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. CORD BYRD, in his official capacity as Florida Secretary of State, et al., Defendants.	Case No. 2022-ca-000666

PLAINTIFFS' RESPONSE BRIEF ON OUTSTANDING LEGAL ISSUES

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INTRODUCTION

Defendants have all but abandoned any attempt to defend the Enacted Map under the non-diminishment provision of the Florida Constitution. They effectively do not dispute that Plaintiffs have satisfied their burden to prove that the Enacted Map diminishes the ability of Black voters in North Florida to elect their preferred candidates, in violation of Article III, Section 20(a) of the Florida Constitution. But as far as Defendants are concerned, that is beside the point. They have known all along that the Enacted Map violates Article III, Section 20(a)—the Governor acknowledged as much when he asked the Florida Supreme Court to re-write the non-diminishment provision, *see* Pls.' Br. at 5-6, and the Legislature's analysis has long confirmed that the Enacted Map eliminates a historically Black-opportunity district in North Florida, *see id.* at 8. Indeed, the Enacted Map—developed by the Governor and passed by the Legislature—was specifically designed to undermine the minority voter protections that Florida voters enshrined in their state constitution. *That* was the point from the beginning: to flout the Florida Constitution, Florida Supreme Court precedent, and the will of Florida voters and then try to strongarm the judiciary into doing the same.

This Court should not play along. Defendants' assault on the Florida Constitution is based on a blatant misrepresentation of what the non-diminishment provision requires and fails under *every applicable legal standard* established by binding Florida and U.S. Supreme Court precedent. Defendants' manufactured dispute with the Florida Constitution is not for this Court to entertain. The Court should reject Defendants' gambit to turn the state constitution against the Florida voters they are charged with protecting. For the reasons stated below and in their opening brief, Plaintiffs respectfully request that the Court enter judgment in their favor on Count I.

ARGUMENT

I. Defendants fundamentally mischaracterize the Florida Constitution's non-diminishment provision.

Defendants' novel legal theories are meritless for myriad reasons, not least of which is that they rely on a fundamental misunderstanding of how the Florida Constitution's non-diminishment provision operates. While Defendants characterize the non-diminishment provision as a "permanent entitlement" to minority districts with "a specific, numerical racial target" and no "geographic or temporal limit," Sec'y's Br. at 6-7, 18-19; *see also* Legis. Defs.' Br. at 14, the non-diminishment provision is no such thing. In reality, the functional analysis required to assess the State's non-diminishment obligations is directly responsive to changes in minority population or voting behavior that would indicate a minority-performing district is no longer required. And the Secretary's repeated insistence that the non-diminishment provision compels a precise racial target is belied by Florida Supreme Court precedent, U.S. Supreme Court precedent, and the Florida Legislature's actual approach during the legislative process. Finally, the Secretary's assertion that Article III, Section 20's tiered structure itself requires racial gerrymandering reveals a basic misconception about what racial gerrymandering is.

A. The non-diminishment provision does not require minority-performing districts in perpetuity without geographic limit.

Defendants' alleged fear that the non-diminishment provision requires Florida to create minority-performing districts without temporal or geographic limitation is misplaced. In fact, the test for non-diminishment is rigorous and responds in real time to changes in population or electoral behavior that would indicate a minority-performing district is no longer required.

To begin with, the non-diminishment provision only protects districts under certain circumstances: when an existing minority community is large enough and politically cohesive enough to band together to elect a candidate of choice. *League of Women Voters of Fla. v. Detzner*,

179 So. 3d 258, 286 n.11 (Fla. 2015) ("*LWV II*") (in determining whether the benchmark district "performs" for the minority group's candidate of choice—and is therefore protected from diminishment in the new map—one considers (1) "whether the minority group votes cohesively," (2) "whether the minority candidate of choice is likely to prevail in the relevant contested party primary," and (3) "whether that candidate is likely to prevail in the general election"). A functional analysis, which considers both demographic information and voting behavior, helps to make this determination. *In re S. J. Res. of Legis. Apportionment 1176*, 83 So. 3d 597, 625 (Fla. 2012) ("*Apportionment I*").

The functional analysis underlying the non-diminishment provision ensures that where the minority population of the benchmark district sufficiently declines, disperses, or diverges in its political preferences such that it is no longer able to elect the minority group's preferred candidate, the district will no longer be protected under the non-diminishment provision. Indeed, the Legislature itself concluded this happened in this redistricting cycle with respect to CD-10, which was previously considered a Black-performing district. As the House's professional redistricting staff concluded:

> "[In CD-10], over the decade, the black population is essentially stagnant. . . . From there whenever you start to look at registered voters, voter turnout, you can see a consistent decrease over the decade, about 10 percentage points between where it started in the beginning of the decade to where it is now, ultimately resulting in levels that we do not believe that the black population would be able to control their shares of the primary or the general election, therefore not allowing them to elect a candidate -- the ability to elect a candidate of their choice."

Pls.' Br. Ex. 5, Feb. 18, 2022 Fla. House Tr. at 27:7-23. In light of these demographic trends, the Legislature concluded that CD-10 was no longer a protected district under the non-

diminishment provision.[1] Notably, the Legislature made no such findings with respect to CD-5.

For this precise reason, the House and Senate's hypothetical—in which they posit "[i]f the 2020 census had revealed that Black population of Benchmark Congressional District 5 had decreased by 50% . . . the State [would have to] draw an even more sprawling district with tendrils stretching perhaps as far as Panama City and Orlando to ensure non-diminishment," Legis. Defs.' Br. at 15—would never come to pass. If Benchmark CD-5's Black population had decreased this dramatically, a functional analysis would reveal that the district would no longer "perform" for Black-preferred candidates because Black voters could no longer exercise enough political power in the primary (let alone the general election) to elect a candidate of choice. *LWV II*, 179 So. 3d at 286 n.11. As a result, a minority-performing district would not be required in any newly-enacted map going forward. In essence, the functional analysis acts as a backstop against racial gerrymandering—legislators are not required to contort the district into a bizarre shape to capture a significantly dwindling minority population.

Similarly, where the minority population in the benchmark district is no longer politically cohesive, the district will not "perform" for minority-preferred candidates and will not be protected under the non-diminishment provision. *See LWV II*, 179 So. 3d at 286 n.11, 287 (holding a Hispanic ability-to-elect district was not required because the Hispanic voting community had divergent political preferences). And because non-diminishment plaintiffs must prove political cohesion among minority voters in a benchmark district—as Plaintiffs did here, *see* Joint Stipulation to Narrow Issues for Resolution filed August 11, 2023 ("Stip.") Ex. 1 ¶ 3(g)—consideration of race in this context does not raise the same pernicious stereotyping concerns that motivate racial-

[1] Plaintiffs disagree with the Legislature that Black voters could not elect their candidate of choice in CD-10. But because that disagreement is outside the scope of this brief given the Parties' Stipulation, Plaintiffs will not address it here.

gerrymandering claims. The Florida House and Senate's concern, therefore, that the non-diminishment provision *assumes* "members of the same racial group . . . think alike, share the same political interests, and will prefer the same candidates at the polls," Legis. Defs.' Br. at 7 (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993) ("*Shaw*")), ignores that the Parties have stipulated to political cohesion among Black voters in Benchmark CD-5 based on actual data, *see* Stip. Ex. 1 ¶ 3(g), and fundamentally misunderstands the test required to proceed under the non-diminishment standard.

B. The non-diminishment provision does not permit—let alone require—racial targeting.

The idea that the non-diminishment provision requires racial targeting, *see* Sec'y's Br. at 6-7, gravely mischaracterizes the Florida Supreme Court's precedent. The Florida Supreme Court has explicitly *rejected* the idea that "the minority population percentage in each district . . . is somehow fixed to an absolute number under Florida's minority protection provision," cautioning that such an approach "would run the risk of permitting the Legislature to engage in racial gerrymandering." *Apportionment I*, 83 So. 3d at 627. The Court reiterated the same several years later. *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 405 (Fla. 2015) ("*LWV I*") (rejecting Legislature's contention that they were required to achieve fixed racial targets for CD-5). In so holding, the Court specifically cited to *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 275 (2015), where the U.S. Supreme Court emphasized that Section 5 of the VRA, the federal analogue to Florida's non-diminishment provision, "does not require a covered jurisdiction to maintain a particular numerical minority percentage" in a district.

The Secretary selectively quotes the case law to represent that "the Florida Supreme Court has explained that the non-diminishment provision allows for only "a *slight* change in percentage of the minority group's population in a given district," Sec'y's Br. at 6 (citing *Apportionment I*, 83

So. 3d at 625). Not true. This is what the Court actually said: "[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. This is 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. In other words, the Supreme Court expressly refuted any requirement of strict adherence to fixed "population figures" to comply with the non-diminishment standard. *Compare, e.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 184-85 (2017) (racial targeting occurred where legislature mandated a 55% Black voting age population (BVAP) threshold for all minority-opportunity districts). Thus, contrary to the Secretary's warped interpretation, Florida Supreme Court precedent on the non-diminishment standard denounces any sort of racial targeting.

Notably, the Secretary stands alone in his insistence that compliance with Florida's non-diminishment provision requires the use of a racial target. The Florida House and Senate make no such argument, and for good reason: During the legislative process, both the Florida House and Senate *disavowed* the use of racial targets in complying with the non-diminishment provision. *See, e.g.*, Pls.' Br. Ex. 18, Oct. 11, 2021 Fla. Senate Tr. at 74:3-17 (Florida Senate counsel Daniel E. Nordby instructing that "[t]here is no predetermined or fixed demographic percentage used at any point in that functional analysis"); Pls.' Br. Ex. 5, Feb. 18, 2022 Fla. House Tr. at 30:1-5 (Florida House professional redistricting staff disavowing reliance on any one "data point"). Defendants can hardly maintain that the non-diminishment provision mandates use of racial targets to draw minority-performing districts where they themselves employed no such thing.

C. Article III, Section 20 does not necessitate racial gerrymandering.

Finally, the Secretary's contention that the tiered structure of Article III, Section 20 necessarily requires racial gerrymandering, *see* Sec'y's Br. at 6, has already been debunked by the

Florida Supreme Court. The Court has held that the plain language of the non-diminishment provision does *not* give the State "*carte blanche* to engage in racial gerrymandering in the name of nonretrogression," *Apportionment I*, 83 So. 3d at 627, and it has rejected minority-opportunity districts that it deemed "simply not compact" enough to trigger the minority protections of Tier I, *see LWV I*, 172 So. 3d at 436.

In this regard, Article III, Section 20 is no different than the Voting Rights Act; the fact that states are required to engage in race-conscious redistricting to comply with minority voting protections (whether in the VRA or the Florida Constitution) does not necessitate racial predominance, let alone condemn all compliant maps as racial gerrymanders. *See Allen v. Milligan*, 143 S. Ct. 1487, 1510 (2023) (plurality opinion) (race did not predominate even though "it was necessary for [mapmaker] to consider race" to meet VRA requirements); *Shaw*, 509 U.S. at 646 ("race consciousness does not lead inevitably to impermissible race discrimination"); *Bush v. Vera*, 517 U.S. 952, 958 (1996) (intentional creation of majority-minority districts in service of VRA does not trigger strict scrutiny); *see also Robinson v. Ardoin*, 605 F. Supp. 3d 759, 838 (M.D. La. 2022) (finding no racial predominance even though "some level of consideration of race" is "necessary" under in the Voting Rights Act context). It is thus of no legal consequence if the non-diminishment provision requires "a race-conscious district in North Florida," as the Secretary contends. Sec'y's Br. at 4.

* * *

Defendants' tortured reading of the non-diminishment provision and Supreme Court precedent interpreting that provision is no accident; it is the entire basis for their claim that the non-diminishment provision itself violates the Equal Protection Clause. But for the reasons already

discussed, Defendants' characterization is fiction, and without it, their constitutional arguments unravel.

II. Defendants do not have the authority to declare the Florida Constitution's non-diminishment provision, or its application, unconstitutional.

Defendants' apparent confusion about the non-diminishment provision simply underscores that they are in no position to opine on, let alone decide, its constitutionality. Under Florida's public official standing doctrine, Defendants do not have the authority to declare the Florida Constitution's non-diminishment provision, or its application, unconstitutional. The judiciary alone has the power to declare what the law is, including whether the Florida Constitution's provisions are themselves unconstitutional. *See Sch. Dist. of Escambia Cnty. v. Santa Rosa Dunes Owners Ass'n, Inc.*, 274 So. 3d 492, 494 (Fla. 1st DCA 2019); *see also Fla. Ass'n of Prof'l Lobbyists, Inc. v. Div. of Legis. Info. Servs.*, 7 So. 3d 511, 514 (Fla. 2009) ("[N]o branch may encroach upon the powers of another.").

The Florida Supreme Court has explicitly rejected the idea that a public officer can unilaterally declare a law to be unconstitutional and refuse to apply it: "The contention that the oath of a public official requiring him to obey the Constitution places upon him the duty or obligation to determine whether an act is constitutional before he will obey it" is wholly "without merit." *See State ex rel. Atl. Coast Line R. Co. v. State Bd. of Equalizers*, 94 So. 681, 682-83 (Fla. 1922). Rather, "the oath of office 'to obey the Constitution,' means to obey the Constitution, *not as the officer decides, but as judicially determined*." *Id.* (emphasis added). As a result, a public official cannot decide *not* to comply with their legal duty on the basis that the duty is unconstitutional because doing so would preempt the judiciary's decision and effectively enjoin the law unilaterally until a judicial decision is made. *Id.* at 683 (explaining that a public official "refusing to enforce a law because in his opinion it is unconstitutional . . . subjects himself to no

penalty if his opinion as to the unconstitutionality of an act is not sustained by the courts," which "is the doctrine of nullification, pure and simple").

The circumstances here only underscore the separation of powers concerns on which the public official standing doctrine is based. As Plaintiffs recounted in their opening brief, the executive and legislative branches had differing views of the non-diminishment provision's constitutionality from the beginning of the 2020 redistricting cycle. *See* Pls.' Br. at 5-9. Despite the Legislature's initial attempts to comply with the non-diminishment provision, Governor DeSantis sought to extract a judicial determination that they need not. *See id.* at 5-6. When that failed, the Governor hijacked the redistricting process and vetoed the Legislature's plans until the Legislature finally agreed to pass his preferred map. *See id.* at 6-9. Governor DeSantis took these drastic steps with the express agenda of nullifying the Florida Constitution's minority-protection provisions—which were overwhelmingly approved by the voters and upheld by the judiciary—under his own novel constitutional theory, which was ultimately incorrect. *See id.* at 25 (explaining that Governor DeSantis's prediction about the constitutionality of race-based redistricting—which led him to conclude that CD-5 should not be protected—was wrong). After refusing to abide by their constitutional obligations, the political branches now ask this Court to not only excuse their violation of the Florida Constitution but to declare a provision of that constitution a nullity.

Contrary to Defendants' view, neither this Court nor this case provides a forum for public officials to air their grievances with the Florida Constitution. Defendants' "[d]isagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion," *Dep't of Revenue v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981), and their allegation that the non-diminishment provision is unconstitutional before "it has been so declared by a court of competent

jurisdiction" is not "true" and therefore "no defense." *Atl. Coast Line*, 94 So. at 682; *see also id.* at 685 (holding that where the operative law has not "been judicially declared unconstitutional, the allegation in the return as to its unconstitutionally is unwarranted, unauthorized, and affords no defense to the [complaint's] allegations").

This Court should reject Defendants' continued attempts to usurp the judicial power.

III. In any event, the only question before this Court is whether the Enacted Map—which Defendants passed and implemented—violates the Florida Constitution.

The only question this Court must answer to render final judgment is whether the Enacted Map's North Florida districts violate the Florida Constitution's non-diminishment provision. The answer to that question is decidedly yes. Yet, Defendants barely even attempt to defend the Enacted Map under the Florida Constitution. Instead, Defendants appear to be litigating a different case altogether, asking this Court to determine that entirely different districts, neither of which are in effect—Benchmark CD-5 or Plan 8015's CD-5—violate the U.S. Constitution. This Court should reject Defendants' invitation to adjudicate maps that *are not law* and thus are not properly before the Court.

A. It is beyond dispute that the Enacted Map violates the non-diminishment provision of the Florida Constitution.

The Parties' factual stipulation resolves Plaintiffs' diminishment claim under Florida law. *See* Pls.' Br. at 12-13. Defendants have not only stipulated "to the facts relevant to Plaintiffs' diminishment claim," Stip. III & Ex. 1, but have also retreated from any defense of the Enacted Map under Florida law. Although the Secretary regurgitates an argument he made at the summary judgment stage—that this Court should ignore binding Florida Supreme Court precedent to rewrite the non-diminishment standard to require satisfaction of the *Gingles* preconditions, *see* Sec'y's Br. at 20-27—he makes no effort to address the arguments Plaintiffs raised on reply and includes this section as an afterthought, only after asserting that the non-diminishment provision is itself

unconstitutional as applied to North Florida. The Florida House and Senate, for their part, no longer "join" in the Secretary's baseless arguments about non-diminishment standard, *see* Florida House and Senate's Resp. to Pls.' Mot. Summ. J. at 1, no doubt because they are already on record of arguing the exact opposite position before the Florida Supreme Court, *see* Pls.' Br. at 18-22. Accordingly, the Florida House and Senate advance no defense of the Enacted Map under Florida law.

Plaintiffs have established their claim that the Enacted Map's "elimination of Benchmark CD-5[] result[s] in diminishment of Black voters' ability to elect their candidates of choice in violation of Article III, Section 20 of the Florida Constitution." Am. Compl. at 33 (Count I). Plaintiffs are thus entitled to a judgment "[d]eclaring that the [Enacted Map] and/or individual districts" in North Florida "violate Article III, Section 20 of the Florida Constitution; [e]njoining Defendants . . . from implementing[,] enforcing, or giving any effect to the [Enacted Map] . . . ; [and o]rdering or adopting a new congressional districting plan that complies with Article III, Section 20 of the Florida Constitution." *Id.*

B. Defendants' as-applied Equal Protection Clause affirmative defense relies on maps that are not before this Court.[2]

Instead of defending the Enacted Map actually at issue in this case, Defendants aim their fire at two different maps—Benchmark CD-5 and Plan 8015—neither of which is currently

[2] The Secretary makes no mention of—and has apparently abandoned—his facial attack on the non-diminishment provision. *See* Sec'y's Br. at 5-20 (arguing only that the provision's application to North Florida violates the Equal Protection Clause). And for good reason: The Florida Supreme Court has specifically held that the non-diminishment provision avoids any risk of authorizing racial gerrymandering, *Apportionment I*, 83 So. 3d at 627, and the U.S. Supreme Court has limited racial gerrymandering claims to specific districts, *see Ala. Legis. Black Caucus*, 575 U.S. at 262-63 ("We have consistently described a claim of racial gerrymandering as a claim that race was improperly used in the drawing of the boundaries of *one or more specific electoral districts*." (emphasis added)).

codified under Florida law. Defendants' own disagreement among themselves about which district is at issue reveals that neither is properly before this Court.

As an initial matter, Defendants' effort to run away from the requirements of Florida law and seek recourse instead in the federal racial gerrymandering standard ignores one critical element of that doctrine: Only voters who reside in an allegedly gerrymandered district have standing to challenge it as a racial gerrymander. In *U.S. v. Hays*, the Supreme Court explained that only "[v]oters in such districts may suffer the special representational harms racial classifications can cause in the voting context." 515 U.S. 737, 745 (1995); *see also Pet Supermarket, Inc. v. Eldridge*, 360 So. 3d 1201, 1205 (Fla. 3d DCA 2023) (holding that Florida imports the U.S. Supreme Court's injury-in-fact requirement (citing *State v. J.P.*, 907 So. 2d 1101, 1113 n.4 (Fla. 2004))). A voter who does not reside in the district, by contrast, "does not suffer those special harms" and "would be asserting only a generalized grievance against governmental conduct of which he or she does not approve." *Hays*, 515 U.S. at 745; *see also Shaw v. Hunt*, 517 U.S. 899, 904 (1996) ("[W]e recognized [in *Hays*] that a plaintiff who resides in a district which is the subject of a racial-gerrymander claim has standing to challenge the legislation which created that district, but that a plaintiff from outside that district lacks standing absent specific evidence that he personally has been subjected to a racial classification."). Defendants' affirmative defense turns this standing inquiry on its head. In order to challenge a remedial district as a racial gerrymander, Defendants would have to establish that they reside in the challenged district. But because no such district actually exists, *no one* lives in the district, let alone Defendants. Defendants' as-applied racial gerrymandering challenge—based on a hypothetical district that no one has standing to challenge—thus fails at step one. The missteps continue from there.

The Florida House and Senate pin their racial gerrymandering claim on Benchmark CD-5.[3] But the Benchmark Map is no longer operative law. Fla. Stat. Ann. § 8.0002 (establishing Enacted Map as effective starting January 3, 2023). This Court accordingly has no rhyme or reason—let alone jurisdiction—to opine on its constitutionality. *See Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc.*, 404 U.S. 412, 415 (1972) (holding that the relief sought—"a declaratory judgment that the now repealed [statute] is unconstitutional"—is "inappropriate now that the statute has been repealed").

It is telling, moreover, that no party challenged Benchmark CD-5 as a racial gerrymander while that district was actually in effect. Rather, Benchmark CD-5 was ordered by the Florida Supreme Court, "drawn by legislative staff [and] passed by both the House and the Senate," and "none of the parties in th[e] case"—including all three Defendants here—"object[ed] to" it. *LWV II*, 179 So. 3d at 272-73; *see also id.* at 273 (concluding that Benchmark CD-5 "comport[ed] with th[e] Court's directions . . . and d[id] not diminish the ability of black voters to elect a candidate of choice"). Indeed, to undertake the inquiry Defendants now invite "would unnecessarily embroil this court in extended mini-trials over the moot issue of whether [the Benchmark district] is constitutionally infirm. . . ." *Colleton Cnty. Council v. McConnell*, 201 F. Supp. 2d 618, 644-45 (D.S.C. 2002). This Court need not evaluate the constitutionality of a district that is no longer in effect.[4]

[3] Even if the Florida House and Senate had standing to raise this affirmative defense, *but see supra* Argument II, only one chamber raised an Equal Protection Clause defense in its Answer. *See* Fla. House Answer to Am. Compl. at 16 (raising as-applied affirmative defense under the Equal Protection Clause); Fla. Senate Answer to Am. Compl. at 26 (not raising any Equal Protection Clause affirmative defense); *see also* Legis. Defs.' Br. at 1 ("The Legislature writes separately to address the specific legal basis for upholding the Enacted Map raised in the House's Fifth Affirmative Defense.").

[4] Defendants no longer argue that Benchmark CD-5 is not an appropriate benchmark for purposes of measuring diminishment. Nor could they. "As a general premise, the benchmark plan for purposes of measuring retrogression is the last 'legally enforceable' plan used in the jurisdiction." *McConnell*, 201 F.

The Secretary's racial gerrymandering attack on Plan 8015's CD-5 fares no better. Plan 8015 was vetoed by the Governor and thus was never enacted into law. *See* Pls.' Br. at 7-8 & Exs. 9, 10. The Secretary's entire argument before this Court thus hinges on the Court's willingness to issue an advisory opinion on a hypothetical district. *But see State v. Barati*, 150 So. 3d 810, 813-14 (Fla. 1st DCA 2014) ("Under the Florida Constitution, only the Florida Supreme Court has the jurisdiction to issue advisory opinions." (citations omitted)); *McMullen v. Bennis*, 20 So. 3d 890, 892 (Fla. 3d DCA 2009) ("[T]rial courts have no authority to issue advisory opinions to parties."); *see also Dep't of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla.1994) ("[P]arties must not be requesting an advisory opinion, except in those rare instances in which advisory opinions are authorized by the Constitution." (citation omitted)); *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991) (stating that petitions for declaratory relief "should deal with a present, ascertained or ascertainable state of facts").

The Secretary tries to shore up his claim by asserting that Plan 8015's CD-5 "is the kind of district Plaintiffs seek—and have sought throughout this litigation." Sec'y's Br. at 14. But the Secretary's attempt to litigate Plaintiffs' preferred remedy fails for at least three reasons. *First*, Plaintiffs' claim is simply that the Enacted Map violates the Florida Constitution's non-diminishment provision, *see* Am. Compl. at 33 (Count I); it does not ask this Court to impose any

Supp. 2d at 644, opinion clarified (Apr. 18, 2002); *see also LWV I*, 172 So. 3d at 404-05 (considering the 2002 plan as the benchmark plan for measuring retrogression in 20212 plan). The benchmark plan can be a court-adopted plan. *See, e.g.*, *Texas v. U.S.*, 831 F. Supp. 2d 244, 255-56 & n. 9 (D.D.C. 2011) (using court-adopted plan as benchmark); *Markham v. Fulton Cnty. Bd. of Registrations & Elections*, No. Civ.A.1:02-CV1111WB, 2002 WL 32587313, at *6 (N.D. Ga. May 29, 2002) (same). Courts presume the previous map is the appropriate benchmark unless the district has been "formally declared" unconstitutional. *McConnell*, 201 F. Supp. 2d at 644. Indeed, both the Florida House and Senate considered Benchmark CD-5 to be the benchmark for purposes of analyzing compliance with the Florida Constitution's non-diminishment provision during the 2021 redistricting cycle, *see* Pls.' Br. at 5, and Defendants stipulated "to the facts relevant to Plaintiffs' diminishment claim" regarding the "Benchmark Plan" in place during the 2016, 2018, and 2020 congressional elections, Stip. III.A, IV.B, & Ex. 1 ¶ 1.

specific remedy for that constitutional violation, let alone imply that Plan 8015 is the only remedy to their diminishment claim. *See id.*

Second, neither Plaintiffs' temporary injunction motion nor their summary judgment motion changed their underlying claim. *See* Pls.' Mot. Summ. J. at 16 (asking this Court to declare the Enacted Map invalid but not seeking a specific remedy); Pls.' Mot. Temp. Inj. at 3 (requesting that the Court "ensure that a necessary remedy is timely adopted and a lawful congressional plan is in place in North Florida"). Using Plan 8015's CD-5 as an example to demonstrate that the State *could have* drawn a compliant district is not equivalent to demanding that the district be judicially installed. Nor can the Secretary read into the Parties' Stipulation any insistence by Plaintiffs on Plan 8015 as the singular remedy to their claim. Rather, the Parties "agree[d]" that if Plaintiffs prevail against Defendants' affirmative defenses, "*an* appropriate remedy to the diminishment in North Florida" would resemble Plan 8015's CD-5, "so long as that remedy is consistent with the courts' rulings." Stip. IV.D (emphasis added); *see also id.* VII.A (agreeing that if Plaintiffs prevail and the Legislature fails to enact a remedial map, "neither Plaintiffs nor Defendants will oppose the Court's adoption of or seek a stay of Exhibit 2 [incorporating Plan 8015's CD-5] (assuming Exhibit 2 is consistent with the ruling of an appeals court)"). Thus, the Joint Stipulation does not dictate a specific remedy as a target for Defendants' racial gerrymandering attack, but rather contemplates an agreed-upon remedy in the event Defendants' racial gerrymandering defense fails.

Third, in assuming Plan 8015 would become law if Plaintiffs prevail on their claim, the Secretary reads the Legislature out of the remedial process entirely—contrary to governing law and the Parties' Stipulation. As the U.S. Supreme Court has repeatedly recognized, it is "appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to

devise . . . its own plan." *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). Florida courts have done the same. *See Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1083 (Fla. 1st DCA 2022), *writ denied*, 340 So. 3d 475 (Fla. 2022) ("The supreme court in fact repeatedly recognized that the Legislature, not the courts, has the prerogative to redraw the lines where the first lines were found wanting.") (collecting cases). Consistent with this precedent, the Parties' Stipulation specifically reserves to the Legislature the first opportunity "to enact a remedial map." Stip. VI(D) & VII(A). The Stipulation does not purport to skip over the legislative process or bind the Legislature to Plan 8015 or any specific remedial map.[5]

The Secretary's argument that his affirmative defense somehow precludes judgment on Plaintiffs' diminishment claim thus puts the cart before the horse. By attacking Plan 8015's CD-5, the Secretary presupposes that Plaintiffs have *already* been granted judgment on their diminishment claim. *See* Stip. VII. In reality, only *if* Plaintiffs prevail on Count I, and only *if* the political branches either fail to timely enact a remedial district *or* they enact a map to which Plaintiffs object as failing to remedy the diminishment *and* the Court agrees with Plaintiffs' objections, and only *if* the Court adopts Plan 8015 as a judicially-imposed remedy, does the Court *then* have reason to entertain Defendants' claim that Plan 8015 is itself a constitutional violation. *See Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1398 (E.D. Wash. 2014) (explaining that concerns about "the appropriate *remedy* for a violation of" an anti-discrimination law "are not especially germane at [the liability] stage of the proceedings" because "the singular focus . . . is whether Plaintiffs can establish a [VRA] violation in the first instance").

[5] Indeed, the Legislature's own advancement of a purportedly performing district that was based in Duval County undermines Defendants' attack on a pre-determined East-West configuration of CD-5. *See* Sec'y's Br. at 8; *see also* Pls.' Br. Ex. 8, Feb. 25, 2022 House Tr. at 30:17-23 (House concluding that a Duval-only version of CD-5 would be a "reliable performing district").

Ultimately, Defendants are attacking a strawman—either a map from Florida's past or a map that may be in Florida's future. Defendants have no standing to raise—and this Court has no authority or reason to referee—these hypothetical disputes. The Court should reject Defendants' attempt to litigate non-existent maps and declare the Enacted Map—the only map before the Court—to be a violation of Florida law and reaffirm Floridians' right to congressional districts that comply with the Florida Constitution.

IV. Even if Defendants *could* challenge a hypothetical remedial district, Defendants do not meet their burden to show that Plan 8015's CD-5 is a racial gerrymander.

Even if the Court were to entertain Defendants' speculative racial gerrymandering claim against a district that is not in place, Defendants fail to meet their demanding burden to prove that Plan 8015's CD-5 is a racial gerrymander.[6]

A. Defendants bear the burden to prove racial gerrymandering.

As an initial matter, Defendants' confusion about the scope of these proceedings also extends to their understanding of which party bears the burden of proof. Plaintiffs have the burden to prove diminishment, and they have met it, as evidenced by Defendants' own stipulation "to the facts relevant to Plaintiffs' diminishment claim," Stip. III & Ex. 1, and their failure to defend the Enacted Map under Florida law, *see supra* Argument III.A. Now, Defendants have the burden of proving their affirmative defense. *Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So. 3d 1086, 1096 (Fla. 2010) (citing *Hough v. Menses*, 95 So. 2d 410, 412 (Fla. 1957)). This is because "[a]n affirmative defense is an assertion of facts or law *by the defendant* . . . and the plaintiff is not bound to prove that the affirmative defense does not exist." *Id.* (emphasis added); *see also id.* at 1097 (holding that defendant "was required to present evidence to the *fact-finder*"). Like in *Custer*, the

[6] As set forth above, *supra* Argument III.B, Defendants' racial gerrymandering claim fails at the outset because they fail to establish standing to challenge Plan 8015's CD-5 (or Benchmark CD-5), as they have not asserted any "individualized harm" as residents of the challenged districts. *Hays*, 515 U.S. at 744-45.

"burden of proof [does not] shift[]" to Plaintiffs merely because Defendants raised the specter of racial gerrymandering "during Plaintiffs' case-in-chief." *Id.*

What's more, in the racial gerrymandering context, it is always the party claiming unconstitutional gerrymandering—here, Defendants—that has the burden to prove that an allegedly gerrymandered district "was enacted with discriminatory intent." *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018); *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995) (holding that the burden to establish racial predominance lies with party claiming unconstitutional racial gerrymandering); *id.* at 928-29 (O'Connor, J., concurring). "The determination that a particular district is the product of a racial gerrymander is a fact-intensive inquiry." *McConnell*, 201 F. Supp. 2d at 644. Defendants, therefore, must "show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller*, 515 U.S. at 916. The U.S. Supreme Court has admonished that "courts [must] exercise extraordinary caution in adjudicating" racial gerrymandering claims given the critical "distinction between being aware of racial considerations and being motivated by them," and the "evidentiary difficulty" of proving such a claim. *Id.* at 916.[7]

It is under this demanding standard that Defendants—not Plaintiffs—must prove that Plan 8015's CD-5 is a racial gerrymander. As detailed below, they fall far short.

[7] Moreover, while the burden of the party proving a racial gerrymander is always "demanding," *see id.* at 928, it is "exponentially more difficult" to show that race predominated "in a *court-ordered* redistricting plan," such as Benchmark CD-5 or any future court-adopted remedy (such as Plan 8015) to the State's constitutional violation. *King v. State Bd. of Elections*, 979 F. Supp. 582, 605 (N.D. Ill.), *vacated sub nom. King v. Illinois Bd. of Elections*, 519 U.S. 978 (1996).

B. Defendants fail to establish racial predominance.

Defendants have shown neither direct nor circumstantial evidence of racial predominance. The legislative record shows that race was but one of several considerations in drawing Plan 8015's CD-5. And the potential remedial district scores reasonably well—in some cases, extremely well—on race-neutral traditional districting criteria. As Plaintiffs show, CD-5 simply does not resemble other districts where race has been found to predominate. A racial gerrymander it is not.

1. There is no direct evidence of racial predominance.

Defendants' insistence that race was considered unlawfully in drawing CD-5 continues to confuse racial *consciousness*, which is permitted, with racial *predominance*, which triggers strict scrutiny. *See* Pls.' Br. at 24-25; *see also Allen*, 143 S. Ct. at 1512 (plurality opinion) (reaffirming "[t]he line that we have long drawn [] between consciousness and predominance" of race). The statements from the legislative record highlighted by the Secretary, *see* Sec'y's Br. at 7-8, show nothing more than race-consciousness in an attempt to comply with Florida law. And as set forth above, a mapmaker's awareness of or intent to comply with minority voting protections does not itself establish that race predominated in drawing a district. *See supra* Argument I.C; *see also Allen*, 143 S. Ct. at 1511 (plurality opinion) (finding that race did not predominate where mapmaker "took several other factors into account, such as compactness, contiguity, and population equality"); *DeWitt v. Wilson*, 856 F. Supp. 1409, 1412-14 (E.D. Cal. 1994) (finding race did not predominate where redistricting plan "sought to balance the many traditional redistricting principles, including the requirements of the Voting Rights Act"), *aff'd in part, appeal dismissed in part*, 515 U.S. 1170 (1995). Defendants point to no direct evidence that race *predominated* in the drawing of Plan 8015's CD-5. To the contrary, the legislative record—including the statements that the Secretary himself cites—reveals other motives were at play,

including a desire to (1) preserve the core of an existing district,[8] (2) comply with the Florida Constitution on both Tier I *and* Tier II, and (3) avoid litigation over the district, *see* Pls.' Br. at 30; *see also* Sec'y's Br. at 8 ("Plan 8015 was an 'attempt at continuing to protect the minority group's ability to elect a candidate of their choice, addressing compactness concerns, and working to make sure we bring this process in for a landing during our regular session.'" (quoting Sec'y's Ex. H at 24:16-24)).

The record undermines any suggestion "that the legislature 'subordinated' other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to 'racial considerations.'" *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (quoting *Miller*, 515 U.S. at 916). Rather, it shows that the Legislature, though aware that it needed to draw a district that did not diminish Black voting strength in North Florida, did not conduct any racial performance analysis of Plan 8015's CD-5 until *after* it had drawn the district. *See, e.g.*, Pls.' Br. Ex. 7, Mar. 4, 2022 Fla. Senate Tr. at 25:7-19 (Chair Rodrigues confirming a functional analysis was performed on the district after the district was already drawn to confirm compliance with the non-diminishment standard). This is in stark contrast to districts in which courts have found racial predominance, where mapmakers prioritized racial considerations while making individual line-drawing decisions. *See, e.g.*, *Cooper*, 581 U.S. at 300 (finding race predominated where mapmaker "moved the district's borders . . . to ensure that the district's racial composition would 'add[ ] up correctly,' deviat[ing] from the districting practices he otherwise would have followed"); *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 155 (E.D. Va. 2018) (finding race

[8] The Secretary himself points to evidence that "Plan 8015 contained a North Florida 'district' whose 'configuration' was 'similar to the benchmark district.'" Sec'y's Br. at 8 (quoting Sec'y's Ex. H at 24:6-15). And although the Secretary later suggests that core retention is impermissible, his argument is limited to those contexts where core retention is "in pursuit of a racial target," Sec'y's Br. at 13, which it is not here, *see supra* Argument I.B. Moreover, the Secretary relies on cases that do not involve diminishment claims or the use of benchmark districts. *See* Sec'y's Br. at 13.

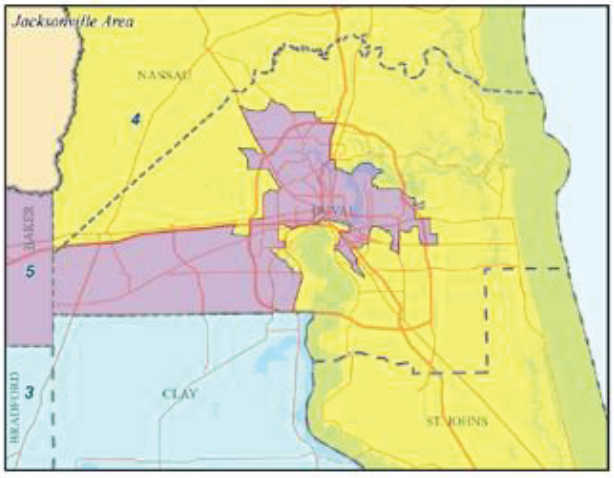
predominated where mapmaker moved specific populations in and out of the district to reach 55% BVAP target); *Perez v. Abbott*, 267 F. Supp. 3d 750, 789 (W.D. Tex. 2017), *aff'd in relevant part*, 138 S. Ct. 2305 (2018) (finding race predominated where mapmaker "started by swapping whole precincts between the districts, but quickly began trading populations at the block level, using racial shading and [Hispanic Voting Age Population] as a proxy for [Spanish-Speaking Voter Registration]").

Indeed, a comparison of Benchmark CD-5 to Plan 8015's CD-5 shows that the Legislature was motivated to comply with traditional districting criteria in drawing the district. For example, in comparison to Benchmark CD-5, CD-5 in Plan 8015:

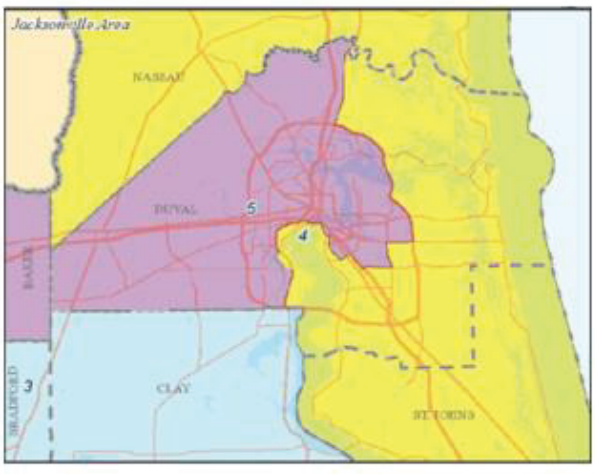
- Reduced a city split/kept an additional city whole;
- Significantly increased its use of political and geographic boundaries (as just one example, CD-5 in Plan 8015 is now bounded by a county line 73% of the time, up from 59% in Benchmark CD-5);
- Decreased its perimeter (from 711 to 646 miles); and
- Decreased its area (from 3,910 to 3,648 square miles).

Compare Stip. Ex. 3 at 2 *with* Pls.' Br. Ex. 6, CS-SB Summary at 3. The Legislature also made significant effort to smooth CD-5's boundaries in Plan 8015 in both Jacksonville and Tallahassee.

Jacksonville Inset (Benchmark)



Jacksonville Inset (Plan 8015)



Compare Stip. Ex. 3 at 1 *with* Pls.' Br. Ex. 6, CS-SB Summary at 2. These kinds of improvements, which Chair Sirois highlighted in session, *see* Pls.' Br. Ex. 8, Feb. 25, 2022 House Tr. at 45:11-46:6 (describing effort to improve compliance with political and geographic boundaries and keep more cities whole in CD-5 in Plan 8015), plainly show that the Legislature did not subvert traditional redistricting criteria in drawing the district. In fact, while nearly all of the Tier II metrics *improved* in Plan 8015's CD-5, the BVAP of CD-5 *decreased* from 46.2% in the Benchmark Map to 43.4% in Plan 8015, *compare* Stip. Ex. 3 at 2 *with* Pls.' Br. Ex. 6, CS-SB Summary at 3, thus belying any claim that the Legislature was committed to maintaining an express racial target or maximizing Black voting strength at the expense of race-neutral criteria.

2. There is no circumstantial evidence of racial predominance.

As the U.S. Supreme Court has held, a district's compliance with traditional redistricting criteria indicates that race did not predominate in the drawing of a district and "may serve to defeat a claim that a district has been gerrymandered on racial lines." *Shaw*, 509 U.S. at 647; *see also Vera*, 517 U.S at 959-60 (examples of "traditional redistricting principles" include "natural geographical boundaries, contiguity, compactness, and conformity to political subdivisions"); *Allen*, 143 S. Ct. at 1510-11 (plurality opinion) (finding that race did not predominate where mapmaker considered race but also considered traditional redistricting criteria); *Miller*, 515 U.S. at 928 (O'Connor, J., concurring) (requiring party asserting racial gerrymandering claim to demonstrate "substantial disregard of customary and traditional districting practices").

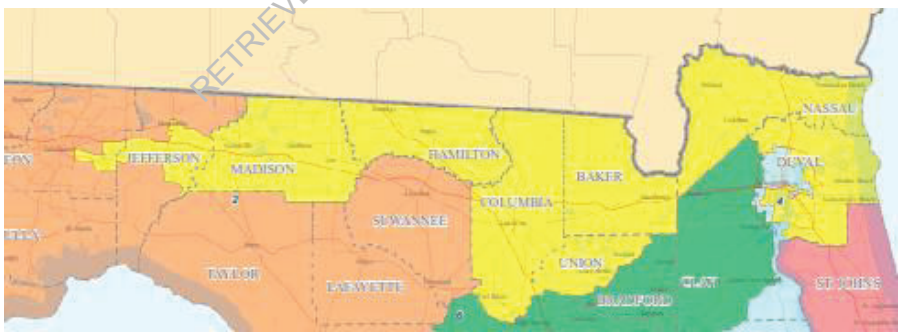
As Plaintiffs show below, CD-5 in Plan 8015 complies with traditional redistricting criteria and bears no resemblance to districts where courts have found race to predominate.

a. CD-5 complies with traditional redistricting criteria.

Defendants grossly overstate CD-5's characteristics in dismissing the district as a racial gerrymander. *See* Legis. Defs.' Br. at 9-10 (deriding CD-5 as an "extreme outlier" on Tier II

criteria and contending it "abandons" traditional redistricting principles). But CD-5 performs just as well—and sometimes *better*—on several traditional redistricting criteria as other districts in the Enacted Map.

Length. While Defendants call CD-5 a "sprawling, 200 mile" district, CD-5's length is largely a factor of North Florida's sparse population. *See, e.g.*, Pls.' Br. Ex. 5, Feb. 18, 2022 House Tr. at 48:17-49:9 (Rep. Skidmore describing CD-5's length "in the context of geographic constraints in the region," including "rural counties, where you have less population"); *id.* at 89:18-24 (Rep. Harding explaining to Mr. Popper, "I come from a rural part of Florida, where [] large and long districts [are] something that we are used to."). Indeed, the district that replaced Benchmark CD-5 in North Florida, Enacted CD-2, now spans 215 miles, *see* Stip. Ex. 4 at 1, making it *even longer* than both Benchmark CD-5, *see* Stip. Ex. 3 at 1, and Plan 8015's CD-5, *see* Pls.' Br. Ex. 6, CS-SB Summary at 2. In fact, well before Benchmark CD-5 ever existed, Florida's congressional plan from 2002 to 2012 included a district which, like CD-5, spanned from Leon County to Duval County. *See* **Ex. 1**, 2002 Congressional Districts.



The length of Plan 8015's CD-5 is thus entirely consistent with the geography, the demographics, and the State's tradition of congressional districting in North Florida.

County Splits. While Defendants deride CD-5 for spanning eight counties, four of which are split, *see* Sec'y's Br. at 11; Legis. Defs.' Br. at 10, the district is not an outlier in this regard.

For example, Enacted CD-6 also splits four counties, *see* Stip. Ex. 4 at 2, and Enacted CD-2 spans no fewer than 16 counties, while Enacted CD-3 spans 12 counties. *See id.*

City Splits. CD-5 performs well on city splits relative to districts in the Enacted Map, keeping 16 cities whole and splitting only two cities (Tallahassee and Jacksonville, the latter of which must be split in any map because it is too large to fit in one district). *See* Pls.' Br. Ex. 6, CS-SB Summary at 3. The Enacted Map has several districts that split more cities, including one district with as many as eight city splits. *See* Stip. Ex. 4 at 2. Plan 8015's CD-5 also out-performs the majority of districts in the Enacted Map on keeping cities whole. *See id*. For example, CD-14 in the Enacted Map splits every city it touches, even in a region in which splitting cities is not required to satisfy equal population (Tampa Bay). *See id.*

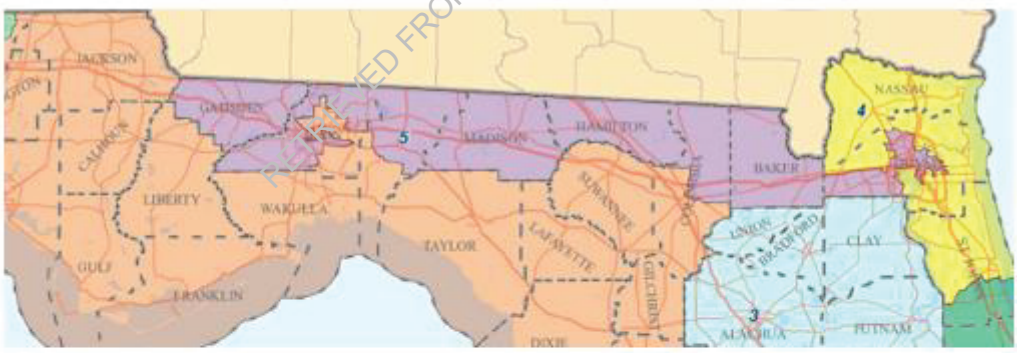
Political and Geographic Boundaries. CD-5 performs extraordinarily well on adherence to utilizing "existing political and geographic boundaries." Fla. Const. art. III, § 20 (b). Florida measures this by calculating which of the district's boundaries are bounded by a city, county, roadway, waterway, or railway. *See Apportionment I*, 83 So. 3d at 638. The purpose of this requirement is to "prevent[] improper intent" by allowing mapmakers to "pick-and-choose" their boundaries. *Id.* CD-5 in Plan 8015 relies on "non-political or geographic boundaries" for only 2% of its boundaries, which is better than nearly every district in the Enacted Map. *See* Pls.' Br. Ex. 6, CS-SB Summary at 3. The average district in the Enacted Map relies on "non-political or geographic boundaries" for 14% of its boundaries, and only one district in the Enacted Map performs better than CD-5 on this measure. *See* Stip. Ex. 4 at 2.

Equal Population. CD-5 satisfies equal population, unquestionably. *See* Pls.' Br. Ex. 6, CS-SB Summary at 3 (showing 0.00% population deviation).

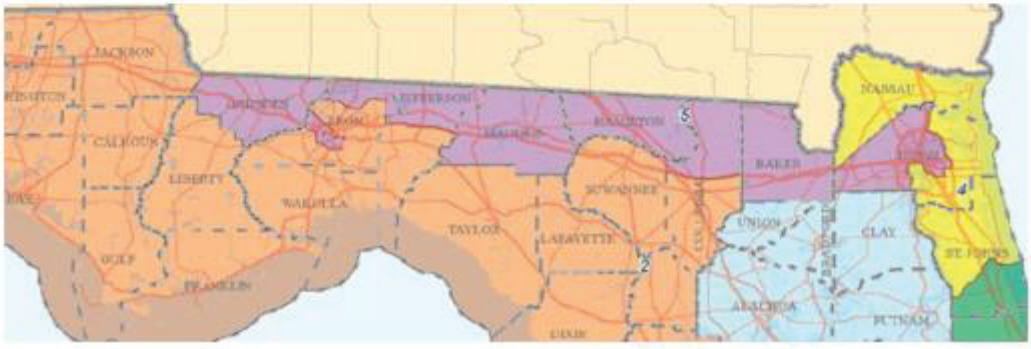
Contiguity. Contiguity captures the extent to which all parts of a district are connected, rather than meeting only at a common corner or right angle. *See Apportionment I*, 83 So. 3d at 628. CD-5 satisfies Florida's contiguity requirement, *see* Fla. Const. art. III, § 20 (a), as confirmed by a visual inspection of the district, *see* Pls.' Br. Ex. 6, CS-SB Summary at 2.

Compactness. Florida's compactness standard "refers to the shape of the district" to "ensure that districts are logically drawn and that bizarrely shaped districts are avoided." *Apportionment I*, 83 So. 3d at 636. The Florida Supreme Court has repeatedly emphasized that the "Florida Constitution does not mandate . . . that districts . . . achieve the highest mathematical compactness scores." *Apportionment I*, 83 So. 3d at 635. And as Plaintiffs have already shown, the Florida Supreme Court approved Benchmark CD-5's compactness when it adopted the district. *LWV I*, 172 So. 3d at 406. CD-5 in Plan 8015 decreases the footprint and smooths the boundaries of Benchmark CD-5 even further, as confirmed by a visual inspection and shown below.

Benchmark



Plan 8015



Compare Stip. Ex. 3 at 1 *with* Pls.' Br. Ex. 6, CS-SB Summary at 2. There is nothing bizarrely shaped about the district, and certainly nothing more bizarre than what was already blessed by the Florida Supreme Court.

Although Defendants complain about CD-5's low compactness scores, *see* Sec'y's Br. at 11; Legis. Defs.' Br. at 9, these scores are not unusual among Florida districts. The Court blessed several House districts last cycle with relatively low compactness scores, even upholding one district (HD 88) with lower compactness scores than CD-5. *See* Pls.' Br. Ex. 15, House Br. at 59-60 (citing *Apportionment I*, 83 So. 3d at 648-50, and noting that the Court upheld HD 88 with a Polsby-Popper score of .08, Reock score of .08, and Convex Hull score of .34); *see also* Pls.' Br. Ex. 6, CS-SB Summary at 3 (showing Plan 8015's CD-5 has a Polsby-Popper score of .11, Reock score of .11, and Convex Hull score of .66). And this redistricting cycle, the Florida House itself asked the Court to uphold several House seats with relatively low compactness scores, s*ee* Pls.' Br. Ex. 15, House Br. at 59-60, which the Court did, *see In re S. J. Res. of Legis. Apportionment 100*, 334 So. 3d 1282, 1287-88 (Fla. 2022) (at the facial review stage, holding the House's districts complied with both Tier I and Tier II criteria).[9]

While CD-5 in Plan 8015 does have a relatively low Polsby-Popper score (.11) compared to other congressional districts in the Enacted Map, that core is still *eleven times better* than the Polsby-Popper score of the districts that courts have deemed to be racial gerrymanders (.01), as Plaintiffs show below. *See infra* Argument IV.B.2.b. As Judge Smith found at the temporary injunction phase, CD-5 "has a higher Polsby-Popper compactness score, indicating a higher degree of compactness, than 65 congressional districts in the United State[s]." *See Black Voters Matter*

[9] Plan 8015's CD-5 also has a higher Convex Hull score than four enacted House districts. *See* **Ex. 2**, Fla. House and Senate Joint Appendix at 448-49 (reporting lower Convex Hull scores for HDs 1, 88, 117, and 120).

Capacity Bldg. Inst., Inc. v. Byrd, No. 2022-ca-000666, 2022 WL 1684950, at *7 (Fla. Cir. Ct. May 12, 2022). It is simply not an extreme outlier as Defendants claim.

* * *

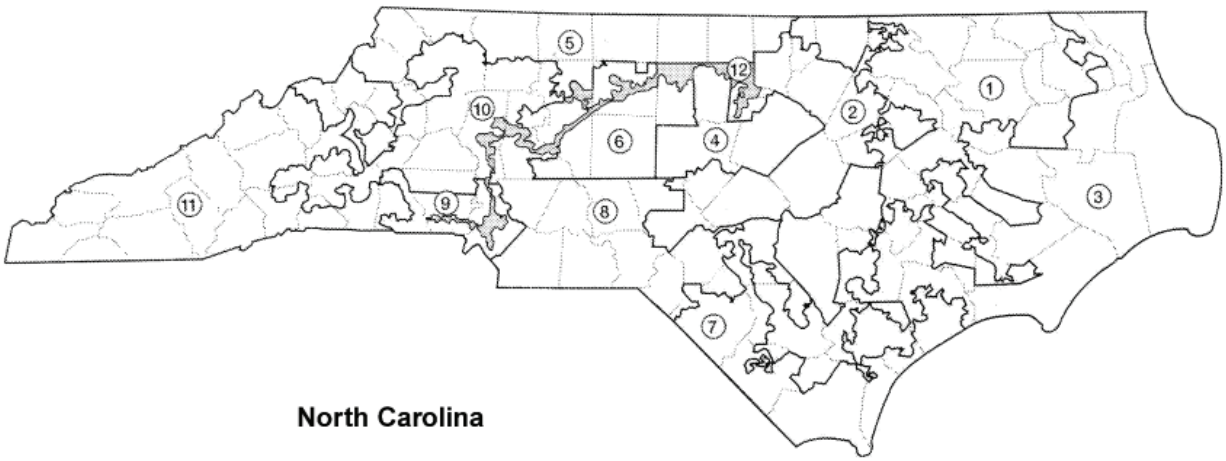
Defendants' attempt to vilify the configuration of Plan 8015's CD-5 thus falls flat upon review of the actual objective metrics of the district. Indeed, Defendants' professed outrage at the configuration of Plan 8015's CD-5 is belied by their willingness to tolerate similar—*or worse*—performance on traditional districting criteria in the Enacted Map.

b. CD-5 bears no resemblance to other districts ruled to be unconstitutional racial gerrymanders.

Although Defendants repeatedly invoke the specter of *Shaw* and other federal racial gerrymandering cases, CD-5 simply does not resemble the districts that have been struck down as unconstitutional racial gerrymanders. *See Apportionment I*, 83 So. 3d at 636 ("Compactness can be evaluated both visually and by employing standard mathematical measurements."). To put CD-5 in appropriate context, Plaintiffs provide a few examples of such districts, as well as districts where courts found that race did not predominate.

North Carolina's 12th Congressional District (Race Predominates). When Justice O'Connor addressed the compactness of North Carolina's 12th congressional district in *Shaw*, which Defendants repeatedly cite as if it were about CD-5 itself, she was referring to the following district:[10]

[10] This image of North Carolina's 12th district appears in Appendix C to the U.S. Supreme Court's decision in *Miller v. Johnson*, 515 U.S. 900 (1995).



North Carolina's 12th district was "for much of its length, no wider than the I-85 corridor," winding in a "snakelike fashion" to "gobble" Black neighborhoods. *Shaw*, 509 U.S. at 635-36. "At one point the district remains contiguous only because it intersects at a single point with two other districts before crossing over them." *Id.* at 636. As Justice O'Connor recounted, "[o]ne state legislator has remarked that '[i]f you drove down the interstate with both car doors open, you'd kill most of the people in the district.'" *Id.* (cleaned up). The district had a Polsby-Popper score of just .01.[11]

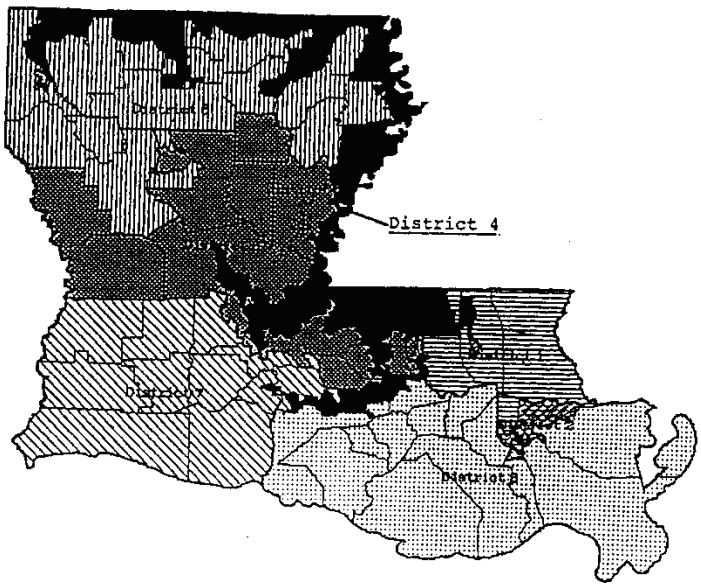
Texas's 18th, 29th, 30th Congressional Districts (Race Predominates). When the Court spoke about the "bizarrely shaped and far from compact" districts that the Secretary refers to from *Vera*, 517 U.S. at 979, the Court was referring to the three Texas congressional districts shown below from Houston and Dallas:

[11] All of the Polsby-Popper scores in this section, unless otherwise noted, come from Richard H. Pildes & Richard G. Niemi, *Expressive Harms, Bizarre Districts, and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483, 562 (1993), which the U.S. Supreme Court itself has relied upon and called "the leading statistical study of relative district compactness and regularity." *Vera*, 517 U.S. at 973.

See *id.* at 986 (Appendices A-C). As the Court wrote in finding that race predominated in the drawing of these districts, these districts were "formed in utter disregard for traditional redistricting criteria." *Id.* at 976. "Campaigners seeking to visit their constituents had to carry a map to identify the district lines, because so often the borders would move from block to block; voters did not know the candidates running for office because they did not know which district they lived in." *Id.* at 974 (cleaned up). Texas's 18th and 29th congressional districts had Polsby-Popper scores of .01 and its 30th district had a score of .02, which were among the very worst in the country. *Id.* at 973.

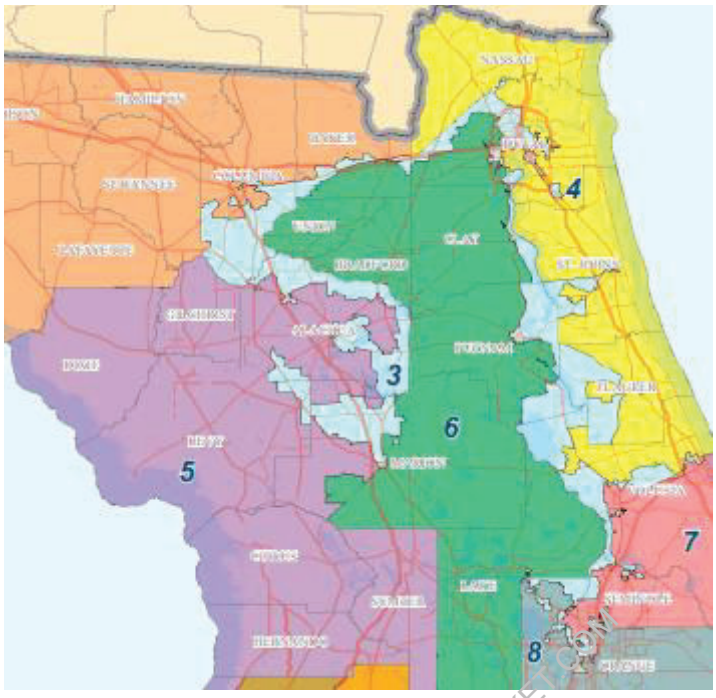
Louisiana's 4th Congressional District (Race Predominates). In *Hays v. Louisiana*, 839 F. Supp. 1188 (W.D. La. 1993), *vacated sub nom. Louisiana v. Hays*, 512 U.S. 1230 (1994), a three-judge federal court held that race predominated in the drawing of Louisiana's 4th Congressional District, pictured below:[12]

[12] The three-judge court's opinion was vacated after Louisiana drew new district lines. *See Louisiana v. Hays*, 512 U.S. 1230 (1994).



See id. at Appendix B. As the court described, the district was "highly irregular": "Like the fictional swordsman Zorro, when making his signature mark, District 4 slashes a giant but somewhat shaky 'Z' across the state, as it cuts a swath through much of Louisiana." *Id.* at 1199. The district had a Polsby-Popper score of just .01.

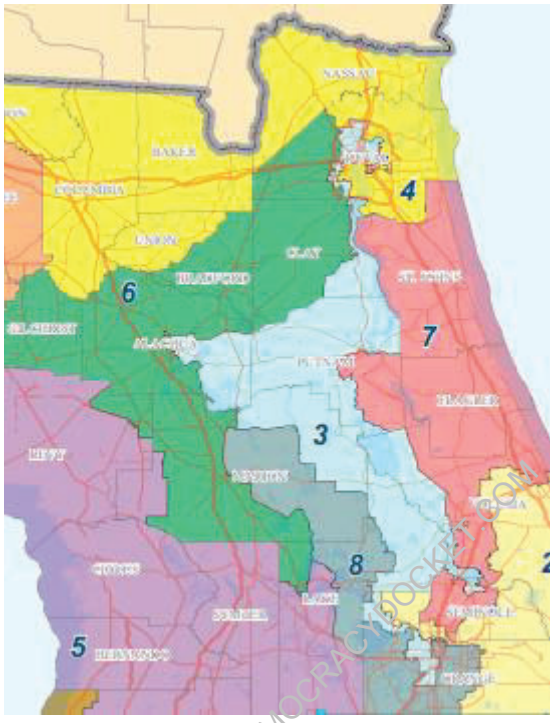
Florida's 3rd Congressional District (Race Predominates). In *Johnson v. Mortham*, 915 F. Supp. 1529 (N.D. Fla. 1995), a three-judge federal court held that race predominated in the Florida's 3rd congressional district (depicted in light blue below):



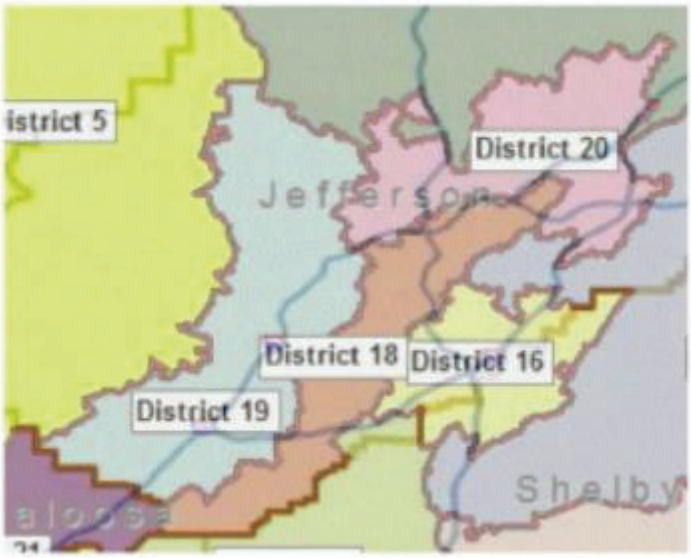
See **Ex. 3**, 1992 Congressional Districts. As the Court wrote: "The 3rd District is shaped like a gnawed wishbone . . . some parts of it no wider than 50 yards or the length of a city block. It begins near Orlando and thinly juts out to the edge of the Atlantic Ocean in places, leaving a trail that looks like an elongated Rorschach ink blot as it zigzags all the way up to Jacksonville. Then it meanders down toward the western part of the state, following a path that resembles spilled paint, before bouncing up and trickling into Levy County, which touches the Gulf of Mexico." *Id.* at 1555-56. This district had a Polsby-Popper score of just .01.

Florida's 3rd Congressional District (Race Does Not Predominate). In Florida's following redistricting cycle, Congressional District 3 was drawn as a district that would perform for a Black candidate of choice, yet a three-judge court found that race *did not* predominate in the drawing of the district. *See Martinez v. Bush*, 234 F. Supp. 2d 1275, 1301 (S.D. Fla. 2002). As the *Martinez* Court wrote, "[r]ace was considered" in the drawing of District 3 but "[t]raditional districting principles were also considered," making the district "reasonably compact." *Id.* The

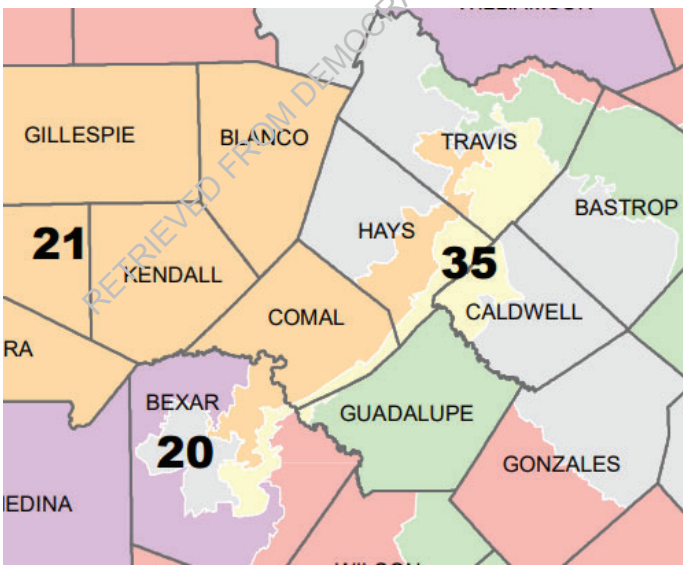
district from *Martinez*, which was in place in Florida from 2003-2012, appears below, *see* Ex. 1, 2002 Congressional Districts.



Alabama's 18th Senate District (Race Does Not Predominate). In 2017, following remand from the U.S. Supreme Court, a federal district court in Alabama undertook a careful analysis of 36 state legislative districts and upheld two-thirds of them against challenges under the Equal Protection Clause. *Ala. Legis. Black Caucus v. Ala.*, 231 F. Supp. 3d 1026, 1348 (M.D. Ala. 2017). Among the districts in which it held that race did not predominate was Alabama's 18th Senate District, which the plaintiffs challenged as a racial gerrymander. *Id.* at 1065-72. In upholding it, the court emphasized that "[t]he drafters maintained the core of the district" and that "[t[he total black population percentage[s] decreased," *id.* at 1065, both of which are also true for Plan 8015's CD-5. Even though the plaintiffs challenging the district presented alternatives that "split fewer precincts than the state did," the court found that "[t]he shape[] of the district[] [is] not so bizarre as to give rise to an inference of gerrymandering." *Id.* at 1068-72.



Texas's 35th Congressional District (Race Does Not Predominate). Finally, in 2018, the U.S. Supreme Court upheld Texas's 35th Congressional District against an Equal Protection Challenge. *See Abbott*, 138 S. Ct. at 2332.



See **Ex. 4**, Texas 2012 Congressional Districts. The Court agreed this district was "likely not a racial gerrymander and that even if it was, it likely satisfied strict scrutiny" because the legislature had "'good reasons' to believe [CD-35] was a viable Latino opportunity district" under the VRA. *Abbott*, 138 S. Ct. at 2332.

Plan 8015's CD-5, shown below, *see* Stip. Ex. 3, is either comparable to or more compact than the districts upheld in *Martinez*, *Alabama*, and *Abbott*. And it certainly does not resemble the districts struck down in *Shaw*, *Vera*, *Hays*, or *Mortham*.

C. Even if Defendants could overcome the racial-predominance threshold, a remedial CD-5 would be narrowly tailored to advance a compelling state interest.

Even if race *did* predominate, this Court's inquiry would not end there. It would then need to decide if the use of race was narrowly tailored to advance a compelling state interest. *See* Pls.' Br. at 26-28, 31-32. In arguing that it would not be, Defendants continue their shocking effort to undermine their own Constitution. This Court should not stand for it. Florida has the power to protect its own citizens from discriminatory state action, which the State did in amending Article III, Section 20(a). The Florida Constitution's minority-protection provisions ensure that the State cannot turn back the clock on minority citizens' access to the franchise—something that Black Floridians struggled for more than a century after Reconstruction to achieve. And because the non-diminishment provision acts a backstop against diminishment only when certain conditions are present, as in North Florida, any remedial CD-5 would be grounded in "good reasons," consistent with the narrow-tailoring standard.[13]

[13] The Florida House and Senate's argument that "Plaintiffs necessarily bear the burden to demonstrate that the use of race is justified by a compelling state interest and is narrowly tailored to accomplish that interest" is plainly incorrect. Legis. Defs.' Br. at 12 n.3. Defendants can point to no case where Plaintiffs—who are

1. Compliance with the Florida Constitution's non-diminishment provision is a compelling state interest.

As Plaintiffs have set forth in prior briefing, compliance with the non-diminishment provision of the Florida Constitution *is* a compelling state interest. The Florida Supreme Court has made clear that Florida's non-diminishment provision "follow[s] almost verbatim the requirements embodied in the [federal] Voting Rights Act." *Apportionment I*, 83 So. 3d at 619 (citation omitted and second alteration in original). And the U.S. Supreme Court has repeatedly assumed that compliance with the VRA constitutes a compelling state interest, even in the years after *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013);[14] *see also* Pls.' Br. at 26-27 (collecting cases). Indeed, 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) ("I would hold that compliance with § 5 of the Voting Rights Act can be [a compelling state] interest."); *id.* at 475 n.12 (Stevens, J., joined by Breyer, J., concurring) ("Justice Breyer has authorized me to state that he agrees with Justice SCALIA that compliance with § 5 of the Voting Rights Act is also a compelling state interest. . . . I, too, agree with Justice SCALIA on this point."); *id.* at 485 n.2 (Souter, J., joined by Ginsburg, J., concurring) ("Like Justice STEVENS, I agree with Justice SCALIA that compliance with § 5 is a compelling state interest."). Given the substantive similarity between Section 5 of the VRA and the Florida Constitution's non-

private parties and not state actors—would need to satisfy strict scrutiny, as that would defy the very purpose of the standard, which is to evaluate the constitutionality of *state action*. *See The Fla. High Sch. Activities Ass'n, Inc. v. Thomas By & Through Thomas*, 434 So. 2d 306, 308 (Fla. 1983) (explaining that "strict scrutiny . . . imposes a heavy burden of justification *upon the state* and should be applied only to those actions *by the state* which abridge some fundamental right or affect adversely some suspect class of persons" (emphases added)).

[14] Although Section 4's coverage formula was struck down, Section 5 of the VRA remains valid federal law. *See Shelby Cnty.*, 570 U.S. at 557 (ruling on the validity of Section 4(b), not Section 5, of the VRA).

diminishment provision, *see Apportionment I*, 83 So. 3d at 620-21, compliance with the latter likewise constitutes a compelling state interest—something that several legislators and Defendant Florida Senate have not only recognized but even *advanced* before the Florida Supreme Court. *See* Pls.' Br. at 27 (citing Pls.' Br. Ex. 16 at 38).

Defendants' arguments to the contrary tilt at windmills. Recognizing compliance with the Florida Constitution's non-diminishment provision as a compelling interest would not open the door to states defending a ban on interracial marriage. *See* Sec'y's Br. at 18. The federal supremacy clause expressly precludes compliance with state laws that directly conflict with federal law. U.S. Const. Art. VI, cl. 2. But that is not the case here, where courts can apply Florida's non-diminishment provision consistent with the U.S. Constitution. *See Allen*, 143 S. Ct. at 1516-17 (explaining that "under certain circumstances, [courts] have authorized race-based redistricting as a remedy for state districting maps that violate [anti-discrimination laws]"); *see also Apportionment I*, 83 So. 3d at 627 (reiterating that Florida's non-diminishment provision does not require or permit the Legislature to engage in racial gerrymandering). In fact, because the Florida Constitution's minority-protection provisions track the federal VRA's requirements, there is no risk that they are introducing a new state interest that could have unintended effects. *Cf. Brown v. Sec'y of State of Fla.*, 668 F.3d 1271, 1283 (11th Cir. 2012) (holding that, because Florida is already subject to the VRA, "it must surely be appropriate for a state legislature to take into account the effect that its new districts will have on racial and language minorities"). Nevertheless, Plaintiffs further explain Florida's authority and justification for the Florida Constitution's non-diminishment provision below.

a. Florida has the authority to protect its own citizens from discriminatory state action.

Defendants are so set on diminishing Black voting power that they would rather denounce their own sovereignty than comply with their constitutional duty. They argue that Florida's minority-protection provisions are less meaningful than those imposed by the federal government because Florida cannot be trusted to protect its own citizens. *See* Sec'y's Br. at 16 (explaining that a key difference between the VRA and the Florida Constitution's minority-protection provisions is that "[t]he Fourteenth and Fifteenth Amendments never trusted the states with [anti-discrimination] powers" but were "enacted to *prevent* states from discriminating based on race"); Legis. Defs.' Br. at 13 (drawing a distinction between the VRA and the Florida Constitution based on "States' denial of the equal protection of the laws on the basis of race"). But their arguments have no basis. As Defendants apparently concede, Florida has a long history of discriminating based on race, which continues to the present day. *See infra* Argument IV.C.1.b. That, however, does not render the State powerless to remediate that discrimination or take action to prevent it.

Quite the opposite. "In any given state, the federal Constitution [] represents the floor for basic freedoms; the state constitution, the ceiling." *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992). The U.S. Supreme Court has explained that its "established practice, rooted in federalism, [is] allowing the States wide discretion, subject to the minimum requirements of the Fourteenth Amendment, to experiment with solutions to difficult problems of policy." *Smith v. Robbins*, 528 U.S. 259, 273 (2000) (Thomas, J.). In the redistricting context, in particular, the Court has long given states *more* leeway to protect racial minorities than what is required, or even allowed, under federal law. *See Voinovich v. Quilter*, 507 U.S. 146, 156 (1993) ("[T]he federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law. But that does not mean that the State's powers are similarly limited. Quite the opposite is

true."); *Karcher v. Daggett*, 462 U.S. 725, 739 (1983) (acknowledging that "state legislatures could pursue legitimate secondary objectives" such as "protect[ing] the interests of black voters," as long as the resulting districts did not involve impermissible population deviations).

And courts, both state and federal, have not hesitated to uphold state minority-protection provisions similar to those in the Florida Constitution as consistent with the Equal Protection Clause of the U.S. Constitution. For example, federal courts rejected an Equal Protection Clause challenge to the California Voting Rights Act's (CVRA) redistricting-related minority-protection provisions. *Higginson v. Becerra*, 363 F. Supp. 3d 1118 (S. D. Cal. 2019), *aff'd* 786 F. App'x 705 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 2807 (2020). Recognizing that governments may adopt measures designed to eliminate racial disparities without race predominating, the Ninth Circuit held that strict scrutiny did not apply. *Id.* A state appellate court rejected a similar challenge to the CVRA, emphasizing that "[a] legislature's intent to remedy a race-related harm constitutes a racially discriminatory purpose no more than its use of the word 'race' in an antidiscrimination statute renders the statute racially discriminatory." *Sanchez v. City of Modesto*, 51 Cal. Rptr. 3d 821, 843 (Cal. Ct. App. 2006); *see also Portugal v. Franklin Cnty.*, 530 P.3d 994, 1011 (Wash. 2023) (en banc) (rejecting racial gerrymandering challenge to the Washington Voting Rights Act where it "mandates *equal* voting opportunities for members of every race, color, and language minority group").

The Florida Constitution's minority-protection provisions are intended to accomplish the same goal. As the Eleventh Circuit explained, "the minority provision does no more than attempt to provide equal opportunity for insular classes of voters." *Brown*, 668 F.3d at 1285. In fact, because it "closely tracks long-standing federal requirements . . . , it is hard to see how [the Florida Constitution's] minority provision could have an unlawful impact." *Id.* at 1284-85. To suggest that

Florida cannot act to protect its own voters, who themselves enshrined Article III, Section 20 into their state constitution, is plainly incorrect.

b. The Florida Constitution's minority-protection provisions were enacted in light of a history of pervasive discrimination against Black Floridians attempting to exercise political power.

Defendants' contention that Florida does not have a history of any "race-based problem" that its constitution could solve represents a careless—and insulting—summation of Florida's electoral history. Leaving aside Florida's storied history of discrimination against minorities in all walks of education, employment, housing, and more, Florida has a specific (and recent) history of utilizing discriminatory election practices that have inhibited minority voters from exercising political power. That history has been well documented by extensive legal precedent.

Florida maintained an all-white primary system until it was ruled unconstitutional in 1945 in *Davis v. Cromwell*, 156 Fla. 181, 184 (Fla. 1945), as a direct consequence of the U.S. Supreme Court's ruling in *Smith v. Allwright*, 321 U.S. 649 (1944). After Florida's effort to reinstate white-only primaries failed, its jurisdictions replaced them—for decades—with at-large election schemes and majority-vote requirements. At-large election systems, which courts repeatedly found were designed to ensure minority voters could not effectively exercise political power, were especially pervasive in North Florida. *See, e.g.*, *Solomon v. Liberty Cnty., Fla.*, 899 F.2d 1012 (11th Cir. 1990) (en banc), *cert. denied*, 498 U.S. 1023 (1991); *Bradford Cnty. NAACP v. City of Starke*, 712 F. Supp. 1523 (M.D. Fla. Feb 27, 1989, Jacksonville Division); *Tallahassee Branch of NAACP v. Leon Cnty., Fla.*, 827 F.2d 1436 (11th Cir. 1987), *cert. denied*, 488 U.S. 960 (1988); *McMillan v. Escambia Cnty., Fla.*, 748 F.2d 1037 (5th Cir. 1984); *NAACP v. Gadsden Cnty. Sch. Bd.*, 691 F.2d 978 (11th Cir. 1982).

In 1992, a three-judge court for the Northern District of Florida summarized the dire state of electing minorities to office in Florida:

> In the state of Florida, minorities have had very little success in being elected to either the United States Congress or the Florida Legislature. An African–American has not represented Florida in the United States Congress in over a century. In addition, only one Hispanic congressperson serves from Florida. From 1889 until 1968, African–Americans were unable to elect a single representative to the state house. Additionally, African–Americans were unable to elect a representative to the state senate until ten years ago. Until four years ago, no Hispanic state senator had ever been elected in Florida.

DeGrandy v. Wetherell, 794 F. Supp. 1076, 1079 (N.D. Fla. 1992). That same year, the Florida Supreme Court's then-Chief Justice Shaw remarked on the "substantial inability minorities in Florida have experienced in electing legislators of their choice throughout the past decade." *In re Constitutionality of S. J. Res.. 2G, Spec. Apportionment Sess. 1992*, 597 So. 2d 276, 292 (Fla. 1992) (C.J. Shaw, dissenting from Court's resolution approving Florida's 1992 Senate districts). When the Department of Justice later objected to Florida's 1992 redistricting plan, it noted "potential problems with the proposed plan in other areas" than the counties covered under Section 5, including in North Florida, which led to the Department of Justice expressly withholding its overall approval of the proposed plan at issue. *In re Constitutionality of S. J. Res. 2G, Spec. Apportionment Sess. 1992*, 601 So. 2d 543, 547 (Fla. 1992) (Shaw, C.J., concurring). Later, in the 2002 redistricting cycle, the Florida Supreme Court declined to weigh in on challengers' federal VRA claims at the facial review stage, reasoning the Court could only consider claims arising under the U.S. Constitution or Florida Constitution. *See In re Constitutionality of H. J. Res. 1987*, 817 So. 2d 819, 825 (Fla. 2002).

It was against this backdrop that Florida voters approved the Fair Districts Amendments to incorporate the VRA standards into the Florida Constitution by an overwhelming majority. As Justice Perry wrote in 2015, "[t]he people of this great state passed a constitutional amendment seeking to address the errors of the past . . . Floridians voted to add these new redistricting

mandates, and they 'could not have spoken louder or with more clarity.'" *LWV II*, 179 So. 3d at 300-01 (Perry, J., concurring) (cleaned up).

2. Plan 8015's CD-5 is narrowly tailored.

Plaintiffs set forth in their opening brief all the reasons that Plan 8015's CD-5 is narrowly tailored. *See* Pls.' Br. at 28, 31-32. The Secretary's arguments to the contrary are baseless.[15] First, and again, the Secretary is wrong to characterize the non-diminishment provision as having no geographic or temporal limits. *See* Sec'y's Br. at 19. The functional analysis anchors the non-diminishment provision's application only to those geographic areas where minority groups are populous enough and politically cohesively enough to elect their candidates of choice; and the reevaluation of districts every decade allows for change over time. *See supra* Argument I.A.

Second, the Secretary's bald assertion that the "good reasons" test for narrow tailoring does not apply to this case because there is no VRA claim at issue defies logic. *See* Sec'y's Br. at 19 ("And because this isn't a Voting Rights Act case, *Cooper*'s good-reasons test doesn't apply."). The fact that this is not a VRA case is of no moment: The "good reasons" test is part of the *racial gerrymandering* analysis that *Defendants* seek to inject into this case, not the VRA analysis. *See Ala. Legis. Black Caucus*, 575 U.S. at 278 ("[L]egislators 'may have a strong basis in evidence to use racial classifications in order to comply with a statute when they have *good reasons* to believe such use is required, even if a court does not find that the actions were necessary for [VRA] compliance.'" (citations omitted)); *see also Cooper*, 581 U.S. at 293 ("[T]he State must establish that it had 'good reasons' to think that it would transgress the [VRA] if it did *not* draw race-based

[15] The Florida House and Senate do not even purport to argue that CD-5 would fail the narrow tailoring inquiry. *See* Legis. Defs.' Br. at 12-15. Accordingly, if the Court holds that the public official standing doctrine bars the Secretary from pursuing his Equal Protection Clause affirmative defense, *see supra* Argument II, then the issue of narrow tailoring is undisputed.

district lines."). Defendants cannot assert a racial gerrymandering defense under federal law and then cherry-pick which elements of the racial gerrymandering inquiry apply.

To the extent that the Secretary is arguing that the "good reasons" test does not apply to Plaintiffs because they are private parties rather than the state, that argument simply highlights the fundamental mismatch between Defendants' arguments and the posture of this case. *See supra* Argument III.B. Plaintiffs have not put forward a district, and they have no authority to unilaterally install a district into Florida law. In any event, as private parties, Plaintiffs are not subject to the Equal Protection Clause at all. *C.R. Cases*, 109 U.S. 3, 11 (1883) ("Individual invasion of individual rights is not the subject-matter of the [Fourteenth] amendment."). If this Court enters judgment in favor of Plaintiffs on their diminishment claim and Defendants later choose to challenge an enacted or court-ordered remedial district as a racial gerrymander, then, at that point, the State would be responsible for the district such that the Equal Protection Clause would apply, along with the "good reasons" test.

CONCLUSION

Defendants' arguments fail at every turn: They misunderstand the very constitutional provision they are obligated to follow and seek to challenge here; they lack standing to challenge the constitutionality of inoperative districts or their own legal duties under the Florida Constitution; and they raise questions that are entirely moot or hypothetical, rather than making any effort to defend the Enacted Map itself. Even if Defendants could somehow clear those hurdles, Plaintiffs have shown that Defendants' arguments have no basis in law or fact.

For the foregoing reasons, and those set forth in their opening brief, Plaintiffs respectfully request that this Court enter judgment on their claim that the Enacted Map results in diminishment in contravention of Article III, Section 20(a) of the Florida Constitution.

Dated: August 21, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 21, 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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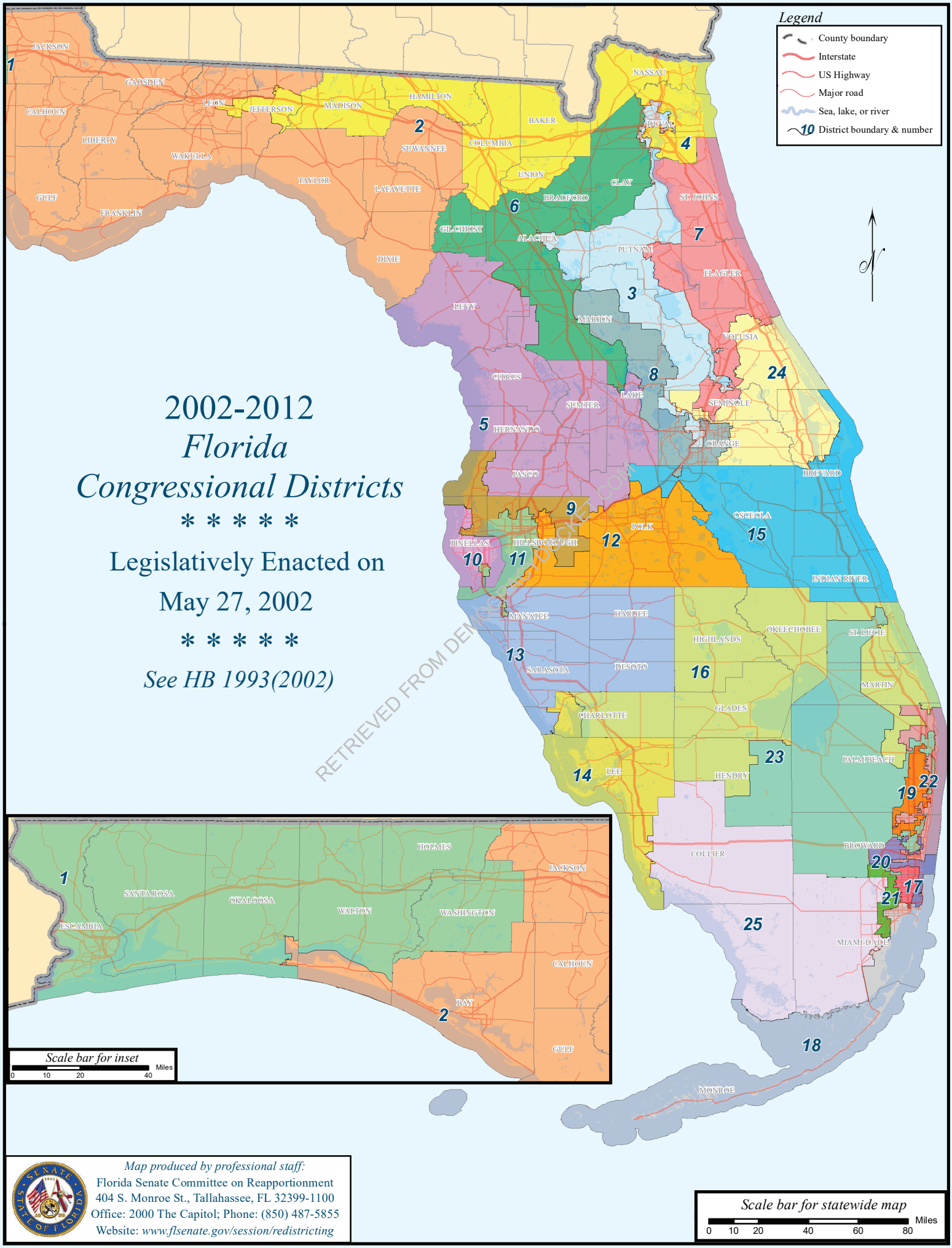
EXHIBIT 1


Legend
County boundary
Interstate
US Highway
Major road
Sea, lake, or river
10 District boundary & number
2002-2012
Florida
Congressional Districts
* * * * *
Legislatively Enacted on
May 27, 2002
* * * * *
See HB 1993(2002)
RETRIEVED FROM DEMOCRACYDOCKET.COM
JACKSON
GADSDEN
CALHOUN
LIBERTY
WAKULLA
LEON
JEFFERSON
MADISON
HAMILTON
SUWANNEE
TAYLOR
LAFAYETTE
GULF
FRANKLIN
BAKER
COLUMBIA
UNION
BRADFORD
NASSAU
DUVAL
CLAY
ST. JOHNS
GILCHRIST
ALACHUA
PUTNAM
FLAGLER
DIXIE
LEVY
MARION
VOLUSIA
CITRUS
SUMTER
LAKE
SEMINOLE
HERNANDO
ORANGE
PASCO
BREVARD
OSCEOLA
POLK
PINELLAS
HILLSBOROUGH
INDIAN RIVER
MANATEE
HARDEE
HIGHLANDS
OKEECHOBEE
ST. LUCIE
SARASOTA
DESOTO
MARTIN
GLADES
CHARLOTTE
PALM BEACH
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OKALOOSA
WALTON
WASHINGTON
ESCAMBIA
BAY
Scale bar for inset
0 10 20 40 Miles
Map produced by professional staff:
Florida Senate Committee on Reapportionment
404 S. Monroe St., Tallahassee, FL 32399-1100
Office: 2000 The Capitol; Phone: (850) 487-5855
Website: www.flsenate.gov/session/redistricting
Scale bar for statewide map
0 10 20 40 60 80 Miles

EXHIBIT 2

IN THE SUPREME COURT OF FLORIDA
Case No. SC22-131

IN RE: JOINT RESOLUTION OF
LEGISLATIVE APPORTIONMENT
_____/

PETITION APPENDIX

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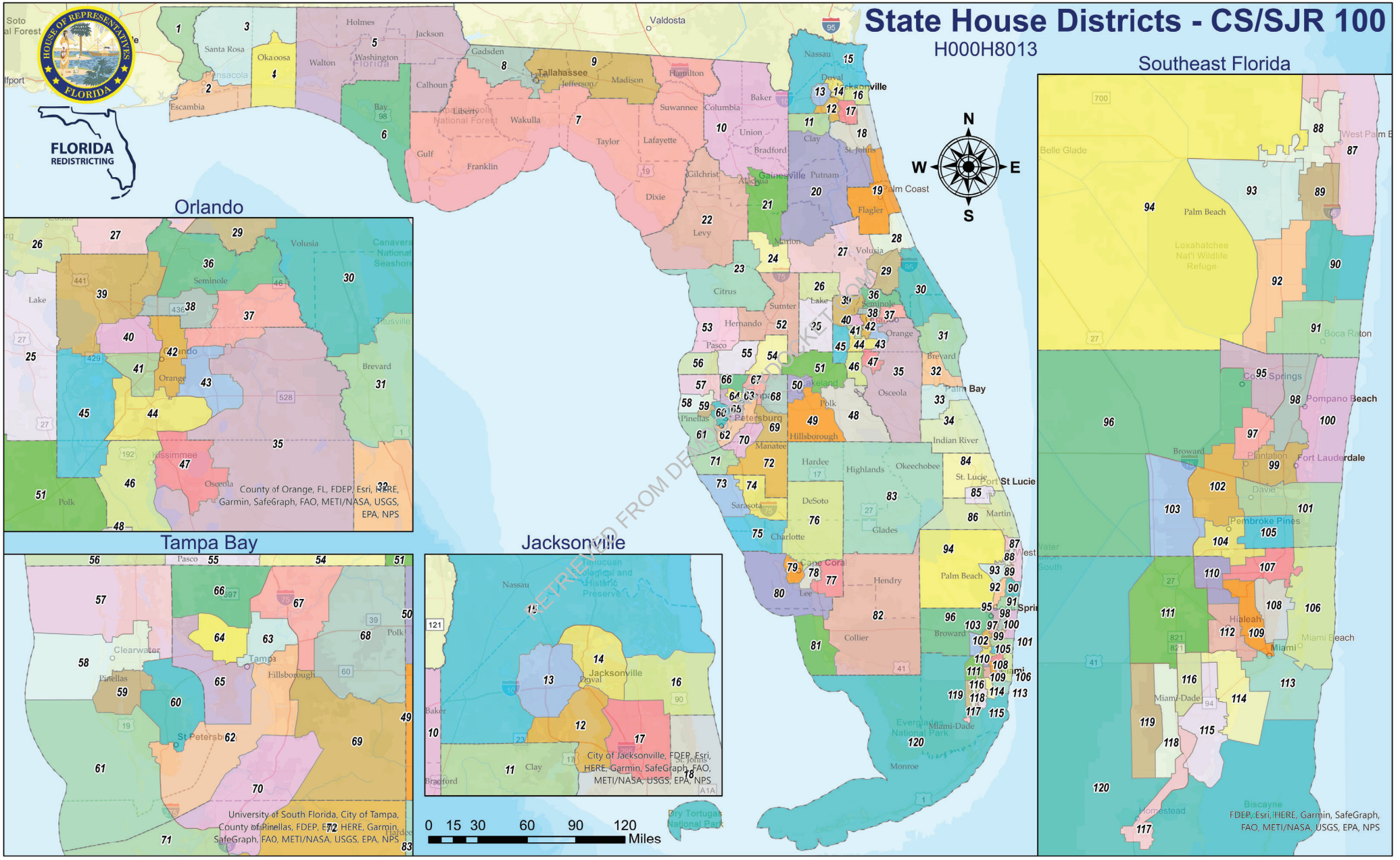


STATE HOUSE DISTRICTS - CS/SJR 100 - H000H8013

STATEWIDE SNAPSHOT

Total State Population:	21,538,187		Total Counties:	67	Reock Avg.	Median Reock
Ideal District Population:	179,485		Counties Split:	31	0.45	0.46
Mean Deviation:	2,850	1.59%	Counties Kept Whole:	36	Convex Hull Avg.	Median Convex Hull
Max Deviation:	4,252	2.37%	Total Cities:	412	0.82	0.83
Min Deviation:	-4,269	-2.38%	Cities Split:	53	Polsby Popper Avg.	Median Polsby Popper
Overall Deviation Range:	8,521	4.75%	Cities Kept Whole:	359	0.45	0.45

DISTRICT BREAKDOWN

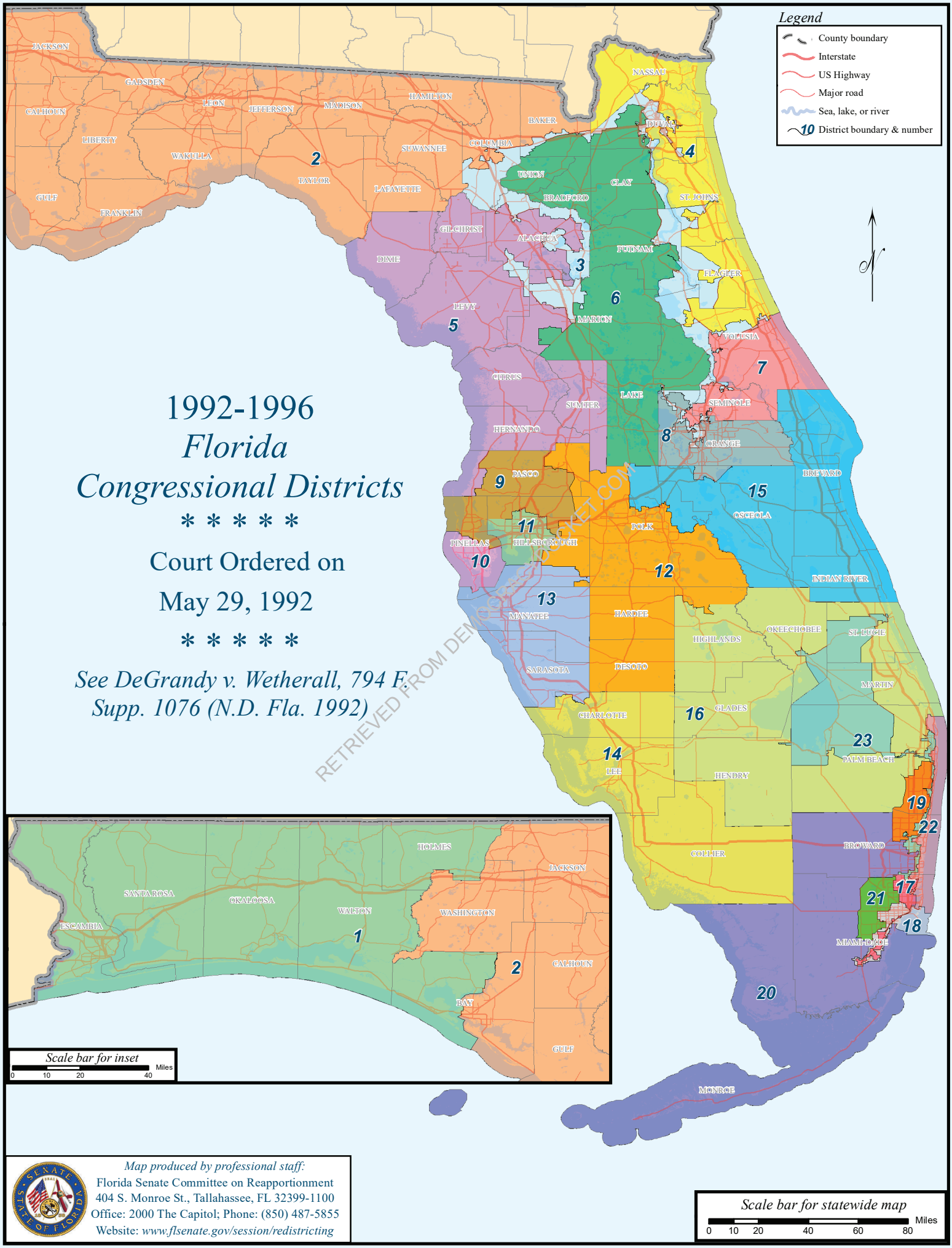
District	Population			Voting Age Population		Compactness			District	Population			Voting Age Population		Compactness		
	Total Population	Deviation from Ideal	% Deviation	BVAP %	HVAP %	Reock	Convex Hull	Polsby Popper		Total Population	Deviation from Ideal	% Deviation	BVAP %	HVAP %	Reock	Convex Hull	Polsby Popper
1	178,511	-974	-0.54	21.12	5.39	0.37	0.64	0.24	31	179,252	-233	-0.13	7.99	7.78	0.50	0.82	0.44
2	180,797	1,312	0.73	16.87	6.01	0.40	0.86	0.44	32	178,737	-748	-0.42	6.71	9.29	0.40	0.82	0.42
3	178,528	-957	-0.53	7.69	5.42	0.53	0.82	0.41	33	183,186	3,701	2.06	16.07	13.96	0.48	0.83	0.43
4	183,737	4,252	2.37	11.20	9.71	0.53	0.93	0.61	34	178,835	-650	-0.36	7.19	10.03	0.55	0.91	0.59
5	181,243	1,758	0.98	12.93	5.06	0.52	0.82	0.41	35	176,404	-3,081	-1.72	11.84	31.86	0.42	0.84	0.26
6	175,216	-4,269	-2.38	10.62	6.85	0.33	0.80	0.45	36	175,313	-4,172	-2.32	16.5	19.84	0.37	0.73	0.32
7	182,734	3,249	1.81	15.26	6.14	0.36	0.67	0.24	37	175,353	-4,132	-2.30	11.54	25.33	0.37	0.78	0.37
8	175,555	-3,930	-2.19	50.08	8.79	0.38	0.72	0.23	38	175,442	-4,043	-2.25	12.29	24.37	0.37	0.79	0.36
9	182,853	3,368	1.88	18.08	6.32	0.34	0.88	0.33	39	175,326	-4,159	-2.32	17.93	22.97	0.49	0.89	0.49
10	180,867	1,382	0.77	16.75	5.89	0.56	0.91	0.42	40	175,326	-4,159	-2.32	48.03	18.49	0.53	0.92	0.56
11	177,922	-1,563	-0.87	14.44	10.20	0.48	0.93	0.58	41	176,364	-3,121	-1.74	44.26	29.46	0.45	0.87	0.58
12	181,072	1,587	0.88	21.62	12.88	0.50	0.75	0.43	42	180,528	1,043	0.58	10.16	19.14	0.36	0.78	0.33
13	183,002	3,517	1.96	48.51	6.63	0.73	0.93	0.68	43	175,629	-3,856	-2.15	12.82	57.69	0.55	0.72	0.37
14	176,278	-3,207	-1.79	50.41	10.16	0.48	0.85	0.59	44	175,329	-4,156	-2.32	10.96	43.38	0.40	0.79	0.42
15	182,272	2,787	1.55	18.69	6.33	0.47	0.74	0.30	45	175,973	-3,512	-1.96	8.48	20.43	0.47	0.93	0.52
16	180,047	562	0.31	12.40	10.32	0.52	0.88	0.59	46	176,200	-3,285	-1.83	16.94	58.99	0.44	0.81	0.48
17	183,248	3,763	2.10	14.56	12.30	0.57	0.92	0.64	47	176,233	-3,252	-1.81	11.95	58.48	0.54	0.77	0.36
18	180,300	815	0.45	4.52	7.72	0.52	0.79	0.46	48	183,593	4,108	2.29	18.52	23.21	0.40	0.84	0.27
19	175,457	-4,028	-2.24	9.28	8.16	0.38	0.75	0.40	49	178,192	-1,293	-0.72	12.4	20.43	0.53	0.92	0.48
20	175,874	-3,611	-2.01	9.70	7.14	0.57	0.85	0.44	50	180,902	1,417	0.79	16.29	18.76	0.50	0.83	0.39
21	176,405	-3,080	-1.72	29.03	12.96	0.41	0.83	0.33	51	182,359	2,874	1.60	12.74	29.36	0.46	0.77	0.30
22	183,529	4,044	2.25	8.51	10.05	0.53	0.79	0.38	52	182,726	3,241	1.81	6.73	6.14	0.45	0.70	0.34
23	176,178	-3,307	-1.84	3.33	5.82	0.36	0.70	0.37	53	175,358	-4,127	-2.30	4.63	13.04	0.54	0.88	0.64
24	175,595	-3,890	-2.17	9.95	16.05	0.43	0.77	0.36	54	176,277	-3,208	-1.79	10.68	18.3	0.45	0.89	0.59
25	176,494	-2,991	-1.67	11.28	20.56	0.57	0.95	0.59	55	175,430	-4,055	-2.26	5.69	13.99	0.47	0.92	0.65
26	177,279	-2,206	-1.23	11.16	10.13	0.58	0.92	0.53	56	176,367	-3,118	-1.74	5.11	12.78	0.51	0.94	0.69
27	183,145	3,660	2.04	6.71	12.42	0.52	0.76	0.36	57	177,343	-2,142	-1.19	3.55	7.45	0.43	0.87	0.47
28	178,466	-1,019	-0.57	16.67	6.91	0.56	0.79	0.43	58	175,888	-3,597	-2.00	8.37	12.65	0.39	0.80	0.37
29	176,556	-2,929	-1.63	11.66	25.07	0.56	0.80	0.40	59	178,235	-1,250	-0.70	6.67	9.62	0.56	0.87	0.44
30	181,596	2,111	1.18	6.18	5.27	0.40	0.85	0.37	60	175,492	-3,993	-2.22	7.65	10.03	0.54	0.87	0.50

STATE HOUSE DISTRICTS - CS/SJR 100 - H000H8013

DISTRICT BREAKDOWN

District	Population			Voting Age Population		Compactness			District	Population			Voting Age Population		Compactness		
	Total Population	Deviation from Ideal	% Deviation	BVAP %	HVAP %	Reock	Convex Hull	Polsby Popper		Total Population	Deviation from Ideal	% Deviation	BVAP %	HVAP %	Reock	Convex Hull	Polsby Popper
61	175,321	-4,164	-2.32	4.70	8.29	0.52	0.88	0.59	**91**	180,714	1,229	0.68	6.08	14.65	0.50	0.92	0.60
62	176,028	-3,457	-1.93	39.87	20.73	0.26	0.66	0.28	**92**	179,284	-201	-0.11	7.50	12.67	0.30	0.75	0.38
63	175,559	-3,926	-2.19	44.70	24.06	0.49	0.78	0.47	**93**	180,537	1,052	0.59	15.33	24.97	0.45	0.88	0.51
64	175,706	-3,779	-2.11	11.73	56.66	0.58	0.86	0.59	**94**	178,736	-749	-0.42	20.34	20.04	0.60	0.94	0.55
65	176,912	-2,573	-1.43	7.40	17.79	0.33	0.69	0.38	**95**	181,346	1,861	1.04	22.08	23.93	0.39	0.78	0.45
66	175,639	-3,846	-2.14	8.21	24.25	0.47	0.90	0.61	**96**	180,503	1,018	0.57	25.31	30.92	0.52	0.91	0.57
67	177,964	-1,521	-0.85	20.06	21.36	0.46	0.76	0.46	**97**	181,456	1,971	1.10	57.94	21.59	0.55	0.88	0.51
68	175,705	-3,780	-2.11	10.54	25.75	0.61	0.96	0.62	**98**	183,663	4,178	2.33	34.96	23.13	0.30	0.72	0.35
69	175,349	-4,136	-2.30	16.14	22.17	0.48	0.82	0.45	**99**	180,790	1,305	0.73	52.02	17.95	0.45	0.83	0.43
70	175,478	-4,007	-2.23	12.98	19.24	0.39	0.83	0.47	**100**	182,865	3,380	1.88	8.31	16.74	0.37	0.89	0.51
71	175,460	-4,025	-2.24	10.90	17.41	0.44	0.89	0.57	**101**	179,020	-465	-0.26	13.65	34.45	0.41	0.80	0.47
72	176,500	-2,985	-1.66	5.29	13.20	0.48	0.80	0.48	**102**	183,490	4,005	2.23	12.84	34.89	0.57	0.86	0.50
73	183,473	3,988	2.22	4.49	8.36	0.39	0.90	0.55	**103**	182,670	3,185	1.77	14.37	51.58	0.44	0.87	0.57
74	183,447	3,962	2.21	4.73	10.38	0.37	0.80	0.45	**104**	176,085	-3,400	-1.89	41.18	45.31	0.45	0.70	0.35
75	183,275	3,790	2.11	3.84	5.67	0.46	0.91	0.63	**105**	183,727	4,242	2.36	38.15	39.77	0.53	0.94	0.65
76	181,871	2,386	1.33	5.55	11.50	0.58	0.93	0.62	**106**	180,735	1,250	0.70	4.80	46.76	0.40	0.91	0.39
77	183,022	3,537	1.97	13.47	31.32	0.61	0.88	0.45	**107**	183,505	4,020	2.24	50.37	36.16	0.34	0.75	0.29
78	183,124	3,639	2.03	12.43	18.03	0.45	0.81	0.40	**108**	181,345	1,860	1.04	50.69	35.42	0.48	0.85	0.45
79	183,355	3,870	2.16	4.75	21.42	0.55	0.88	0.49	**109**	183,366	3,881	2.16	40.06	58.37	0.25	0.73	0.33
80	183,411	3,926	2.19	1.38	9.36	0.35	0.79	0.43	**110**	178,199	-1,286	-0.72	6.50	88.91	0.42	0.79	0.47
81	182,510	3,025	1.69	4.29	15.37	0.45	0.90	0.62	**111**	182,977	3,492	1.95	3.15	90.11	0.59	0.88	0.56
82	183,534	4,049	2.26	10.12	43.96	0.47	0.88	0.55	**112**	179,362	-123	-0.07	3.58	93.99	0.42	0.79	0.42
83	178,332	-1,153	-0.64	9.83	21.09	0.53	0.84	0.57	**113**	182,742	3,257	1.81	4.55	71.94	0.55	0.77	0.39
84	183,408	3,923	2.19	20.51	16.09	0.50	0.88	0.60	**114**	181,962	2,477	1.38	5.79	74.50	0.35	0.73	0.35
85	182,082	2,597	1.45	15.72	17.22	0.55	0.91	0.50	**115**	183,386	3,901	2.17	6.77	65.86	0.28	0.72	0.30
86	179,269	-216	-0.12	5.00	14.05	0.31	0.77	0.37	**116**	182,984	3,499	1.95	3.32	87.41	0.35	0.88	0.51
87	182,880	3,395	1.89	7.53	15.84	0.26	0.76	0.26	**117**	182,260	2,775	1.55	28.93	65.06	0.15	0.45	0.17
88	175,984	-3,501	-1.95	50.05	23.16	0.30	0.57	0.12	**118**	183,694	4,209	2.35	5.60	85.74	0.22	0.79	0.33
89	177,515	-1,970	-1.10	16.64	51.51	0.55	0.89	0.54	**119**	183,655	4,170	2.32	5.37	85.20	0.28	0.92	0.47
90	179,439	-46	-0.03	24.05	13.29	0.61	0.91	0.60	**120**	183,229	3,744	2.09	11.60	44.89	0.22	0.54	0.20

EXHIBIT 3



Map produced by professional staff:
Florida Senate Committee on Reapportionment
404 S. Monroe St., Tallahassee, FL 32399-1100
Office: 2000 The Capitol; Phone: (850) 487-5855
Website: *www.flsenate.gov/session/redistricting*

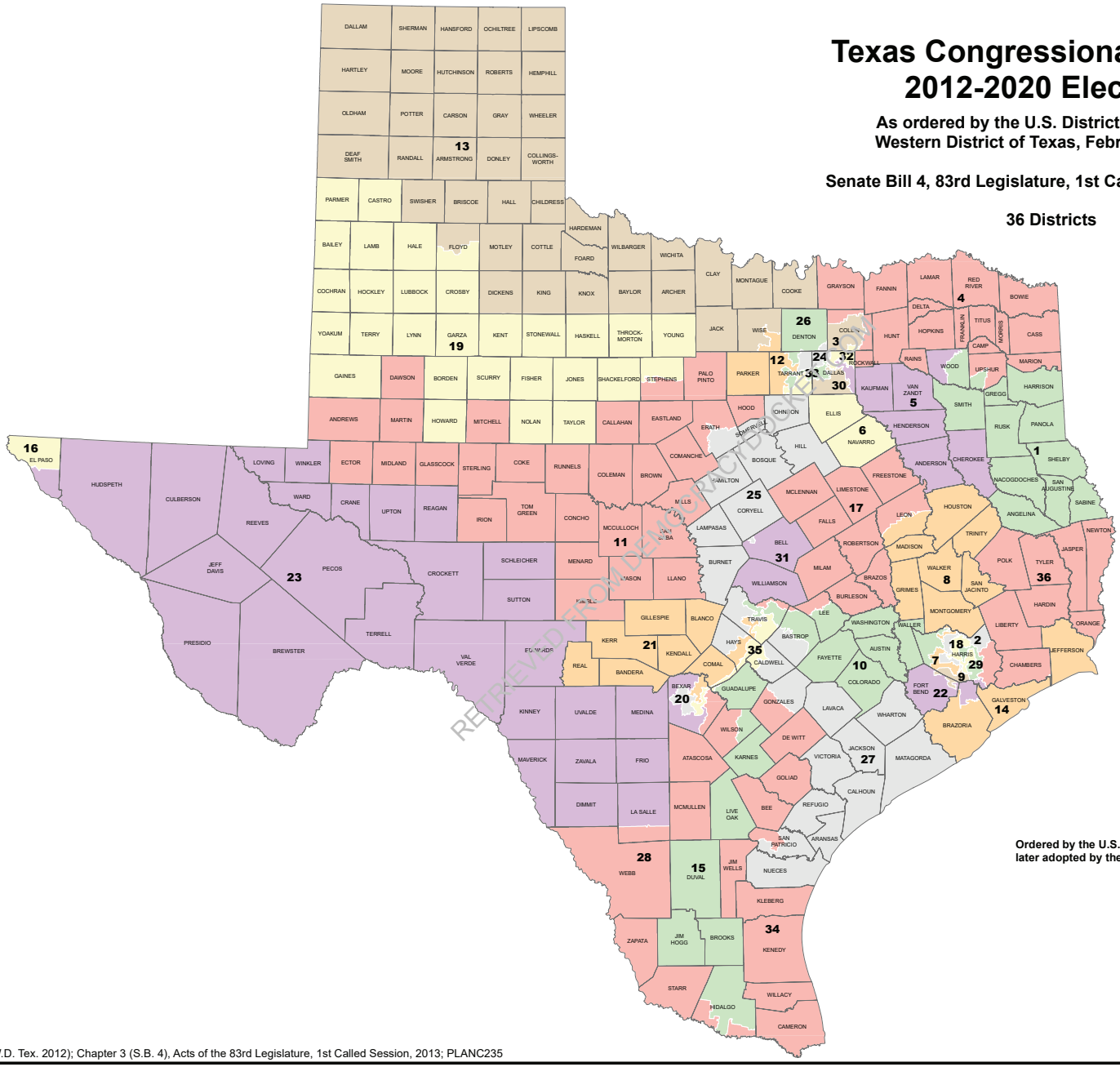
EXHIBIT 4

Texas Congressional Districts 2012-2020 Elections

As ordered by the U.S. District Court for the Western District of Texas, February 28, 2012

Senate Bill 4, 83rd Legislature, 1st Called Session (2013)

36 Districts



Ordered by the U.S. District Court for the 2012 Elections, later adopted by the 83rd Legislature.

21R2109 12/10/21

Texas Legislative Council

Perez v. Perry, No. 5:11-cv-360 (W.D. Tex. 2012); Chapter 3 (S.B. 4), Acts of the 83rd Legislature, 1st Called Session, 2013; PLANC235