SC2026-0857

In the Supreme Court of Florida

EQUAL GROUND EDUCATION FUND, INC., ET AL.,
Petitioners,
v.
SECRETARY, FLORIDA DEPARTMENT OF STATE, ET AL.,
Respondents.

L.T. NOS. 1D26-1539, 2026-CA-914

RESPONDENTS' JOINT RESPONSE TO EMERGENCY PETITION FOR CONSTITUTIONAL WRIT

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INTRODUCTION & SUMMARY OF THE ARGUMENT

Florida's 2022 congressional map, though an improvement on prior iterations, nevertheless drew lines based on race. To solve that problem—and also to address major demographic changes since the 2020 census—the Governor proposed a new map. The result was a map enacted by the Legislature that both complies with ordinary districting considerations and respects the principle, embodied in the Equal Protection Clause of the Fourteenth Amendment, that no one should be treated differently based on race. *See Louisiana v. Callais*, 146 S. Ct. 1131 (2026) (underscoring that race generally should play no role in redistricting).

Plaintiffs do not like that new map. They say that it was drawn with partisan intent and violates traditional districting principles, running afoul of Florida's Fair Districts Amendment (FDA). *See* Art. III, § 20, Fla. Const. But Plaintiffs had a chance to prove those claims to a circuit court, which held an expedited hearing. And that court concluded that Plaintiffs failed to do so.

Plaintiffs' appeal of that decision is now working its way through the First District, the presumptive "court[] of last resort." *Rivera v. State*, 728 So. 2d 1165, 1166 (Fla. 1998). Yet Plaintiffs now seek to

jump the line. Despite the denial of their request for pass-through certification to this Court, Plaintiffs say that the Court can intervene at this early stage of the litigation under its all-writs authority. That is wrong. And even if it weren't, the Court should deny an extraordinary writ. Numerous independent reasons justify denying Plaintiffs' petition.

First, Plaintiffs' proposed use of the all-writs power is unprecedented. The all-writs clause allows the Court to issue an extraordinary writ when "necessary to the complete exercise of its jurisdiction." Art. V, § 3(b)(7), Fla. Const. To trigger that authority, it must be "likely" that the Court will eventually obtain jurisdiction over the case. *Roberts v. Brown*, 43 So. 3d 673, 677 (Fla. 2010). That cannot be said here. Indeed, just a few years ago this Court rejected a redistricting plaintiff's request for all-writs relief in a nearly identical scenario. *See Black Voters Matter Capacity Building Inst., Inc. v. Byrd*, 340 So. 3d 475, 475 (Fla. 2022). The Court explained that it was merely "speculative," not "likely," that the "First District's eventual decision w[ould] provide an appropriate basis for this Court's exercise of discretionary review." *Id.* As in *Black Voters Matter*, the First District's eventual opinion here could easily be based on non-

constitutional grounds that would not vest this Court with jurisdiction: The district court could affirm, for example, based on the equitable rule that courts should not issue an injunction shortly before an election.

Even if the Court had all-writs jurisdiction, it should exercise its discretion to deny relief. Down the road, this case may well arrive at this Court on a fully developed record. Waiting makes sense. It would allow this Court the benefit of a fully reasoned opinion from the First District, as well as the chance for the circuit court to fully resolve the claims—including disputed expert testimony—after a trial. *Cf. Advisory Op. to the Gov. re: Whether Article III, Section 20(a) of the Fla. Const. Requires the Retention of a District in Northern Fla.*, 333 So. 3d 1106, 1108 (Fla. 2022) (declining request to issue advisory opinion where "the Governor's request might necessitate fact-intensive analysis). Acting now, on this highly expedited timeline, would only increase the risk of error.

Second, the circuit court properly denied a temporary injunction for two threshold reasons. For one, it correctly concluded that Plaintiffs had failed their burden of showing that the status quo they sought to reinstate—the 2022 map—was legally permissible. The

Governor urged the Legislature to redistrict based in part on concerns that the 2022 map contained multiple districts that were infected by race. Former Congressional District 20 was a prime example. Former CD20 was suspect on its face; it featured two odd tendrils that were drawn, by map makers' own admission, to connect disparate minority communities across multiple counties for the express purpose of complying with the FDA's racial mandates. Plaintiffs never demonstrated that former CD20 was anything but an unconstitutional racial gerrymander. Having identified no lawful status quo to preserve, Plaintiffs could not hope to obtain a temporary injunction.

For another thing, the *Purcell* principle counseled against a late-breaking injunction. The trial court found that "[t]he election machinery of the state is already underway," because prequalification of candidates began on May 25, 2026, with "[t]he primary" "less than three months away, and the general less than six months." App. 2780. Since then, hundreds of candidates have sought to qualify for office, and many have resigned other positions to run, so timing concerns have grown even more acute. *See* App. 2944–45.

An official from the Miami-Dade County Supervisor of Elections

Office was explicit. He said on June 2, 2026 that "[i]t is now past the point at which we would need to begin the implementation process for any new congressional district plan—or even revert to the previous congressional districts—while still adequately preparing for the Primary Election." App. 2947. "[M]ore than 160,000 voter information cards reflecting the new congressional districts" were mailed to voters "on June 5, 2026," as well. *Id.* And he cautioned that "any change to those districts at this stage would not only create operational challenges for [Miami-Dade County] but would also cause voter confusion in the upcoming elections." App. 2948.

For the 2026 elections, time is up. "To undertake to interfere with the election process at this late date, even if a clear legal right were shown, would result in confusion and injuriously affect the rights of third persons." *State ex rel. Haft v. Adams*, 238 So. 2d 843, 845 (Fla. 1970). That may well be why *no* candidate joined in Plaintiffs' challenge to the maps and the all writs petition. The very candidates and officials most affected by maps have accepted them as binding on the 2026 election and have acted accordingly.

Third, if this Court nevertheless chooses to address the merits and the evidence without the benefit of a full record and lower courts'

assessments, Plaintiffs still lose. Florida's 2026 redistricting plan, "like any legislation, is entitled to a presumption of validity." *Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y Fla. Dep't of State*, 415 So. 3d 180, 197 (Fla. 2025) ("*BVM II*"). The trial court recognized this principle and denied Plaintiffs' attempt to enjoin the 2026 plan based on unsubstantiated tweets, reams of material without any live testimony, and an inconclusive snippet from hours of legislative testimony by the map drawer. Plaintiffs offer only *ipse dixit* to prove their accusations of partisan intent and lack of compactness. For example, while touting one map drawer's statement that he considered "partisan data" when crafting the 2026 plan, Plaintiffs ignore that same map drawer's testimony elsewhere that the plan was not drawn to favor any political party. Invalidating a congressional map requires more than bald speculation; it requires proof.

If Plaintiffs *had* shown a violation of the FDA, they still must contend with the invalidity of the FDA itself. Article III, § 20(a)'s race-based provisions follow "almost verbatim the requirements embodied in the [Federal] Voting Rights Act." *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 619 (Fla. 2012) ("*Apportionment I*") (citations omitted). These provisions of the Florida

Constitution make race-based classifications like the federal statute. Unlike the Voting Rights Act, however, these classifications lack any compelling state interest. *BVM II*, 415 So. 3d at 197. There are no "documented findings of intentional discrimination, past or present." *Id.* Nor are there temporal and geographic limitations on the applicability of Article III, § 20(a). And unlike Congress, Florida lacks the authority to pass remedial, race-based measures because Section 2 of the Fifteenth Amendment to the U.S. Constitution grants that power only to Congress. Plaintiffs avoid these concerns only through a proposed full-scale rewrite of the FDA.

The FDA's racial defects are fatal. In 2009, the FDA's proponents pitched the amendment to voters as a packaged deal: Though many voters worried that the FDA's Tier II requirements, like compactness, threatened to water down minority voting strength, proponents assured voters that the racial provisions would prevent that from happening. The race-based provisions were part of the deal. Take away those provisions and it is far from clear that voters—who only narrowly ratified the FDA—would still have supported it. The racial components are therefore inseverable from the rest of the FDA. Root and branch, the whole FDA is invalid.

Florida's 2026 congressional map is an important win for race-blindness in elections. The Court should resist Plaintiffs' efforts to undo that victory for all Floridians.

STATEMENT OF THE CASE AND FACTS

A. Factual background.

Since the 2020 Census, Florida has experienced explosive population growth. By July 2025, Florida had grown by nearly two million residents. *See* App. 371. But that growth has been uneven, and many of Florida's new residents have clustered in communities around Orlando, Tampa, and the east coast. *See id.* This left Florida with uneven representation in Florida's congressional delegation. Some congressional districts saw dramatic increases in voting populations, while others saw relatively little.

At the same time, litigation in the United States Supreme Court was casting considerable doubt on the validity of Florida's 2022 congressional map. *See* App. 370–71. The Supreme Court's then-pending decision in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026) was anticipated to (and ultimately did) prohibit race-based mapmaking practices previously thought required under the Voting Rights Act (VRA). App. 370. This created tension with the Florida Constitution's

race-based provisions used to create Florida's 2022 congressional map. Take former Congressional District 20 (former CD20). The Legislature drew that district with "two claws that track the black population" to comply with the federal Voting Rights Act (VRA). *Id.* Other districts "were drawn with the Hispanic voting age population in mind" to comply with the Fair Districts Amendment (FDA), Florida's state-law equivalent to the VRA. *Id.*

On January 7, 2026, Governor DeSantis responded to these dual concerns by announcing a special session of the Legislature to consider congressional redistricting. *See* App. 355–56. On April 27, 2026, the Governor submitted a proposed map to the Legislature. *See* App. 369–73. This new map considered Florida's recent population boom and did so "on race-neutral terms." App. 371.

Over the next two days, the Legislature considered Governor DeSantis's proposed map. During this period, committees in both the House and Senate held hearings to receive presentations from the Governor's map maker, Jason Poreda. App. 2774–75. During those hearings, Poreda explained that changing former CD20 to a race-neutral configuration had "cascading effects all throughout the center part of the state." App. 2775. Poreda also "sought to account for

population growth while complying with traditional districting criteria," such as compactness. *Id.* After these hearings, both House and Senate committees approved the new map and referred it to their respective chambers for debate and a final vote. *See id.* On April 29, both chambers approved the new map. App. 2231.

The Governor signed the new map into law on May 4. *Id.* The Secretary of State estimated that May 25 was the deadline for the implementation of any new map. App. 2775.

B. Circuit court proceedings.

Plaintiffs filed three separate lawsuits. App. 2773. While varying in detail, all three alleged that the 2026 map violated the FDA. App. 2774. Plaintiffs also moved to temporarily enjoin the use of the 2026 map and argued that doing so would return the situation to the status quo, which they argued was the 2022 map. App. 2776.

1. Plaintiffs primarily argued that the 2026 map violated the FDA's Tier I standards because it was drawn with a partisan intent. App. 121–30. Plaintiffs alleged that there was direct evidence of an intent to partisan gerrymander based on statements by Jason Poreda, the map drawer. App. 101, 122–23. Plaintiffs

characterized those statements as proving that Mr. Poreda believed that he was not bound by the FDA, and that in his testimony before the House Redistricting Committee he had admitted to partisan intent when he said that he used "the entire suite of redistricting criteria that are available to other states . . . including partisan data." App. 103. Additionally, Plaintiffs relied on statements allegedly made on the Governor's X account, a tweet remarking that "Florida can add up to +5 REPUBLICAN seats to more than cancel out Virginia's 10-D-1R gerrymandering map that passed," and an NBC interview in which a "Florida Republican consultant" indicated that they thought the 2026 map was partisan. App. 122–123. Plaintiffs also alleged various pieces of circumstantial evidence. App. 123–130.

Plaintiffs next argued that the 2026 map violated the FDA's Tier II standards. App. 131–39. Relying in part on their expert, Dr. Chen, and in part on allegations that districts were visually unusual, Plaintiffs claimed that the 2026 map's districts were less compact than could be. App. 131–36. They also alleged that the map failed to adhere to existing political and geographic

boundaries, claiming that it unnecessarily split city and county boundaries. App. 137–39.

2. Defendants opposed the temporary injunction on multiple grounds. The Secretary of State explained that returning to Plaintiffs' purported status quo, the 2022 map, was infeasible because that map was drawn impermissibly relying on race, in violation of this Court's and the United States Supreme Court's precedent.

Defendants further noted that Plaintiffs could not demonstrate likelihood of success on the merits or that a temporary injunction would be in the public interest. App. 2239–2257. The 2026 map carried a presumption of validity, and Plaintiffs' allegations failed to show that the Legislature had improper intent. App. 2240–45. The allegedly damning statements offered by Plaintiffs were irrelevant, Defendants explained, as they came from parties who had no role in the 2026 map and were innocuous in context. App. 2242. As to Plaintiffs' keystone argument that Mr. Poreda's testimony before the Senate Rules Committee conceded that he used the "entire suite of redistricting criteria," "including partisan data," the Secretary offered key context: that it was an isolated statement from hours of testimony, and Mr. Poreda expressly

stated on the record that he did not have partisan intent. App. 2242–43.

The Secretary also preliminarily presented his own experts. Those experts would explain that Plaintiffs' expert reports suffered, amongst other serious issues, from methodological problems, used methods which have never before been used in litigation, used unstable metrics, and contained misleading color-coding. App. 2243–45. The Secretary observed that Mr. Poreda testified that the 2026 map statistically was as compact as the 2022 map. App. 2246.

The Secretary also addressed why the FDA was invalid. App. 2246–54. On its face, the FDA mandates the use of race in districting. App. 2246–47. That subjects it to strict scrutiny under the Equal Protection Clause, a standard that could be overcome only by a showing that application of the FDA was necessary to remedy ongoing racial discrimination against minority voters. *Id.* Plaintiffs had not undertaken that showing. Moreover, *Callais* recently held that Section 2 of the VRA, *properly construed*, provided a compelling reason to survive strict scrutiny. App. 2247–48. But unlike the FDA, the VRA was an exercise of Congress's

enforcement authority granted by the Fifteenth Amendment, and was supported by a detailed record of race-based voting problems. *Id.* Because the race-based provisions of the FDA cannot be severed from the rest of the constitutional provision, the entire FDA is inoperable. App. 2248–55. Indeed, the Secretary cited numerous sources indicating that the voters in 2009 ratified the FDA only because they believed the Tier I and II factors were a packaged deal. App. 2253–54.

The Secretary also explained why a temporary injunction would disserve the public interest. App. 2255–57. Observing that the primary election was then only three months away, and the general election was then only six months away, the Secretary argued that reverting to the 2022 map would severely disrupt the work of election administrators, while also impeding candidate qualifying. *Id.* Candidate qualifying runs from noon on June 8th and runs through the 12th. App. 2911.

3. After a hearing, the circuit court sided with Defendants and declined to grant the temporary injunction. It did so on three bases. First, Plaintiffs failed to show that the 2022 map was a permissible status quo. App. 2776–77. The court observed that

the Governor's determination that former CD20 was drawn with prohibited racial intent, and that the 2022 map needed to be redrawn in anticipation of *Callais*, were unrebutted. *Id.* The court rejected Plaintiffs' contentions that the 2022 map had been validated by prior litigation, as that litigation did not involve the congressional district at issue. *Id.*

Second, the court determined that there was insufficient evidence of impermissible intent to show that Plaintiffs had a substantial likelihood of succeeding on the merits on this preliminary record. App. 2778–79. In its view, the key merits issue—whether the 2026 map was drawn with impermissible partisan intent—was, at minimum, unclear. *Id.* The court noted that Mr. Poreda's intent was "not as apparent as Plaintiffs argue," nor was it clear that any such intent could be "imput[ed] . . . to the entire legislature." *Id.* at 2778. The court also accepted Defendants' arguments that at the preliminary injunction stage, there was no "adequate chance at rebuttal" of Plaintiffs' "numerous experts." *Id.* at 2779.

Third and finally, the court found that even if "Plaintiff had established all of the other elements, the balance of hardships and the public interest weigh heavily against the issuance of an

injunction." App. 2779. In doing so, the court cited federal and state precedents acknowledging the importance of promoting "[s]tability before elections." *Id.* This so-called *Purcell* doctrine militated against changing the rules of the road close in time to the upcoming candidate qualifying and primary elections. App. 2780 (quoting *State ex rel. Haft v. Adams*, 238 So. 2d 843, 845 (Fla. 1970) ("to interfere with the election process at this late date, even if a clear legal right were shown, would result in confusion and injuriously affect the rights of third persons")). Applying that doctrine, the circuit court reasoned that because the "election machinery of the state is already underway," the "public interest weighs more in favor of certainty than a haphazard judicial mandate of discarded maps." *Id.*

C. First District proceedings.

Plaintiffs appealed the circuit court's denial of their motion for temporary injunction and suggested that the First District certify the case for immediate resolution by the Florida Supreme Court. App. 2781, 2793. Defendants opposed, and the First DCA refused pass-through certification. App. 2900–12, 2922–23.

Plaintiffs then sought to expedite the appeal, which the First District also denied. App. 2924–32, 2956–57.

ARGUMENT

I. The Court lacks jurisdiction to exercise the all-writs power here.

As the basis for their request that the Court intervene in a complicated election-law dispute before the First District has even had the chance to rule, Plaintiffs invoke this Court's power to issue "all writs necessary to the complete exercise of its jurisdiction." Pet. 4 (quoting Art. V, § 3(b)(7), Fla. Const.). But the all-writs power is inapplicable here.

A. "[T]he doctrine of all writs is not an independent basis for this Court's jurisdiction." *Roberts v. Brown*, 43 So. 3d 673, 677 (Fla. 2010). "Rather, its use is restricted to preserving jurisdiction that has already been invoked or protecting jurisdiction that likely will be invoked in the future." *Id.*; *see also Williams v. State*, 913 So. 2d 541, 543 (Fla. 2005) (explaining that the all-writs provision "operates as an aid to the Court in exercising its 'ultimate jurisdiction,' conferred elsewhere in the constitution"). Invoking all writs at this early stage of the litigation would be unprecedented.

Indeed, the Court has already held that it lacks all-writs authority in materially identical circumstances. Just four years ago, the plaintiffs in a redistricting case urged the Court to issue a "constitutional writ" to "intervene in the First District Court of Appeal's ongoing consideration of an appeal of an order imposing a temporary injunction." *Black Voters Matter Capacity Building Inst., Inc. v. Byrd*, 340 So. 3d 475, 475 (Fla. 2022).[1] The Court declined, citing its lack of jurisdiction. At its widest ebb, the all-writs power enables a court to act to preserve jurisdiction that "likely will be invoked in the future." *Id.* (quoting *Roberts*, 43 So. 3d at 677). In *Black Voters Matter*, however, it was merely "speculative" that the "First District's eventual decision w[ould] provide an appropriate basis for this Court's exercise of discretionary review." *Id.* More was required to trigger the all-writs authority.

Those same considerations apply here. Plaintiffs argue that the First District's eventual decision will address the "unenforceability"

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[1] There, the First District had stayed the temporary injunction pending the Secretary of State's appeal of the circuit court's order. *See Byrd v. Black Voters Matter Capacity Building Inst., Inc.*, 339 So. 3d 1070, 1074 (Fla. 1st DCA 2022) ("*BVM I*").

of the FDA. Pet. 4–5. Thus, they say, the district court's opinion "will [] trigger at least three bases for this Court's jurisdiction": Construing a constitutional provision, declaring valid a state statute, or expressly affecting a class of constitutional or state officers. Pet. 5 (quoting Art. V, § 3(b)(3), Fla. Const.). Yet none of that is certain. Throughout this litigation, the Secretary and the Legislature have offered numerous non-constitutional grounds for affirming the circuit court's denial of a temporary injunction. Among those is the *Purcell* principle: the equitable rule that courts shouldn't order injunctive relief shortly before an election. *Infra* 30–35. That standalone basis for denying Plaintiffs' relief would implicate *none* of the three jurisdictional grounds cited by Plaintiffs. Neither would an affirmance predicated on Plaintiffs' failure to meet their burden to establish a permissible status quo. *Infra* 23–30.[2] Neither would an affirmance based on deference to the

[2] Plaintiffs distinguish *Black Voters Matter* on the theory that this case involves a challenge to the FDA as a whole, whereas *Black Voters Matter* involved a "question about the application of the [FDA] to a particular district." Pet. 6–7. It is unclear why that matters. *Black Voters Matter* did not turn on the nature of the underlying merits of the case, but on the Court's lack of certainty about the ultimate basis for the First District's opinion. That same uncertainty exists here.

trial court's determination that the evidentiary record on the principal merits issue was unclear and failed to satisfy Plaintiffs' burden to show a substantial likelihood of success on the merits.

That distinguishes Plaintiffs' lead case: *League of Women Voters of Fla. v. Data Targeting, Inc.*, 140 So. 3d 510 (Fla. 2014). Pet. 4–6. In *Data Targeting*, the "highly likely" basis for the First District's decision would have eventually implicated the Court's jurisdiction. 140 So. 3d at 514. In staying the trial court's order, the district court had issued a one-paragraph order citing a Ninth Circuit case and promising that "[a]n opinion of this court explaining its reasoning will follow." *Id.* at 512. But the order offered a preview of the contents of that future opinion. The district court's order had "relied on a case holding that courts are required to consider the importance of the litigation in evaluating whether information is protected by the associational privilege." *Id.* at 514. "[T]his determination," the Court noted, "[wa]s highly likely to require the construction of not only the First Amendment but also the Fair Districts Amendment." *Id.* That would give the Court jurisdiction under Article V, § 3(b)(3). Unlike *Data Targeting*, Plaintiffs here are simply guessing that the First District's decision will be reviewable.

If Plaintiffs are right, then this Court's all-writs jurisdiction effectively renders meaningless Article V, § 3(b)(5) of the Florida Constitution. That provision allows this Court to review a trial court order that has been "certified by the district court of appeal in which an appeal is pending to be of great public importance." Art. V, § 3(b)(5), Fla. Const. Plaintiffs sought pass-through certification from the First District. That request was denied. Yet on their present theory, no certification was required in the first place. In short, the Court lacks jurisdiction.

B. Even if it had jurisdiction, the Court should decline to exercise it at this juncture. The petition presents several interlocking claims regarding the validity of the 2026 map, the validity of the 2022 map, the validity of the FDA, the availability of temporary injunctive relief below, and so on. In tackling those important questions, this Court would undoubtedly benefit from a reasoned opinion from the district court. Issuing an extraordinary writ now cuts off that possibility. Apart from that, Plaintiffs have asked this Court to wade into the thicket on an extremely expedited basis, mere days before candidate qualifying closes. That frantic timeline increases the odds of error, especially since Plaintiffs' road to relief rests upon untested

and disputed expert testimony. And as explained below, time-honored equitable principles counsel against judicial tinkering in election administration when an election is this near at hand. The Court can deny the petition for any of those discretionary reasons.

II. The circuit court correctly concluded that temporary injunctive relief is improper here.

In seeking to temporarily enjoin the 2026 map, Plaintiffs bore a tall burden. "If the party seeking the temporary injunction fails to prove one of the requirements, the motion for injunction must be denied." *State, Dep't of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 472 (Fla. 1st DCA 2018). Not only that, but "[e]ach of these elements must be proven by the movant with competent, substantial evidence." *Holland M. Ware Charitable Found. v. Tamez Pine Straw LLC*, 343 So. 3d 1285, 1289 (Fla. 1st DCA 2022).

Setting aside for the moment the merits of Plaintiffs' substantive theories, Plaintiffs failed twice over to meet their burden. First, the circuit court correctly held that Plaintiffs failed to show that their request for injunctive relief was possible because they failed to justify their proposed status quo as a lawful remedy. Second, both the

equities and the public interest prohibited Plaintiffs' desired wholesale change to Florida's congressional districts.

A. Plaintiffs failed their burden of showing that the 2022 map was a lawful status quo that could be preserved through a temporary injunction.

First off, the circuit court properly denied Plaintiffs' request for a temporary injunction because there was no legally permissible status quo to preserve. App. 2776–78. The "status quo" that Plaintiffs sought to preserve was the 2022 congressional map. Pet. 61–63. But at this preliminary stage, the circuit court had ample basis to agree with the Secretary's arguments and conclude that the 2022 map contained an impermissible racial gerrymander: former Congressional District 20. That independently warrants affirmance.

1. "[T]he purpose of a temporary injunction is to preserve the status quo while final injunctive relief is sought." *Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 924 (Fla. 2017) (citing *Sullivan v. Moreno*, 19 Fla. 200, 215 (1882)). A circuit court derives its authority to issue temporary relief from its power to issue "all writs necessary or proper to the complete exercise of [its] jurisdiction." *BVM I*, 339 So. 3d at 1075 (quoting Art. V, § 5(b), Fla. Const.).

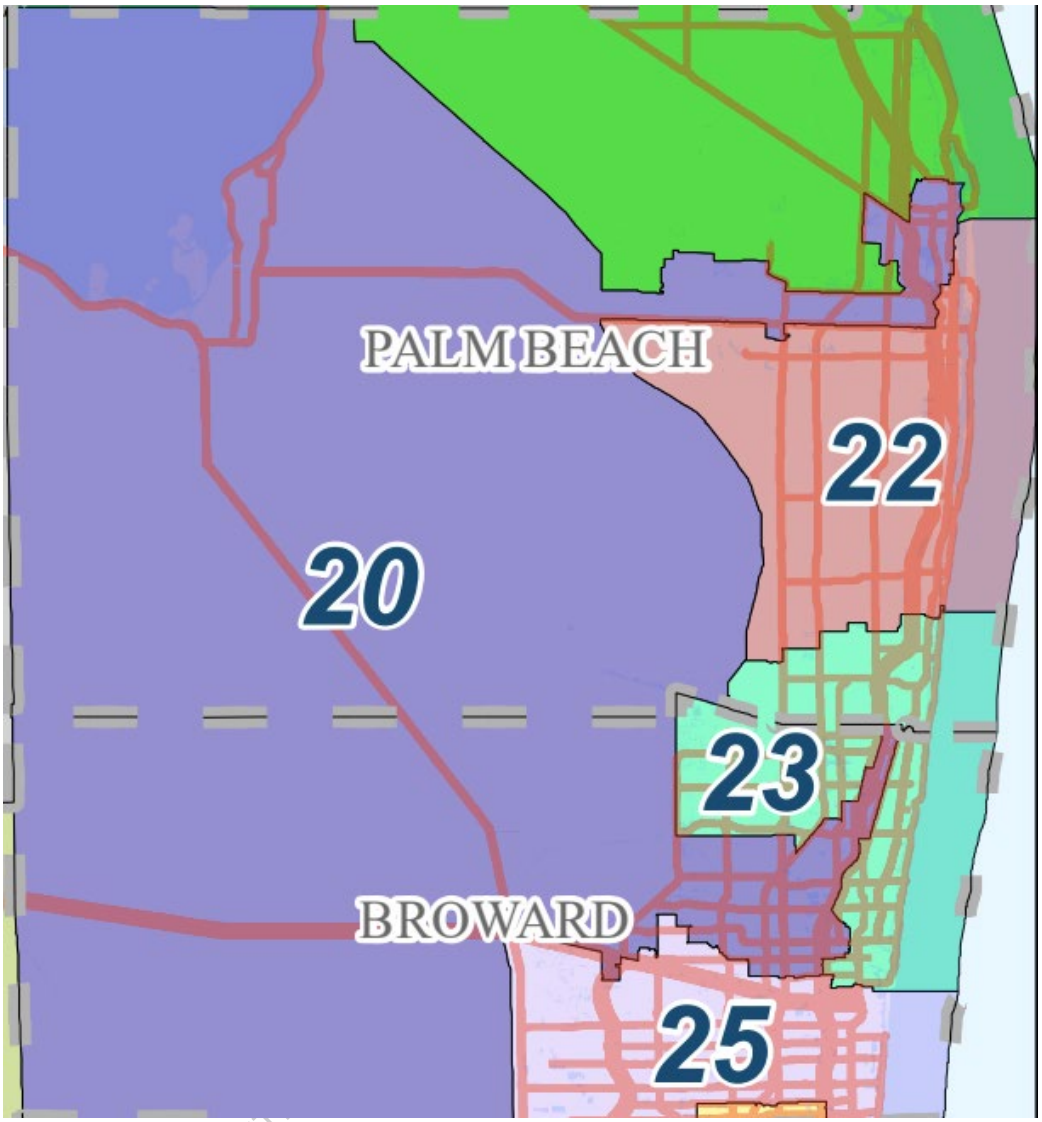
But that authority is quite narrow. The all-writs clause permits the court to do no more than "maintain unchanged, as far as practicable, the *status* or condition of the subject-matter of the controversy during the pendency of the suit." *Id.*[3] Because this is an "extraordinary" power—not an "ordinary, everyday" one—it must be employed "cautiously" and "sparingly." *Id.* And, critically, a court's all-writs power is available only if "maintaining the status quo would be constitutionally permissible." *Id.* at 1081. Where, by contrast, the status quo is "infeasib[le]" due to some constitutional infirmity with the status quo, a temporary injunction is out of the question. *Id.* at 1080.

2. Plaintiffs failed to show that the 2022 map was a constitutionally permissible interim remedy. The circuit court had it right: "Plaintiffs' evidence at this stage is insufficient to support the permissibility of . . . forcing the 2022 map onto the electorate." App. 2777. To the contrary, the Secretary raised substantial questions about the legality of the 2022 map by pointing to the portions of the

[3] The "status quo" means "the last actual, peaceable, noncontested condition which preceded the pending controversy." *Id.* at 1079.

map that contained a racial gerrymander, arguably in violation of the Fourteenth Amendment's Equal Protection Clause.

The Secretary's evidence was straightforward. As explained by the Governor in his letter to the Legislature urging redistricting, the 2022 map—the status quo that Plaintiffs ask to maintain—was a "compromise" map that, while an improvement on prior maps, suffered from racial defects. *See* App. 370. In particular, former "Congressional District 20 in the southeast has an odd shape with two claws that track the black population," "arguably a telltale sign of racial predominance." *Id.* That is plain enough from the eye test. Here is former CD20, with its odd appendages:



2022 Map, Florida Senate Committee on Reappointment, https://perma.cc/H85R-BT9G. The northeast and southeast prongs of former CD20 are striking. Both snake to the east, sweeping in black and Hispanic population centers in West Palm Beach, Pompano Beach, Lauderhill, and Fort Lauderdale. Those clawlike features of the district cannot be justified by ordinary districting

principles: They are not compact and do not seem to follow major geographical or political boundaries.

Indeed, it was well known that former CD20 was drawn as a majority-minority district to comply with the FDA. App. 2197 (map-drawer Langan's statement to the Legislature that former CD20 was drawn as a "Tier 1 compliant district[]" by "connecting the [minority] communities in northern Palm Beach County with those in Broward County"), 2007 (map-drawer Poreda's statement that former CD20 was a "tier 1 protected district[]"), 1958 (Rep. Sirois: "Congressional District 20 is a performing majority -minority black district that was recreated similar to the benchmark district that connects population in Palm Beach County to population in Broward County.").

On top of that, the Governor's letter recounted that the "legislative record shows" that several other districts in the 2022 map "were drawn with the Hispanic voting age population in mind to comply with the race-based requirements of the FDA." App. 370.

Both this Court and the U.S. Supreme Court have since clarified that reliance on race fails strict scrutiny in all but the most extraordinary cases. *See Black Voters Matter Capacity Building Inst., Inc. v Sec'y, Fla. Dep't of State*, 415 So. 3d 180, 197 (Fla. 2025) (*BVM II*);

Louisiana v. Callais, 146 S. Ct. 1131, 1152–53 (2026). Yet no one has identified any ongoing and concrete racial discrimination that needed rectifying through a race-based map. *See Callais*, 146 S. Ct. at 1153 (holding that states have "no compelling interest in generally remediating 'past discrimination in a particular industry or region' or 'the effects of societal discrimination'"). "[R]eturning to the status quo" was therefore "infeasibl[e]." *BVM I*, 339 So. 3d at 1080; *see also id.* at 1081 (noting that courts should consider the "unavailability of the status quo" before entering interim injunctive relief).

And though Plaintiffs fault the State for having previously held out the 2022 map as constitutional, they take those statements out of context. Pet. 61, 64. In *BVM II*, the State previously defended the 2022 map against a challenge *to a single North Florida district*. *See* 415 So. 3d at 188 ("This case centers on changes that the Enacted Plan made to Congressional District 5 (Benchmark CD 5) in the districting plan that was in effect from 2016 until 2022."). The Secretary of State and the Legislature defended *that* portion of the map. But the State simply had no occasion to address former CD20. The same was true of other cases involving the 2022 map. *See* App. 2631.

And *BVM II* and *Callais*—the precedents most clearly exposing the infirmity in the 2022 map—were each decided *after* the 2022 map was enacted. With the benefit of those decisions from this Court and the United States Supreme Court, the 2022 map cannot form a valid status quo.

Reframing the inquiry, Plaintiffs imply that the Secretary bore the burden of proving that former CD20 was a racial gerrymander. Pet. 62–63. But the "presumption of validity" cannot carry the day for Plaintiffs. Pet. 63. This Court has already held that the race-based provisions of the Fair Districts Amendment clash with the federal Equal Protection Clause, *see BVM II*, 415 So. 3d at 197, and former CD20 is the product of that amendment. It is therefore presumptively suspect. Either way, the presumption applies to existing legislation. It does not apply to a former map discarded due to constitutional concerns.

Plaintiffs also overlook that the ultimate burden always rests on the plaintiff. In the typical case, the plaintiff challenges the congressional map, and so the plaintiff carries the burden of proving the map's infirmity. The Secretary, of course, is not the plaintiff here. And as shown above, Florida law provides that a plaintiff must

establish entitlement to temporary injunctive relief—including the existence of a constitutionally permissible status quo. *Cf. Fla. Dep't of Health v. Florigrown, LLC*, 317 So. 3d 1101, 1110–11 (Fla. 2021).

At minimum, the Secretary made an adequate threshold showing that the 2022 map suffered from racial defects. In the context of this fast-moving election dispute, that was more than enough to trigger questions about the veracity of the status quo. From there, Plaintiffs bore the burden of showing that the status quo *was* constitutionally permissible. In finding that Plaintiffs failed to meet their burden, the circuit court did not err.

B. The equities and public interest support maintaining the 2026 Plan.

The equities and public interest also independently foreclose a temporary injunction. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). This "risk will increase" as "an election draws closer." *Id.* at 5. The Supreme Court recently affirmed these principles by noting that a state legislature makes "a strong showing of irreparable harm and that the equities and public interest favor" it

when courts "'alter the election rules on the eve of an election,'" as states are generally "free to decide for themselves whether last-minute changes to an election are in their best interests." *Allen v. Milligan*, 2026 WL 1552756, at *2 (U.S. June 2, 2026) (*per curiam*) (quoting *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020)).

As the circuit court rightly recognized, *Purcell* simply articulates "a common-sense and sound principle" that courts should not throw "state elections into disarray." App. 2780. This Court has announced the same equitable principle: "To undertake to interfere with the election process at this late date, even if a clear legal right were shown, would result in confusion and injuriously affect the rights of third persons." *State ex rel. Haft v. Adams*, 238 So. 2d 843, 845 (Fla. 1970).

The circuit court also correctly recognized that the public interest counseled against a temporary injunction. The "election machinery of the state is already underway," it observed, and it would be "difficult" for the "ship of statewide elections to change directions at this juncture." App. 2780. As a result, the "public interest weighs more in favor of certainty than a haphazard judicial mandate of

discarded maps." *Id.* That finding deserves deference. *See Florigrown*, 317 So. 3d at 1110.

And the evidence unquestionably supports it. At the time of the circuit court's order, the primary was "less than three months away," and the "general less than six months." App. 2780. As the Secretary explained, Florida's statutory date for the beginning of candidate qualification was May 25, 2026, by which time districts should have been set. § 99.061(8), Fla. Stat. The circuit court issued its order the next day. App. 2780.

As the clock continues to tick, the circuit court's reasoning grows even stronger. For example, Miami-Dade County's Supervisor of Elections Office filed a declaration on June 2, 2026 confirming that "[i]t is now past the point at which we would need to begin the implementation process for any new congressional district plan—or even revert to the previous congressional districts—while still adequately preparing for the Primary Election."[4] App. 2947.

[4] Obviously, election preparations go beyond just the gathering, and designation of signatures for particular congressional districts. *Cf.* Pet. 69.

Plaintiffs' arguments to the contrary don't persuade. Their lengthy argument that the 2026 map "was not enacted on the basis of a good faith legal judgment that it complies with the Florida Constitution as written," Pet. 66 and implication that the Governor[5] created an "urgency it seeks to exploit," *id.* at 67–68, assumes the merits of their case—which are both untrue and unproven. *Supra* 24–30. And Plaintiffs' attempt to characterize the Secretary's citations to federal and Florida law as asserting a "per se bar," Pet. 67, is simple strawmanning—of course, the balancing of equities, except for rare circumstances, requires some discretion, which the circuit court here has exercised as part of "common-sense." App. 2780. And as a Hail-Mary, the Plaintiffs suggest that the court has an "inherent equitable authority to adjust or extend the qualifying schedule." Pet. 69–70 (citing *Johnson v. Mortham*, 926 F. Supp. 1540, 1542 (N.D. Fla. 1996)). Not only is this argument forfeited, as Plaintiffs did not raise

[5] Even if true, it is unclear how any alleged intent on the Governor's part, regarding timing, is imputed to the Legislature, or the Secretary, or should work to balance the equities against either. The Secretary is unaware of any equitable principle whereby the alleged inequitable behavior of one official makes it equitable to enjoin *other officials* or branches of the government.

it below, *Hall v. State*, 421 So. 3d 483, 486 (Fla. 1st DCA 2025), it is likely no longer good law in light of *Purcell*'s admonishment that courts should not needlessly intervene in state election procedures at the last second.[6]

Plaintiffs suggest that *Purcell* restrains only federal courts. Pet. 66–67 (characterizing the doctrine as limited to "*federalism* concerns about *federal* courts overriding state election rules").[7] Even if so, *this* Court more than 50 years ago warned that "[t]o undertake to interfere with the election process at this late date, even if a clear legal right were shown, would result in confusion and injuriously affect the rights of third persons." *Adams*, 238 So. 2d at 845. And long before *Purcell*, the Supreme Court also recognized the inequity of "requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of a court's

[6] Plaintiffs also overlook the basic outcome of the case. The court later said that "Plaintiffs' motion to reset the candidate qualifying dates for congressional elections to July 8 through July 12, 1996 (Doc.209) [was] DENIED." 926 F. Supp. 1540, 1545 (N.D. Fla. 1996).

[7] Plaintiffs attempt to limit *Purcell* to federal courts while simultaneously arguing that a federal case—*Johnson v. Mortham*—suggests that Florida state courts could do the same. Plaintiffs can't have it both ways.

decree" and "any relief accorded can be fashioned in the light of well-known principles of equity." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). This Court can dispose of the petition based on that equitable consideration alone. *Id.*

III. The circuit court correctly concluded that Plaintiffs are not substantially likely to succeed on the merits of their claims.

Should the Court reach the merits, it should likewise deny the petition. Plaintiffs did not satisfy their burden of proving that the 2026 map violates the FDA: They showed neither that the map was drawn with impermissible partisan intent nor that the map violates the Tier II requirements. Even if they had, however, the FDA is inoperative. The FDA's race-based requirements are plainly unconstitutional, and those components of the law cannot be severed from "the single unified purpose of establishing standards by which legislative and congressional districts are to be drawn." *Advisory Opinion to Att'y Gen. re Standards For Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 183 (Fla. 2009).

A. Plaintiffs failed to prove improper partisan intent.

1. Alleging and proving improper partisan intent are distinct phenomena. The latter requires the trier of fact to weigh and consider

evidence. The circuit court did so here and "conclude[d] that from this record, there is insufficient evidence of impermissible intent to show substantial likelihood of success on the merits." App. 2779. This factual finding deserves deference and should remain undisturbed if "supported by evidence that is 'sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.'" *Citizens of the State of Fla. v. Fla. Public Serv. Comm'n*, No. 2023-0988, 2026 WL 1596209, at *7 (Fla. June 4, 2026) (quoting *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)). Especially so here—in a rushed case with a multi-factor, burden-shifting test, and reams of unauthenticated and untested hearsay provided by Plaintiffs.

Article III, § 20(a) provides that "[n]o apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party." Challengers bear the heavy burden of overcoming the presumption of validity that attaches to every enacted plan when attempting to prove improper partisan intent. *In re Sen. J. Res. of Legislative Apportionment 1176*, 83 So. 3d 597, 606 (Fla. 2012) (*Apportionment I*); *In re Sen. J. Res. of Legislative Apportionment 2-B*, 89 So. 3d 872, 881 (Fla. 2012) (*Apportionment II*). The presumption

packs a punch: It "serves to recognize the deference initially owed to legislative acts upon passage" and reflects the "fundamental doctrine of separation of powers" that places "the primary responsibility" of line-drawing on the political branches. *Apportionment I*, 83 So. 3d at 606. It persists until a court makes an affirmative finding that the plan was drawn with unconstitutional partisan intent. *See League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 400 (Fla. 2015) (*Apportionment VII*).

Only "[o]nce a tier-one violation of the constitutional intent standard is found" does the burden shift to the State "to justify its decisions, and no deference should [be] afforded to the Legislature's decisions regarding the drawing of the districts." *Id.* That requires a trial.

Proving improper intent is inherently fact-specific and difficult. Plaintiffs must prove the collective intent of two legislative bodies from a mix of statements, processes, and outcomes. *Id.* at 376–78, 388–89. The facts considered include the use of and access to "political data," *Apportionment I*, 83 So. 3d at 619; the "effects of the plan," though effect alone is insufficient evidence of improper intent, *id.* at 617; the "shape of district lines," *id.*; a "disregard for [Tier II]

principles," *id.* at 618; an assessment of alternative plans, *id.* at 611; the "specific sequence of events leading up to the challenged decision," *Apportionment VII*, 172 So. 3d at 389; and "[d]epartures from the normal procedural sequence." *See id.* The list is not exhaustive, however. This Court's test for partisan intent borrows from the totality-of-circumstances framework for intent used by the federal courts.

The only previous instance of Article III, § 20(a) being used to invalidate a congressional plan followed a 12-day trial. *Id.* at 376. There, the adjudicated facts included the following:

- The existence of a parallel redistricting process separate from the legislature's public-facing process, *id.* at 376–77;
- The Legislature's destruction of "almost all" emails and "other documentation relating to redistricting," *id.* at 392;
- Evidence of meetings between political consultants and legislative leaders early in the redistricting process, *id.*;
- Continued involvement and influence of political consultants throughout the legislative process, *id.*; and
- The use of an admittedly partisan 2002 congressional plan as the starting point for redistricting, *id.* at 371.

Notably, here, there is no evidence of any of these facts.

There's another complication when the Governor becomes involved in the process. Plaintiffs must then prove the improper partisan intent of both the Governor and the Florida Legislature. The allegedly improper intent of one cannot be imputed to the other. The U.S. Supreme Court has explained that such a "'cat's paw' theory has no application to legislative bodies." *Brnovich v. DNC*, 594 U.S. 647, 689 (2021). The executive and legislative branches are separate entities with different duties and functions, accountable to different constituencies. "It is insulting to suggest that" legislators "are mere dupes or tools" of another branch of government. *Id.* at 690.

Skipping over the Legislature's intent is not an option either. The Florida Constitution's structure makes that much clear. After all, Article III, § 20(a)'s partisan-intent requirement resides in Article III—the part of the constitution specific to the Legislature.

2. The circuit court found that Plaintiffs had failed to establish partisan intent under this existing framework. Though the circuit court's order doesn't mention statements that Plaintiffs attribute to the President of the United States and legislators in Texas, North Carolina, and Missouri, that omission is reasonable. These individuals don't draw Florida's maps. Hearsay statements attributed to

Senator Joe Gruters never found their way into the circuit court's order; understandable, because he neither participated in any legislative hearings nor voted on the 2026 plan. Resp. App. 73–74, https://perma.cc/48M7-FEFM. And tweets from the handle "Team DeSantis" don't speak for the Executive Office of the Governor and are not self-authenticating. *See generally* § 90.902, Fla. Stat.

As to the map maker, Mr. Poreda, the circuit court simply disagreed with Plaintiffs. From hours of testimony, Plaintiffs focused on the one statement where Mr. Poreda said he looked at "the entire suite of redistricting criteria," "including partisan data." App. 693. No legislator asked Mr. Poreda what precisely that data was—voter registration, turnout data, all available election results, or merely the results of one election. Nor did Mr. Poreda testify as to how (if at all) the data he looked at affected any particular district. And Mr. Poreda stated emphatically on the record that he had no partisan intent—though not emphatic enough for Plaintiffs, who make no mention of it. App. 721.

The circuit court considered all this in finding, first, that Mr. Poreda's "statement is not direct evidence of impermissible intent" because "Mr. Poreda did not say that he drew district lines to favor

or disfavor an incumbent or party." App. 2778. "Rather, one must infer that because he used partisan data (along with all other data available), that he then used it with impermissible intent." *Id.* Next, the circuit court chose "not [to] accord the same weight to this statement that [Plaintiffs] do, at least not on a cold record at this stage in the litigation." *Id.* This was so because the statement was one snippet from "one of two presentations that Mr. Poreda gave that day" and, without better questions, left the partisan intent issue unresolved. *Id.* In their request for an extraordinary writ, Plaintiffs fail to overcome the deference accorded to the circuit court's findings about Mr. Poreda's statement.

Plaintiffs also fail to overcome the circuit court's findings about the experts who appeared by paper but not through live testimony. Stepping back, Plaintiffs now before this Court were one of three sets of movants before the circuit court. Plaintiffs had three experts. The other movants had several other supposed experts. And though the State raised evidentiary issues with the presentation of these experts, they attempted to have experts of their own respond to Plaintiffs' three experts: Drs. Rodden, Chen, and Warshaw. *See* App. 2243–45;

Resp. App. 5–30 (Dr. Voss Report responding to Dr. Chen); Resp. App. 31–59 (Dr. Trende Report responding to others).

The circuit court found the State's "evidentiary objection to [Plaintiffs'] numerous experts at the preliminary injunction stage without adequate chance at rebuttal [to be] well taken." App. 2779. More specifically, there was no opportunity to test the underlying data, methodology, credentials, or credibility of the witnesses who appeared only in paper form. To underscore the point, the circuit court focused on "one example" about the proper data set needed to measure population shifts. *Id.* Ultimately, it was reasonable for the circuit court to conclude that Plaintiffs failed to prove partisan intent through a battle of the experts conducted only on paper and without an adequate opportunity for a response.

And, at the most basic level, Plaintiffs' experts complain that Democrats lack proportional representation under the 2026 plan. That's not enough to succeed in a partisan-intent claim. The FDA "does not require the affirmative creation of a fair plan" that must "compensate for a natural packing effect of urban Democrats" or bring the likely results "more in balance with the composition of voters statewide." *Apportionment I*, 83 So. 3d at 643. If anything, for

Plaintiffs to be "made whole" on this score, it would require the very affirmative partisan considerations in map drawing that they say doom the 2026 plan.

Plaintiffs needed more and better evidence to prove improper partisan intent. Reweighing the evidence presented to the circuit court is inappropriate.

B. Plaintiffs failed to prove that the 2026 Plan violates Tier II requirements.

The problem is much the same for the Tier II requirements, namely compactness and adherence to political and geographic boundaries. The presumption of correctness extends to these requirements. A compactness violation requires a showing that the shape of a district is unusual. *Apportionment* I, 83 So. 3d at 634. "[F]inger-like extensions," "narrow and bizarrely shaped tentacles," and "hook-like shape[s]" are "constitutionally suspect and often indicative of racial and partisan gerrymandering." *Id.* at 638. "[Q]uantitative geometric measures of compactness" from "commonly used redistricting software" are used as proxies for the eyeball test. *Id.* at 635. Alternatives are considered for comparison. *See, e.g.*, *Apportionment VII*, 172 So. 3d at 436. Adherence to geographic and

political boundaries also requires comparisons. And, as Plaintiffs said below, and their experts said in their papers, the Tier II requirements are most relevant when used as a "yardstick by which to evaluate" whether a district was drawn with improper partisan intent. *Apportionment I*, 83 So. 3d at 636. In this way, the Tier II requirements overlap with the Tier I analysis. Proving a violation requires well-developed facts.

Here, as Mr. Poreda testified before the Legislature, the overall compactness of the 2026 congressional plan is consistent with the 2022 congressional plan that it replaced and to which Plaintiffs want to revert. App. 681, 696–97. The geographic and political boundary scores are much the same, too. App. 681–82; *see also* Statistics Package, https://perma.cc/8PD2-WYEG (last visited June 8, 2026) (providing statistics for the 2026 plan); Resp. App. 38–39 (Dr. Voss Report) (discussing compactness).

For Plaintiffs to rebut these statements made on the legislative record, they must explain why any differences on a plan-wide basis or on a district-by-district basis are meaningful from a practical perspective. Dr. Chen's statistical sleight of hand does not get the job done for the reasons that Dr. Voss explains. Resp. App. 38–39. Or, to

make the point another way, if a quantitative measure looks at the percentage of a circle a district covers, as the Reock score does, there needs to be some persuasive explanation of why covering 46% of a circle rather than 45% of the same circle is meaningfully different. Plaintiffs never provide these meaningful explanations.

Finally, time after time, the only meaningful use of the compactness and boundary numbers from Plaintiffs has come when they attempt to buttress the improper intent argument. Indeed, the presentation before the circuit court used the Tier II requirements to help make the partisan intent point. App. 2596–97. That's fine as part of the totality-of-circumstances test for intent. *See Apportionment I*, 83 So. 3d at 636. But Plaintiffs cannot then turn around and accuse the circuit court of failing to adequately address the Tier II issues. To the extent that the partisan intent argument relied on the Tier II issues, the circuit court considered and rejected the Tier II arguments. Similarly, to the extent that Plaintiffs' experts were the source of the Tier II discussion, and they were, and the circuit court found an evidentiary problem with the experts' materials, which it did, then the circuit court considered and rejected the Tier II arguments there too. App. 2779; *see Briceño v. Bryden Investments, Ltd.*, 973 So. 2d 614,

617 (Fla. 3d DCA 2008) ("[T]he trial court's failure to specify its reasons for denying Briceño's Motion for Temporary Injunction Over Interest Proceeds does not warrant reversal."); *E.S. Thomas & Associates, Inc. v. Powell*, 827 So. 2d 396, 397 (Fla. 2d DCA 2002) ("We recognize that trial courts are required to specify the reasons for their decisions only when temporary injunctions are granted.") (citing Fla. R. Civ. P. 1.610(c)).

C. Even if Plaintiffs had proved a violation, the FDA is inoperative because its race-based components are both unconstitutional and inseverable from the rest of the FDA.

Whatever the Court's views on the above, Plaintiffs cannot prevail. The FDA is simply inoperative; its ban on partisan line-drawing and Tier II requirements cannot be severed from its unconstitutional racial mandates.[8] It falls as it was adopted: a single, unified program.

[8] The circuit court, in denying Plaintiffs' motions for preliminary injunctions, relied on other grounds. But this Court can affirm that denial on "any legal ground supported by the record." *Morris v. Cap. City Bank*, 403 So. 3d 369, 371 (Fla. 1st DCA 2025).

1. The Fair Districts Amendment's use of racial classifications is unconstitutional.

The FDA contains unconstitutional racial mandates. The FDA reads:

> In establishing congressional district boundaries:
>
> (a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; *and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice*; and districts shall consist of contiguous territory.
>
> (b) Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.
>
> (c) The order in which the standards within subsections (a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

Art. III, § 20, Fla. Const. (emphasis added).

As relevant here, Tier I explicitly forbids congressional maps from being drawn "with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect

representatives of their choice." *Id.* And these racial mandates trump all Tier II criteria. *Id.* at § 20(b).

What this means is that the Legislature *must* use the racial data of a district's residents, evaluate the political behavior of racial groups, and determine if those racial groups can elect their preferred candidate. The Legislature must then draw (and avoid undoing) district lines that protect these race-based election prospects. Or as the Court previously explained, compliance with these race-based provisions requires a "'functional analysis,' requiring consideration not only of the minority population in the districts . . . but of political data and how a minority population group has voted in the past." *Apportionment I*, 83 So. 3d at 625.

This is unconstitutional. At its core, the Equal Protection Clause guarantees "the absolute equality of all citizens of the United States politically and civilly before their own laws." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 201 (2023) (citing Cong. Globe, 39th Cong., 1st Sess., 431 (1866) (statement of Rep. Bingham)). From this principle follows the commitment "that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall

stand equal before the laws of the States[.]" *Id.* at 202; *see also McLaughlin v. State of Fla.*, 379 U.S. 184, 192 (1964) (noting "the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States").

"The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007). That includes redistricting. "[W]here the State assumes from a group of voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls, it engages in racial stereotyping at odds with equal protection mandates." *Miller v. Johnson*, 515 U.S. 900, 920 (1995) (quotation marks omitted).

This Court recently affirmed this intuitive point when it upheld a congressional districting plan against a claim that it failed to retain a particular minority district as required by the FDA's racial provisions. *See BVM II*, 415 So. 3d at 184. Specifically, it upheld the plan "because the federal Equal Protection Clause prohibits the racially gerrymandered district that the plaintiffs demand." *Id.*

"Under the Equal Protection Clause, districting maps that sort voters on the basis of race 'are by their very nature odious.'" *Id.* at 195 (quoting *Wisconsin Legislature v. Wisconsin Elections Comm'n*, 595 U.S. 398, 401 (2022)). A race-infused map therefore can survive only "in the most extraordinary case." *Id.* at 196. Moreover, this Court explained that one of the few justifications for a race-based map—remedying a *specific* instance of "past or present discrimination"[9]—was not available because the FDA lacked any "pre-enactment record identifying the discrimination—past or present, public or private—that the Non-Diminishment Clause is meant to remedy." *Id.* at 196. Put simply, "compliance with the Non-Diminishment Clause is not a compelling governmental interest under the test established in the Supreme Court's Equal Protection Clause jurisprudence." *Id.* at 197.

The U.S. Supreme Court confirmed as much in *Callais*. The Court there assessed whether compliance with § 2 of the Voting Rights Act justifies racial sorting normally forbidden by the Equal

[9] *See also Callais*, 146 S. Ct. at 1152–53 (outlining the requirements to survive strict scrutiny for an effort to remedy past discrimination).

Protection Clause. *Callais*, 146 S. Ct. at 1153. The Court started "with the general rule that the Constitution almost never permits the Federal Government or a State to discriminate on the basis of race." *Id.* at 1152. The Court ultimately concluded that "§ 2 imposes liability only when the evidence supports a strong inference that the State intentionally drew its districts to afford minority voters less opportunity because of their race." *Id.* at 1157. Short of that heavy burden, no "compelling interest justified the State's use of race." *Id.* at 1162. Plaintiffs' lack of a VRA challenge only confirms the difficulty of sustaining any claim.

In sum, the FDA's race-based requirements "subordinate[] traditional race-neutral districting principles . . . to racial considerations." *BVM II*, 415 So. 3d at 195 (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017)). It therefore triggers strict scrutiny. And no one in this case has attempted to show that the FDA would satisfy strict scrutiny in any of its applications.

To save the FDA, Plaintiffs effectively rewrite it. They argue that this Court should interpret the FDA in the same way that the Supreme Court interpreted the VRA in *Callais* to eliminate any constitutional concern. *See* Pet. 52–56. This is warranted, they claim,

given past FDA cases noting that its interpretation is "guided" by federal VRA jurisprudence. Pet. 55; *but see BVM II*, 415 So. 3d at 187 (noting lack of foundation for this assumption).

Such a simple solution, however, ignores the key differences in the language of Florida's FDA and the VRA, as well as this Court's holding in *BVM II*. Start with the text of the two laws. Section 2 of the VRA prohibits any state standard or practice "which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . . as provided in subsection (b)." 52 U.S.C. § 10301(a). Subsection (b) lays out the criteria, including its warning that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." *Id.* § 10301(b). Section 2's effect, therefore, is cabined in two ways: (1) "it imposes liability only when the circumstances give rise to a strong inference that *intentional* discrimination occurred" and (2) it "does not intrude on States' prerogative

to draw districts based on nonracial factors." *Callais*, 146 S. Ct. at 1156.[10]

The FDA is not so limited. It bars any congressional map that has the "intent *or result*" of limiting political participation. *See* Art. III, § 20(a), Fla. Const. And by nature of being a Tier I requirement, the non-diminishment provision necessarily "intrudes" on the State's use of nonracial factors, namely all Tier II factors. *Callais*, 146 S. Ct. at 1156.

Section 5 of the VRA is likewise far more limited than the FDA. That provision prohibits any practice that "has the purpose of or will have the effect of diminishing the ability of any citizens . . . on account of race or color . . . to elect their preferred candidates of choice." 52 U.S.C. § 10304. Yet "Section 5 applies only to 'covered jurisdictions'"—those places that historically used "tests and devices for voter registration" and had a suppressed voting rate. *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 546 (2013). In contrast, "Florida's

[10] And unlike the VRA post-*Callais*, the FDA still lacks any "pre-enactment record identifying the discrimination—past or present, public or private—that the Non-Diminishment Clause is meant to remedy." *BVM II*, 415 So. 3d at 196.

constitutional prohibition applies to the entire state." *Apportionment I*, 83 So. 3d at 620. The FDA therefore fails to "tailor[] the remedy" in the way envisioned by the VRA. *See Shelby County*, 570 U.S. at 550. And this Court has already noted key ways in which the two provisions "stand on different footing." *BVM II*, 415 So. 3d at 197.

These textual differences are fatal to Plaintiffs' claim. "When the subject statute in no way suggests a saving construction, we will not abandon judicial restraint and effectively rewrite the enactment." *Brown v. State*, 358 So. 2d 16, 20 (Fla. 1978).

Plaintiffs also fail to grapple with *BVM II* and the many ways in which it outpaced *Callais*. For the reasons mentioned above, this Court has already rejected the idea that the "Legislature has a compelling [constitutional] interest in complying with the Non-Diminishment Clause." *BVM II*, 415 So. 3d at 196.[11]

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[11] To argue against severability, Plaintiffs also claim that the FDA's racial provisions must be found "facially unconstitutional." Pet. 52–53. That argument, lacking any citation to legal authority, gravely overstates things. Requiring a facial challenge to the statute before severability analysis ignores examples from this Court severing a provision after an as-applied challenge. *See, e.g.*, *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181 (Fla. 2017). And it stands to reason that a provision of law suffering from many, many unconstitutional applications will trigger severability

2. The Fair Districts Amendment's unconstitutional provisions cannot be severed from its constitutional applications.

The racial mandates within the FDA violate the Equal Protection Clause. This dooms Plaintiffs' Tier I and Tier II arguments, Pet. 34-59, because the racial components of the FDA are inseverable from the rest of the provisions. After *BVM II* and *Callais*, no part of the FDA remains effectual.

This Court has explained that the remainder of a constitutional provision can be severed from its unconstitutional portion only when:

> (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

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analysis even if there may be some outlier applications that pass constitutional muster. In any event, Plaintiffs haven't met their burden to show any constitutional applications of the FDA's race-based mandates.

Ray v. Mortham, 742 So. 2d 1276, 1281 (Fla. 1999).[12] "In brief, the question is whether the taint of an illegal provision has infected the entire enactment, requiring the whole unit to fail." *Emerson v. Hillsborough Cnty.*, 312 So. 3d 451, 460 (Fla. 2021) (cleaned up).

The answer here is yes. The FDA's interlocking structure and highly calibrated purpose make clear that the racial provisions cannot permissibly be removed from the remaining provisions. In other words, the racial mandates and other requirements of the FDA "form an interlocking plan" with, and "are functionally dependent" upon, each other. *Emerson*, 312 So. 3d at 461. Severability is therefore impossible: "When . . . the valid and void parts of a statute are mutually connected with and dependent upon each other as conditions, considerations, or compensations for each other, then a severance of the good from the bad . . . cannot be applied to save the valid parts

[12] While this Court applied the legislative severability test to a constitutional amendment, serious concerns with such an approach remain. *See Mortham*, 742 So. 2d at 1290 (Fla. 1999) (Lewis, J., concurring in result only) ("In my view, the elements of the legislative severability analysis adopted by the majority are inadequate to protect our basic governing charter from misadventures in the future.").

of the statute." *Barndollar v. Sunset Realty Corp.*, 379 So. 2d 1278, 1281 (Fla. 1979).

That conclusion flows both from the FDA's plain text and evidence from the amendment's ratification process. And Plaintiffs' responses fail to persuade.

i. In two ways, the text of the FDA defeats severability. To begin, each Tier I provision bears equal "priority" among each other. Art. III, § 20(c), Fla. Const. To remove two of the four Tier I substantive provisions,[13] then, necessarily elevates the remaining non-racial provisions to a prominence not envisioned by the voters. Without racial requirements to dilute its influence, for example, the FDA's Tier I requirement that districts maintain "contiguous territory" takes on new prominence—balanced only against the partisan prohibitions.

This dynamic is more prominent for Tier II requirements, which are meant to be secondary considerations to Tier I. *See* Art. III, § 20(b), Fla. Const. But again, Tier II requirements will necessarily fill the vacuum left by the now-invalidated Tier I racial provisions.

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[13] *See BVM II*, 415 So. 3d at 186 (explaining that Tier I's language "includes two clauses that expressly address 'racial or language minorities'").

This ensures that secondary considerations—such as equal population, compactness, and existing boundaries—will play a more pronounced role in map drawing than voters expected.

Second, the FDA lacks any severability clause. Now, as a general rule, "severability does not always depend on the inclusion of a severability clause." *Milks v. State*, 894 So. 2d 924, 934 n.11 (Fla. 2005). But it is also a "generally accepted canon of construction" that when drafters "include[] a provision in one section of a statute but exclude[] it in another, courts will deem the difference intentional and will assign meaning to the omission." *BellSouth Telecommunications, Inc. v. Meeks*, 863 So. 2d 287, 291 (Fla. 2003). Initiative petitions routinely include severability clauses. *See, e.g.,* Art. X, § 21(f), Fla. Const. ("If any portion of this section is held invalid for any reason, the remaining portion of this section, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application."). A severability clause puts voters on notice that some of an amendment's multifarious objectives may not survive a court challenge, and thus informs their voting choices. Yet the FDA lacks any such clause. And courts have noted the absence of a severability clause when finding a statute inseverable. *See, e.g.*,

Lawnwood Med. Ctr., Inc. v. Seeger, 990 So. 2d 503, 518 & n.21 (Fla. 2008).[14]

ii. The ratification process removes any doubt that the FDA was a finely tuned packaged deal. The initiative's proponents confirmed the FDA's unified purpose at oral argument, telling the Court that the initiative had "a single concept, designed to do one goal," that "each of the [initiative's] standards serve[d] that same singular purpose," and so all of Article III, § 20 had a "cohesive unity." SC08-986, Oral Arguments, Florida Supreme Court Gavel to Gavel Video Portal | Case SC08-986, SC08-1163, SC08-1149, SC08-1165 (wfsu.org/gavel2gavel/), at 3:10-3:50 (last visited June 8, 2026).

[14] And, of course, all of this is interpreted through the lens of ballot initiatives, which include the constitutional restriction that they "shall embrace but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. An initiative passes single subject muster "when it may be logically viewed as having a natural relation and connection as component parts or aspects *of a single dominant plan or scheme*." *Advisory Op. to the Att'y Gen. re All Voters Vote in Primary Elections for State Legislature, Governor, & Cabinet.*, 291 So. 3d 901, 905 (Fla. 2020) (cleaned up) (emphasis added). The proper understanding of the single-subject requirement coupled with the lack of any severability clause only increases the understanding that the FDA was an all-or-nothing proposition.

This Court echoed this sentiment. Its advisory opinion approving the amendment for ballot placement embraced the argument. It concluded that the initiative's various components "possess a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Advisory Op. re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 175, 181–82 (Fla. 2009) (quotation removed). And at oral argument in *BVM II*, the Chief Justice asked if the FDA could be severed from the racial provisions—since the FDA was "part of a packaged deal . . . if we neuter half of the bargain, do the voters get a chance to just sort of start from scratch or are they stuck with the half" that survived? Oral argument at 1:18:05-42, *Black Voters Matter Capacity Building Institute, Inc., et al. v. Secretary, Florida Dept. of State, et al.* SC2023-1671, available at https://perma.cc/ZDK7-KF8B (last visited June 8, 2026) (cleaned up).[15]

[15] Plaintiffs' citations to other state constitutions that contain bans on partisan gerrymandering and other boundary requirements therefore offer no evidence against what *Florida's* voters assumed when voting on *this* amendment. *See* Pet. 58.

Public discourse during ratification is also instructive. Key constituencies worried over the FDA's equilibrium when the amendment was voted upon by Florida's residents. The NAACP, for instance, considered Tier II to contain "*problematic standards*," but supported the FDA nonetheless *because* these secondary standards "[a]bsolutely [would] not" "lessen the ability of Florida's black voters to elect candidates of their choice." Resp. App. 274–75 (emphasis added). In other words, some voters feared that in insisting on respect for compactness and political and geographic boundaries, the FDA would result in maps that undermined minority voters' ability to elect their preferred candidates. The NAACP responded that the FDA's Tier I race-based protections solved those concerns. Its support therefore turned on the as-is calibration of the FDA. Remove the Tier I racial mandates and the organization's response almost certainly would have differed.

The initiative's sponsors also emphasized the primacy of the racial mandates over the Tier II considerations. The sponsors went so far as to testify to the Florida Legislature that the NAACP had "joined the Fair Districts' team because they agree that in addition to reducing partisan gerrymandering, the amendments will add permanent

protections for minority voters that are greater than what exist today in Florida or any other state." Resp. App. 294. They also assured the Legislature that racial voting blocs would remain given the subordinate nature of Tier II requirements. *See* Resp. App. 296–97.[16]

All said, from the time of the FDA's enactment to *BVM II*, there was a clear understanding that the FDA's unique, interlocking structure rendered its core provisions inseverable. Nothing has changed since then.

iii. These aspects of the FDA make it clearly distinguishable from the provision at issue in *Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999). There, this Court severed a constitutional provision enforcing term limits on state officials from term limits on federal officials after the U.S. Supreme Court had found federal term limits unconstitutional. *See id.* at 1286; *see also U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779 (1995). "[M]indful that the initiative power of fully informed citizens to amend the Constitution must be respected as an important aspect of the democratic process," 742 So. 2d at 1281, the

[16] Plaintiffs notably omit any rebuttal of this evidence in their motion. *See* Pet. 56–58.

Court found severability possible so long as "the purpose of the amendment can still be accomplished" after removing the unconstitutional provisions. *Id.*

The answer in *Mortham* was an easy one. "Simply because the purpose cannot be accomplished as to the class of federal legislators does not mean that the overriding purpose of the amendment cannot be accomplished as to the remaining offices." *Id.* at 1282. Federal and state elected officials are two distinct and neatly separated classes of officers and are "functionally independent." *Id.* at 1283. So "[t]he unconstitutional provisions of this amendment can be stricken without disrupting the integrity of the remaining provisions." *Id.* Making matters easier, "it is clear from the initiative petition that severability was anticipated by the voters[,] . . . which is persuasive of the fact that the framers intended severability to save the amendment in case portions of it were declared invalid." *Id.*

The same cannot be said for the FDA. For all the reasons mentioned above, the FDA's substantive provisions balance and complement each other—every component works together to fulfill the FDA's dominant scheme; to remove one component is to change the force and sweep of every other provision. And the missing severability

clause undermines any affirmative claim that the voters thought the FDA could and should continue to operate if any part of it was invalidated.

Assuming that Plaintiffs had otherwise proven a violation of the FDA, the amendment as a whole is now unenforceable. That is yet another basis for denying the petition.

* * *

Perhaps for the first time in Florida's history, the State has a truly colorblind map; a map that refuses to assault the dignity of men and women by color-coding them; a map that jettisons odious stereotypes about how certain racial groups are likely to behave; a map that refuses to define voters' political hopes and aspirations by immutable—and irrelevant—facts of birth. In America's 250th year, Florida's 2026 plan finally lives up to the Founder's self-evident truth: "that all men are created equal." That is cause for celebration.

CONCLUSION

This Court should deny the petition.

Date: June 8, 2026

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I certify that this brief was prepared in Bookman Old Style, 14-point font, in compliance with Rules 9.045(b), 9.100(g), and 9.210(a)(2)(B) of the Florida Rules of Appellate Procedure; and that it is less than 13,000 words.

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