

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 2022-ca-000666

**MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Under Florida Rule of Civil Procedure 1.190(a), Plaintiffs move for leave to file an amended complaint, a copy of which is attached as **Exhibit 1**. Defendants have indicated they are not yet able to consent to or oppose amendment of the complaint, but should be able to advise next week whether they are able to stipulate to amendment of the complaint. In support of their motion, Plaintiffs state:

1. On September 29, 2022, the Court entered a scheduling order providing that “[t]he parties shall have until **January 13, 2023**, to amend their pleadings.” Joint Scheduling Order at 1 (emphasis in original).

2. Pursuant to that Order, Plaintiffs seek to amend their complaint primarily to (1) add and remove individual plaintiffs, (2) remove defendants who have been dismissed from this action, (3) remove claims Plaintiffs voluntarily dismissed without prejudice, and (4) to add factual allegations, including several related to the 2022 midterm election.

3. Plaintiffs respectfully request that the Court grant their motion.







































42. “Accordingly, the Legislature cannot eliminate majority-minority districts or weaken other historically performing minority districts where doing so would actually diminish a minority group’s ability to elect its preferred candidates.” *Id.* at 625. The non-diminishment standard accordingly calls for a comparative analysis: “The existing plan of a covered jurisdiction serves as the ‘benchmark’ against which the ‘effect’ of voting change is measured.” *Id.* at 624.

43. This comparative or “functional” analysis 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.*

44. Unlawful intent can be discerned from both direct and circumstantial evidence. *See Apportionment VII*, 172 So. 3d at 388–89. Direct evidence of improper intent is often found in the statements and communications of those “responsible for drafting districting plans.” *Id.* (citing *Easley v. Cromartie*, 532 U.S. 234, 254 (2001)).

45. Circumstantial evidence, however, can be enough by itself to show improper intent. Indeed, the “specific sequence of events leading up to the challenged decision also may shed light on the decisionmaker’s purposes.” *Apportionment VII*, 172 So. 3d at 389 (quoting *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977)). “Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.” *Id.* (quoting *Arlington Heights*, 429 U.S. at 267).

46. In determining intent, courts have also “considered the role of alternative plans,” because if “an alternative plan can achieve the same constitutional objectives that prevent vote dilution and retrogression of protected minority and language groups and also apportions the districts in accordance with tier-two principles . . . this will provide circumstantial evidence of improper intent.” *Apportionment I*, 83 So. 3d at 641.

**B. The Florida Constitution prohibits the drawing of congressional districts to favor or disfavor a political party.**

47. The Florida Constitution’s prohibition on partisan gerrymandering is also a Tier I standard.

48. “The acceptability of partisan political gerrymandering in this state dramatically changed” after the people of Florida amended the Constitution with the Fair Districts Amendment. *Apportionment VII*, 172 So. 3d at 374.

49. Article III, Section 20(a) of the Florida Constitution provides that “[n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent.” This requirement “prohibits what has previously been an acceptable practice, such as favoring incumbents and the political party in power.” *Apportionment I*, 83 So. 3d at 615. “While some states have sought to minimize the political nature of the apportionment process by establishing independent redistricting commissions to redraw legislative districts, Florida voters have instead chosen to place restrictions on the Legislature by constitutional mandate in a manner similar to the constitutions of other states.” *Id.* at 616.

50. The Florida Constitution “prohibits drawing a plan or district with the intent to favor or disfavor a political party or incumbent; there is no acceptable level of improper intent.” *Id.* at 617. It “does not reference the word ‘invidious’ as the term has been used by the United States Supreme Court in equal protection discrimination cases, and Florida’s provision should not be read to require a showing of malevolent or evil purpose.” *Id.* (cleaned up). The Florida Constitution’s prohibition on partisan gerrymandering, moreover, “applies to both the apportionment plan as a whole and to each district individually.” *Id.*

## FACTUAL BACKGROUND

### II. The Fair Districts Amendment is enforceable against Florida's congressional reapportionment plans.

51. When the U.S. Supreme Court held that partisan gerrymandering claims could not be brought in federal court, it explained that its holding did not “condemn complaints about districting to echo into a void.” *Rucho*, 139 S. Ct. at 2507. The task of reforming the redistricting process is one for the states and their citizens because “[p]rovisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.” *Id.*

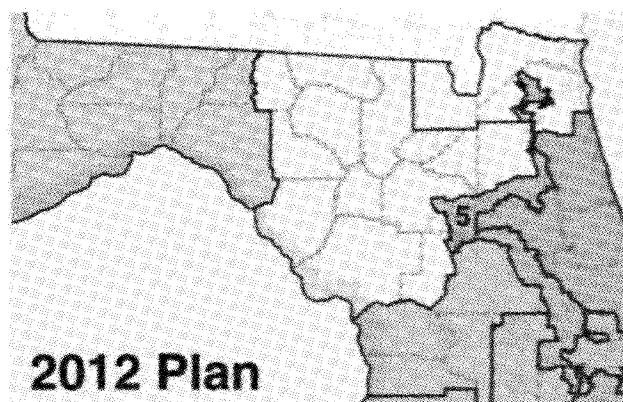
52. The U.S. Supreme Court pointed to Florida as a model for the nation. Citing favorably to the Florida Supreme Court's decision to strike down the Legislature's 2012 congressional redistricting plan, the U.S. Supreme Court held that federal courts were not similarly empowered to adjudicate partisan gerrymandering claims because “[t]here is no ‘Fair Districts Amendment’ to the Federal Constitution.” *Rucho*, 139 S. Ct. at 2507 (citing *Apportionment VII*, 172 So. 3d at 363). And it observed that other states, including Missouri, Iowa, and Delaware, followed Florida's lead by amending their constitutions in similar fashion. *Id.* at 2507–08.

53. In *Apportionment VII*, plaintiffs alleged that Florida's 2012 congressional plan was drawn to benefit the Republican Party in violation of the Fair Districts Amendment's prohibition on partisan gerrymandering. The trial court agreed, enforcing the Fair Districts Amendment against the Legislature's plan. *See Romo v. Detzner*, No. 2012-CA-000412, 2014 WL 3797315, at \*3 (Fla. 2d Cir. Ct. July 10, 2014).

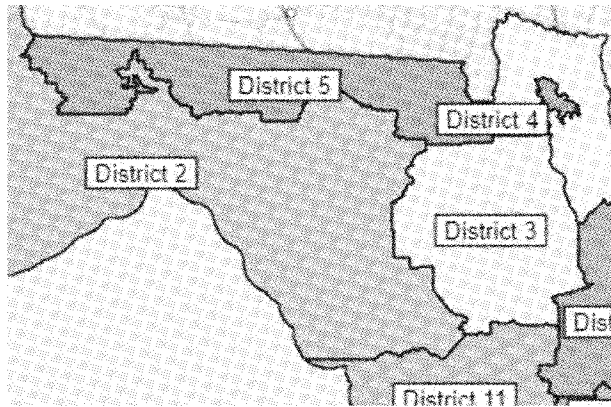
54. The Florida Supreme Court agreed that the Legislature had made a “mockery” out of the Fair Districts Amendment in drawing its 2012 congressional plan. *Apportionment VII*, 172 So. 3d at 377. The Court gave no deference to the Legislature's justifications for the challenged district boundaries given its finding that the entire map had been “tainted by unconstitutional intent

to favor the Republican Party and incumbent lawmakers.” *Id.* at 369 (cleaned up). It then ordered the Legislature “to redraw, on an expedited basis, Congressional Districts 5, 13, 14, 21, 22, 25, 26, 27, and all other districts affected by the redrawing.” *Id.* at 371–72.

55. The Court also provided precise guidelines to ensure that the Legislature redrew the map in accordance with the Florida Constitution. For example, the Court ordered the Legislature to redraw North Florida’s CD-5, which, as shown below, was “visually not compact, bizarrely shaped” and contravened “traditional political boundaries as it [wound] from Jacksonville to Orlando, narrowing at one point to the width of a highway.” *Id.* at 402.



56. The Florida Supreme Court rejected the Legislature’s assertion that this north-to-south configuration was necessary to comply with the Fair Districts Amendment’s non-diminishment standard, explaining that the Legislature “placed more black voters in the district than [was] necessary to ensure that they can elect a candidate of choice—thereby diluting the influence of Democratic minorities in surrounding districts.” *Id.* at 402. It then ordered the Legislature to redraw CD-5 in an East-West configuration as legislative staffers had initially done in draft plans, *id.* at 403–04, and subsequently affirmed the redrawn configuration as shown below:



*See League of Women Voters of Fla. v. Detzner* (“*Apportionment VIII*”), 179 So. 3d 258, 271–72 (Fla. 2015).

57. The Florida Supreme Court rejected arguments that the East-West configuration of CD-5 “causes the redistricting map to become significantly less compact.” *Apportionment VII*, 172 So. 3d at 405–06. While the redrawn CD-5 had a longer perimeter than the Legislature’s version, “length is just one factor to consider in evaluating compactness.” *Id.* at 406. Indeed, “the phrase ‘as compact as possible’ does not mean ‘as small in size as possible, but rather ‘as regular in shape as possible.’” *Id.* (cleaned up). After all, “numerical compactness scores actually favor[ed] the East-West orientation.” *Id.* The redrawn CD-5 also produced fewer city and county splits. *Id.*

58. The Court provided additional guidance for redrawing the Tampa Bay-based CDs-13 and 14. It explained that the Legislature adopted a configuration of these districts that was “known to have been favored by political operatives” in which CD-14 “crossed Tampa Bay, add[ing] more Democratic voters to an already safely Democratic District 14, while ensuring that District 13 was more favorable to the Republican Party.” *Id.* at 406–07. The Court then ordered CDs-13 and 14 to be “redrawn to avoid crossing Tampa Bay.” *Id.* at 409.

59. The Court further held that CDs-21, 22, 25, 26, and 27 were likewise drawn with impermissible partisan intent, in each instance rejecting the Legislature’s justifications for the

district lines and providing specific guidance for redrawing the district boundaries. *See id.* at 410–13.

60. After the Florida Supreme Court issued its decision and remanded, the Legislature quickly convened a special session that ended without agreement. In the absence of an agreed plan, the trial court analyzed and recommended remedial districts drawn by the House, Senate, and plaintiffs. *Apportionment VIII*, 179 So. 3d at 261. The Florida Supreme Court adopted the trial court’s recommendation in December 2015, resulting in the congressional map that would be used in Florida’s next three congressional elections—the Benchmark Plan. *See id.*

61. The Court acknowledged that *Apportionment VII* was “neither the first, nor likely the last time” that the Florida judiciary would need to “confront a challenge to a redistricting plan enacted by the Legislature.” 172 So. 3d at 415. Future courts, it pressed, must continue to “endeavor[] to give meaning to the intent of the framers and voters who passed the Fair Districts Amendment.” *Id.* at 415.

**III. After the Legislature indicated that they would protect CD-5 from diminishment, Governor DeSantis hijacked the process and declared the Amendment unconstitutional.**

62. The U.S. Census Bureau released the 2020 census data needed for redistricting on August 12, 2021. The Florida Senate and House commenced the redistricting process by holding initial hearings in September 2021, kicking off an iterative process of drafting congressional maps.

63. Throughout the process, both chambers repeatedly asserted that CD-5 was a protected district under the Florida Constitution’s non-diminishment standard and explained the importance of keeping the district intact.



64. That process culminated in the Senate approving, on a bipartisan basis, a congressional redistricting plan that retained the east-west configuration of CD-5.<sup>2</sup> The Senate Reapportionment Committee voted to advance its congressional plan to the full Senate on January 13, 2022.<sup>3</sup> The full Senate then voted overwhelmingly—by a vote of 31 to 4—in favor of the plan.<sup>4</sup> That plan was expected to produce 16 Republican seats and 12 Democratic seats.

65. At that time, the House was also in the process of finalizing a congressional map that retained the core of CD-5. But before it could do so, Governor DeSantis upended the redistricting process by threatening to veto the House and Senate plans over the configuration of CD-5. Describing CD-5 as an “unconstitutional gerrymander,” Governor DeSantis then claimed repeatedly that he would “not be signing any congressional map that has an unconstitutional gerrymander in it. That is going to be the position that we stick to. Take that to the bank.”<sup>5</sup>

66. On February 1, 2022, Governor DeSantis requested that the Florida Supreme Court issue an advisory opinion on whether the Fair Districts Amendment’s non-diminishment standard “requires the retention” of CD-5 in either the east-west configuration adopted in *Apportionment VII* or the north-south version preceding it. *See Advisory Op.*, 2022 WL 405381, at \*1. The Court denied the request.

67. The Legislature attempted to appease Governor DeSantis by passing a redistricting plan on March 4, 2022, that modified CD-5 to make it more compact and eliminated the so-called

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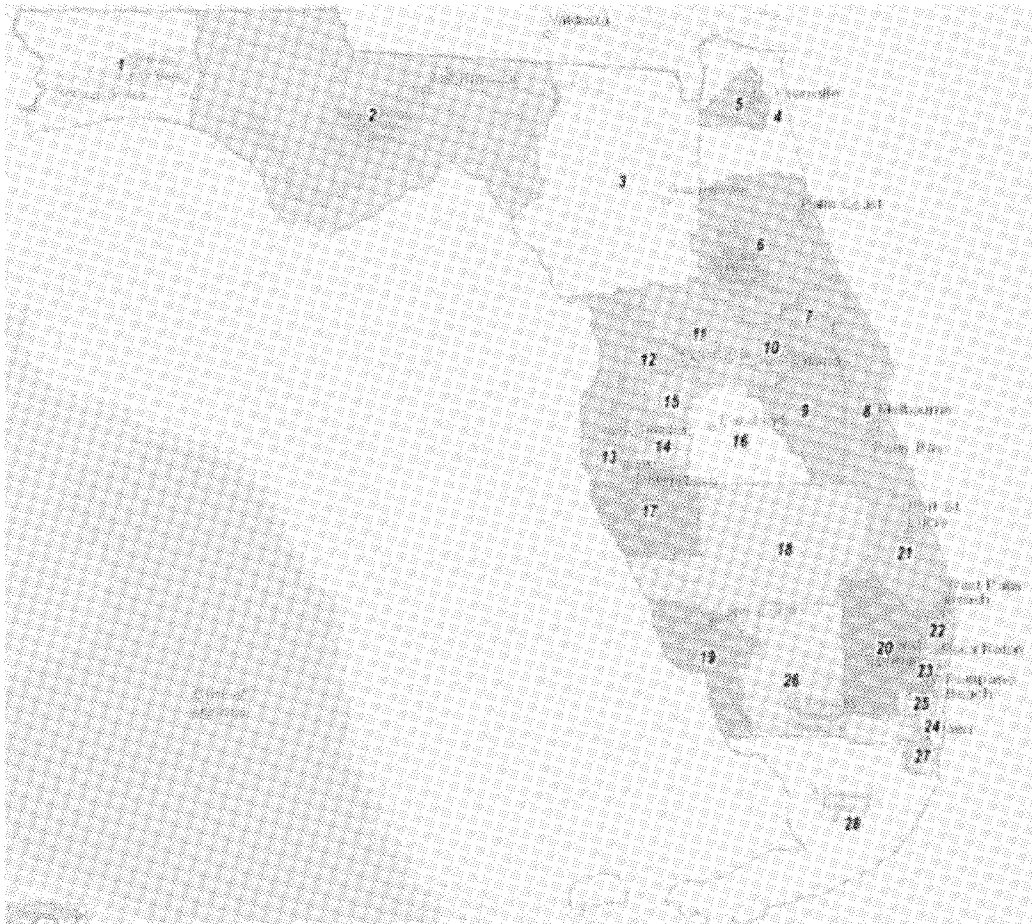
<sup>2</sup> See *CS/SB 102: Bill Analysis and Fiscal Impact Statement* at 13, Fla. Sen. (Jan. 14, 2022), <https://www.flsenate.gov/Session/Bill/2022/102/Analyses/2022s00102.re.PDF>.

<sup>3</sup> See *CS/102: Establishing the Congressional Districts of the State*, Fla. Sen., <https://www.flsenate.gov/Session/Bill/2022/102> (Mar. 29, 2022).

<sup>4</sup> See *id.*

<sup>5</sup> *DeSantis Says He Will Not Sign Legislation That Has ‘Unconstitutional Gerrymander,’* WTXL (Feb. 11, 2022) <https://www.wtxl.com/news/local-news/desantis-says-he-will-not-sign-legislation-that-has-unconstitutional-gerrymander>.

“sprawling” nature of the district, which Governor DeSantis had opposed. While the modified version, as shown below, substantially reduced the Black population of the district, the Legislature contended that it still would have allowed the Black candidate of choice to prevail in a majority of elections:<sup>6</sup>



68. The Legislature’s March 4 plan favored Republicans even more than the Senate’s version; it was anticipated to produce 18 Republican seats and 10 Democratic seats.

69. The Legislature’s plan also included an alternative map that the Legislature intended to take effect if courts found that the primary map diminished Black voting power in

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<sup>6</sup> *CS/SB 102: Establishing the Congressional Districts of the State*, Fla. Sen., <https://www.flsenate.gov/Session/Bill/2022/102/?Tab=BillHistory> (Mar. 29, 2022).

violation of the Florida Constitution. The alternative map retained the East-West configuration of CD-5 and, like the primary plan, was expected to produce 18 Republican seats and 10 Democratic seats.

70. On March 29, 2022, Governor DeSantis vetoed the Legislature’s plan despite the changes the House made to appease him and called a special legislative session. Governor DeSantis claimed that the Legislature’s plan still contained “unconstitutional racial gerrymanders.”<sup>7</sup>

71. In advance of the special session, House Speaker Sprowls and Senate President Simpson informed lawmakers that legislative staff would not draw new maps and that the Legislature would instead consider a congressional plan from Governor DeSantis.<sup>8</sup> The intent of the special session, they explained, “is to provide the Governor’s Office opportunities to present [a plan] before House and Senate redistricting committees.”<sup>9</sup>

72. Governor DeSantis released his proposed congressional plan on April 13, 2022.

73. During the special session, the Governor’s Deputy Chief of Staff, Alex Kelly, and Legal Counsel, Ryan Newman, presented the DeSantis Plan to the House and Senate.

74. During his testimony, Mr. Kelly confirmed that Governor DeSantis had hired Adam Foltz, a well-known Republican redistricting operative, to help draw the map. Up until that point, the Governor’s Office failed to disclose that Foltz had been working behind the scenes with the

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<sup>7</sup> *Gov. DeSantis Vetoes Congressional Redistricting Maps Passed by Florida Lawmakers*, WTSP (Mar. 29, 2022), <https://www.wtsp.com/article/news/politics/desantis-vetoes-congressional-redistricting-maps/67-f04f20fd-9113-4cb7-9704-1fb0aac22159>.

<sup>8</sup> Associated Press, *Florida Legislature Gives up, Asks DeSantis for Congressional Maps*, WTXL (Apr. 11, 2022), <https://www.wtxl.com/news/local-news/florida-legislature-gives-up-asks-gov-for-congressional-map>.

<sup>9</sup> *Id.*

Governor’s Office to draw maps, including the prior maps that the Governor’s Office released in January and February 2022.

75. The Legislature passed the DeSantis Plan on April 21, 2022, without amendment, over the vigorous protest of the chambers’ Black representatives.

**IV. The DeSantis Plan violates the Florida Constitution by diminishing the ability of Black voters to elect representatives of their choice.**

76. As the 2020 census revealed, Florida is home to over 3.7 million Black residents, a substantial increase from the last decennial census. Today, Florida has three times the Black population of Alabama and a larger Black population than Georgia.

77. Under the Benchmark Plan, as ordered by the Florida Supreme Court in 2015, Black voters could and did elect their candidates of choice in four districts across the state: CD-5, in North Florida; CD-10, in Central Florida; and CDs-20 and 24 in South Florida.

78. Under the Benchmark Plan, CD-5 consisted of the historic Black population in North Florida.

79. While CD-5 was known for its inclusion of Tallahassee and Jacksonville, both of which have substantial Black populations, Black voters also comprise a substantial portion of the lower-density counties that made up the rest of CD-5. Gadsden County, for instance, is 55% Black, and Jefferson, Madison, and Hamilton Counties are all more than 30% Black.

80. Under the Benchmark Plan, Black voters made up 46.2% of the citizen and total voting-age populations of CD-5. At this threshold, CD-5 elected Black voters’ candidates of choice in every election since the Benchmark Plan’s adoption:

<b>Election</b>	<b>Black Candidate of Choice</b>	<b>Vote Share</b>
2016	Al Lawson (D)	64.2%
2018	Al Lawson (D)	66.8%

2020	Al Lawson (D)	65.1%
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81. The DeSantis Plan obliterates CD-5 and Black voters’ ability to elect their candidate of choice in North Florida.

82. Specifically, the DeSantis Plan takes existing CD-5 and carves up its Black population among four new districts: the new CD-2, CD-3, CD-4, and CD-5. The resulting Black populations of those districts are now 23.3%, 16.3%, 29.6%, and 11.8%, respectively. The white populations of those districts now subsume the Black populations considerably in each district.

83. As a result, there are no districts in North Florida that permit Black voters to elect their candidates of choice.

84. In passing the DeSantis Plan, the Legislature did not even attempt to argue that the DeSantis Plan’s obliteration of CD-5 complied with the Florida Constitution’s non-diminishment standard. Rather, legislative leadership stated only that they believed there was a “legitimate question” as to whether they were required to honor that provision of the Fair Districts Amendment.

**V. The DeSantis Plan violates the Florida Constitution by intentionally diminishing and abridging the ability of Black voters to elect representatives of their choice.**

85. The DeSantis Plan does not result in diminishment by happenstance; it was intended to have that precise effect.

86. Governor DeSantis stated that he intended to dismantle the historically black CD-5 when he released his redistricting plan in advance of the special legislative session. At a news conference following the release of the DeSantis Plan, the Governor stated that “[w]e are not going

to have a 200-mile gerrymander . . . . That is wrong. That’s not the way we’ve governed in the state of Florida.”<sup>10</sup>

87. Indeed, the special legislative session came on the heels of months of repeated statements from Governor DeSantis and his staff pledging to eliminate CD-5. Following the release of the first iteration of the DeSantis Plan earlier this year, Governor DeSantis’s press secretary was unequivocal: “We eliminated this flagrant gerrymander.” And Governor DeSantis used similar language regarding CD-5 in explaining his decision to veto the Legislature’s proposal in March.<sup>11</sup>

88. Governor DeSantis’s desire to eliminate CD-5 was also apparent in his request for an advisory opinion from the Florida Supreme Court on “whether Article III, Section 20(a) of the Florida Constitution requires the retention of [CD-5].” *Advisory Op.*, 333 So. 3d at 1107–08.

89. The Legislature passed the DeSantis Plan with full knowledge and acceptance of the fact that the plan would eliminate a historically performing Black district.

90. During the special session, when asked on the House Floor whether new CD-4 or CD-5 would perform for Black candidates of choice, Chair Leek responded that it would not. He further explained, “[O]ur [House] staff did a functional analysis and confirmed it does not perform.”

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<sup>10</sup> Jane C. Timm & Marc Caputo, *DeSantis Draws Congressional Map That Would Dramatically Expand GOP’s Edge in Florida*, NBC News (Apr. 13, 2022), <https://www.nbcnews.com/politics/elections/desantis-draws-congressional-map-dramatically-expanding-gops-edge-flor-rcna24317>.

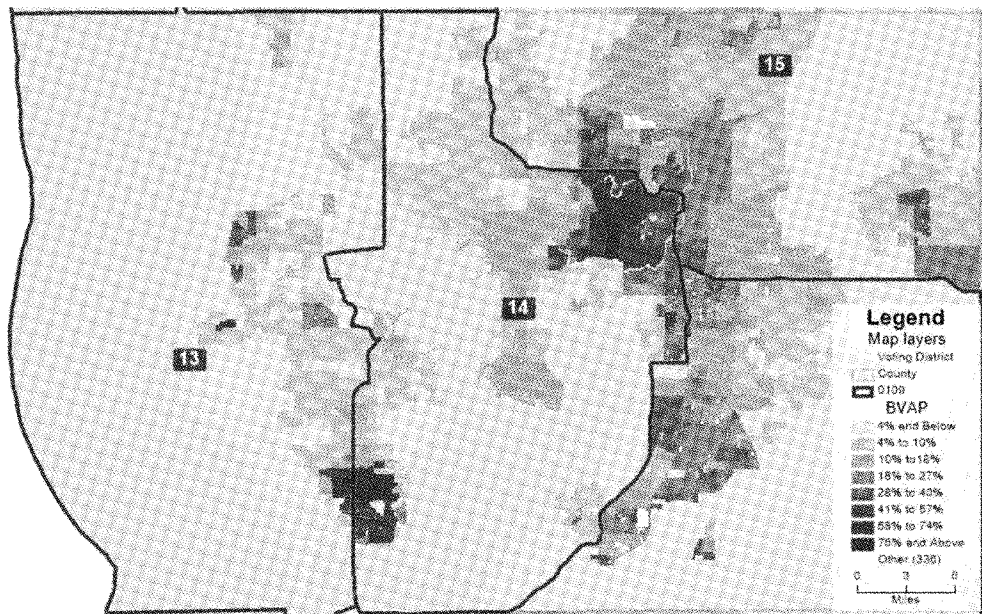
<sup>11</sup> Steve Contorno, *DeSantis Vetoes New Florida Congressional Map and Calls for Special Session*, CNN (Mar. 29, 2022), <https://www.cnn.com/2022/03/29/politics/desantis-vetoes-florida-congressional-map/index.html> (Governor DeSantis describing CD-5 as “pure racial gerrymander” that must be eliminated).

91. And in signing the plan, Governor DeSantis made good on a promise he had made months earlier to veto any plan that complied with the Fair Districts Amendment's protection of CD-5 as a Black-opportunity district.

92. Beyond knowingly dismantling CD-5, the DeSantis Plan also engages in race-based line drawing throughout the state to abridge and diminish the voting strength of minority voters.

93. In Central Florida, for example, the DeSantis Plan pulls *hundreds of thousands* of minority voters out of their existing districts and subsumes them into white districts. Most notably, the DeSantis Plan removes approximately 300,000 people from CD-10. The majority of those removed are persons of color who have now been pushed into CD-11, a predominantly white district.

94. In Tampa Bay too the DeSantis Plan splits St. Petersburg's Black population in half, cracking Black voters in CD-13 between two congressional districts, thereby diminishing and abridging the Black community's ability to influence elections. The picture below shows the new split of the Black population in Pinellas County, shown in blue:



95. Across the state, the DeSantis Plan intentionally and repeatedly carves out Black voters from districts where they previously exercised electoral power.

**VI. The DeSantis Plan violates the Florida Constitution by intentionally favoring the Republican Party and disfavoring the Democratic Party.**

96. With nearly every line-drawing decision, the DeSantis Plan advantages the Republican Party.

97. Under the Benchmark Plan, Democrats were expected to consistently win 11 of the state's 27 congressional districts: one in North Florida, three in Central Florida, two in Tampa Bay, and five in South Florida. Several more congressional seats beyond those 11 were competitive between the parties: Under the Benchmark Plan, depending on prevailing national trends, the Democratic Party could have plausibly claimed 13 or 14 seats (or roughly half) of Florida's 27 congressional districts.

98. While the Benchmark Plan was widely thought to exhibit a slight Republican bias, it at least gave Democrats a roadmap to compete for half the state's congressional seats. This was a reasonable outcome in a longstanding purple state.

99. During the regular legislative session, the Legislature produced at least some plans that resulted in a roughly similar breakdown of seats as the Benchmark Plan. For example, while the Senate's final congressional plan exhibited a Republican bias, it was still expected to elect 16 Republicans and 12 Democrats to Congress.

100. The DeSantis Plan, however, was expected to and did elect 20 Republicans and only 8 Democrats to Congress.



101. As Princeton University Professor Sam Wang described, the DeSantis Plan will result in “one of the most extreme gerrymanders in the country.”<sup>12</sup>

102. As a Florida campaign consultant similarly described, the DeSantis Plan “is the conservative dream map. It aims to compact Democrats into as few districts as possible.”<sup>13</sup>

103. That is exactly what the DeSantis Plan does: It intentionally favors Republicans at nearly every turn. The result is devastatingly effective, resulting in a loss of at least three safely held Democratic seats as compared to the Benchmark Plan.

104. Both as a whole, and as considered at an individual district level, the DeSantis Plan is an intentional partisan gerrymander.

105. Below are just a few of the examples of how the DeSantis Plan intentionally favors Republicans across the state:

**A. North Florida**

106. In the Benchmark Plan, North Florida consistently elected one Democrat to Congress: Al Lawson, from CD-5. As discussed, the DeSantis Plan obliterates CD-5, cracking its Black (and Democratic-leaning) populations across the new CDs-2, 3, 4, and 5, creating four safe-Republican seats. Because CDs-1 and 6 also remain reliably Republican, no district in North Florida will elect a Democrat under the DeSantis Plan.

107. Even taken at face value, Governor DeSantis’s articulated desire to comply with the U.S. Constitution (and the consequent elimination the East-West configuration of CD-5) does not plausibly explain the elimination of a Democratic seat in North Florida.

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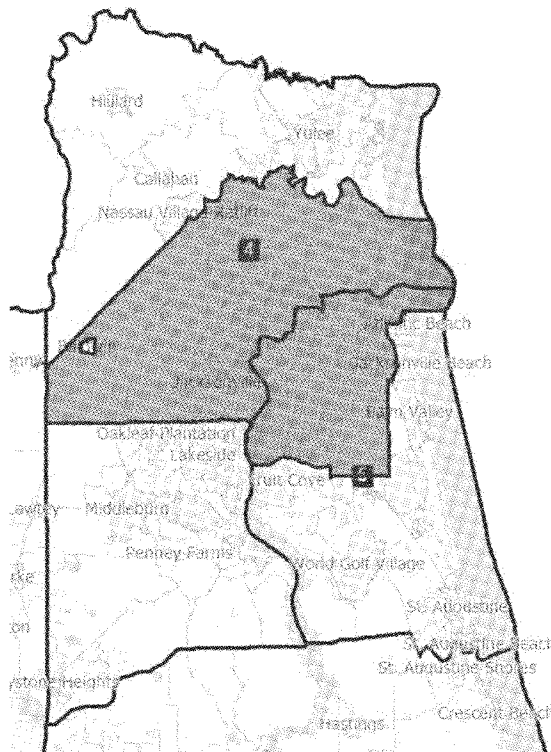
<sup>12</sup> Paul LeBlanc, *Ron DeSantis Is Drawing Democrats out of the Equation in Florida*, CNN (Apr. 14, 2021), <https://www.cnn.com/2022/04/14/politics/desantis-florida-redistricting-what-matters/index.html>.

<sup>13</sup> Matthew Isabel, *Issue 44: A Good Friday Analysis of a Bad Redistricting Map*, MCIMAPS Report (Apr. 15, 2022).

108. As the Legislature’s March 4 map demonstrated, before it was vetoed by Governor DeSantis, it was possible to draw a compact, Jacksonville-only district with a substantial Black population. That version of CD-5 would have consistently elected Democrats.

109. Governor DeSantis vetoed that plan, decrying what he deemed to be the plan’s unfair treatment of Jacksonville, which was divided in the Legislature’s plan, even while it kept the city’s Black population substantially together.

110. Governor DeSantis’s plan, however, still cleaves Jacksonville—and its Black population—in two. It just now does so in a way that disadvantages both Black voters and Democrats, resulting in two safe-Republican seats. The DeSantis Plan’s division of Jacksonville is shown below:



111. In the 2022 midterm election, North Florida elected only Republicans to Congress, just as observers expected it would under the DeSantis Plan.

## **B. Central Florida**

112. In the Benchmark Plan, Central Florida consistently elected three Democrats to Congress, from CDs-9, 10, and 7. Of these districts, CD-7 was the most competitive for Republicans, though it still elected a Democrat by more than 10 percentage points in 2020.

113. The DeSantis Plan ensures that Republicans will safely be elected in CD-7.

114. In the Benchmark Plan, CD-7 sat in the northeast corner of Orlando and its suburbs, encompassing the University of Central Florida. The Benchmark CD-7 encompassed all of Seminole County and took a portion of Orange County to the south. The district was relatively compact.

115. At the start of this redistricting cycle, CD-7 needed to lose only a small amount of population to reach population equality. It did not need to be drastically reconfigured.

116. The DeSantis Plan wholly reconfigures CD-7. The new CD-7 exits Orange County entirely, then reaches out all the way to the Space Coast to take the southern half of Volusia County. The new district sheds about 300,000 residents from the prior district, the majority of whom are persons of color, retaining only about 30% of its prior area. The resulting district is far whiter and Republican, resulting in a reliably safe-Republican seat.

117. Moreover, by moving into Volusia County, the new CD-7 creates an additional unnecessary county split in the map, further diminishing its compliance with traditional redistricting principles.

118. In the 2022 midterm election, CD-7 switched from Democratic hands to Republican hands, just as observers expected it would under the DeSantis Plan.

## **C. Tampa Bay**

119. As proposed plans from even the Republican Senate demonstrated this cycle, Tampa Bay can elect as many as three Democratic representatives from compact districts.

120. In the Benchmark Plan, Tampa Bay consistently elected two Democrats to Congress, from CDs-13 and 14.

121. In the Benchmark Plan, CD-13 was situated wholly in Pinellas County and included all of St. Petersburg. CD-14 was similarly situated wholly in Hillsborough County.

122. The Benchmark Plan's configuration of CDs-13 and 14 was the result of three years of litigation. In *Apportionment VII*, the plaintiffs alleged that the Legislature's enacted configuration of these districts—in which CD-14 jumped across Tampa Bay to pack Democratic voters from St. Petersburg into CD-14—was an intentional partisan gerrymander. The trial court and Florida Supreme Court agreed, ordering the configuration of CDs-13 and 14 as found in the Benchmark Plan.

123. The DeSantis Plan does precisely what the Florida Supreme Court told the Legislature it could not do in 2015: jump across Tampa Bay to pack Democratic voters into CD-14 and drain them away from CD-13, thereby turning CD-13 from a safe-Democratic seat to a safe-Republican seat.

124. The DeSantis Plan's treatment of CDs-13 and 14 is not easily explained by the need to meet population equality or improve upon other Tier II criteria.

125. At the start of this redistricting cycle, CD-13 needed to gain approximately 40,000 people to reach population equality. CD-14, conversely, needed to lose approximately 20,000 people. CD-13 thus needed to expand slightly, and CD-14 needed to contract slightly.

126. In the DeSantis Plan, however, CD-14 jumps across Tampa Bay to seize nearly 200,000 of Pinellas County's residents from CD-13, the district that needed to *gain* population. This configuration splits one of Florida's major cities—and specifically, splits St. Petersburg's Black population in half, cracking Black voters in CD-13 and packing them into CD-14 to ensure

a new safely held Republican seat in Tampa Bay. In so doing, the DeSantis Plan reduces the compactness of CD-13 as compared to the Benchmark Plan

127. In the 2022 midterm election, CD-13 switched from Democratic hands to Republican hands, just as observers expected it would under the DeSantis Plan.

128. The new representative of CD-13 is Republican Anna Paulina Luna. Shortly after her election, Representative Luna was asked by a reporter to explain the “red tsunami” in Florida in 2022. In response, Representative Luna did not credit Republican policies or Republican popularity, but responded that it was the result of Governor DeSantis’s redistricting plan and willingness to stand up to both Democrats and the Legislature in passing his plan.<sup>14</sup>

#### **D. South Florida**

129. In the Benchmark Plan, South Florida had two fiercely competitive seats: CDs-26 and 27. Both seats were winnable by either party. For example, both seats switched hands from a Republican in 2016, to a Democrat in 2018, and back to a Republican in 2020.

130. The DeSantis Plan redraws both districts to ensure Democrats cannot realistically win either seat going forward. CD-26 (now CD-28), for example, shaves off Palmetto Estates and West Perrine, communities with substantial Democratic populations. It trades those communities for Fontainebleau, which is more reliably Republican. CD-27 makes similar moves, trading its Democratic-heavy portions of Miami Beach for more reliably Republican areas. The result is to put both districts of out of reach for Democrats.

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<sup>14</sup> Anna Paulina Luna (@VoteAPL), Twitter (Dec. 28, 2022, 9:18 PM), <https://twitter.com/VoteAPL/status/1608286181770539015>.

## CLAIMS FOR RELIEF

### COUNT I

#### **Violation of Article III, Section 20 of the Florida Constitution Diminishment of Minority Ability to Elect (Tier I Violation)**

131. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 130 of this Complaint as though fully set forth herein.

132. Under the Florida Constitution, districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice

133. The DeSantis Plan and individual districts in the plan, including specifically the elimination of Benchmark CD-5, result in diminishment of Black voters' ability to elect their candidates of choice in violation of Article III, Section 20 of the Florida Constitution.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment:

- a. Declaring that the DeSantis Plan and/or individual districts in the DeSantis Plan violate Article III, Section 20 of the Florida Constitution;
- b. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to the DeSantis Plan, including enjoining Defendants from conducting any elections for the U.S. House of Representatives under the DeSantis Plan;
- c. Ordering or adopting a new congressional districting plan that complies with Article III, Section 20 of the Florida Constitution;
- d. Issuing an order requiring Defendants to pay Plaintiffs' costs and expenses incurred in the prosecution of this action, as authorized by Fla. Stat. § 86.081; and
- e. Granting such other and further relief as the Court deems just and proper.

**COUNT II**

**Violation of Article III, Section 20 of the Florida Constitution  
Intent to Abridge and Diminish Minority Voting Strength (Tier I Violation)**

134. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 130 of this Complaint as though fully set forth herein.

135. The DeSantis Plan was intended to result in diminishment of Black voters' ability to elect their candidates of choice in violation of Article III, Section 20 of the Florida Constitution.

136. The DeSantis Plan further intentionally abridges and diminishes the equal opportunity of minority voters to participate in the political process by targeting minority populations in North Florida, Tampa Bay, and Central Florida to draw them out of minority-opportunity districts.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment:

- a. Declaring that the DeSantis Plan and/or individual districts in the DeSantis Plan violate Article III, Section 20 of the Florida Constitution;
- b. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to the DeSantis Plan, including enjoining Defendants from conducting any elections for the U.S. House of Representatives under the DeSantis Plan;
- c. Ordering or adopting a new congressional districting plan that complies with Article III, Section 20 of the Florida Constitution;
- d. Issuing an order requiring Defendants to pay Plaintiffs' costs and expenses incurred in the prosecution of this action, as authorized by Fla. Stat. § 86.081; and
- e. Granting such other and further relief as the Court deems just and proper.

**COUNT III**  
**Violation of Article III, Section 20 of the Florida Constitution**  
**Intent to Favor or Disfavor a Political Party (Tier I Violation)**

137. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 130 of this Complaint as though fully set forth herein.

138. The DeSantis Plan and individual districts in the plan, including but not limited to CDs-4, 5, 7, 10, 11, 13, 14, 15, 26, and 27, were drawn with the intent to favor the Republican Party and to disfavor the Democratic Party in violation of Article III, Section 20 of the Florida Constitution.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment:

- a. Declaring that the DeSantis Plan and/or individual districts in the DeSantis Plan violate Article III, Section 20 of the Florida Constitution;
- b. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to the DeSantis Plan, including enjoining Defendants from conducting any elections for the U.S. House of Representatives under the DeSantis Plan;
- c. Ordering or adopting a new congressional districting plan that complies with Article III, Section 20 of the Florida Constitution;
- d. Issuing an order requiring Defendants to pay Plaintiffs' costs and expenses incurred in the prosecution of this action, as authorized by Fla. Stat. § 86.081; and
- e. Granting such other and further relief as the Court deems just and proper.



Dated: January \_\_\_\_, 2023

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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

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