

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 2022-ca-000666

**PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, Plaintiffs Black Voters Matter Capacity Building Institute, et al., respectfully submit the following statement of undisputed material facts as to which there is no genuine issue to be tried.

PRELIMINARY BACKGROUND

Plaintiffs move for summary judgment on Count I of their Amended Complaint. *See* Pls.' Mot. for Summ. J. at 1. Count I alleges that, as compared to Florida's previous congressional map (the "Benchmark Map"), Florida's new congressional map (the "Enacted Map"), through "the elimination of Benchmark CD-5, result[s] in the diminishment of Black voters' ability to elect their candidates of choice in violation of Article III, Section 20 of the Florida Constitution." Am. Compl. ¶ 133.

I. CD-5 INDIVIDUAL PLAINTIFFS

A. Pastor Reginald Gundy

1. Plaintiff Pastor Reginald Gundy is a Black Florida citizen and qualified registered voter in Jacksonville, FL. *See* Gundy Aff. ¶ 2, **Ex. 24**.

2. Under the Benchmark Map, Pastor Gundy resided in Benchmark CD-5. *See Gundy Aff.* ¶ 4, Ex. 24.

3. Under the Benchmark Map, Pastor Gundy voted for his preferred congressional candidate, Representative Al Lawson. *See Gundy Aff.* ¶ 7, Ex. 24.

4. Under the Enacted Map, Pastor Gundy now resides in Enacted CD-4. *See Gundy Aff.* ¶ 4, Ex. 24.

5. Pastor Gundy is a registered Democrat and has a preference for electing Democratic legislators because he believes their policies more closely represent his political and personal views. *See Gundy Aff.* ¶ 5, Ex. 24.

6. Pastor Gundy has consistently voted for Democratic candidates to the U.S. House of Representatives and plans to continue to do so in future congressional elections, including the 2024 election and beyond. *See Gundy Aff.* ¶ 6, Ex. 24.

B. Ms. Phyllis Wiley

7. Plaintiff Phyllis Wiley is a Black Florida citizen and qualified registered voter in Jacksonville, FL. *See Wiley Aff.* ¶ 2, Ex. 25.

8. Under the Benchmark Map, Ms. Wiley resided in Benchmark CD-5. *See Wiley Aff.* ¶ 4, Ex. 25.

9. Under the Benchmark Map, Ms. Wiley voted for her preferred congressional candidate, Representative Al Lawson. *See Wiley Aff.* ¶ 7, Ex. 25.

10. Under the Enacted Map, Ms. Wiley now resides in Enacted CD-4. *See Wiley Aff.* ¶ 4, Ex. 25.

11. Ms. Wiley is a registered Democrat and has a preference for electing Democratic legislators because she believes their policies more closely represent her political and personal views, including on issues involving race. *See* Wiley Aff. ¶ 5, Ex. 25.

12. Ms. Wiley has consistently voted for Democratic candidates to the U.S. House of Representatives and plans to continue to do so in future congressional elections, including the 2024 election and beyond. *See* Wiley Aff. ¶ 6, Ex. 25.

C. Ms. Sylvia Young

13. Plaintiff Sylvia Young is a Black Florida citizen and qualified registered voter in Tallahassee, FL. *See* Young Aff. ¶ 2, **Ex. 26**.

14. Under the Benchmark Map, Ms. Young resided in Benchmark CD-5. *See* Young Aff. ¶ 4, Ex. 26.

15. Under the Benchmark Map, Ms. Young voted for her preferred congressional candidate, Representative Al Lawson. *See* Young Aff. ¶ 7, Ex. 26.

16. Under the Enacted Map, Ms. Young now resides in Enacted CD-2. *See* Young Aff. ¶ 4, Ex. 26.

17. Ms. Young is a registered Democrat and has a preference for electing Democratic legislators because she believes their policies more closely represent her political and personal views, including on issues involving race. *See* Young Aff. ¶ 5, Ex. 26.

18. Ms. Young has consistently voted for Democratic candidates to the U.S. House of Representatives and plans to continue to do so in future congressional elections, including the 2024 election and beyond. *See* Young Aff. ¶ 6, Ex. 26.

II. THE ORIGIN OF BENCHMARK CD-5

19. In the November 2010 election, Floridians voted to adopt the Fair Districts Amendments to the Florida Constitution. *See* The Florida Senate: About Redistricting at 2, **Ex. 2**.

20. The Fair Districts Amendment mandates, among other things, that “districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.” Art. III, § 20(a), Fla. Const..

21. In the 2010 redistricting cycle, which immediately followed the Fair District Amendments’ enactment, Florida enacted a new, 27-seat congressional map (hereinafter the “Detzner Map”). *See* Dr. Ansolabehere Rep. ¶ 57, **Ex. 1**.

22. In *League of Women Voters of Florida v. Detzner* (“*LWV I*”), 172 So. 3d 363 (Fla. 2015), the Florida Supreme Court held that the Detzner Map, including that map’s CD-5, did not comply with the Fair Districts Amendment and ordered several districts, including CD-5, to be redrawn.

23. In *LWV I*, the Florida Supreme Court explained that “the predecessor to District 5 . . . has continued to perform for the black candidate of choice in every election from 2000 through the present.” 172 So. 3d at 404.

24. In *LWV I*, the Florida Supreme Court explained that District 5’s predecessor had performed for the Black candidate of choice at Black voting age population (BVAP) percentages below 50%, including within a 42-47% BVAP range. 172 So. 3d at 404.

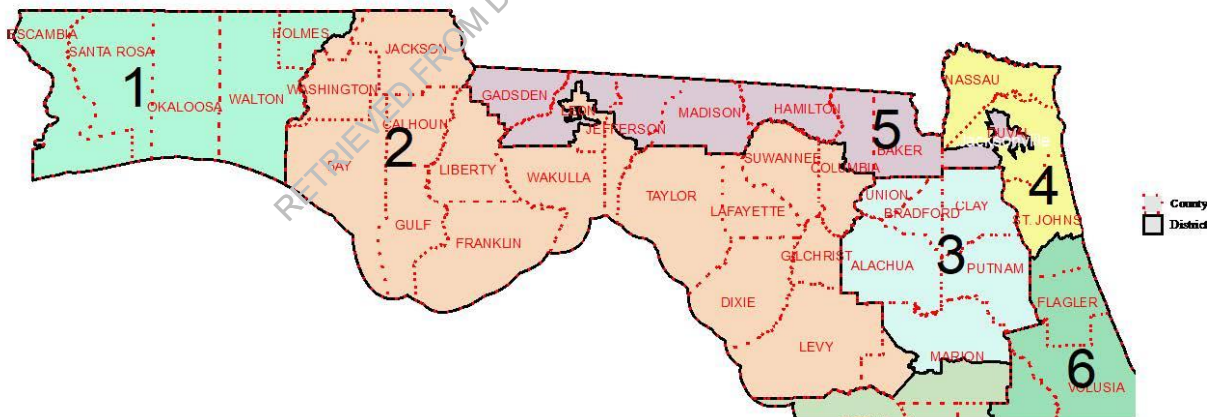
25. In *LWV I*, the Florida Supreme Court held that “District 5 must be redrawn in an East-West manner” rather than the North-South manner that the Legislature had originally drawn in the Detzner Map. 172 So. 3d at 403.

26. In December 2015, the Florida Supreme Court approved a specific remedial plan that included the East-West version of CD-5, which spanned from Tallahassee to Jacksonville across Florida’s northern border. *League of Women Voters of Fla. v. Detzner (“LWV I”)*, 179 So. 3d 258, 272-73 (Fla. 2015).

27. In *LWV II*, the Florida Supreme Court held that in this East-West configuration of District 5, “the ability of black voters to elect a candidate of their choice is not diminished.” 179 So. 3d at 272.

28. At the time of its adoption, this new district (now called Benchmark CD-5) had a Black voting age population of 45.12%. *LWV I*, 172 So. 3d at 404.

29. An image of Benchmark CD-5 that the Florida Supreme Court approved in the *LWV* litigation appears below. *See* Dr. Ansolabehere Rep. ¶ 64, Ex. 1; *see also* 2016-2022 Florida Congressional Districts, **Ex. 3**.



30. The Benchmark Map, including Benchmark CD-5, was in place during the 2016, 2018, and 2020 congressional elections. *See* Dr. Ansolabehere Rep. ¶ 87, Ex. 1.

III. FUNCTIONAL ANALYSIS OF BENCHMARK CD-5

31. In the last redistricting cycle, the Florida Supreme Court explained that, under the Fair Districts Amendments, a court determines whether a districting plan results in “diminish[ment]”

of minority voters’ “ability to elect representatives of their choice” by comparing the results of a functional analyses of both the benchmark plan and the newly enacted plan. *See* Dr. Ansolabehere Rep. ¶ 75, Ex. 1; *In re S. J. Res. of Legis. Apportionment 1176*, 83 So. 3d 597, 624-26 (Fla. 2012) (“*Apportionment I*”).

32. A functional analysis should include “the review of the following statistical data: (1) voting-age populations; (2) voting-registration data; (3) voting registration of actual voters; and (4) election results history.” *Apportionment I*, 83 So. 3d at 627; *see also* Dr. Ansolabehere Rep. ¶ 36, Ex. 1.

33. In the 2020 redistricting cycle, the Florida House performed a functional analysis on the Benchmark Map to determine which districts permitted minority voters to elect the candidate of their choice. *See* Fla. House’s Objs. & Resps. to Pls.’ First Set of Interrogs. (“House Interrogatory Responses”) at 7-8, **Ex. 4**.

34. The Florida House performed its functional analysis consistent with existing Florida Supreme Court precedent—that is, in the manner indicated by *Apportionment I*. *See* House Interrogatory Response at 8, Ex. 4.

35. In the 2020 redistricting cycle, the Florida Senate performed a functional analysis on the Benchmark Map to determine which districts permitted minority voters to elect the candidate of their choice. *See* Fla. S.’s Resps. & Objs. to Pls.’ First Set of Interrogs. (“Senate Interrogatory Responses”) at 12-13, **Ex. 5**.

36. The Florida Senate performed its functional analysis consistent with existing Florida Supreme Court precedent—that is, in the manner indicated by *Apportionment I*. *See* Senate Interrogatory Responses at 13 (“The functional analyses . . . were performed on appropriate districts in accordance with Florida Supreme Court precedent.”), Ex. 5.

37. In the course of this litigation, Plaintiffs' expert, Dr. Stephen Ansolabehere, a Professor of Government at Harvard University, performed a functional analysis on Benchmark CD-5 to examine whether it provided Black voters the ability to elect the candidates of their choice. *See* Dr. Ansolabehere Rep. ¶¶ 75-89, Ex. 1.

38. All of the parties to and experts in this litigation who performed a functional analysis of the Benchmark Map concluded that Black voters had the ability to elect their preferred candidates to Congress in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 89, Ex. 1; House Interrogatory Response at 8, Ex. 4; *see also* Florida House's Response to Plaintiffs' First Request for Admission at 2 ("Admitted that, under the Florida Supreme Court's interpretation of the non-diminishment standard in *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597 (Fla. 2012), Black voters in Congressional District 5 of the Benchmark Congressional Plan had the ability to elect the candidates of their choice."), **Ex. 6**; Senate Interrogatory Responses at 13 ("The Florida Senate's functional analysis examined congressional districts 5, 9, 10, 20, 24, 25, 26, and 27 in the Benchmark Congressional Plan and determined that [B]lack voters had the ability to elect representatives of their choice in districts 5, 10, 20, and 24 and Hispanic voters had the ability to elect representatives of their choice in 25, 26, and 27."), Ex. 5.

39. Neither of Defendants' experts, Dr. Owens or Dr. Johnson, performed a functional analysis of Benchmark CD-5 as described by the Florida Supreme Court. *See* Owens Dep. Tr. at 107:25-108:4 ("Q: Turning to North Florida and CD-5 on the Benchmark map, so again, here you did not perform your own functional analysis of Benchmark CD-5 or any of the newly enacted districts, correct? A: Correct, I did not."), **Ex. 20**; Johnson Dep. Tr. at 40:18-21 (Dr. Johnson testifying that he is not familiar with the Florida Supreme Court's definition of a functional analysis); 41:7-42:1 (Dr. Johnson testifying that he has not examined, and thus cannot offer an

opinion, as to whether Dr. Ansolabehere's functional analysis matches the one recommended by the Florida Supreme Court), **Ex. 21**.

40. Neither of Defendants' experts disputes that Black voters had the ability to elect the candidate of their choice in Benchmark CD-5. *See* Owens Dep. Tr. at 108:14-19 ("Q: So again, none of the new analysis you did changes the fact that Benchmark CD-5 in the previous map was a district in which Black voters could and did elect candidates of their choice, correct? A: Yeah, it would not – it does not dispute facts."), Ex. 20; Johnson Dep. Tr. at 128:6-9 (Dr. Johnson testifying that his report does not reach any opinion as to whether Black voters had the ability to elect the candidates of their choice in Benchmark CD-5), Ex. 21.

41. Dr. Ansolabehere's functional analysis of Benchmark CD-5 included an examination of the following factors and datapoints:

A. Demographic Composition of Benchmark CD-5

42. As of the 2020 Census, Benchmark CD-5 was a majority-minority district by total population in which the Black population comprised the predominant minority group. Dr. Ansolabehere Rep. ¶ 77, Ex. 21; Owens Dep. Tr. at 113:2-4 ("Q: You don't contest Dr. Ansolabehere's figures in his opening report, correct? A: No, I don't contest them."); 155:9-156:9 (agreeing that he does not claim that any of Dr. Ansolabehere's numerical data, calculations, or empirical results are incorrect), Ex. 20; Johnson Dep. Tr. at 94:11-15 (confirming he "didn't dispute any of [Dr. Ansolabehere's] numbers" relating to "demographic figures or figures about the voting age population of CD5"), Ex. 21.

43. According to the 2020 Census, racial minorities made up 63.1 percent of the total population of the district and whites made up 36.9 percent of the total population of the district.

Dr. Ansolabehere Rep. ¶ 77, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:11-15 (not disputing), Ex. 21.

44. According to the 2020 Census, Benchmark CD-5 had a Black population of 367,467, which accounts for 49.1 percent of the total population of the district. Dr. Ansolabehere Rep. ¶ 77, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:11-15 (not disputing), Ex. 21.

45. Racial minorities were a majority of the Voting Age Population (VAP) in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 78, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:11-15 (not disputing), Ex. 21.

46. Specifically, all racial minorities combined comprised 59.8 percent of the VAP, and whites comprised 40.2 percent of the VAP in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 78, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:11-15 (not disputing), Ex. 21.

47. The Black population comprised 46.2 percent of the VAP in Benchmark CD-5. Dr. Ansolabehere Rep. at tbl.4, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:11-15 (not disputing), Ex. 21.

B. Composition of Registered Voters and Turnout

48. Racial minorities were the majority of registered voters in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 79 & tbl.7, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:16-22 (not disputing any figures Dr. Ansolabehere reports in Table 7), Ex. 21.

49. According to registration data from the November 2020 general election, Black voters were the largest group of registered voters in Benchmark CD-5, comprising 46.1 percent of all

registered voters in the district. Dr. Ansolabehere Rep. at tbl.7, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:16-22 (not disputing), Ex. 21.

50. Racial minorities cast the majority of votes in the 2016, 2018, and 2020 general elections under Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 80 & tbl.9, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:23-95:2 (not disputing any figures Dr. Ansolabehere reports in Table 9), Ex. 21.

51. Under Benchmark CD-5, Black voters cast a plurality of all votes in the 2016 and 2018 general elections. Dr. Ansolabehere Rep. at tbl.9, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:23-95:2 (not disputing any figures Dr. Ansolabehere reports in Table 9), Ex. 21.

52. Black voters were approximately half of all primary election voters (i.e., both the Democratic and Republican primaries combined) under Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 81 & tbl.10, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 95:5-8 (not disputing any figures Dr. Ansolabehere reports in Table 10), Ex. 21.

53. Most primary election voters in Benchmark CD-5 participated in the Democratic Primary: Of the 128,235 people who voted in either the Democratic or Republican primary in Benchmark CD-5 in 2020, 94,780 (73.9 percent) voted in the Democratic Primary and 33,455 (22.1 percent) voted in the Republican Primary. Dr. Ansolabehere Rep. ¶ 82, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

54. Black voters were the majority of registered Democratic Party voters in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 83 & tbl.8, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:16-22 (not disputing any figures Dr. Ansolabehere reports in Table 8), Ex. 21.

55. In 2020, Black voters were 68.6% of all registered Democrats in Benchmark CD-5. Dr. Ansolabehere Rep. at tbl.8, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:16-22 (not disputing any figures Dr. Ansolabehere reports in Table 8), Ex. 21.

56. Black Democrats cast the majority of votes in the Democratic Primary elections in 2016, 2018, and 2020 under Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 83 & tbl.11, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 95:5-8 (not disputing any figures Dr. Ansolabehere reports in Table 11), Ex. 21.

57. Black voters accounted for 70.0 percent of votes cast in Benchmark CD-5 in the 2020 Democratic Primary; 70.0 percent of votes cast in Benchmark CD-5 in the 2018 Democratic Primary; and 67.1 percent of votes cast in Benchmark CD-5 in the 2016 Democratic Primary. Dr. Ansolabehere Rep. at tbl.11, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 95:5-8 (not disputing), Ex. 21.

C. Cohesion and Polarization

58. Voting was racially polarized in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 85, Ex. 1; *see also* Owens Dep. Tr. at 27:23-14 (agreeing that, in North Florida, “party is a strong force” for both Black voters, who consistently vote for Democrats, and non-Hispanic white voters, who often vote for Republicans), Ex. 20; Johnson Dep. Tr. at 97:13-16 (“Q: Did you conduct your own statistical analysis of whether voting was racially polarized in Benchmark CD5? A: No.”), Ex. 21.

59. Black voters voted cohesively in elections under Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 84, Ex. 1; Owens Dep. Tr. at 36:1-8 (confirming that Black voters in North Florida “show a strong cohesion in support for Democratic candidates”), Ex. 20.

60. Ecological regression—a statistical method used to analyze racially polarized voting that has long been credited by courts, *see, e.g., Thornburg v. Gingles*, 478 U.S. 30, 52 & n.20 (1986)—shows that 89 percent of Black voters in Benchmark CD-5 voted for Democratic candidates. Dr. Ansolabehere Rep. ¶ 41 & tbl.12, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

61. White voters also voted cohesively in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 85, Ex. 1; *see also* Owens Dep. Tr. at 28:5-14 (explaining that in North Florida, non-Hispanic white voters are likely to vote for the Republican candidate), Ex. 20.

62. Two thirds of white voters in Benchmark CD-5 chose candidates opposed to the candidates preferred by Black voters. Dr. Ansolabehere Rep. ¶ 85 & tbl.12, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; *see also* Owens Dep. Tr. at 110:23-111:16 (agreeing that the percent of non-Hispanic white voters in Benchmark CD-5 that voted for Republican candidates is “in the 60s”), Ex. 21.

63. In the 2016, 2018, and 2020 U.S. House general elections, the overwhelming majority of Black voters in Benchmark CD-5 preferred and voted for the Democratic candidate. *See* Dr. Ansolabehere Rep. at tbl.13, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; *see also* Owens Dep. Tr. at 26:11-27:3 (confirming that in all of the elections he studied, “a very high percentage” of Black voters in Benchmark CD-5 support the Democratic candidate), Ex. 21.

64. In the 2016, 2018, and 2020 U.S. House general elections, a majority of white voters in Benchmark CD-5 preferred and voted for the Republican candidate. *See* Dr. Ansolabehere Rep. at tbl.13, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

D. Election Results

65. A Black candidate (Al Lawson) won each of the U.S. House elections held under Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 87, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

66. Al Lawson was the candidate of choice for Black voters in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 86, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

67. In 2016, 2018, and 2020, approximately 90 percent of Black voters in Benchmark CD-5 voted for Al Lawson to be their Representative in the U.S. House. Dr. Ansolabehere Rep. ¶ 87, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

68. Al Lawson was not the candidate of choice for white voters in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 86, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

69. Al Lawson won 65 percent of the general election vote in 2020, 67 percent of the general election vote in 2018, and 64 percent of the general election vote in 2016. Dr. Ansolabehere Rep. ¶ 87, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

70. In Florida's eight statewide elections in 2016, 2018, and 2020, the Black-preferred candidates won a majority of the vote in precincts covered by Benchmark CD-5 in each election. Dr. Ansolabehere Rep. ¶ 88 & tbl.14, Ex. 1; Owens Dep. Tr. at 108:14-19; 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

E. Overall Conclusions as to Benchmark CD-5's Performance

71. Minorities comprised the majority of the VAP and of turnout in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 89, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:11-15 (confirming he "didn't dispute any of [Dr. Ansolabehere's] numbers" relating to "demographic figures or figures about the voting age population of CD5"), Ex. 21.

72. The majority of white voters voted for candidates opposed to those preferred by the majority of minority voters. Dr. Ansolabehere Rep. ¶ 89, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

73. Black voters controlled the Democratic primary in Benchmark CD-5: Black voters comprised the vast majority of Democratic registration and of Democrats who voted in primary elections in 2016, 2018, and 2020. Dr. Ansolabehere Rep. ¶ 89 & tbl.8, tbl.11, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:16-22, 95:5-8 (not disputing any figures Dr. Ansolabehere reports in Table 8 or Table 11), Ex. 21.

74. The candidates preferred by the overwhelming majority of Black voters won the primary and general elections in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 89, Ex. 1; Owens Dep. Tr. at 108:14-19; 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

75. Black voters had the ability to elect the candidate of their choice in Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 89, Ex. 1; House Interrogatory Response at 8, Ex. 4, Florida House's Response to Plaintiffs' First Request for Admission at 2, Ex. 6; Senate Interrogatory Responses at 13, Ex. 5; Owens Dep. Tr. at 108:14-19 ("Q: So again, none of the new analysis you did changes the fact that Benchmark CD-5 in the previous map was a district in which Black voters could and did elect candidates of their choice, correct? A: Yeah, it would not – it does not dispute facts."), Ex. 20.

IV. LEGISLATIVE PROCESS FOR THE ENACTED MAP

A. The Regular Session

76. In the 2020 redistricting cycle, both the Florida House and Senate explained that while the U.S. Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), means the preclearance process established by Section 5 of the VRA was no longer in effect, that decision

“does not affect the validity of the statewide diminishment standard in the Florida Constitution.”
See The Florida Senate: About Redistricting at 2, Ex. 2; Florida House Feb. 18, 2022 Meeting Packet at 38, **Ex. 7**.

77. During its redistricting committee process, the Florida Senate proposed congressional redistricting plans which included the East-West configuration of CD-5 which would have retained Black voters’ ability to elect a candidate of their choice in CD-5. *See* Florida Senate Jan. 10, 2022 Meeting Packet (reporting that various Senate workshop plans, all of which retained an East-West version of CD-5, “do not retrogress and maintain the ability for racial and language minorities to participate in the political process and elect candidates of choice”), **Ex. 8**; *see also* Florida Senate’s Response to Plaintiffs’ First Request for Admission at 5-6 (“Florida Senate admits that Proposed CD-5 in CS/SB 102, which was passed by the Florida Senate on January 20, 2022, did not diminish the ability of racial or language minorities to elect representatives of their choice as compared to Benchmark CD-5 in the congressional map imposed by the Florida Supreme Court in 2015”), **Ex. 27**.

78. During its redistricting committee process, the Florida House proposed congressional redistricting plans which included the East-West configuration of CD-5 which would have retained Black voters’ ability to elect a candidate of their choice in CD-5. *See* Florida House Feb. 18, 2022 Meeting Packet (reporting that the Proposed Plan 8011, which contained an East-West version of CD-5, “ensures all protected minority districts have the ability to elect candidates of their choice”), **Ex. 7**; *see also* Florida House’s Response to Plaintiffs’ First Request for Admission at 2 (“Admitted that, under the Florida Supreme Court’s interpretation of the non-diminishment standard in *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597 (Fla. 2012), each of the congressional redistricting plans that the House Redistricting Committee or the

House Congressional Redistricting Subcommittee proposed before Plan H000C8019 was proposed, including Plan H000C8015, preserved Black voters' ability to elect the candidates of their choice in one congressional district in North Florida.”), Ex. 6.

79. On February 1, 2022, Governor Ron DeSantis requested an advisory opinion from the Florida Supreme Court which sought the “Court’s opinion on whether Article III, Section 20(a) of the Florida constitution requires the retention of a district in northern Florida that [connects minority communities] to ensure sufficient voting strength, even if not a majority, to elect a candidate of their choice.” *See* Feb. 1, 2022 Advisory Opinion Request at 2, **Ex. 9**.

80. The Governor’s Advisory Request acknowledged that existing precedent from the Florida Supreme Court “suggest[s] that the answer is ‘yes.’” *See* Feb. 1, 2022 Advisory Opinion Request at 4, Ex. 9.

81. The Governor’s Advisory Request nonetheless asked the Florida Supreme Court to clarify “what the non-diminishment standard does require,” including whether it required the retention of an East to West district connecting “minority voters in Jacksonville with minority voters in Leon and Gadsden Counties.” *See* Feb. 1, 2022 Advisory Opinion Request at 5, Ex. 9.

82. On February 10, 2022, the Florida Supreme Court declined the Governor’s request to issue an advisory opinion providing new guidance either on the non-diminishment standard generally or on CD-5 specifically. *See* Advisory Opinion to the Governor Re: Whether Article III, Section 20(A) of the Florida Constitution Requires the Retention of a District in Northern Florida, etc., **Ex. 10**; *see also* Kelly (Executive Office of the Governor Corporate Representative) Dep. Tr. at 91:13-21 (“Q: In this February 10 order from the Florida Supreme Court denying the advisory opinion, the Florida Supreme Court did not tell the Governor that he was free to propose or sign a

map that eliminated an existing performing district, correct? A: No. No. They made no such comment at all.”), **Ex. 23**.

83. On February 14, 2022, the Governor’s Office submitted a draft congressional redistricting plan (Plan 0094) to the Legislature which did not retain an East-West configuration of Congressional District 5. *See* Plan 0094, **Ex. 11**; Kelly (Executive Office of the Governor Corporate Representative) Dep. Tr. at 110:15-21, Ex. 23.

84. On February 18, 2022, the Governor’s Office sent the Florida House a legal memorandum which objected to the House’s continued inclusion of district “which largely tracks current Congressional District 5.” *See* Feb. 18, 2022 Newman Memo at 1, **Ex. 12**.

85. On February 18, 2022, the Florida House passed a redistricting plan which retained an East-West version of CD-5 which the House concluded would retain Black voters’ ability to elect their candidate of choice. *See* House Meeting Packet February 18, 2022, Ex. 7.

86. Over the course of this redistricting cycle, the Governor’s office reached out to “the vast majority of the Legislature” to convince them to support the Governor’s alternative redistricting plan, ultimately having a “couple hundred” meetings with individual legislators on this issue. *See* Kelly (Executive Office of the Governor Corporate Representative) Dep. Tr. at 104:18-24, 106:6-18, Ex. 23.

87. In March 2022, the Florida Legislature passed a redistricting plan which contained both a “Primary Map” (Plan 8019) and a “Secondary Map” (Plan 8015) with different configurations of Congressional District 5. *See* CS/SB 102 Bill Summary, **Ex. 13**.

88. The Primary Map (Plan 8019) contained a configuration of Congressional District 5 including only portions of Jacksonville. *See* CS/SB 102 Bill Summary at 10, Ex. 13.

89. The Secondary Map (Plan 8015) contained the East-West configuration of District 5 spanning from Tallahassee to Jacksonville. *See* CS/SB 102 Bill Summary at 2, Ex. 13.

90. The Legislature intended that the Secondary Map would take effect “[i]f Congressional District 5 in the primary map is invalidated” by a court. *See* CS/SB 102 Bill Summary, at 1, Ex. 13.

91. Both the House and Senate performed a functional analysis on Congressional District 5 in Plan 8015. *See* House Interrogatory at 8, Ex. 4; Senate Interrogatory at 13, Ex. 5.

92. Both the House and Senate concluded that Congressional District 5 in Plan 8015 would not diminish Black voters’ ability to elect their candidate of choice. *See* House Interrogatory at 8-9, Ex. 4; Senate Interrogatory at 13, Ex. 5.

93. Governor DeSantis vetoed the Legislature’s Primary and Secondary Maps in CS/SB 102 on March 29, 2022. *See* CS/SB 102 Bill History, **Ex. 14**.

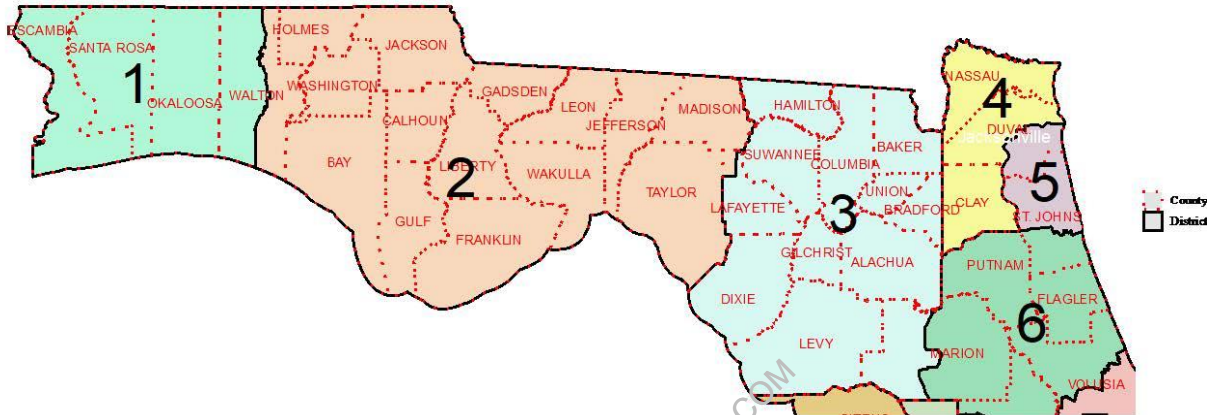
B. The Special Session

94. After the Governor vetoed the Legislature’s redistricting plans, the Legislature planned a special session to address congressional redistricting. *See* April 11, 2022 Sprowls and Simpson Update, **Ex. 16**.

95. In advance of the special session, House Speaker Chris Sprowls and Senate President Wilton Simpson informed lawmakers that the Legislature would not draw any new plans and that it would instead take up a forthcoming plan from the Governor’s Office that the Governor would support. *See* April 11, 2022 Sprowls and Simpson Update, Ex. 16.

96. The Governor’s Office released its preferred congressional plan on April 13, 2022 (hereinafter the “Enacted Map”). *See* April 13, 2022 Newman Memo, **Ex. 17**.

97. The Enacted Map “eliminates” the predecessor version of CD-5, as shown in the image below. *See* Dr. Ansolabehere Rep. ¶¶ 67-74, Ex. 1; *see also* April 13, 2022 Newman Memo at 1, Ex. 17.



98. The Legislature passed the Enacted Map on April 21, 2022, and Governor DeSantis signed it into law on April 22, 2022. *See* SB 2C Bill History, **Ex. 15**.

V. THE ENACTED MAP’S CONFIGURATION OF NORTH FLORIDA

99. The Enacted Map substantially reconfigures the orientation of CDs in North Florida as compared to the Benchmark Map. Dr. Ansolabehere Rep. ¶ 69, Ex. 1.

100. Enacted CD-4 is the district with the highest percentage of population that comes from Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 73, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

101. Under the Enacted Map, 45.2 percent of the population of Benchmark CD-5 now resides in Enacted CD-4. Dr. Ansolabehere Rep. ¶ 73, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

102. The remaining 54.8 percent of the population of Benchmark CD-5 is divided across Enacted CD-2, Enacted CD-3, and Enacted CD-5. Dr. Ansolabehere Rep. ¶ 73, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

VI. FUNCTIONAL ANALYSIS OF THE ENACTED MAP

103. The Governor's Office did not perform a functional analysis on any districts in North Florida in the Enacted Map. *See* Kelly Individual Dep. Tr., Volume 1 at 118:18-20, **Ex. 22**.

104. The Florida Senate chose not to perform a functional analysis on any districts in North Florida in the Enacted Map. *See* Senate Interrogatory Response at 14, **Ex. 5**.

105. The Florida House did perform a functional analysis on Enacted CD-4 in the Enacted Map in advance of the special session. *See* House Interrogatory Response at 9-10, **Ex. 4**.

106. The House redistricting committee staff who performed a functional analysis on Enacted CD-4 (the closest analogue to Benchmark CD-5) found that “[Enacted] Congressional District 4 did not afford racial or language minorities an ability to elect the representatives of their choice.” House Interrogatory Responses at 9-10, **Ex. 4**.

107. During the special session, House Redistricting Chair, Representative Tom Leek, stated that “our staff did a functional analysis” on Enacted CD-4 “and confirmed it does not perform” for Black voters’ candidate of choice. Florida House’s Response to Plaintiffs’ First Request for Admission at 7, **Ex. 6**.

108. Plaintiffs’ expert, Dr. Ansolabehere, performed a functional analysis of Enacted CD-2, CD-3, CD-4, and CD-5. Dr. Ansolabehere Rep. ¶¶ 90-102, **Ex. 1**.

109. Neither of Defendants’ experts performed a functional analysis on any districts in the Enacted Map as described by the Florida Supreme Court. *See* Owens Dep. Tr. at 107:25-108:4, **Ex. 20**; Johnson Dep. Tr. at 40:18-21, 41:7-42:1, **Ex. 21**.

110. All of the parties to and experts in this litigation who performed a functional analysis of the North Florida districts in the Enacted Map concluded that Black voters in the Enacted Map will no longer be able to elect a candidate of their choice in North Florida. Dr. Ansolabehere Rep.

¶¶ 90, 101-02, Ex. 1; Florida House’s Response to Plaintiffs’ First Request for Admission at 3 (“Admitted that, under the Florida Supreme Court’s interpretation of the non-diminishment standard in *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597 (Fla. 2012), Black voters do not have the ability to elect the candidates of their choice in Enacted Congressional District 4.”), Ex. 6.

111. Neither of Defendants’ experts disputes that Black voters no longer have the ability to elect the candidate of their choice in any North Florida congressional districts. *See* Owens Dep. Tr. at 110:1-15 (not disputing that, given current voting patterns, Black voters’ candidates of choice would not be elected in the Enacted Map’s North Florida districts), Ex. 20; Johnson Dep. Tr. at 128:10-20 (“Q: Dr. Ansolabehere reaches a conclusion in his report that none of the newly enacted congressional districts in North Florida – and here I mean District 2 through 5 – will allow Black voters to elect candidates of their choice. Do you have any reason to dispute that? A: In the context where – that he gives it with all the assumptions and data he’s using, no. And I guess I should add and amongst the list of elections that he’s looking at, I would say no, I don’t have reason to dispute that.”), Ex. 21.

112. Dr. Ansolabehere’s functional analysis of the Enacted CDs in North Florida included an examination of the following factors and datapoints:

A. Demographic Composition of Enacted CDs

113. None of the Enacted CDs in North Florida (i.e., Enacted CD-2, CD-3, CD-4, or CD-5) are majority-minority VAP districts. Dr. Ansolabehere Rep. ¶ 91 & tbl.5, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

114. In comparison to Benchmark CD-5, in which minority voters were approximately 60 percent of the total VAP, white voters are the predominant group in each of these newly enacted

CDs in North Florida. Dr. Ansolabehere Rep. ¶ 91 & tbl.5, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

115. Specifically, the Black VAP of Enacted CD-2, Enacted CD-3, Enacted CD-4, and Enacted CD-5 is now 23.1%, 15.9%, 31.7%, and 12.8%, respectively. Dr. Ansolabehere Report at Table 5, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

B. Composition of Registered Voters and Turnout

116. White voters are the significant majority of registered voters in Enacted CD-2, Enacted CD-3, Enacted CD-4, and Enacted CD-5. Dr. Ansolabehere Rep. ¶ 92 & tbl.7, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:16-22 (not disputing any figures Dr. Ansolabehere reports in Table 7), Ex. 21.

117. White voters cast the significant majority of votes in the 2016, 2018, and 2020 General Elections in each of the Enacted CDs in North Florida. Dr. Ansolabehere Rep. ¶ 93 & tbl.9, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:23-95:2 (not disputing any figures Dr. Ansolabehere reports in Table 9), Ex. 21.

118. In the precincts incorporated into each of the Enacted CDs in this area, white voters cast the majority of votes in the 2016, 2018, and 2020 primary elections. Dr. Ansolabehere Rep. ¶ 94 & tbl.10, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; Johnson Dep. Tr. at 94:23-95:2 (not disputing any figures Dr. Ansolabehere reports in Table 9), Ex. 21.

C. Cohesion and Polarization

119. In Enacted CD-2, Enacted CD-3, Enacted CD-4, and Enacted CD-5, there is racially polarized voting between Black and white voters. Dr. Ansolabehere Rep. ¶ 95, Ex. 1; *see also* Owens Dep. Tr. at 27:23-28:14 (agreeing that, in North Florida, “party is a strong force” for both Black voters, who consistently vote for Democrats, and non-Hispanic white voters, who often vote

for Republicans), Ex. 20; Johnson Dep. Tr. at 97:12-21 (Q: And did you conduct your own statistical analysis of whether voting was racially polarized in any of the newly enacted congressional districts in North Florida? A: No.”), Ex. 21.

120. Black voters voted cohesively in Enacted CD-2, Enacted CD-3, Enacted CD-4, and Enacted CD-5, with more than three-quarters of Black voters in each district supporting the Democratic candidate. Dr. Ansolabehere Rep. at tbl.12, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; *see also* Owens Dep. Tr. at 26:11-27:3 (confirming that in all of the elections he studied, “a very high percentage” of Black voters in Enacted CD-4 support the Democratic candidate), Ex. 21.

121. White voters voted cohesively in Enacted CD-2, Enacted CD-3, Enacted CD-4, and Enacted CD-5—with more than a supermajority supporting Republican candidates. Dr. Ansolabehere Rep. ¶ 95 & tbl.12 (showing, for example, that 82 percent of white voters chose Republican candidates in Enacted CD-4), Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20; *see also* Owens Dep. Tr. at 110:23-111:16 (testifying that in Enacted CD-4, “the non[-]Hispanic white voters are much closer to 70 percent in support of the Republican nominee”), Ex. 20.

D. Election Results

122. Two Black candidates ran and lost in the Enacted CDs in North Florida in 2022. Dr. Ansolabehere Rep. ¶ 98, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

123. Representative Al Lawson, who is Black and represented Benchmark CD-5, ran for re-election in Enacted CD-2, but lost to Representative Neal Dunn, who is white. Dr. Ansolabehere Rep. ¶ 98, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

124. LaShonda Holloway, who is Black, ran for election in Enacted CD-4, but lost to Aaron Bean, who is white. Dr. Ansolabehere Rep. ¶ 98, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

125. Under the Enacted Plan in 2022, North Florida did not elect a Black member of Congress for the first time in three decades. Dr. Ansolabehere Rep. ¶ 9, Ex. 1.

126. In the 2016, 2018, and 2020 statewide elections, candidates preferred by Black voters failed to win a majority of votes in any of the four Enacted CDs that took parts of Benchmark CD-5. Dr. Ansolabehere Rep. ¶ 99, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

127. In Enacted CD-2, Enacted CD-3, Enacted CD-4, and Enacted CD-5, the white-preferred candidates won the majority of votes cast in the 2016, 2018, and 2020 statewide elections. Dr. Ansolabehere Rep. ¶ 99, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

E. Overall Conclusions as to the Enacted Map's Performance

128. None of the Enacted CDs in North Florida are CDs in which Black voters have the ability to elect their preferred candidates. Dr. Ansolabehere Rep. ¶ 101, Ex. 1; Florida House's Response to Plaintiffs' First Request for Admission at 3 ("Admitted that, under the Florida Supreme Court's interpretation of the non-diminishment standard in *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597 (Fla. 2012), Black voters do not have the ability to elect the candidates of their choice in Enacted Congressional District 4."), Ex. 6; *see* Owens Dep. Tr. at 110:1-15 (not disputing, given current voting patterns), Ex. 20.

129. In every Enacted CD in North Florida, white voters are the majority of the VAP; they are the majority of registered voters; they cast the majority of general election votes; white voters are cohesive in support of Republican candidates in general elections; and the Republican candidates

that white voters support win all statewide elections examined. Dr. Ansolabehere Rep. ¶ 101, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

VII. PLAN 8015 AND DEMONSTRATION MAP

130. Plaintiffs' expert, Dr. Ansolabehere, prepared a Demonstration Map to show that it was possible to create an equal population map in which Black voters in North Florida retain the ability to elect the candidate of their choice. Dr. Ansolabehere Rep. ¶¶ 104, 111, Ex. 1.

131. Benchmark CD-5 required only minor changes to equalize its population. Dr. Ansolabehere Rep. ¶ 68, Ex. 1.

132. Dr. Ansolabehere's Demonstration Map incorporates the version of CD-5 contained in Plan 8015 from the Legislature. Dr. Ansolabehere Rep. ¶ 104, Ex. 1.

133. The Florida House did its own functional analysis on District 5 in Plan 8015 and found that it allowed Black voters to elect the candidate of their choice. *See* House Interrogatory Response at 8-9, Ex. 4.

134. The Florida Senate did its own functional analysis on District 5 in Plan 8015 and found that it allowed Black voters to elect the candidate of their choice. *See* Senate Interrogatory Response at 13, Ex. 5.

135. In the Governor's veto memorandum, the Governor's Office stated that District 5 in Plan 8015 (also called the Secondary Map) "complies with the Florida Constitution's non-diminishment provision." March 29, 2022 Veto Memorandum Re: Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State at 7, **Ex. 18**.

136. Speaker Sprowls of the Florida House has stated that District 5 in Plan 8015 "is one the Legislature knows is legally compliant under current law." Feb. 25, 2022 Sprowls Statement, **Ex. 19**.

137. Dr. Ansolabehere performed a functional analysis on District 5 from Plan 8015/the Demonstration Map and similarly found it would allow Black voters to elect the candidate of their choice. Dr. Ansolabehere Rep. ¶¶ 104-111, Ex. 1.

138. The Demonstration CD-5 from Plan 8015 and Benchmark CD-5 have similar compactness scores. *See* Dr. Ansolabehere Rep. at tbl.3a & tbl.3c, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

139. Benchmark CD-5 had a Reock score of .10 and a Polsby Popper score of .09. *See* Dr. Ansolabehere Rep. at tbl.3a, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

140. Demonstration CD-5 from Plan 8015 has a Reock score of .09 and a Polsby Popper score of .11. *See* Dr. Ansolabehere Rep. at tbl.3c, Ex. 1; Owens Dep. Tr. at 113:2-4; 155:9-156:9 (not disputing), Ex. 20.

Dated: June 23, 2023

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 23, 2023 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

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