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

BLACK VOTERS MATTER CAPACITY BUILDING INSTITUTE, INC., EQUAL GROUND EDUCATION FUND, INC., LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., LEAGUE OF WOMEN VOTERS OF FLORIDA EDUCATION FUND, INC., FLORIDA RISING TOGETHER, PASTOR REGINALD GUNDY, SYLVIA YOUNG, PHYLLIS WILEY, ANDREA HERSHORIN, ANAYDIA CONNOLLY, BRANDON P. NELSON, KATIE YARROWS, CYNTHIA LIPPERT, KISHA LINEBAUGH, BEATRIZ ALONSO, GONZALO ALFREDO PEDROSO, and ILEANA CABAN,

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as Florida Secretary of State, ASHLEY MOODY, in her official capacity as Florida Attorney General, the FLORIDA SENATE, the FLORIDA HOUSE OF REPRESENTATIVES, WILTON SIMPSON, in his official capacity as the President of the Florida Senate, CHRIS SPROWLS, in his official capacity as the Speaker of the Florida House of Representatives, RAY RODRIGUES, in his official capacity as Chair of the Senate Committee on Reapportionment, and TOM LEEK, in his official capacity as Chair of the Chair of the House Redistricting Committee,

Defendants.

Case No. 2022-ca-000666

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

INTRODUCTION

The Secretary does not seriously dispute that the DeSantis Plan diminishes the electoral power of Black voters in CD-5—who were previously capable of electing their candidate of choice—by cracking its Black voters among four separate districts across North Florida. Under existing Florida Supreme Court precedent, that concession alone is sufficient to prove a diminishment claim under Article III, Section 20(a) of the Florida Constitution and should entitle Plaintiffs to relief.

The Secretary's arguments to the contrary are as unavailing as they are creative. She argues that the Fair Districts Amendment's non-retrogression principle is no longer enforceable in Florida, paying no heed to state prerogatives to establish constitutional protections greater than those afforded by the federal constitution. And she argues that today, nearly four months away from the primary, is too late to provide Plaintiffs relief for their constitutional injuries, no matter that multiple courts, including in this cycle, have resolved redistricting challenges functionally indistinguishable from this one in less time, ensuring that voters are not forced to cast their ballots under unlawful or unconstitutional maps.

The Secretary's arguments are nothing but a transparent attempt to muddy a straightforward constitutional challenge. The DeSantis Plan plainly dilutes Plaintiffs' electoral power in violation of the Florida Constitution. For these reasons, and those stated below, Plaintiffs respectfully request that the Court grant their motion for a temporary injunction.

ARGUMENT

I. Plaintiffs have established a clear violation of the Fair Districts Amendment's non-diminishment standard.

The Fair Districts Amendment established new standards to constrain the Legislature's once-in-a-decade exercise of its congressional reapportionment power, which are enumerated

within two "tiers" in Article III, Section 20 of the Florida Constitution. *See* Art. III, § 20, Fla. Const. Among the "Tier I" standards is a requirement that "districts shall not be drawn with the intent or result of . . . diminish[ing] the ability" of racial or language minorities "to elect representatives of their choice." *Id.* § 20(a). Although Plaintiffs brought their Motion for a Temporary Injunction under this specific provision, the Secretary all but ignores it, failing even to mention the provision until 13 pages into her brief. The reason for her evasiveness is clear: it is incontestable that the dismantling of Benchmark CD-5 under the DeSantis Plan strips Black voters in North Florida of their ability "to elect representatives of their choice."

The report of Plaintiffs' expert, Dr. Ansolabehere, establishes that Black voters in Benchmark CD-5 have been able to elect a candidate of their choice since the district was created in 2015. Black residents are the largest group of registered voters in the district and "account[ ] for 49.1 percent of the total population and 77.7 percent of the minority population in this district." *See* Ex. 2 ¶ 32. Given the political cohesion of Black voters in Benchmark CD-5, Black voters had the ability to elect their preferred candidates and exercised that power by electing Democrat Al Lawson to Congress in 2016, 2018, and 2020. *Id.* ¶¶ 39-40.

The DeSantis Plan diminishes the electoral ability of Black voters by carving up Benchmark CD-5 and cracking its Black population among four new districts: New CD-2, CD-3, CD-4, and CD-5. *Id.* ¶ 43. The resulting Black populations of those districts are now 22.7%, 15.3%, 30.8%, and 10.9%, respectively. Ex. 2 tbl. 2. By contrast, white voters now comprise the majority of the population in each of these districts and cast the majority of votes in 2016, 2018, and 2020 in both the general and Democratic primary elections. *Id.* ¶¶ 47-48. The result is that the approximately 370,000 Black voters who were in Benchmark CD-5 are no longer able to elect their preferred candidates. There is no longer a minority-performing congressional district in North

Florida, and the electoral preferences of Black voters have been subrogated to those of the white voters in the four districts into which Black voters have been cracked and displaced.

Faced with these indisputable facts, the Secretary's first gambit is to argue that the Fair Districts Amendment's non-diminishment standard does not apply because "there's no record of a race-based problem that justifies its use as a race-based solution. . . ." Def. Sec'y of State Lee's Resp. in Opp. to Pls.' Mot. ("Opp.") at 14 (May 9, 2022). But a violation of the non-diminishment standard does not hinge on whether there is a "race-based problem," a term that is found nowhere in the Fair Districts Amendment and that the Secretary does not even attempt to define. Instead, the non-diminishment standard requires a straightforward comparative analysis: "The existing plan of a covered jurisdiction serves as the 'benchmark' against which the 'effect' of voting change is measured." *In re S. J. Res. of Legis. Apportionment 1176*, 83 So. 3d 597, 615 (Fla. 2012). And whether a minority group's voting power has been diminished is determined by a "functional analysis" of "whether a district is likely to perform for minority candidates of choice." *Id.* at 625. This inquiry requires "consideration not only of the minority population in the districts, or even the minority voting-age population in those districts, but of political data and how a minority population group has voted in the past." *Id.* The Florida Supreme Court has specifically provided that its functional analysis "will involve review of the followings statistical data: (1) voting age-populations; (2) voting-registration data; (3) voting registration of actual voters; and (4) election results history." *Id.* at 627. Dr. Ansolabehere conducted exactly this type of analysis. *See* Ex. 2 ¶¶ 32-67.

This standard required the Secretary to respond to Dr. Ansolabehere's diminishment analysis with a comparative electoral analysis of her own, which she has completely failed to do. The Secretary's primary offering is an affidavit from Dr. Mark Owens that never analyzes the only

two relevant questions -- whether Black voters had the ability to elect their preferred candidates under Benchmark CD-5 and whether they have lost that ability under the DeSantis Plan's dispersion of Black voters across four white majority districts. Dr. Owens focuses instead on whether the race of candidates in Benchmark CD-5 and new CD-4 affects the level of support they have among Black voters in those CDs and concludes that "the voting preferences of Black voters seem more aligned with political party than race of the candidates." Opp., Ex. 11 at 9. But the analysis of whether a minority group is able to elect its preferred candidate does not depend on "the race of the candidate," but rather "the status of the candidate as the chosen representative of a particular racial group." *See Thornburg v. Gingles*, 478 U.S. 30, 68 (1986) (discussing Voting Rights Act); *see also In re S. J. Res. of Legis. Apportionment*, 83 So. 3d at 620 ("Our interpretation of [the FDA's non-diminishment standard] is guided by prevailing United States Supreme Court precedent."). The FDA's non-diminishment standard focuses only on whether the ability of Black voters to elect their preferred candidates has been diminished. *See id.* at 625 ("[T]he Legislature cannot . . . weaken other historically performing minority districts where doing so would actually diminish a minority group's ability to elect its preferred candidates."). Only Dr. Ansolabehere answers that question, and he does so by providing exactly the type of comparative electoral analysis the Florida Supreme Court requires. His conclusion that the DeSantis Plan diminishes the voting power of Black voters in North Florida is unrebutted.

Nothing in the affidavit of the other expert witness the Secretary proffers, Dr. Johnson, saves the Secretary's failure to rebut the violation of the non-diminishment requirement established by Dr. Ansolabehere. Dr. Johnson does not address the DeSantis Plan's diminishment of Black voting strength at all, focusing instead on comparisons of the number of political boundary splits and compactness in the versions of CDs 2-5 of the DeSantis Plan, the 2015

Benchmark Plan, and the Florida Legislature's Plan 8015. But under the Fair Districts Amendments, non-diminishment is a Tier One requirement that takes precedence over boundary splits and compactness, which are Tier Two criteria. As the Florida Supreme Court held in *In re S. J. Res. of Legis. Apportionment*, the "constitutional directive is that tier two [is] subordinate to tier one," and if there is a conflict between the tier requirements, "the Legislature is obligated to adhere to the requirements of section 21(a) (tier one) and then comply with the considerations in section 21(b) (tier two) to the extent 'practicable' or 'feasible' . . . ." 83 So. 3d at 615. By ignoring the non-diminishment requirement, Dr. Johnson improperly elevates Tier Two criteria above the Tier One requirement, which renders his analysis irrelevant.

Moreover, Dr. Johnson's comparison of the various maps' compliance with traditional redistricting principles is not factually accurate. As demonstrated in Dr. Ansolabehere's Rebuttal Report, the Proposed CD-5 that would replace the DeSantis Map's CD-5 scores nearly identically to the Benchmark Plan CD-5 on the compactness and political boundary splits criteria, and in some places even improves upon the DeSantis Map. *See* Ex. 13 ¶¶ 48-60. Most important, this version of CD-5 complies with the Tier One non-diminishment requirement, unlike the DeSantis Map that is the flawed basis for Dr. Johnson's analysis.

II. There is time for a narrow remedy in advance of the 2022 elections.

A. The *Purcell* doctrine does not constrain this Court.

Relying almost exclusively on the "*Purcell* principle," the Secretary argues that no matter the merits of this case, it is too late for this Court to offer Florida voters any relief. Opp. at 9. But *Purcell* does not bind this court. Purcell is a *federal* doctrine, created by *federal* courts, as a tool to restrain *federal* judicial interference in the administration of state elections close to an election, as demonstrated by all of the *federal* precedent the Secretary cites in support of the principle. *See id.* at 7-8. The *Purcell* principle does not bind state courts. As New York's highest state court

recently explained in enjoining that state's congressional plan after that state's qualifying period had already passed, *Purcell* "does not limit state judicial authority where, as here, a state court must intervene to remedy violations of the State Constitution." *Harkenrider v. Hochul*, 2022 NY Slip Op. 02833, at 28 n.16 (N.Y. Apr. 27, 2022).

Nor is there a Florida-specific *Purcell* principle that would foreclose relief in every circumstance as an election was nearing, as the Secretary implies. *See* Opp. at 9. Reaching back fifty years, the Secretary cites *State ex rel. Haft v. Adams*, 238 So. 2d 843 (Fla. 1970), in which the Florida Supreme Court declined to grant a writ of mandamus to prohibit the Secretary from placing certain candidates' names on the ballot, just three weeks before the primary election, over the allegation that such candidates did not pay the proper filing fee by a few dollars. In denying relief, the Court emphasized that the candidate seeking to force others off the ballot had discovered the error weeks earlier and waited to file his suit to "belatedly take advantage" of the situation so that no other candidate could have gained access to the ballot by the time his suit was heard. *See id.* at 845. Under the circumstances, the Court denied relief; it did not set a bright-line rule that injunctions near elections are disfavored. In the only other case that the Secretary cites, *State ex rel. Walker v. Best,* 163 So. 696, 697 (Fla. 1935), the Court refused to order a town clerk to publish a new amendment to the town charter 15 days before the election, when the town's charter required such amendments to be published not less than 25 days before. The case plainly does not stand for the principle that injunctive relief should be foreclosed in the weeks before an election. Nor are we "weeks" from an election. Florida's primary is not until August 23, nearly four months away, and is one of the latest in the nation. *See* Ex. 11. This is decidedly not the typical eve-of-election case in which judicial relief may disrupt an election. *See Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022) (invalidating plan on February 14, 2022, about three months before North Carolina's May

17 primary elections); *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (invalidating plan on February 7, 2018, about three months prior to Pennsylvania's May 15 primary elections; plan ordered on February 23); *Rivera v. Schwab*, No. 2022-CV-000089 (Kan. D. Ct. 2022) (invalidating plan on April 25, 2022, about three months prior to Kansas's August 2 primary elections), appeal docketed No. 125092 (Kan.).

While she now disclaims it as an error, the Secretary of State represented in federal court proceedings just a few weeks ago that a congressional plan could be put in place as late as June 13, 2022. *See* Def. Sec'y of State Lee's Reply in Supp. of her Mot. to Stay at 6, *Common Cause Fla. v. Lee*, No. 4:22-cv-109-AW/MAF (N.D. Fla. Apr. 8, 2022), ECF No. 73. It is indeed true that Plaintiffs' counsel believed that date was too late for a court to implement a remedial map if Florida were to conduct its primary election on August 23. That is precisely why, in this proceeding, Plaintiffs have asked this Court to enjoin the DeSantis Plan and ensure a remedy is in place no later than May 27, approximately three weeks sooner than the Secretary's first announced drop-dead date for a plan. The only party to this proceeding who has substantially changed their position on the date by which a congressional plan must be in place is the Secretary.

B. Plaintiffs' requested relief is narrow and practicable.

The record demonstrates that there is sufficient time to implement a congressional plan prior to the 2022 elections that ensures that Black voters in North Florida will have the opportunity to elect the candidate of their choice. That relief would be narrow, it would affect only a handful of counties and Supervisors, and it would instill confidence in Florida voters that they were electing their representatives under a plan consistent with the Florida Constitution.

While the Secretary criticizes Plaintiffs' proposed remedies from their April 26 briefing as requiring changes to counties "as far south as" Marion and Volusia, Opp. at 1, the fact that Plaintiffs' initial remedy *did not* affect any county south of Volusia or Marion was notable in itself.

But to the extent that this Court has any concern about the remedies Plaintiffs proposed in their opening brief, Plaintiffs' expert Dr. Ansolabehere has prepared for the Court illustrative remedial plans that make even fewer changes to the Enacted Map, and yet still permit Black voters to continue to elect the candidate of their choice in North Florida.

While Dr. Ansolabehere's initial proposals include swapping the Enacted Map's version of North Florida for the version in the Legislature's "Backup Map" (Plan 8015) or the Senate Map (Plan 8060)—both of which retained Black voters' ability to elect their candidate of choice, *see* Ex. 1 ¶ 52—it is also possible to remedy the constitutional violation at issue by simply inserting the Legislature's version of CD-5 from Plan 8015 straight into the existing Enacted Map. *See* Ex. 13 ¶¶ 36-47. Using this approach, Dr. Ansolabehere has produced two additional proposals, both of which remedy the constitutional violation Plaintiffs allege, but exhibit different benefits and tradeoffs. Dr. Ansolabehere's first proposal, Proposal A, alters only five CDs from the Enacted Plan, CD-2, 3, 4, 5, and 6. Most importantly, however, where lines must be changed, Dr. Ansolabehere attempts to match those lines with the new legislatively enacted State House districts wherever possible, thus reducing the number of new precincts that would be required under such a map. *See* Ex. 13 ¶ 38. Dr. Ansolabehere's second proposal, Proposed Map B, is designed to make "as few changes to the Enacted CDs as possible," and thus, in Proposed Map B, only four CDs (CD-2, CD-3, CD-4, and CD-5) are altered. *See* Ex. 13 ¶ 43.

The upshot of Dr. Ansolabehere's proposals is that a remedy is available, a remedy can be implemented quickly, and a remedy need affect only a handful of Supervisors of Elections. While the Secretary relies on two Supervisors' Offices who explain that a new map would impose administrative burdens on their office, an administrative burden should not be sufficient to justify violating constitutional rights. *See, e.g.*, *Taylor v. Louisiana*, 419 U.S. 522, 535 (1975) (explaining

that "administrative convenience" is not a sufficient reason to uphold unconstitutional law). Plaintiffs do not doubt the sincerity of Supervisor Brown, who the Secretary puts forward because she doubts her ability to implement a new congressional plan in time for the 2022 elections. But the roadblocks that Supervisor Brown identifies are *fixable* problems, which include self-identified problems such as needing to cancel and reschedule a meeting with the Board of County Commissioners. Opp., Ex. 1 ¶ 9. And while Plaintiffs appreciate that Columbia County would need to expend additional funds to implement a new map, such expense could have been avoided in the first place had Florida implemented a constitutional map from the beginning. Similarly, while Mr. Phillips of Duval County cites the increased burden on the Duval County Supervisor of Elections Office if a new plan is implemented, *id.*, Ex. 2 ¶ 17, Representative Tracie Davis (who worked at the Duval County Supervisor's Office for 14 years and ultimately served as Deputy Supervisors of Elections there) has explained that that office is seasoned in managing complicated districting schemes, knows how to handle precinct splits in its congressional plan (as it had under the Benchmark Plan), and should be able to implement a remedial plan in time for the primary election so long as it is received by the end of May. Ex. 15 ¶¶ 5-8.

Ultimately, many of Florida's Supervisors and their staff are not ready to cede their voters to an unconstitutional redistricting plan should this Court find that the Enacted Map violates the Florida Constitution. Leon Supervisor of Elections, Mark Earley, for example, one of the Supervisors who would be most affected by a redrawing of CD-5, has explained that his office can implement any remedial plan received by May 27, 2022. *See* Ex. 12. Supervisor Earley's deputy Christopher Moore agrees. *See* Ex. 17. The same holds true for the Supervisor of Elections of Orange County, who oversees a county with over 850,000 voters, as long as relief is ordered in the next few weeks. *See* Ex. 14 ¶ 9 (explaining that "so long as final boundaries for congressional

districts are set no later than May 27, 2022, the Orange County Supervisor and staff will have adequate time to prepare for the election and meet each relevant election deadline in advance of the August 23, 2022, Primary Election"). While Orange County is not likely to be affected by a remedial map if one of Dr. Ansolabehere's narrower remedies is chosen, that a county with nearly a million voters could adapt to a new congressional plan within a few weeks demonstrates the feasibility of Plaintiffs' requested remedy.

Finally, while the Secretary cited a declaration from Polk Supervisor Lori Edwards which she submitted in separate litigation approximately a month ago, which suggested that Supervisor Edwards hoped to have a congressional plan in place by late April or early May, *see* Opp. at 6, Supervisor Edwards affirms to this Court *today* that her county could implement a revised congressional plan as long as it is received by May 27 and would diligently do so to comply with the Florida Constitution. Ex. 16 ¶ 7. The Secretary's reliance on Supervisor Edwards' prior declaration was misplaced, as Secretary Edwards explains in her own words now:

> I understand the Secretary of State [] has cited my previous declaration in Common Cause Florida et al. v. Lee, Case No.: 4:22-cv-109 (N.D. Fla.) as support for the argument that it is too late to implement a congressional redistricting plan that complies with the Florida Constitution, if ordered by this Court. My testimony [there] was and is different, as was the circumstances at the time of my prior declaration, and the scope of remedial possibilities now appears much clearer and narrower.
>
> Ex. 16 ¶ 5.

The upshot is that Florida's Supervisors *can* implement a new plan in advance of the 2022 elections, even if it imposes a small burden on their offices, and even if it takes a little time—a small ask where the constitutionality of Florida's congressional plan is at stake. Where Plaintiffs assert clear violations of their constitutional rights and a remedial plan would require only narrow

changes to a plan already passed by the Legislature, it would be manifestly unjust to deny them relief.

III. The Secretary's primary defense of the DeSantis Plan relies on an unsupported and novel legal argument.

The Secretary's chief argument in support of the DeSantis Plan rests on the novel notion that Florida could not enact a plan that preserves Black voters' ability to elect their candidates of choice because doing so would violate the U.S. Constitution. It is novel because even supporters of the view said it was. *See* Ex. 1-V at 14 (transcript of April 20, 2022 Florida Senate special session proceedings). And it's novel because the Secretary attempts to end-run a duly enacted state constitutional provision meant to protect minority voting strength by suggesting that compliance with those protections constitutes discrimination against the very voters it attempts to protect.

The Secretary cannot carry the burden of what she contends. To prove an unconstitutional gerrymander the Secretary must show that: "(1) race is the 'dominant and controlling' or 'predominant' consideration in deciding 'to place a significant number of voters within or without a particular district,' and (2) the use of race is not 'narrowly tailored to serve a compelling state interest.'" *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 260-61 (2015) (quoting *Miller v. Johnson*, 515 U.S. 900, 913, 916 (1995) and *Shaw v. Hunt*, 517 U.S. 899, 902 (1996) ("*Shaw II*")). But the Secretary cannot show that race was the predominant motive for the Legislature's drawing 8015's CD-5, instead of just one of several districting objectives motivating the Legislature. Nor can the Secretary prove that the Legislature's consideration of race was not narrowly tailored to advance a compelling state interest.

A. The Secretary has not proved race predominated in Plan 8015.

The Secretary faces a heavy burden to establish that race predominated in the drawing of 8015's CD-5. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (explaining that the burden of

proof lies with the party claiming "a state law was enacted with discriminatory intent"). Courts must "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race," given the "presumption of good faith that must be accorded to legislative enactments" and the "distinction between being aware of racial considerations and being motivated by them." *Miller*, 515 U.S. at 916. The party challenging the legislature's decision "must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Id.*

The Secretary has not established that race was the predominant factor in the drawing of 8015's CD-5. While the Secretary points to supposed "direct evidence" from the legislative debate, *see* Opp. at 12, those quotations merely demonstrate that race was one factor considered in creating CD-5, not that it was the predominant factor. The Secretary's alleged circumstantial evidence, the length of CD-5, is equally unavailing. *See* Opp. at 12. The Secretary does not explain how this constitutes circumstantial evidence of racial intent, particularly where 8015's CD-5 hews closely to the Benchmark CD-5. *See Lee v. City of L.A.*, 908 F.3d 1175, 1185 (9th Cir. 2018) (holding that "[t]he circumstantial evidence . . . fails to create a genuine dispute on racial predominance" where the challenged congressional district was "not any more bizarrely shaped than it was with its previous boundaries").

It is easy to imagine a host of reasons, many of which are race neutral, as to why the Legislature pursued a plan like 8015. By preserving the core of Benchmark CD-5, for example, the Legislature made minimal changes to North Florida that were required to account for population changes. Of course, the U.S. Supreme Court has recognized that "preserving the cores of prior districts" is a "legitimate state objective" in redistricting. *See Karcher v. Daggett*, 462 U.S.

725, 740 (1983); *see also Tennant v. Jefferson Cnty. Comm'n*, 567 U.S. 758, 764 (2012) ("The desire to minimize population shifts between districts is clearly a valid, neutral state policy").

More than anything, however, the Legislature likely drew 8015 to comply with the Florida Supreme Court's prior rulings regarding CD-5. *See League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 272 (Fla. 2015) (upholding trial court's adoption of an "East-West" version of CD-5). As the U.S. Supreme Court has explained, a desire to avoid litigation is specifically one of the race-neutral reasons that may motivate a Legislature to adopt a plan. *See Abbott*, 138 S. Ct. at 2327 (finding race did not predominate where the Legislature chose a plan which would "bring the litigation about the State's districting plans to an end as expeditiously as possible").

B. Even if the Secretary could show racial predominance, federal precedent supports the Legislature's drawing of CD-5.

Even if the Secretary could show that racial considerations predominated in the drawing of 8015's CD-5, the Secretary would have a heavy burden to demonstrate that the Legislature's configuration of CD-5 is not narrowly tailored to advance compelling state interests under existing federal precedent.

To put it plainly, compliance with the Fair Districts Amendment's non-retrogression provision is a compelling state interest. This provision of the Fair Districts Amendment "follow[s] almost verbatim the requirements embodied in the [Federal] Voting Rights Act." *In re S. J. Res. of Legis. Apportionment*, 83 So. 3d at 619 (citation omitted and second alteration in original); *see also* Ex. 1-D at 42 (recognizing that Florida's Constitution incorporates federal retrogression standards); Ex. 1-E at 15 (same). Though Section 4's coverage formula was struck down, Section 5 of the Voting Rights Act (VRA) remains valid federal law. *See Shelby Cnty. v. Holder*, 570 U.S. 529, 557 (2013) (ruling on the validity of Section 4(b), not Section 5, of the VRA). And the U.S. Supreme Court has repeatedly assumed that compliance with the VRA constitutes a compelling

state interest. *See, e.g.*, *Wis. Legis. v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1249 (2022) ("We have assumed that complying with the VRA is a compelling interest."); *Abbott*, 138 S. Ct. at 2315; *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 801 (2017) ("[T]he Court assumes, without deciding, that the State's interest in complying with the Voting Rights Act was compelling."). Given the substantive similarity between Section 5 of the VRA and the Fair Districts Amendment's non-retrogression provision, compliance with the latter likewise constitutes a compelling state interest.

In opposing Plaintiffs' requested relief, the Secretary mischaracterizes federal precedent regarding Section 5. Though the U.S. Supreme Court invalidated Section 4(b)'s coverage formula in *Shelby County v. Holder*, the Court specifically noted that it "issue[d] no holding on § 5 itself, only on the coverage formula." 570 U.S. at 557. Contrary to the Secretary's claims, in *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015), the Supreme Court did not suggest that continued compliance with Section 5 may not remain a compelling interest in light of *Shelby County*. Opp. at 13. Rather, the Supreme Court merely stated that it "d[id] not decide whether, given [*Shelby*], continued compliance with § 5 remains a compelling interest." *Ala. Legis. Black Caucus*, 575 U.S. at 279. And in fact, the U.S. Supreme Court continued to assume that Section 5 compliance constituted a compelling interest in the years after *Alabama Legislative Black Caucus*. *See Bethune-Hill*, 137 S. Ct. at 801.

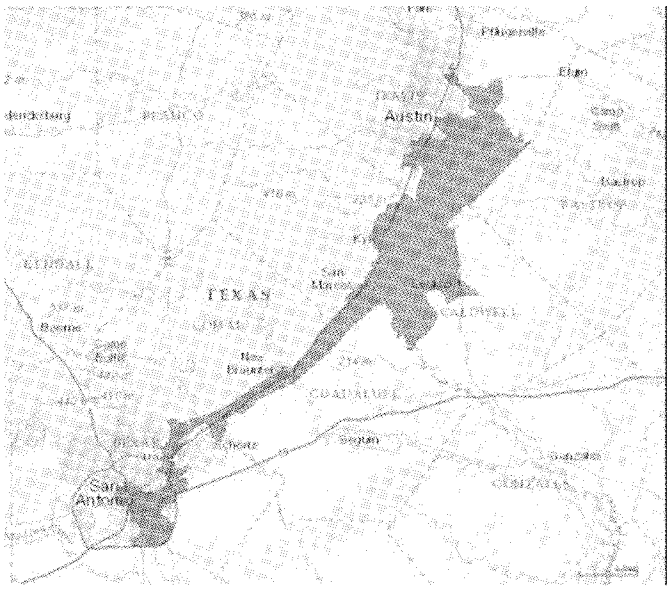
More fundamentally, addressing the history of voting-related racial discrimination and a lack of representation in North Florida also constitutes a compelling state interest for CD-5. *See Miller*, 515 U.S. at 920 (1995) (explaining that there is a "significant state interest in eradicating the effects of past racial discrimination"). While the Secretary claims there is "no record of a race-based problem" that would justify CD-5, *see* Opp. at 14, this assertion ignores the voluminous

evidence, both from judicial precedent and from the evidentiary filings accompanying Plaintiffs' motion for a temporary injunction, outlining how Black voters in North Florida have long been deprived of the ability to elect candidates of their choice.

Plaintiffs presented evidence that, for much of Florida's history, Black voters in the state have been unable to participate equally in the electoral process, with Black residents of North Florida experiencing particularly severe burdens in access to the franchise. *See* Pls.' Mem. in Supp. of Mot. For Temp. Inj. ("Br.") at 5-6 (Apr. 26, 2022). As a result, between 1876 and 1992, Florida did not elect a single Black candidate to Congress. *Id.* at 6. As Dr. Sharon Austin describes, "[t]his lack of political representation was the result of redistricting practices that split the state's Black population into districts where their votes would be drowned out by overwhelming White majorities." Ex. 3 at 13.

Plan 8015's CD-5 is narrowly tailored to address these compelling state interests. The legislative record includes detailed testimony that 8015's configuration of CD-5 is necessary to ensure minority voters' continued ability to elect candidates of their choice. *See, e.g.*, Fla. H.R. Comm. on Redist., recording of proceedings, at 19:45-19:54 (Feb. 25, 2022), https://thefloridachannel.org/videos/2-25-22-house-redistricting-committee (last accessed May 10, 2022) (Chair of House Redistricting Committee noting the Committee's aim "to protect the minority group's ability to elect a candidate of their choice"). The Legislature, which conducted a functional analysis on their redistricting plans, *see* Ex 1-V at 13, thus "had good reasons to believe that" 8015's configuration of CD-5 "was necessary . . . to avoid diminishing the ability of black voters to elect their preferred candidates." *Bethune-Hill*, 137 S. Ct. at 791. This "strong showing of a pre-enactment analysis with justifiable conclusions," amply demonstrates a compelling state interest. *Wis. Legis.*, 142 S. Ct. at 1249 (citing *Abbott*, 138 S. Ct. at 2335).

The Secretary also cannot demonstrate a lack of narrow tailoring simply because Governor DeSantis was able to draw a plan with better compactness scores or slightly fewer splits of political boundaries. As an initial matter, the Fair Districts Amendment explicitly categorizes compactness and utilization of political boundaries as "Tier Two" standards that must give way when in conflict with "Tier One" standards, including the non-retrogression principle. *See* Fla. Const. Art. III, § 20; *In re S. J. Res. of Legis. Apportionment*, 83 So. 3d at 615. Moreover, courts have denied racial gerrymandering claims against districts that are even less compact than Plan 8015's CD-5. *See* Ex. 13 ¶ 56 (explaining that 8015's CD-5 "is more compact . . . than other CDs in the United States from the last redistricting cycle that withstood federal court challenges" such as Texas's CD-35, as shown below).



The fate of Texas's 35th congressional district is instructive here. While plaintiffs challenged the district as an unconstitutional racial gerrymander, the U.S. Supreme Court upheld it, explaining that the Legislature could have "had 'good reasons' to believe that the district at issue (here CD35) was a viable Latino opportunity district that satisfied the *Gingles* factors." *Abbott*, 138 S. Ct. at 2332. Notably, the first *Gingles* factor is that the minority population is

sufficiently compact, *see Gingles*, 478 U.S. at 50, and it is hard to imagine that the U.S. Supreme Court could conclude that TX-35 was reasonably compact without concluding the same for Proposed CD-5.

IV. Plaintiffs seek a return to the status quo that existed in North Florida prior to the DeSantis Plan.

Despite the Secretary's framing, Plaintiffs seek a temporary *prohibitory* injunction to return to the status quo before the unlawful DeSantis Plan was enacted. Plaintiffs said so in their motion for temporary relief, Pls.' Mot. for Temp. Inj ("Mot."). at 3-4 (Apr. 26, 2022) ("Plaintiffs request that the Court temporarily enjoin implementation of the DeSantis Plan."); in their briefing supporting that motion, Br. at 2 ("Plaintiffs seek temporary relief enjoining Defendants from administering the 2022 primary or general election for Congress under the DeSantis plan."); and now again in this reply, *infra* at 18. The Secretary's argument that the Court "should deny Plaintiffs' Motion because it seeks to mandate action rather than simply prohibit action on the State's part," Opp. at 10, is therefore no more than sleight-of-hand, a further attempt to muddle Plaintiffs' clear right to temporary relief.

To the extent the Secretary's argument relates to the manner the Court chooses to ensure a lawful congressional plan is in place for the 2022 elections, the Secretary also misses the mark. Plaintiffs have made abundantly plain that the nature and enactment of any remedial plan is in the Court's discretion. *See* Mot. at 3. Plaintiffs have merely "request[ed] that the Court expedite its consideration of this motion, including the scheduling of any hearings" and "ensure that a necessary remedy is timely adopted and a lawful congressional plan is in place in North Florida in time for the 2022 congressional elections," *id.*; Br. at 20-21 (same), which the Court can accomplish in a variety of ways, including by selecting a map itself if the Legislature fails to enact a lawful one in time for the 2022 elections. As the U.S. Supreme Court has explained, state courts

have wide latitude in remedying unconstitutional districting schemes. *See Growe v. Emison*, 507 U.S. 25, 33 (1993) ("The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged." (internal quotation marks omitted)). Such a remedy may entail a court-adopted remedial plan, but it does not require one.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court temporarily enjoin implementation of the DeSantis Plan. Plaintiffs further request that the Court expedite its consideration of this motion to ensure that a necessary remedy is timely adopted and a lawful congressional plan is in place in North Florida in time for the 2022 congressional elections.

Dated: May 10, 2022

Respectfully submitted,

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Exhibit 13

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. LAUREL M. LEE, in her official capacity as Florida Secretary of State, et al., Defendants.	Case No. 2022-ca-000666

REBUTTAL REPORT OF DR. STEPHEN ANSOLABEHERE

IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION

EXECUTIVE SUMMARY

1. On April 26, 2022, I submitted my first expert report in this matter. Using a functional analysis, that report concluded that the Enacted Map resulted in the diminishment of Black voters' ability to elect their candidate of choice in North Florida as compared to the Benchmark Plan as adopted by the Florida Supreme Court in 2015. My first expert report also concluded that the North Florida portions of the Legislature's Backup Map (H000C8015) or the Senate Map (S035C8060), both of which preserved Black voters' ability to elect, could be exchanged for the Enacted Map's version of North Florida while having a minimal effect on the rest of the Enacted Map. Specifically, those remedial approaches would have required changes to only 7 of Florida's 28 congressional districts (CDs).

2. In response to Defendants' submissions, I have been asked by counsel in this matter to create a U.S. Congressional District ("CD") map that restores Black voters' ability to elect the candidate of their choice in North Florida while making *even fewer* changes to the Enacted Map than my original remedial proposals. I determined that such an approach was possible by carefully inserting the version of CD-5 drawn by the Florida Legislature (Plan H000C8015) straight into the Enacted Map, rather than by exchanging all of the Legislature's North Florida districts for those in the Enacted Map.

3. This report presents two Proposed Maps and compares them to the Enacted Map. The Proposed Maps make no changes to Enacted CD-1 or to

any Enacted CDs in Central Florida or in South Florida. Each Proposed Map offers different tradeoffs and benefits.

4. Proposed Map A is designed to minimize the administrative burden within the counties affected by Proposed CD-5 by following the boundaries of the recently enacted Florida State House map to the greatest extent possible and by minimizing the number of additional precinct splits, while still restoring CD-5 as a district where Black voters have the ability to elect the candidate of their choice. By following the legislatively enacted State House district lines where possible, we can reduce the number of new precincts and additional ballot forms that would be required under a new plan. This version of the map alters only five CDs, including specifically CD-2, CD-3, CD-4, and CD-5, as well CD-6. In addition, Proposed Map A would split a total of only 22 Voting Tabulation Districts (VTDs or precincts) that are not already split by legislative districts and that have populated areas on both sides of the split (*i.e.*, excluding divisions where one part has no people). The Enacted Map, by comparison, splits 12 VTDs that are not already split by legislative districts and that have populated areas on both sides of the districts. That is a difference of only 10 additional VTD splits that would require some re-precincting across all of North Florida.

5. Proposed Map B is designed to make as few changes to the Enacted CDs as possible while restoring CD-5 as a district in which Black voters have the opportunity to elect their candidates of choice. Specifically, in

Proposed Map A, only four CDs (CD-2, CD-3, CD-4, and CD-5) would need to be altered.

6. Each of the Proposed Maps, which incorporate the version of CD-5 from the Legislature's Map H000C8015 into the Enacted Map, show that it was possible to restore the ability of Black voters to elect their candidate of choice in North Florida, without making changes to CDs beyond those neighboring CD-5. As discussed in my initial report in this matter, the version of CD-5 from Plan 8015 as passed by the Legislature is a district in which Black voters will have the opportunity to elect their candidate of choice to Congress.

7. In this rebuttal report, I also briefly analyze the conclusions by Dr. Douglas Johnson and Dr. Mark Owens. I respond to Dr. Johnson by noting that the Florida Constitution requires compliance with Tier I criteria like non-retrogression before Tier II criteria like compactness, and I respond to Dr. Owens by explaining that Dr. Owens has not refuted my core conclusion that Black voters are no longer able to elect their candidates of choice under the Enacted Map.

8. My qualifications and expertise are presented in my initial report in this matter. I am compensated at a rate of $600 an hour. My compensation is in no way contingent upon the conclusions or results of my analysis.

METHODOLOGY

A. Maps Compared in this Analysis

9. The Enacted Map is Plan P000C0109 and was enacted into law on April 22, 2022. See Map 1.

10. This analysis compares the Enacted Map to two proposed maps: Proposed Map A and Proposed Map B.

11. Proposed Map A incorporates CD-5 from the Legislature's Backup Map H000C8015 and changes only CD-2, CD-3, CD-4, CD-5, and CD-6 from the Enacted Map. This map follows legislative district boundaries where possible in Marion and St. Johns Counties. Doing so reduces administrative burdens by improving the extent to which legislative districts are nested within Congressional Districts thereby reducing the number of additional precincts or combinations of ballots that need to be created. See Map 2.

12. Proposed Map B incorporates CD-5 from the Legislature's Backup Map H000C8015 and keeps all districts from the Enacted Map unchanged except for CD-2, CD-3, CD-4, and CD-5. See Map 3.

B. Data Sources

13. Maps analyzed in this analysis come from the Florida Redistricting website: https://www.floridaredistricting.gov/pages/submitted-plans.

14. Census, voting, and district boundary data are from the U.S. Census Bureau API. Maps are from the redistricting website of the Florida State government: https://www.floridaredistricting.gov/pages/submitted-plans. Precinct level data comes from the Voting and Election Science Team:

https://dataverse.harvard.edu/dataverse/electionscience. Precinct data is cross walked to census block data following the process of the ALARM Census data: https://github.com/alarm-redist/census-2020.

C. Criteria for Evaluation

15. Throughout the course of this rebuttal report, I use various criteria to analyze maps.

16. Compactness is measured two ways: area dispersion and perimeter irregularity. The most commonly used measure of area dispersion, which I relied on in my expert reports in *Romo v. Detzner* in the last Florida congressional redistricting cycle, is the Reock score. This measure begins with the insight that a circle is the most compact geometric shape. Reock computes the area of the district divided by the area of the smallest inscribing circle of the district, *i.e.*, a circle whose diameter is the same as the overall length of the district. The highest value of Reock is 1, which is attained if the district is a perfect circle. The lowest value of Reock is 0. A perfectly square district has a Reock of .64. Reock detects long, narrow districts. Additionally, the irregularity of the boundary of a district is measured using the Polsby-Popper score. Polsby-Popper also takes the circle as the standard for the most compact shape. This measure calculates the area of the district and divides that area by the area of a circle with the same perimeter (circumference) as the district. Polsby-Popper ranges from a high of 1 to a low of 0, and higher values correspond to greater compactness. Polsby-Popper detects districts that have indentations or

jagged borders. There are many different compactness measures; these are the two most commonly applied.

17. Political boundaries include county boundaries and boundaries of incorporated municipalities or places. A county or a municipality is split if two or more districts divide that area.

18. Finally, I tally the number of Voting Tabulation Districts (VTDs) that are divided by CD boundaries. The State of Florida participates in the Census Voting Tabulation District program. This program, started in the early 1970s, creates a standard "precinct" called a Voting Tabulation District. The Census collects and reports population data at the "block" level. Blocks are very small areas, usually consisting of approximately 100 people, but some have 0 or 1 person. Working with states and counties, the Census defines VTDs as clusters of blocks that are equal to precincts. Most states use the VTDs directly as precincts, though some modifications in precincts occur following redistricting or even from one election to the next. I use the VTDs as the standard definition of the precinct areas.

19. There are three sorts of VTD splits created by CD boundaries. First, some VTDs are divided by CDs and by state legislative districts. These are districts that must be divided regardless of the configuration of the CDs. Second, some VTDs have zero-population splits. That is, some parts of the VTD, such as a road, have no population and are assigned to another CD. These zero-population splits are not consequential for election administrators,

as they do not involve creating a new precinct in which people can vote or consolidating two precincts. I call these zero-population VTD splits. Third, some VTDs are divided in a way that places populated areas in the VTD in one CD and populated areas of the VTD in another CD. Such splits are consequential to election administrators as they may require merging part of one precinct with another or creating an entirely new precinct. I call these populated VTD splits.

COMPARISON OF MAPS

A. Enacted Map

20. Enacted CD-2 consists of part of Walton County and part of Lafayette County, and the entirety of Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Taylor, Wakulla, and Washington Counties.

21. Enacted CD-3 consists of part of Lafayette County and part of Marion County and the entirety of Alachua, Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Levy, Suwanee, and Union Counties.

22. Enacted CD-4 has the highest overlap with the population of Benchmark CD-5. Enacted CD-4 consists of the western side of Duval County, plus the entirety of Clay County to the south and Nassau County to the north.

23. Enacted CD-5 has almost no overlap with Benchmark CD-5. It consists of the southeastern quadrant of Duval County and the northern two-thirds of St. Johns County.

24. Enacted CD-6 consists of part of Marion County and part of St. Johns County. These portions are altered slightly in the Proposed Maps. The remainder of Enacted CD-6 is left unchanged by the Proposed Maps.

B. Proposed CD-5

25. Proposed CD-5 was introduced by the Florida House Committee on Redistricting as part of Plan H000C8015 and was adopted by the Florida Legislature in its Backup Map (which was later vetoed by Governor DeSantis). The entirety of that map, including its version of CD-5, is discussed in my initial report in this case.

26. Proposed CD-5 follows the footprint of Benchmark CD-5. Proposed CD-5 consists of part of Columbia County, part of Duval County, part of Leon County, and part of Jefferson County, as well as the entirety of Baker, Gadsden, Hamilton, and Madison Counties. These are the same counties that were included in this district in the Benchmark Map.

27. Proposed CD-5 divides Jefferson County along Interstate 10. Jefferson County was also divided in the Benchmark Map, and it is divided in the State House District map.

28. Proposed CD-5 also divides Columbia County along Interstate 10. Columbia was similarly divided in the Benchmark Map. The division of Columbia County in Proposed CD-5 does not follow the boundary of any State House or State Senate Districts.

29. Proposed CD-5 divides Leon County along similar lines to the division of Leon County in the State House Districts and under the Benchmark Map. In many precincts, the division of Leon County follows the same precincts as State House Districts 7, 8, and 9.

30. Proposed CD-5 takes the entirety of the western side of Duval County. Its northeastern boundary in Jacksonville follows Interstate 295, which is similar to the boundary followed by the State Senate District 5 and State House District 14.

31. Proposed CD-5 is identical in Proposed Maps A and B.

C. Proposed CD-2

32. Proposed CD-2 is identical in Proposed Maps A and B.

33. Proposed CD-2 consists of part of Walton County, part of Jefferson County, and part of Columbia County, and the entirety of Bay, Calhoun, Dixie, Franklin, Gulf, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Suwanee, Taylor, Wakulla, and Washington.

34. Fourteen of these 19 counties were in Benchmark CD-2, were incorporated into Enacted CD-2 and would remain in Proposed CD-2.

35. Proposed Map A and B treat CDs 3, 4, 5, and 6 differently. Proposed Map A alters the boundaries in CD-2, CD-3, CD-4, CD-5, and CD-6. Proposed Map B alters the boundaries in only CD-2, CD-3, CD-4 and CD-5. These maps offer a least change map within counties (Proposed Map A) or a

least change of CDs map, depending on which tradeoffs and values the court wishes to prioritize. I discuss those maps below.

PROPOSED MAP A

36. Proposed Map A is designed to minimize the administrative burden within the counties affected by Proposed CD-5 by following the boundaries of state legislative districts to the greatest extent possible and by minimizing the number of additional precinct splits.

37. Proposed Map A restores the East-West version of CD-5 that was in the Benchmark Map by incorporating CD-5 from H000C8015 into the Enacted Map. Proposed Map A incorporates Proposed CD-2 as described above.

38. Proposed Map A seeks to relieve the potential administrative burden on counties by following state legislative district boundaries where possible and by minimizing the number of precinct splits in Marion and St. Johns Counties. Proposed CD-5 follows state legislative district boundaries in several areas. Proposed Map A applies that same approach to Proposed CD-3, Proposed CD-4, and Proposed CD-6. Enacted CD-1 and Enacted CD-7 through Enacted CD-28 are unchanged from the plan adopted by the State. See Map 2. Enacted CD-2, Enacted CD-3, Enacted CD-4, and Enacted CD-6 are reconfigured to attain populations of exactly 769,221 persons.

39. Proposed Map A's version of CD-3 consists of entirety of Alachua, Bradford, Clay, and Union Counties, and part of Marion County. Only the

division of Marion County differs from other version. The boundary between Proposed Map A's CD-3 and CD-6 follows to the greatest extent possible the state legislative district boundaries in this county, especially to the north and east of the city of Ocala.

40. Proposed Map A's boundary between CD-4 and CD-6 also mirrors State House district boundaries in St. Johns County, especially west and south of St. Augustine.

PROPOSED MAP B

41. Proposed Map B was designed to make as few changes to the enacted congressional districts as possible.

42. Proposed Map B restores the East-West version of CD-5 that was in the Benchmark Map by incorporating Proposed CD-5 from H000C8015 into the Enacted Map. Proposed Map A incorporates Proposed CD-5 as described above. Proposed Map A also includes Proposed CD-2 is as described above.

43. Under Proposed Map B, Enacted CD-1 and Enacted CD-6 through Enacted CD-28 are unchanged from the plan adopted by the State. See Map 2. Enacted CD-2, Enacted CD-3, and Enacted CD-4 must be reconfigured to attain populations of exactly 769,221 persons.

44. Proposed Map B's version of Proposed CD-3 consists of part of Marion County and part of St. Johns County, as well as the entirety of Alachua, Bradford, Clay, and Union Counties.

45. The configuration of Proposed CD-3 in Marion County is exactly the same as under the Enacted Map. Proposed CD-3 and Enacted CD-6 divide that county.

46. To equalize the populations of CD-3 and CD-4, while keeping Enacted CD-6 intact, Proposed CD-3 must gain population in St. Johns County. That population gain is accomplished by taking precincts from the western side of St. Johns County, south of Fruit Cove and west of World Golf Village.

47. Enacted CD-4 consists of the entirety of Nassau County, the eastern side of Duval County, and most of the northern half of St. Johns County. Its configuration resembles the configuration of that CD under the Benchmark Map.

RESPONSE TO DEFENDANTS' EXPERTS

A. Reply to Dr. Johnson

48. Dr. Johnson implicitly criticizes my initial report by responding that the DeSantis Plan scores better on traditional redistricting criteria such as compactness or political splits than either the Benchmark Plan or the Plans I put forth as possible remedies in my initial report. I respond simply by noting that the Florida Supreme Court has made clear that compliance with Tier I factors such as non-retrogression are to be prioritized over Tier II factors like achieving compactness and reducing political and geographic splits. *In re Senate Joint Resol. of Legislative Apportionment 1176*, 83 So. 3d 597, 615 (Fla. 2012). In any event, as I demonstrate below, the Proposed CD-5 fares

reasonably well on compactness and political boundary splits. It is nearly the same as the Benchmark Plan CD-5, which was approved by the Florida Supreme Court, and in some places even improves upon the Enacted Map.

i. Compactness

49. The compactness of Proposed CD-5 is nearly the same as Benchmark CD-5, under the Map approved by the Florida Supreme Court in 2015.

50. According to the District Compactness Report accompanying the Benchmark Map and available through the Florida Redistricting website, the area dispersion (Reock) of the Benchmark CD-5 is .12, and the perimeter dispersion (Polsby-Popper) is .10. See Table 1.

51. The District Compactness Report accompanying Plan H000C8015, and available through the Florida Redistricting website, reports that the area dispersion measure (Reock) for Proposed CD-5 is .11 and the perimeter compactness measure (Polsby-Popper) for Proposed CD-5 is .11. See Table 1. Hence, the Proposed CD-5 has nearly identical configuration to Benchmark CD-5. Proposed CD-5 is slightly less compact in its area dispersion and slightly more compact in its perimeter than the Benchmark version of CD-5.

52. Benchmark CD-5 was created and approved by the Florida Supreme Court to replace a district in which Black voters had the ability to elect their candidates of choice but was noticeably less compact and split every

county and municipality that it covered. While the Florida Supreme Court in *League of Women Voters v. Detzner* explained Benchmark CD-5 was not "a model of compactness," it also explained that Florida's own geography played a role in the shape of the district and that it would tolerate some level of non-compactness of Benchmark CD-5 in order to adhere to Tier I criteria, namely creating a version of CD-5 in which Black voters could elect their candidates of choice.[1]

53. Neither the Florida Legislature nor the Florida Supreme Court have set a specific number for any given metric that a redistricting plan must meet to comply with the Florida Constitution. Dr. Johnson suggests that the appropriate number for Reock is one used by the Arizona Independent Redistricting Commission. The figure does was set by a commission as a rubric to guide their deliberations. It was not set by a legislature or by a court. No rationale is offered as to why the standards applicable in Arizona ought to be applied in Florida. It is my experience that redistricting practices depend on local geographies. Arizona's geography and demography are quite different from Florida's. Arizona is a nearly perfectly square state, without coastlines, peninsulas or panhandles. There is one significant population center in

[1] Specifically, the Florida Supreme Court explained, "[t]he reality is that neither the North–South nor the East–West version of the district is a 'model of compactness,' as the trial court stated. Other factors account for this phenomenon, 'including geography and abiding by other constitutional requirements such as ensuring that the apportionment plan does not deny the equal opportunity of racial or language minorities to participate in the political process or diminish their ability to elect representatives of their choice.'" League of Women Voters v. Detzner, No. SC14-1905, July 9, 2015. https://caselaw.findlaw.com/fl-supreme-court/1707310.html

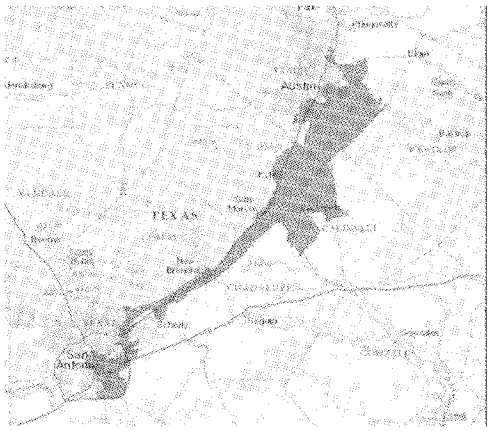
Arizona (the Phoenix-Tempe metro area), and that is located in the center of the state. In the absence of any prior court decisions or legislative guidance, it may be appropriate to use standards set elsewhere. However, in this instance, the Florida Supreme Court did decide, after weighing Tier I and Tier II criteria, that the level of compactness in Benchmark CD-5 was acceptable.

54. Comparison with other CDs throughout the United States indicates that there are many districts with comparable or lower compactness scores. Proposed CD-5 is more compact than 66 CDs throughout the United States as of 2020 in terms of perimeter compactness.[2]

55. The compactness of Benchmark CD-5 and Proposed CD-5 is limited because they are long districts. But their length is explained in part by the fact that they follow the northern border of Florida, which is essentially a long straight line. In fact, between 2002 and 2012, Florida had a congressional district (CD-4) that similarly spanned the top of North Florida and reached all the way from Leon County to Duval County, much like Benchmark CD-5 and Proposed CD-5, except for the fact that it connected those counties' white populations rather than the Black populations. See Map 4. This district had an area dispersion (Reock) of .18 and perimeter compactness (Polsby-Popper) measure of .07, which is lower than the perimeter compactness of Proposed CD-5.

[2] See Stephen Ansolabehere and Maxwell Palmer, "A Two-Hundred Year Statistical History of the Gerrymander," *The Ohio State University Law Review* 77 (2016): 741-762.

56. Even with Proposed CD-5's long shape, it is more compact in area dispersion (Reock) than other CDs in the United States from the last redistricting cycle that withstood recent racial gerrymandering challenges. For example, Proposed CD-5 is more compact than Texas CD-35, which was subject to extensive federal litigation, challenged as a racial gerrymander, and upheld by the United States Supreme Court in *Abbott v. Perez*, 138 S. Ct. 2305 (2018). Texas's 35th Congressional District, while also long in shape, did not even follow any particular geographic boundary like Proposed CD-5 does:

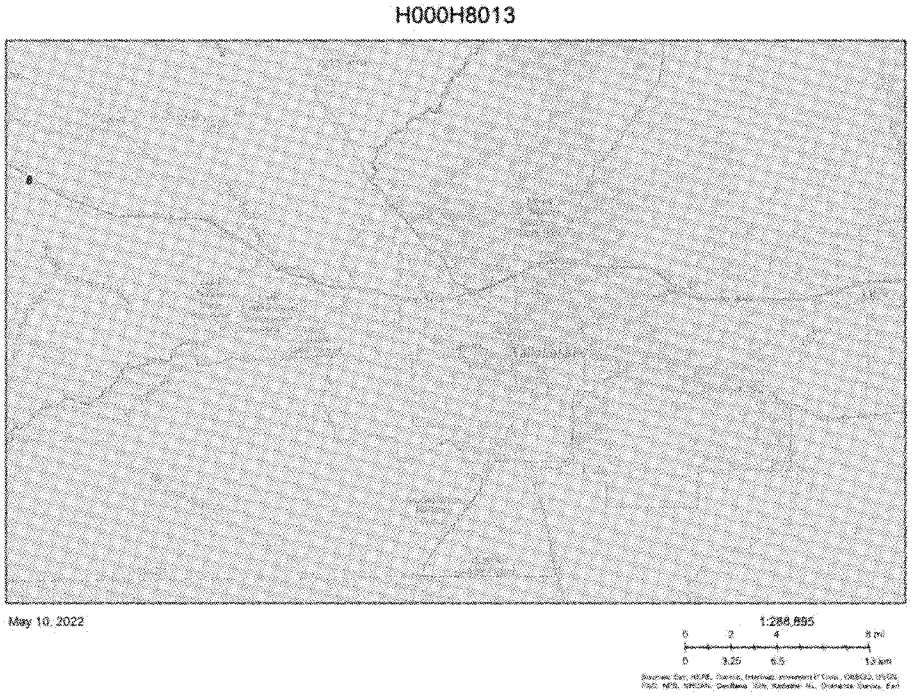


ii. Division of Political Boundaries

57. The Proposed Maps divide only two more counties than the Enacted Map in North Florida. The configuration of Enacted CD-2, Enacted CD-3, Enacted CD-4, and Enacted CD-5 divides Duval, Lafayette, Marion, St. Johns, and Walton Counties. The configurations of all three versions of Proposed CD-2, Proposed CD-3, Proposed CD-4, and Proposed CD-5 divide Columbia, Duval, Jefferson, Leon, Marion, St. Johns, and Walton Counties.

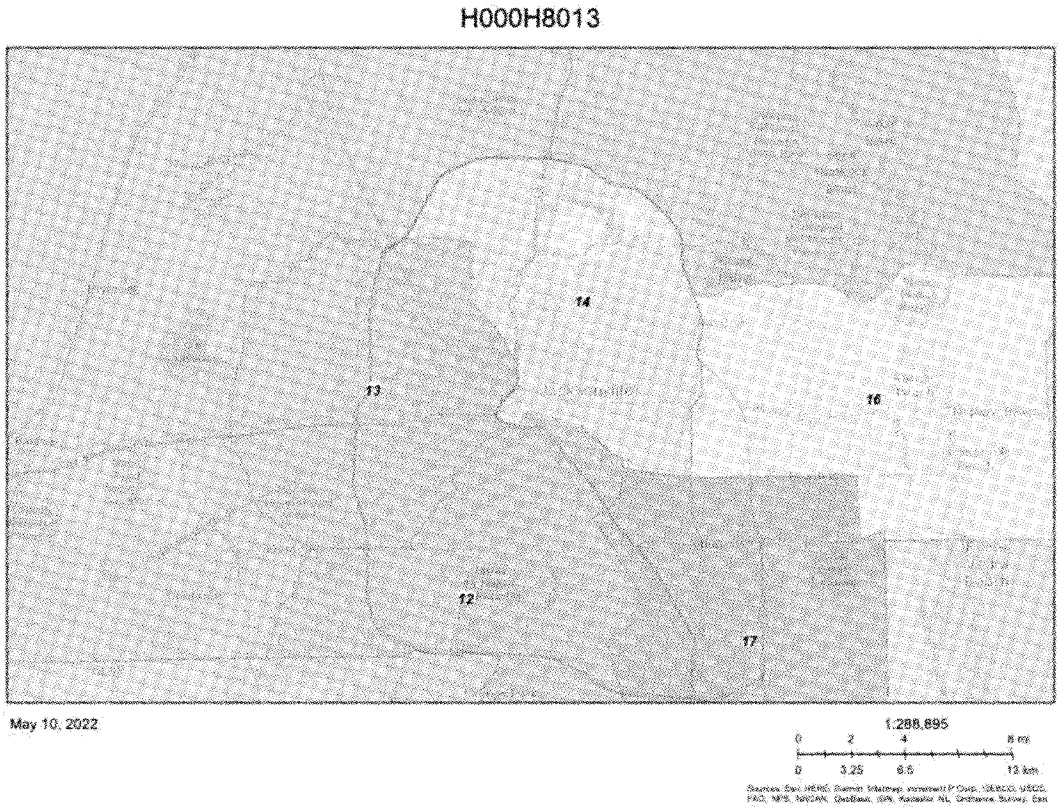
58. The division of municipalities is similar in the Proposed and Enacted Maps. The Enacted and Proposed Maps both divide Jacksonville. In addition, the Proposed Maps divide Tallahassee. The Enacted Map divides one Census Designated Place (not incorporated): St. Augustine South. The Proposed Map divides one Census Designated Place (not incorporated): Bradfordville.

59. While Dr. Johnson questions the configuration of Proposed CD-5 in key areas like Leon County, Proposed CD-5 mirrors state legislative district boundaries. For example, the State House District 8 has a very similar (and often identical) boundary in Leon County, as shown below.



Map: Florida House District 8 in Leon County

60. Dr. Johnson further questions the boundary of Proposed CD-5 in Duval County. But Proposed CD-5 follows the boundary of the State House Districts along Interstate 295. And while Dr. Johnson believes that the St. Johns River is the "clear geographic" boundary for districts in Duval County, the Florida Legislature created State House District 14, which spans both banks of the St. Johns River in Duval County, shown below.



Map: Florida State House Districts in Duval County

This configuration of Jacksonville mirrors the approach in Plan 8015, as shown below:

Map: Boundary of Florida CD-5 and CD-4 in H000C8015 in Duval County

iii. Division of Voting Tabulation Districts (Precincts)

61. The configuration of CDs in North Florida, under the Enacted Map and under the Proposed Maps, divides VTDs (precincts) within Counties. Precincts correspond to administrative units in which voting happens: voters are assigned to precincts where polling places are located, and precincts correspond to a unique ballot (*i.e.*, one State House District, one State Senate District, and one Congressional District). It is helpful to elections administrators to keep VTD divisions to a minimum. However, equal population requirements necessarily require the division of some VTDs.

62. For the Enacted Map and for each Proposed Map, I tabulated the total number of split VTDs. I further distinguished those VTDs split by both a CD and by a legislative district (either a House District or a Senate District) and those VTDs split by a CD boundary but not by a legislative district boundary. Among the latter cases, I distinguish zero-population splits and populated splits. Only this last group – populated splits of VTDs divided only by CD boundaries – should be of concern to election administrators. See Table 2.

63. Proposed CD-5 splits Columbia, Duval, Jefferson, and Leon Counties. First, consider Columbia County. This county has a total of 25 VTDs (regardless of the map drawn). Columbia County is kept whole under the Enacted Map, but it is divided under the Proposed Maps. Under the Proposed

Maps, the boundary between CD-2 and CD-5 bisects the county along Interstate 10. The Proposed Maps split 4 (out of the 25) VTDs. However, 3 of these are zero-population splits. Only one VTD, then, is a populated split, *i.e.*, a division of a precinct in which there are people in both sides of the dividing line. Thus only one precinct will need to be reconfigured in Columbia County. See Table 2.

64. Second, consider Jefferson County. This county has 16 VTDs, two of which are split by the Proposed CD-5. The division of Jefferson County follows Interstate 10. See Table 2.

65. Third, consider Duval County. The Enacted Map splits 7 of 295 VTDs in Duval. Three of these splits are populated splits that do not follow House District or Senate District Boundaries. The Proposed Maps split 24 of 295 VTDs in Duval. Of these 24, 12 correspond to VTD splits made by House or Senate Districts and three are zero-population splits. That leaves just 9 VTD splits created by Proposed CDs in Duval County that are not zero-population splits.

66. Fourth, consider Leon County. The Enacted Map does not divide Leon County, so there are 0 split VTDs in the county. The Proposed Map splits 25 of 157 VTDs in Leon County. Of these, 12 follow state legislative district boundaries and 7 are zero-population splits. As a result, there are just 6 VTD splits created by Proposed CDs in Leon County that are not zero-population splits and will require re-precincting. See Table 2.

67. Enacted and Proposed CD-3 and CD-6 divide Marion County. Proposed Map A is identical to the Enacted Map in Marion County. Both Maps divide 13 of 111 VTDs in the county. Four of these follow state legislative district boundaries and four are zero-population splits. Thus, the CDs in the Enacted Map create five VTD splits in Marion County that are not zero population splits and will require re-precincting. See Table 2.

68. Proposed Map A in Marion County has only two such split VTDs that are not zero population splits. Proposed Map A splits a total of 7 VTDs. Of the 7 split VTDs in Proposed Map A, 5 follow state legislative district boundaries, and only two do not. Thus, Proposed Map A carries less administrative burden due to the need to reconfigure precincts in Marion County than the Enacted Map.

69. Enacted CD-4 and Enacted CD-6 divide St. Johns County. They split a total of 7 out of 77 VTDs. Two of these follow state legislative district lines and one is a zero-population split. As a result, the Enacted Map creates populated VTD splits in four precincts in St. Johns County. See Table 2.

70. Proposed Map A results in fewer total VTD splits and fewer substantial splits than the Enacted Map. Proposed Map A splits only 5 VTDs in St. Johns County, and 3 of them follow state legislative district boundaries, meaning there are only 2 substantial VTD splits, as compared to 4 in the enacted map. Proposed Map B's version of CD-3, CD-4 and CD-6 in St. Johns

County creates more (12) and more substantial (10) VTD splits in St. Johns County compared to the Enacted Map. See Table 2.

71. Across all counties, the Enacted Map has 12 VTD splits that do not follow existing state legislative district lines and are not zero-population splits. Proposed Map A has 22 VTD splits that are non-zero splits. Compared to the Enacted Map, the Proposed Map A splits 10 VTDs (precincts) that have some population and that would not otherwise be split by state legislative district boundaries. Proposed Map A would place a moderately higher administrative burden on Duval and Leon Counties, but lower burden on Marion and St. Johns Counties.

D. Reply to Dr. Owens

72. Dr. Owens responds to my initial report by agreeing with my finding that Black voters overwhelmingly prefer Democratic candidates in Benchmark CD-5 and that none of Enacted CD-2, Enacted CD-3, Enacted CD-4, or Enacted CD-5 would afford Black voters the ability to elect their preferred candidates.

73. His response is that Black voters prefer Democratic candidates regardless of their race. This finding does not dispute the fact that Black voters are able to elect their *preferred* candidates in the Benchmark CD-5 or in the version of CD-5 in H000C8015.

74. Dr. Owens offers an incomplete analysis of the value of creating a district in which Blacks have the ability to elect their preferred candidates.

In particular, it ignores the important effects of the composition of a district and of the race of the candidate on participation rates of Black voters. Extensive literature in political science has established that the composition of the district has a significant effect on the participation of racial minorities. Specifically, the higher the percent Black in a district the higher the participation of Blacks in the election, and when there is a Black candidate running in a Black district, there is an added boost in Black participation.[3] The effect of the racial composition of districts on *turnout* is particularly important even if there is no measurable effect on the *percent* of votes won by a Black candidate (compared to a White Candidate). Dr. Owens ignores this important and well-established effect of the racial composition of districts on turnout, and, thus, on voters and on election outcomes.

CONCLUSION

75. Proposed Maps A and B offer minimally disruptive ways to retain CD-5 as a district in which Black voters will have the opportunity to elect their candidates of choice. Proposed Map A offers an approach that largely adheres to state legislative district boundaries; it also minimizes the splitting of VTDs,

[3] See, Bernard Fraga, "Candidates or Districts? Reevaluating the Role of Race in Voter Turnout," *American Journal of Political Science* 60 (2016): 97-122; Bernard Fraga, "Redistricting and the Causal Impact of Race on Voter Turnout," The Journal of Politics 78 (2016): 19-34; Danny Hayes and Seth McKee, "The Intersection of Race, Redistricting, and Turnout" *American Journal of Political Science* 56 (2012): 115-130; Ebonya Washington, "Black Candidates Affect Voter Turnout" Quarterly Journal of Economics 121 (2006): 973-998; Amir Shawn Fairdosi and Jon C. Rogowski, "Candidate Race, Partisanship, and Political Participation: When Do Black Candidates Increase Black Turnout?" *Political Research Quarterly,* 68 (2015): 337-349.

thereby lowering the potential administrative burdens of the map. In Marion and St. Johns Counties, the number of split VTDs in Proposed Map A is lower than in the Enacted Map. Proposed Map B offers an approach that minimizes the number of districts that would be changed: it shows that one need only change CD-2, CD-3, CD-4, and CD-5 to comply with the Tier I non-diminishment standard.

76. Above all, the Proposed Maps provide feasible ways to maintain the representation that 367,461 Black Floridians in North Florida received under Benchmark CD-5 and that would be diminished under the Enacted Map. It is possible to restore a version of CD-5 that maintains the representation of Black voters in North Florida, and it is possible to do so without affecting Enacted CD-1 or any Enacted CDs in Central or South Florida. The net effect on the number of precincts split is an additional 10 out of 645 precincts that would need to be reconfigured.

77. I make the foregoing statements with knowledge that they will be used as evidence in court and do declare under penalty of perjury under the laws of the State of Florida that they are true and correct to the best of my knowledge and belief.

Executed this 10th day of May 2022.

Dr. Stephen Ansolabehere

Tables

Table 1. Compactness Measures for North Florida Districts Under the Enacted Map and Proposed Maps A and B						
Congressional District	Enacted Map		Proposed Map A		Proposed Map B	
	Reock	P-P	Reock	P-P	Reock	P-P
CD-2	.46	.48	.28	.25	.28	.25
CD-3	.57	.50	.43	.31	.43	.28
CD-4	.38	.32	.25	.14	.31	.16
CD-5	.56	.52	.11	.11	.11	.11
CD-6	.74	.48	.69	.39	.72	.49

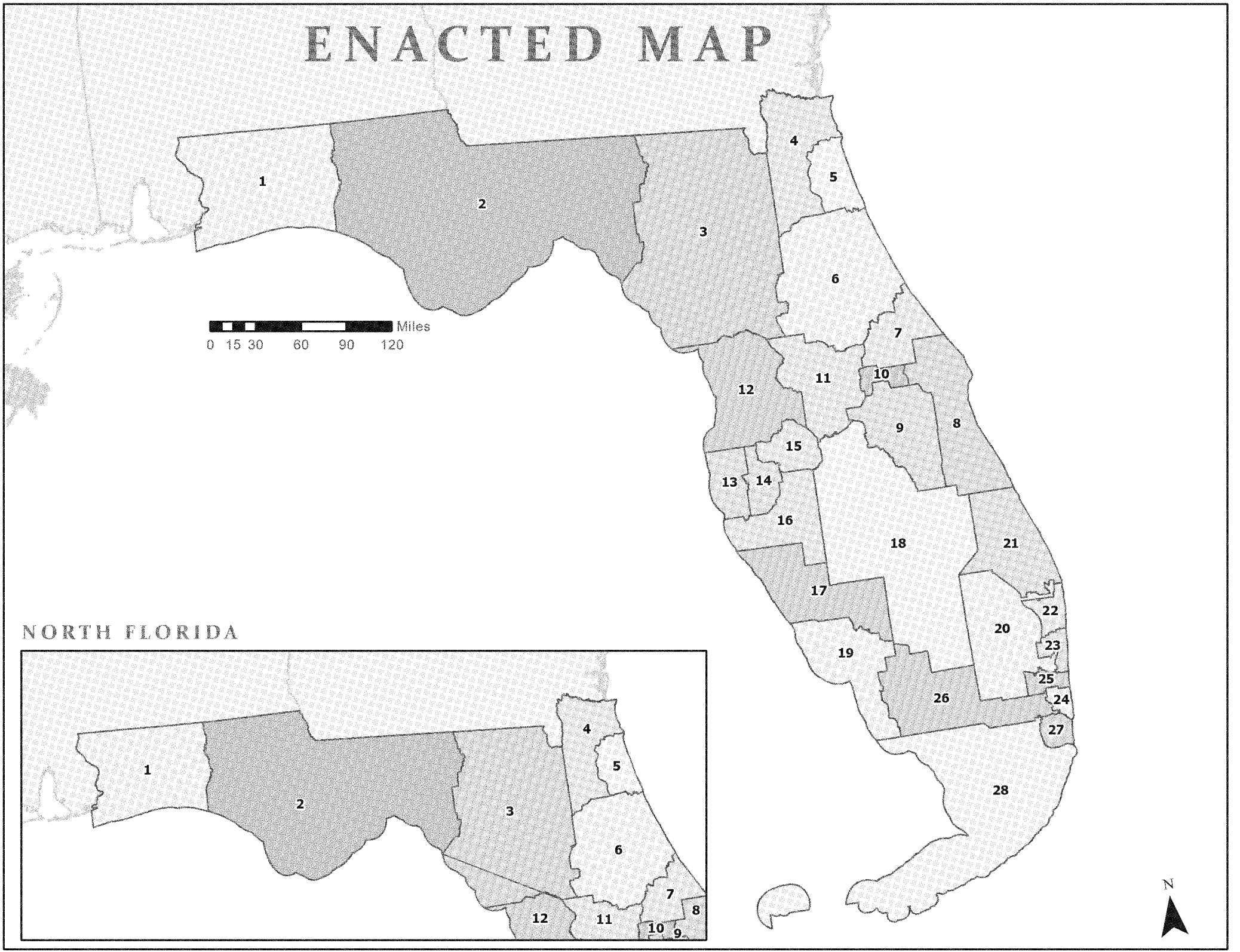
*Reock is an area compactness measures. P-P stand for Polsby-Popper, a perimeter compactness or regularity measure.

Table 2. VTD Splits for North Florida Districts Under the Enacted Map and Proposed Maps Versions A and B					
				VTD Not Split by HD or SD	
Map	Total Number of VTDs (Precincts)	Total Number of Split VTDs	VTDs Split by CD and by HD or SD	Zero-Population VTD Splits	Populated VTD Splits
Columbia County					
Enacted	25	0	0	0	0
Proposed A and B	25	4	0	3	1
Duval County					
Enacted	295	7	3	1	3
Proposed A and B	295	24	12	3	9
Jefferson County					
Enacted	16	0	0	0	0
Proposed A and B	16	2	0	0	2
Leon County					
Enacted	157	0	0	0	0
Proposed A and B	157	25	12	7	6
Marion County					
Enacted	111	13	4	4	5
Proposed A	111	7	5	0	2
Proposed B	111	13	4	4	5

St. Johns County					
Enacted	77	7	2	1	4
Proposed A	77	5	3	0	2
Proposed B	77	12	0	2	10

Map 1

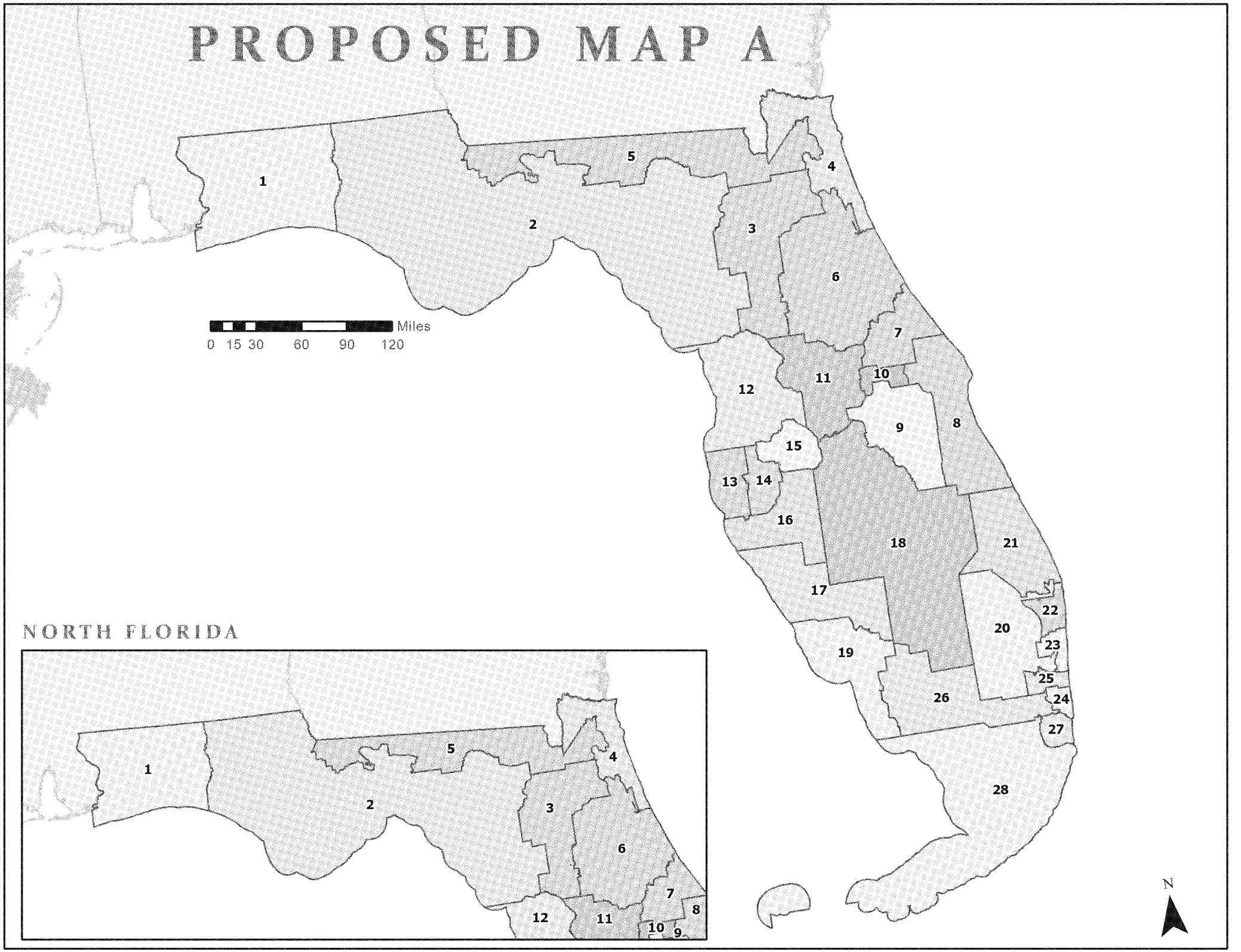
ENACTED MAP



NORTH FLORIDA

Map 2

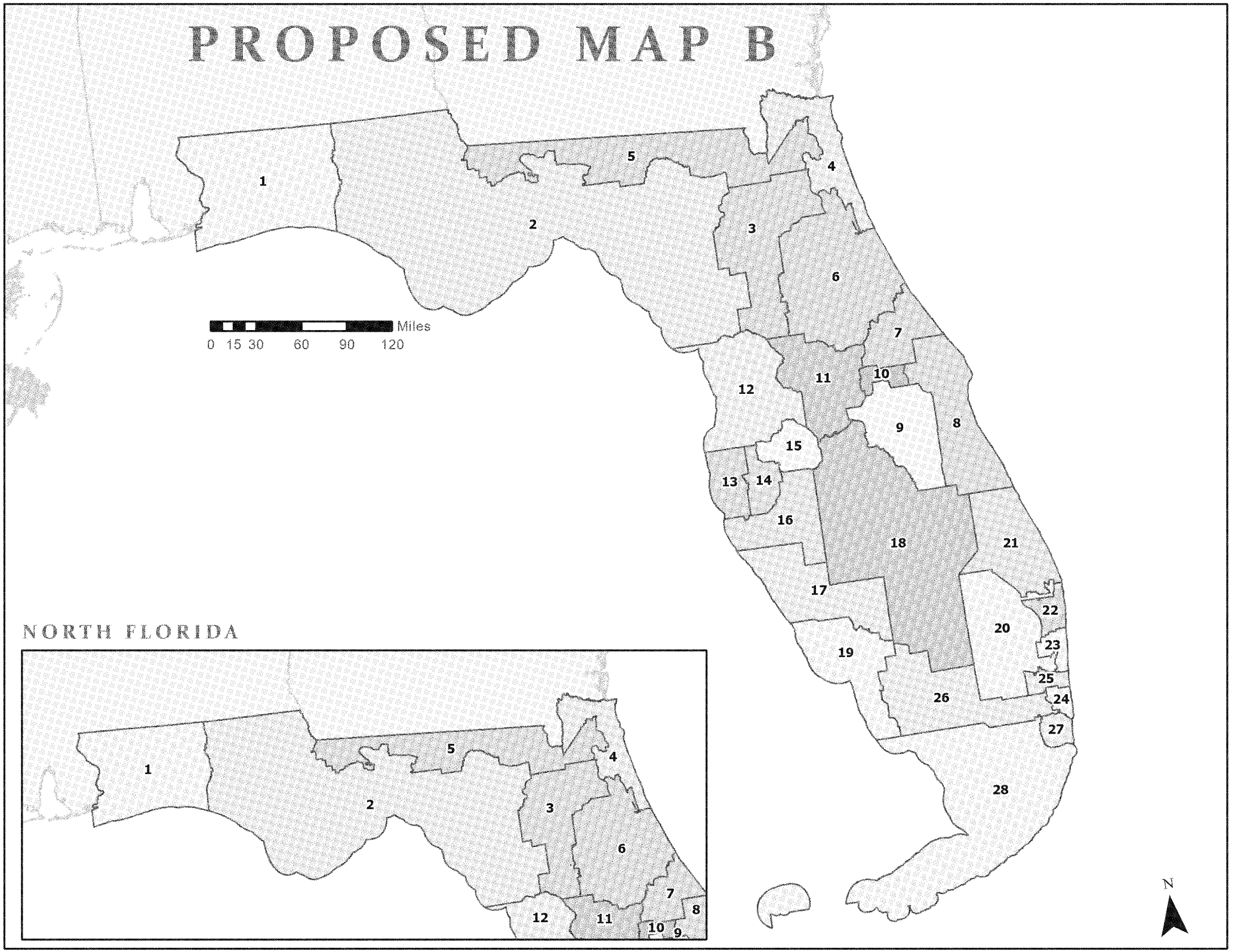
PROPOSED MAP A



NORTH FLORIDA

Map 3

PROPOSED MAP B



NORTH FLORIDA

Map 4

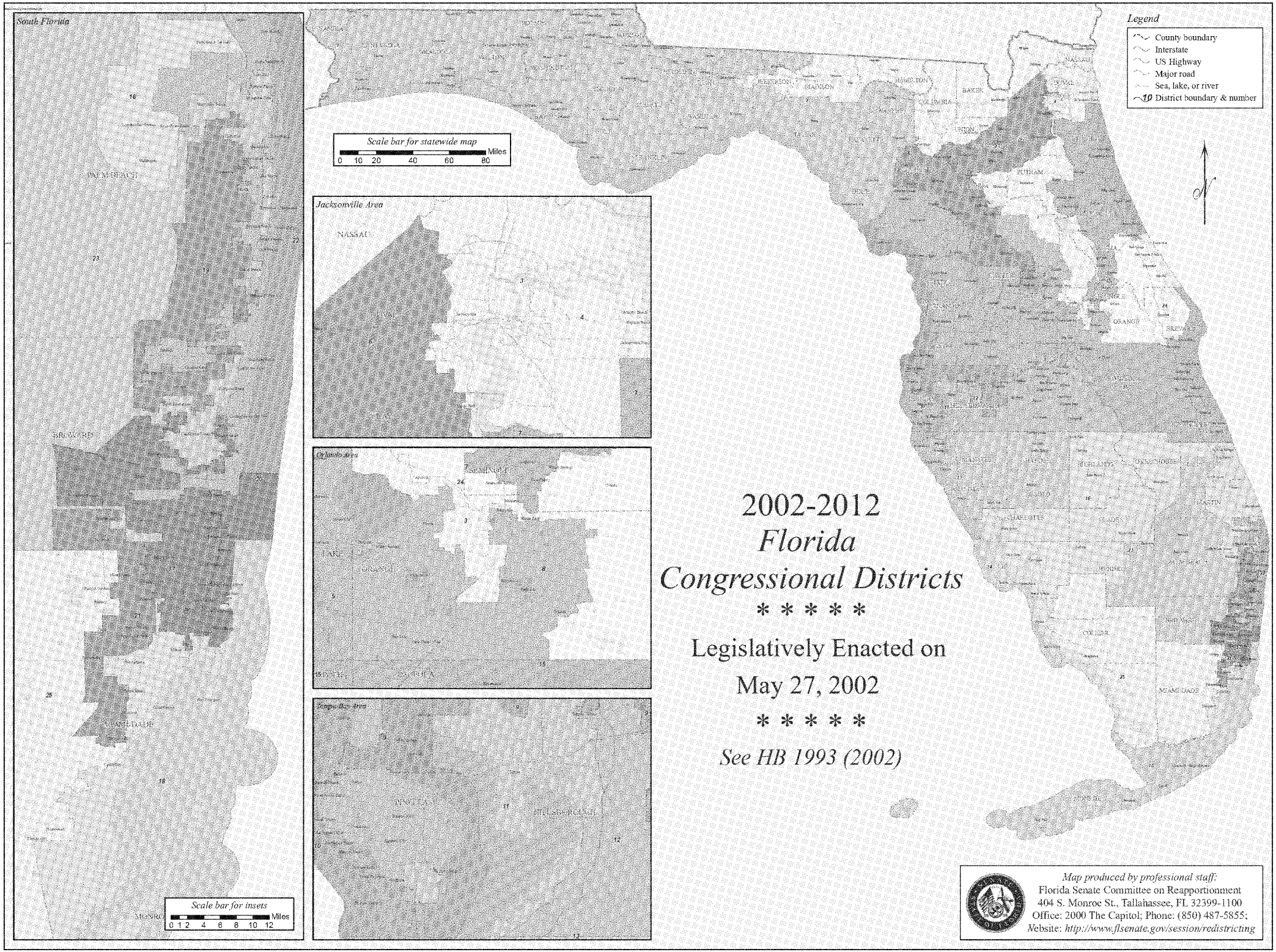

South Florida
Jacksonville Area
Orlando Area
Tampa Bay Area
Legend
County boundary
Interstate
US Highway
Major road
Sea, lake, or river
19 District boundary & number
Scale bar for statewide map
0 10 20 40 60 80 Miles
Scale bar for insets
0 1 2 4 6 8 10 12 Miles
2002-2012
Florida
Congressional Districts
* * * * *
Legislatively Enacted on
May 27, 2002
* * * * *
See HB 1993 (2002)
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: http://www.flsenate.gov/session/redistricting

Exhibit 14

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.

LAUREL M. LEE, in her official capacity as
Florida Secretary of State, et al.,

Defendants.
_____/

AFFIDAVIT OF NICHOLAS A. SHANNIN, GENERAL COUNSEL FOR BILL COWLES, ORANGE COUNTY SUPERVISOR OF ELECTIONS

STATE OF FLORIDA
COUNTY OF ORANGE

BEFORE ME, the undersigned authority, personally appeared Nicholas A. Shannin, Esquire, who, being first duly sworn, deposes and says that:

1. I am now, and for over 27 years have been, a member in good standing of the Florida Bar, and I am fully familiar with the facts set forth below.

2. I am the General Counsel for the Orange County Supervisor of Elections in Florida. Orange County is located in the middle of Central Florida, and with over 850,000 registered voters is the fifth most populous county in Florida.

3. I have served as General Counsel for the Orange County Supervisor of Elections and its staff for over a decade. Doing so, I have assisted the Supervisor and his staff with the legal and administrative duties attendant to properly complying with federal, state, and local laws throughout dozens of Primary, General, and Special Elections.

4. In the conduct of my duties I am directly familiar with the processes required to administrate those elections, including the labor and technical difficulty inherent in the formatting of specific precincts for the voters for each upcoming election, including the special care required to ensure that the congressional, state, and county political boundaries are incorporated within those precincts so that each voting precinct may be allocated a unique and appropriate ballot style.

5. Because of Orange County's size and the fact that it is home to multiple congressional districts, state house and senate districts, and single-member county commission districts local commission and school board districts, it is necessary to prepare for well over 200 unique ballot styles for the Primary Elections.

6. This level of work and detail requires adequate time to allow for the precinct boundaries to be accurately drawn and organized, and the ballots

designed, proofed, printed, and mailed within the time necessary to meet the statutory deadlines to transmit vote-by-mail ballots, particularly to its overseas voters.

7. This year, Florida is scheduled to hold its 2022 state-wide Primary Election on August 23, 2022. As a result, the statutory date for which vote-by-mail ballots are to be mailed overseas is July 9, 2022.

8. I have consulted with the Orange County Supervisor of Elections and his staff to determine the amount of lead time necessary to conduct the technical and administrative tasks necessary to ensure that each of those precincts are correctly drawn and the process for ballot design, proofing, printing, and mailing is timely administered.

9. Notwithstanding each of the difficulties outlined above, Supervisor Cowles' well-trained and efficient staff has assured me that so long as final boundaries for congressional districts are set no later than May 27, 2022, the Orange County Supervisor and staff will have adequate time to prepare for the election and meet each relevant election deadline in advance of the August 23, 2022, Primary Election.

10. As General Counsel for the Orange County Supervisor I have been closely following the legislation and subsequent litigation related to the

congressional maps. I can ensure that Supervisor Cowles is updated with regard to any potential changes as the process swiftly proceeds through the court system. Because Supervisor Cowles is aware of the potential for modification to the presently set congressional districts, Supervisor Cowles will be able to implement any newly authorized congressional maps upon judicial direction to do so.

11. On behalf of the Orange County Supervisor of Elections and his staff, the undersigned thanks each of the parties and the Court for working together to proceed with all deliberate speed through the judicial process to allow Supervisor Cowles and his fellow Supervisors as much time as is possible to properly administrate each of their duties in compliance with federal, state, and local law, and with the United States and Florida Constitutions.

FURTHER AFFIANT SAYETH NAUGHT.

NICHOLAS A. SHANNIN, ESQUIRE
General Counsel for ORANGE COUNTY
SUPERVISOR OF ELECTIONS

SWORN TO AND SUBSCRIBED before me by means of physical presence, on May 7, 2022, by NICHOLAS A. SHANNIN, who did take an oath and who is personally known to me.

Notary Public, State of Florida

MARIA H. FIGLEY
Notary Public - State of Florida
Commission # HH 055949
My Comm. Expires Feb 13, 2025
Bonded through National Notary Assn.

Exhibit 15

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. LAUREL M. LEE, in her official capacity as Florida Secretary of State, *et al.*, Defendants.	Case No. 2022-ca-000666

AFFIDAVIT OF TRACIE DAVIS

STATE OF ~~FLORIDA~~ XXXXXXX Texas
COUNTY OF ~~DUVAL~~ XXXXXX Dallas

BEFORE ME, the undersigned authority, personally appeared Tracie Davis, who, after first being duly sworn, deposes and says:

1. I am Tracie Davis, a resident of Florida, over the age of twenty-one, and under no disability. I have personal knowledge of the facts described in this Affidavit.

2. I currently serve as the member of the Florida House of Representatives representing District 13 in the city of Jacksonville, in Duval County, Florida. I was first elected to the Florida House of Representatives in 2018.

3. From 2001 to 2015, spanning most of my career, I worked in the Supervisor of Elections Office for Duval County, where I ultimately served as Deputy Supervisor of Elections, the highest unelected position in the Duval County Supervisor Elections Office. In my role as Deputy Supervisor of Elections, my duties include participating in and closely observing virtually every aspect of the administration of county, state, and federal elections in Duval

County.

4. Among my experiences at the Duval County Supervisor of Elections office, I worked with staff involved in redrawing precincts (re-precincting) for Duval County as part of the 2012 congressional and legislative redistricting process, and I know firsthand the ability of the staff, who still work in the Duval County Supervisor of Elections Office, to implement new redistricting plans.

5. The redistricting process, and associated re-precincting, entails assigning voters to their proper congressional district, State Senate district, and State House district and, further, assigning voters to manageably sized precincts that share a common ballot style (i.e., list of electoral races) or a number of ballot styles within a precinct. The latter instance, which entails having a number of ballot styles within a precinct, occurs when it is not administratively practicable (timewise, staff wise, location wise, or a combination of these factors) to have separate polling places to serve voters in a geographic area split by various electoral district boundaries. These are common problems that Duval County faces and has the technical resources to address.

6. Historically, Duval County has been divided among multiple congressional, State Senate, and State House districts, and has found it reasonably necessary to have split precincts, in which more than one ballot style has been used in certain precincts. The Duval County Supervisor of Elections office is capable of handling elections with split precincts, to the extent such splits cannot be resolved by drawing new precinct lines.

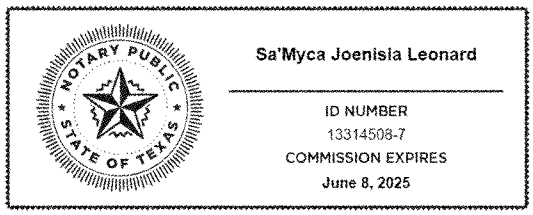
7. On August 23, 2022, Florida is scheduled to hold its 2022 statewide primary election. This is among the latest primaries in the country. The associated deadline to transmit vote-by-mail ballots to overseas and uniformed voters is July 9, 2022.

8. The Duval County Supervisor of Elections Office has competent and professional staff well capable of handling the redistricting and re-precincting process. Based on my experience and knowledge of the Duval County Supervisor of Elections Office, if the Court were to set in a place a remedial congressional district plan by May 27, 2022, the Duval County Supervisor of Elections Office would have adequate time to prepare for the primary election and meet the relevant election deadlines under the current elections schedule.

FURTHER AFFIANT SAYETH NOT.

Tracie Davis

SWORN TO AND SUBSCRIBED before me this 9th day of May 2022, by Tracie Davis, who (check one) ☐ is personally known to me, ☑ produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or ☐ produced other identification, to wit:



Notarized online using audio-video communication

Sa'Myca Joenisia Leonard

Print Name: Sa'Myca Joenisia Leonard
Notary Public, State of ~~Florida~~ Texas
Commission No.: 13314508-7
My Commission Expires: 06/08/2025

Exhibit 16

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. LAUREL M. LEE, in her official capacity as Florida Secretary of State, *et al.*, Defendants.	Case No. 2022-ca-000666

AFFIDAVIT OF LORI EDWARDS
POLK COUNTY SUPERVISOR OF ELECTIONS

STATE OF FLORIDA
COUNTY OF POLK

BEFORE ME, the undersigned authority, personally appeared Lori Edwards, who, after first being duly sworn, deposes and says:

1. I am Lori Edwards, a resident of Florida, over the age of eighteen, under no disability, and I have personal knowledge of the facts described in this Affidavit.

2. I currently serve as Supervisor of Elections for Polk County, Florida. Polk County is one of ninth-most populous county in the state. Polk County is home to about 453,000 registered voters, and it has 167 precincts.

3. In my role as Polk County Supervisor of Elections, my duties include administering county, state, and federal elections.

4. I understand the Secretary of State in the above-captioned case has cited my previous declaration in Common Cause Florida et al. v. Lee, Case No.: 4:22-cv-109 (N.D. Fla.) as support for the argument that it is too late to implement a congressional redistricting plan that complies with the Florida Constitution, if ordered by this Court. My testimony was and is different, as was the circumstances at the time of my prior declaration, and the scope of remedial possibilities now appears much clearer and narrower.

5. It is true that, in order for the primary election to proceed on August 23, 2022, elections officials need adequate time to prepare for the primary. The recently enacted congressional redistricting plan P000C0109 splits Polk County into four separate congressional districts. This complicates the task of organizing precincts to address the number of ballot styles needed so that each voter in Polk County has a ballot that reflects the electoral races that fit the combination of electoral districts covering the voter's place of residence. Nevertheless, as recent experience confirms, the process of doing so would by no means be impossible if, by the end of May, the Court were to order a remedial congressional district map with the roughly the same or fewer congressional district splits in Polk County.

6. The Polk County Supervisor of Elections Office, just as many other counties' elections offices, must periodically contend with changes to electoral districts and changes to precincts for a variety of reasons. The number of precincts split by district lines may sometimes make it difficult to redraw a precinct map quickly.

7. If the Court were to implement a remedial plan, the Polk County Supervisor of Elections office would be capable of implementing the new plan if ordered to do so by the end of May 2022. If ordered to do so, the Polk County Supervisor of Elections office will work diligently to implement such a map that complies with the Florida Constitution.

FURTHER AFFIANT SAYETH NOT.

Lori Edwards

Lori Edwards
POLK COUNTY SUPERVISOR OF ELECTIONS

SWORN TO AND SUBSCRIBED before me this _____ day of May 2022, by _____, who (check one) ☐ is personally known to me, ☐ produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or ☐ produced other identification, to wit:

RACHEL C. HARRIS
Notary Public, State of Florida
My comm. expires Nov. 15, 2025
Commission Number HH 199048

Rachel Harris

Print Name: Rachel Harris
Notary Public, State of Florida
Commission No.: 199048
My Commission Expires: 11/15/22

Exhibit 17

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.

LAUREL M. LEE, in her official capacity as Florida Secretary of State, *et al.*,

Defendants.

Case No. 2022-ca-000666

AFFIDAVIT OF CHRISTOPHER MOORE
DEPUTY SUPERVISOR OF ELECTIONS OF LEON COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME, the undersigned authority, personally appeared Christopher Moore, who, after first being duly sworn, deposes and says:

1. I am Christopher Moore, a resident of Florida, over the age of eighteen, under no disability, and I am fully familiar with the facts set forth below.

2. I am the Deputy Supervisor of Elections for Leon County, Florida, which is the highest unelected position in the Leon County Supervisor of Elections Office. I have been employed with the Leon County Supervisor of Elections office for 16 years. In my role as Deputy Supervisor of Elections, my duties include participating in and closely observing virtually every aspect of the administration of county, state, and federal elections in Leon County. I and other staff that I supervise provide technical support and advice to other County Supervisor of Elections offices related to redistricting and elections administration on occasion when requested.

3. Among the roles I have held in Leon County Supervisor of Elections Office, I previously had primary responsibility for the office's geographic information systems (GIS) needs, which included work in implementing redistricting plans and revising electoral precinct boundaries. In my current role, I still oversee the office's GIS work, and I am actively involved in working to implement redistricting plans and revising electoral precinct boundaries for the Leon County Supervisor of Elections Office. Because my technical GIS background and staff oversight, I am familiar with the various GIS tools and software used in work related to elections administration, and I am also aware of the functionality of some GIS tools used by other Supervisor of Elections Offices that have not been implemented in the Leon County Supervisor of Elections Office.

4. I have reviewed the April 26, 20222 Affidavit of Leon County Supervisor of Elections Mark S. Earley in this case, agree with its contents, and share his assessment that the Leon County Supervisor of Elections office can meet the upcoming primary election deadlines if a new congressional plan is in place by May 27, 2022.

5. If, for instance, the Court were to adopt a map containing the east-west configuration of Congressional District 5 ("CD-5") in plan H000C8015, as passed by the Legislature on March 4, 2022, it would require Supervisor Earley to decide whether to redraw precincts within Leon County to have only one ballot style (that is, list of competing candidates and ballot issues) per precinct or to deploy street-level splits within existing precincts, such that there are multiple ballot styles within one or more precincts. Either way, the Leon County Supervisor of Elections Office could implement the new redistricting plan and administer the elections in the current election cycle on the current elections schedule. In the case of plan H000C8015, the boundaries of CD-5 would split roughly 17 precincts, in addition to precincts

split by the new Florida House and Florida Senate district plans.

6. It is not uncommon for elections administrators to split precincts, such that they administer elections in which more than one ballot style is used within a precinct. Deciding whether or not to deploy the street-level split model within precincts does encumber an election administrator to consider concerns of ballot style complexity for poll workers, staff technical expertise in GIS, and programming and proofing ballot styles for the election. One benefit of using splits at the street level (and not redrawing precinct boundaries), is that the County Supervisor of Elections Office need not submit a new precinct map to the County Board of Commissioners for approval since the boundaries have not technically been altered. But whether or not a county elections office decides if they need approval from the Board of County Commissioners, such approval has never been withheld in Leon County to my knowledge. The administrative action of submitting the boundaries for approval need not delay or prevent the Leon County Supervisor of Elections Office from moving forward with work in our "reprecincting" (staging) database environment in our voter software package if the Court were to impose an alternative congressional redistricting plan by May 27, 2022. Our office may be in an advantageous position to other counties having an in-house GIS staff expert, but that administrative decision was made long ago and was the primary reason I was recruited to join this office in 1999.

7. Although Leon County Supervisors Office uses its own in-house GIS staff expertise, there are available software tools to aid in implementing new redistricting and reprecincting plans. There is a GIS vendor in the State that offers a program with an interface to the voter registration database to replace the required data tables updates for redistricting once the mapping tasks have been completed. I am aware that there are counties in Florida currently

licensing that solution. The Leon County Supervisor of Elections Office can, nonetheless, efficiently implement new redistricting and reprecincting plans without need of such software.

FURTHER AFFIANT SAYETH NOT.

Christopher Moore

SWORN TO AND SUBSCRIBED before me this 10th day of May 2022, by Chris Moore, who (check one) ☑ is personally known to me, ☐ produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or ☐ produced other identification, to wit:

CORY LOGAN
MY COMMISSION # GG 367025
EXPIRES: September 23, 2023
Bonded Thru Notary Public Underwriters

Print Name: Cory Logan

Notary Public, State of Florida

Commission No.: #GG367025

My Commission Expires: 9/23/2023