeks of partisan gamesmanship and flies in the face of the Florida Constitution’s prohibition on intentional political favoritism.

District 28 is likewise visually compact and otherwise highly compliant with the Tier-Two metrics, with a 99% boundary usage and no municipal splits. App. 20-23. The district’s relatively low compactness scores across the mathematical measures is a consequence of the unique geography of the Florida Keys in Monroe County, rather than evidence of a Tier-One violation. *See Apportionment I*, 83 So. 3d at 635 (“Given Florida’s unique shape, some of Florida’s districts have geographical constraints, such as those located in the Florida Keys, that affect the compactness calculations.”).



As with District 27, Plaintiffs’ suggestion that District 28 should be modified specifically to add “communities with substantial Democratic populations,” Am. Compl. ¶ 130, is repugnant to the Florida Constitution.

No direct or circumstantial evidence suggests that Districts 20-28 were drawn with the intent to favor or disfavor a political party or an incumbent. Indeed, the “Demonstration Plan” produced by Plaintiffs’ expert Dr. Stephen Ansolabehere to suggest an alternative configuration of Florida’s congressional districts elsewhere in the state preserves Districts 20-28 in an identical configuration to that in the Enacted Plan. App. 1163-65. Dr. Ansolabehere specifically confirmed that his expert report for the Plaintiffs did not express concerns about any portions of the Enacted Plan outside of North Florida, Tampa/St. Petersburg, and the Orlando area. App. 1165.

CONCLUSION

This Court should enter partial summary judgment in favor of Defendants on Count III as to Districts 1, 2, 3, 6, 8, 9, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 23, 2023, this document was filed through the Florida Courts E-Filing portal and was served via electronic mail on the following counsel of record:

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