IN THE SUPREME COURT OF FLORIDA

THE LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., *et al*.,

Appellants,

v.

KEN DETZNER, in his official capacity as Florida Secretary of State, *et al*.,

Appellees.

Case No. SC14-1905
L.T. Case No. 2012-CA-000412
L.T. Case No. 2012-CA-000490

THE FLORIDA HOUSE OF REPRESENTATIVES' SUPPLEMENTAL APPENDIX TO ITS RESPONSE TO APPELLANTS' SUPPLEMENTAL BRIEFS

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I certify that the foregoing Supplemental Appendix was furnished by electronic mail on the thirtieth day of October, 2015, to all counsel identified on the attached Service List.

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TAB A

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

RENE ROMO, an individual, *et al.*,

Plaintiffs,

vs. Case No. 2012-CA-000412

KEN DETZNER, in his official capacity as Florida Secretary of State, and PAMELA JO BONDI, in her official capacity as Attorney General,

Defendants.
_____/

THE LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., *et al.*,

Plaintiffs,

vs. Case No. 2012-CA-000490

KEN DETZNER, in his official capacity as Florida Secretary of State, *et al.*,

Defendants.
_____/

PROPOSED ORDER RECOMMENDING
REMEDIAL CONGRESSIONAL REDISTRICTING PLAN

After a special session at which the Legislature was unable to agree upon a remedial congressional redistricting plan, the Supreme Court relinquished jurisdiction to this Court to accept proposed remedial plans from the parties and to "make a recommendation to the [Supreme] Court . . . as to which map proposed by the parties—or which portions of each map—best fulfills the specific directions in the Court's July 9, 2015, opinion and all constitutional requirements." Order at 2-3, *League of Women Voters of Fla. v. Detzner*, No. SC14-1905 (Fla. Sept. 4, 2015).

At the same time, the Supreme Court directed this Court to focus especially on "the map passed during the special session by the House, and any amendments offered thereto; the map passed during the special session by the Senate, and any amendments offered thereto; and the areas of agreement between the legislative chambers." *Id*. at 2. The Court did not authorize discovery, "as it contemplated instead that the remedial map-drawing would occur transparently and on the record." *Id*. at 4. It directed this Court to hold a hearing at which the parties may present evidence and arguments for and against the proposed remedial plans offered to this Court. *Id*. at 2.

The Court conducted that evidentiary hearing on September 24, 25, and 28, 2015. It received seven proposed remedial plans from the parties: H110C9071, which the House passed during the special session and then submitted to this Court (the "House Map"); S026C9062, which the Senate passed during the special session and then submitted to this Court (the "Senate Map"); S024C9066, which was drawn after the conclusion of the special session at the direction of Senator Bill Galvano, Chairman of the Senate Committee on Reapportionment, and which the Senate submitted to this Court (the "Galvano Map"); CP-1, CP-2, and CP-3, which were submitted by the Coalition Plaintiffs; and the Romo Map, which was submitted by the Romo Plaintiffs.

After careful consideration, the Court recommends the House Map for adoption by the Supreme Court. For the reasons set forth below, the Court concludes that the House Map, which was passed during the special session by the House and openly debated and discussed in the legislative process, best fulfills the Supreme Court's directions and all constitutional requirements. The House Map closely adheres to the "Base Map" that professional staff of the Legislature drew in consultation with legal counsel in anticipation of the special session. It corrects the deficien-

cies identified in *Apportionment VII*,[1] was not drawn with an intent to favor or disfavor a political party or an incumbent, and does not diminish the ability of minorities to elect the candidates of their choice. The House Map exhibits superior implementation of the tier-two mandates of compactness and adherence to political and geographical boundaries. The Court credits the testimony of the Legislature's professional staff—Jason Poreda, staff director of the House Select Committee on Redistricting; Jeff Takacs, special advisor to the House Select Committee on Redistricting; and Jay Ferrin, staff director of the Senate Committee on Reapportionment—whose testimony was frank, straightforward, and credible, and who demonstrated skill, integrity, and thoughtfulness in their collaborative work and analysis. The Court therefore rejects Plaintiffs' factually unsubstantiated contention that Districts 26 and 27 were drawn for improper purposes.

The Court declines to recommend Plaintiffs' maps for the reasons described below. In addition, the Court has grave reservations about the genesis and presentation of Plaintiffs' proposals. In *Apportionment VII*, the Supreme Court urged the Legislature to permit challengers to submit alternatives and offer testimony in the legislative process, and it expressly contemplated that maps would be developed transparently and on the record. Plaintiffs did not submit their maps to the Legislature during the special session, and their maps were developed entirely behind closed doors. Indeed, Plaintiffs reviewed, discussed, modified, and approved their maps in the very non-public meetings that Plaintiffs have condemned. Because the Supreme Court contemplated an open process and did not permit discovery, the press and the public have had no occasion to probe the intent and origins of Plaintiffs' proposals or to understand the decisions

[1] Consistent with the usage adopted by the parties, the Court refers to *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597 (Fla. 2012); *In re Senate Joint Resolution of Legislative Apportionment 2-B*, 89 So. 3d 872 (Fla. 2012); and *League of Women Voters of Florida v. Detzner*, 40 Fla. L. Weekly S432, 2015 WL 4130852 (Fla. July 9, 2015), as *Apportionment I*, *Apportionment II*, and *Apportionment VII*, respectively.

that Plaintiffs made and the rationales for those decisions. While Plaintiffs maintain that their districts are mere exemplars that anybody might have drawn, the same is true of districts proposed by the House and Senate. Any person *might* have drawn the districts that the House and Senate drew, but their intent is relevant nonetheless. The Court therefore hesitates to recommend for adoption maps that, despite the Supreme Court's expressed expectations, were not developed in an open and transparent manner. In light of the prohibition on partisan and incumbent favoritism and the judicial scrutiny to which the Constitution subjects the State's electoral districts, the State of Florida's congressional districts should not, like Plaintiffs' districts, spring out of a void.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On July 9, 2015, the Supreme Court directed the Legislature to redraw eight congressional districts and any districts affected by the revisions. In response, on July 20, 2015, the Speaker of the House and the President of the Senate issued a joint memorandum that directed professional staff of the House Select Committee on Redistricting and the Senate Committee on Reapportionment to "work collaboratively with House and Senate legal counsel to develop a base map that complies with the Florida Supreme Court's recent ruling and all of the relevant standards." H. Ex. 118 at 1.[2] The Base Map was to be drawn "solely by staff in collaboration with counsel," without the participation of the elected members of the Legislature, and disclosed simultaneously to all members and the public before the special session. *Id.* One objective of the Base Map was to "make it easier to discuss all legislative actions in an open and transparent manner." *Id.*

Consistent with this direction, Mr. Poreda, Mr. Takacs, and Mr. Ferrin read *Apportionment VII* and, on July 23, 2015, began their collaborative efforts to develop a Base Map. T1 at

[2] In this Order, the Court will cite the House's exhibits as "H. Ex.", the Senate's exhibits as "S. Ex.", the joint exhibits as "J. Ex.", and the hearing transcript by the letter "T" followed by the volume and page and line numbers. It will refer to "voting-age population" as "VAP".

68:20-70:4; T2 at 152:6-9. The drawing took place in a large conference room in the House's redistricting office in the Capitol. T1 at 75:22-76:8. The map-drawers began with a blank map. *Id*. at 102:17-103:6. During the drawing process, the map-drawers occasionally consulted with legal counsel and then continued to draw outside of counsel's presence. *Id*. at 70:9-20. Mr. Poreda performed almost all of the manual drawing, and nobody outside of the secure room had any input into the decisions that professional staff made in consultation with legal counsel. *Id*. at 75:2-9, 82:24-83:6. The map-drawers had copies of *Apportionment VII* in the room and referred to the relevant sections of that decision as they drew different areas of the State. *Id*. at 84:8-19.

The map-drawers worked systematically, addressing the Supreme Court's directives in a logical sequence, and then drawing districts in the remainder of the State. For example, the map-drawers first redrew Districts 26 and 27 because the Supreme Court's directive to reunite Homestead presented a "clear-cut" alternative: Homestead could be placed wholly within District 26 or wholly within District 27. *Id*. at 84:24-85:12. The map-drawers proceeded to different regions of the State and, in separate drafts, developed one or more possible configurations of the districts in which the Supreme Court had identified deficiencies. T2 at 109:21-114:9. As drafts were completed, the map-drawers prepared data reports that included compactness scores and, with respect to minority districts, data needed to perform a functional analysis. T1 at 83:11-22.

As directed in the Speaker and President's joint memorandum, the map-drawers did not assess the political implications of the Base Map, except as necessary to perform a functional analysis of minority districts. H. Ex. 118 at 2; T1 at 69:21-70:10, 75:15-20; T2 at 227:10-13. During its development, the map-drawers did not discuss the Base Map with any member of the Legislature—or of course with political consultants or members of Congress or their staffs. H. Ex. 118 at 2; T1 at 71:11-21; T2 at 227:10-13. They preserved their emails and all 31 draft maps

and posted the draft maps and associated data reports on the House and Senate websites. T1 at 78:16-22, 83:11-25; T2 at 203:7-14. The House and Senate have waived the attorney-client privilege with respect to all communications that occurred during the development of the Base Map between the map-drawers and legal counsel, and which comprise direction or collaborative work on the Base Map. T1 at 28:5-11; Florida House of Representatives' Notice of Filing Proposed Remedial Plan at 3-4, *Romo v. Detzner*, No. 2012-CA-000490 (Fla. 2d Cir. Ct. Sept. 14, 2015).

The Base Map was released publicly on August 5, 2015. T1 at 76:19-77:9. No member of the Legislature previewed the Base Map before its public release. *Id*. Shortly thereafter, professional staff in the House provided briefings to Representative Jose Oliva, Chairman of the House Select Committee on Redistricting, and Representative Mark Pafford, the House Democratic Leader. *Id*. at 77:10-78:1. On August 11, 2015, one day after the Legislature convened in special session, Mr. Poreda, Mr. Takacs, and. Mr. Ferrin presented the Base Map at a joint meeting of the House Select Committee on Redistricting and the Senate Committee on Reapportionment. H. Exs. 126, 127, 145; T1 at 79:8-18. In a meeting that continued for many hours, professional staff presented each draft map in exhaustive detail and answered many questions asked by members of the two committees. H. Exs. 126, 127; T1 at 79:8-80:6. The House and Senate also permitted and received testimony and alternative maps from members of the public and posted the maps received from the public on their websites. H. Exs. 126, 127; T1 at 80:14-18, 82:1-19.

On August 13, 2015, at a meeting of the House Select Committee on Redistricting, Chairman Oliva presented the Base Map as House Bill 1B, and the committee reported the bill favorably. H. Ex. 130 at 146; T2 at 154:2-11. After the full House passed the bill, the Senate returned the bill with an amendment. T2 at 154:20-155:3. Chairman Oliva then directed Mr. Poreda and Mr. Takacs to review the Base Map and identify any municipalities that might be

made whole. *Id*. at 155:4-7. With minor changes, Mr. Poreda and Mr. Takacs made whole the cities of Groveland, Auburndale, Riviera Beach, and Sunrise. *Id*. at 155:4-156:5. On August 20, 2015, the House adopted the amendment and passed the bill as amended. H. Ex. 137 at 23-30, 61-62. The Base Map, as amended, is the House Map now before this Court. T2 at 157:5-9.

The House Map complies with *Apportionment VII*. All maps before the Court contain the same iterations of Districts 5, 13, and 14, and the Court concludes that those districts are consistent with *Apportionment VII*.[3] The House Map redraws District 25 to avoid splitting Hendry County, and does so in the same manner as the Senate Map and the Galvano Map. Plaintiffs do not directly challenge District 25 in the House Map and do not present an iteration of District 25 that better implements tier-two standards. Instead, Plaintiffs challenge Districts 26 and 27, and the Romo Plaintiffs challenge Districts 21 and 22.[4] Plaintiffs contend that the Legislature drew Districts 26 and 27 with an intent to favor the Republican Party, while the Romo Plaintiffs contend that the Legislature drew Districts 21 and 22 with an intent to pair and therefore disfavor two Democratic incumbent. Notably, Districts 21, 22, 26, and 27 are identical in the House Map and the Senate Map, and accordingly represent some of the "areas of agreement between the legislative chambers" on which the Supreme Court directed this Court to place a particular focus. *See* Order at 2, *League of Women Voters of Fla. v. Detzner*, No. SC14-1905 (Fla. Sept. 4, 2015).

[3] District 5 cannot be drawn more compactly without a further diminishment in the ability of blacks to elect the candidates of their choice. The district contains 239,094 blacks of voting age. Of these, 144,494 reside in Duval County, 54,377 reside in Leon County, and 18,888 reside in Gadsden County. H. Ex. 5. No other county in the district contains even 6,000 blacks of voting age. *Id*. Duval, Leon, and Gadsden Counties also happen to be the most eastern and most western counties within the district. The length of the district cannot be reduced, therefore, without a substantial decrease in Black VAP. And the nearest alternative concentration of black voters is in Gainesville, the addition of which to District 5 would further reduce its compactness.

[4] Any reference to "Plaintiffs" include both the Coalition Plaintiffs and the Romo Plaintiffs. Where the Court intends to distinguish between them, the Court refers to "Coalition Plaintiffs" and the "Romo Plaintiffs."

For the reasons set forth in Section I of this Order, this Court holds that Districts 21, 22, 26, and 27 were not drawn with improper intent. The Legislative Parties have carried their burden to demonstrate that these districts were drawn in a sterile environment free from partisan or incumbent bias. The legislative record and the testimony of the map-drawers establishes that the Legislature's decisions with respect to these districts were not motivated by improper considerations. The Court also rejects Plaintiffs' contention that *Apportionment VII* required the Legislature to draw District 26 as a "more Democratic" district. H. Ex. 155. The only appropriate and constitutional cure for a district drawn with an intent to favor the Republican Party is a district drawn without partisan intent—not a district drawn with an intent to favor the Democratic Party. Professional staff did exactly what the Constitution and *Apportionment VII* required them to do.

I. THE HOUSE MAP IS CONSTITUTIONAL.

The Court concludes that the House Map was not drawn with improper intent. It finds no support for Plaintiffs' contention that the boundary between Districts 26 and 27 was drawn with an intent to shift Democratic voters into District 27, or the Romo Plaintiffs' contention that the map-drawers intentionally paired the incumbents who represent Districts 21 and 22. The Legislative Parties have more than carried their burden to establish the neutrality of these decisions.

A. Districts 26 and 27.

Plaintiffs recognize that the House Map does not split Homestead. Still, Plaintiffs argue that District 26—which is identical to District 26 in the Base Map, the Senate Map, and the Galvano Map—was drawn with the intent to favor the Republican Party. In particular, Plaintiffs claim that professional staff placed the black communities of Franklin Heights, Palmetto Estates, and West Perrine into District 27 to enhance the Republican performance of District 26. Despite these assertions, Plaintiffs repeatedly urged the Supreme Court not to permit discovery in this

remedial process.[5] The Court finds no support for Plaintiffs' claim and solid evidence against it.

The map-drawers prepared two drafts of Districts 26 and 27. In one, Homestead was whole in District 26; in the other, Homestead was whole in District 27. T1 at 85:9-86:23. In the first, after Homestead was placed into District 26, District 26 was overpopulated and District 27 was underpopulated by approximately 30,000 people. *Id*. at 88:3-9. To equalize populations, the map-drawers looked for population to transfer from District 26 to District 27. *Id.* at 88:10-17. They observed that the Florida Turnpike crossed the district boundary (U.S. Highway 1) and then traveled northwest into District 26. *Id*. at 88:18-11. Because the Turnpike was the "largest, most recognizable roadway in that particular area," the map-drawers decided to follow the Turnpike to the north until each district attained its ideal population. *Id*. at 88:18-90:24; *accord* T2 at 169:5-22, 183:19-23, 223:22-224:24; T5 at 527:10-528:1. They then drew a line to the east to rejoin the existing district boundary at Southwest 97th Avenue. T1 at 90:5-24; T5 at 527:10-528:1.

Once the two options were drawn, because Districts 26 and 27 are Hispanic districts, the map-drawers performed a functional analysis and found that neither option was retrogressive. T1 at 86:24-87:13; T2 at 99:9-100:17, 222:25-223:15; T5 at 526:13-24. The map-drawers then examined the relative compactness scores and found that, by all numerical measures, the draft that placed Homestead into District 26 was either as compact as, or more compact than, the draft that placed Homestead into District 27. T1 at 87:8-88:2; T2 at 99:9-100:17, 223:16-21; T5 at 526:25-527:9. They elected to proceed with the more compact configuration and ultimately incorporated that option into the Base Map. T1 at 87:8-88:2; T2 at 223:16-21; T5 at 526:25-527:9.

[5] *See* Romo Appellants' Response to House's Motion for Reconsideration, *League of Women Voters of Fla. v. Detzner*, No. SC14-1905 (Fla. Sept. 18, 2015); Coalition Appellants' Response to House's Motion for Reconsideration, *League of Women Voters of Fla. v. Detzner*, No. SC14-1905 (Fla. Sept. 17, 2015); Coalition Appellants' Response to House's Motion for Further Relinquishment of Jurisdiction at 4-6, *League of Women Voters of Fla. v. Detzner*, No. SC14-1905 (Fla. Aug. 27, 2015).

The legislative record confirms this testimony. At the joint meeting of the House Select Committee on Redistricting and the Senate Committee on Reapportionment, Mr. Poreda explained that the map-drawers chose the Turnpike because it was a significant roadway and an obvious means to equalize the populations of the two districts. H. Ex. 126 at 128. Similarly, in a letter sent to the Coalition Plaintiffs during the session, Chairman Oliva explained that the map-drawers followed the Turnpike because it was the "most significant geographical boundary on the map." H. Ex. 157 at 2. He argued that the "decision to follow the Turnpike rather than some lesser roads comports with the Supreme Court's interpretation of tier two requirements." *Id.*

In drawing Districts 26 and 27, the map-drawers did not view any racial or political data. T1 at 92:13-25; T2 at 168:12-169:4, 177:22-178:8; T5 at 529:19-530:3. In fact, the map-drawers viewed no data besides total district population. T1 at 92:13-25. The map-drawers had no knowledge of the racial or partisan composition of the affected neighborhoods, T1 at 92:13-25; T2 at 184:18-24, 223:22-224:7, and had never heard of Richmond Heights, Palmetto Estates, or West Perrine, T1 at 93:1-16; T5 at 529:6-12. In drawing Districts 26 and27, the map-drawers did not discuss the race or the partisanship of the affected population. T1 at 93:21-24; T2 at 184:25-185:5. After the map-drawers reviewed the compactness scores and political data in connection with a functional analysis, no alterations were made to the districts. T2 at 100:18-21.

The evidence is overwhelming that Mr. Poreda, Mr. Takacs, and Mr. Ferrin did not draw Districts 26 and 27 with an intent to favor the Republican Party. Plaintiffs, therefore, proceed to argue that the Supreme Court not only required that Homestead be made whole, but that District 26 be made more Democratic. Indeed, during the special session, the Coalition Plaintiffs sent a letter to the Legislature, arguing that the "Democratic performance index" of District 26 was too low, and suggesting changes that would make the district "more Democratic." H. Ex. 155. The

House responds that the Supreme Court did not order the affirmative creation of a Democratic district, but rather a district drawn without any partisan intent. This Court agrees with the House.

In *Apportionment VII*, Plaintiffs argued that the benchmark plan divided Homestead to benefit the Republican Party. The Supreme Court held that this Court "should have required the Legislature to demonstrate that the decision to split Homestead between Districts [26 and 27] was not done to benefit the Republican Party." 2015 WL 4130852, at *41. The Court's instruction was clear and concise: "these districts must be redrawn to avoid splitting Homestead." *Id*.

Apportionment VII did not hold that District 26 must be redrawn as a Democratic district. First, the Supreme Court intended to provide—and did provide—clear and explicit instructions. *See* 2015 WL 4130852, at *47 ("Through this opinion, we have provided clear guidance as to the specific deficiencies in the districts that the Legislature must redraw."). With respect to each invalid district, after setting forth its analysis, the Supreme Court summarized its guidance in unambiguous terms. *See id*. at *39 ("District 5 must be redrawn in an East-West orientation."); *id*. at *40 ("Districts 13 and 14 must be redrawn to avoid crossing Tampa Bay."); *id*. at *41 ("[Districts 26 and 27] must be redrawn to avoid splitting Homestead."); *id*. at *42 ("District 25 must be redrawn to avoid splitting Hendry County."); *id*. at *43 ("[W]e leave it for the Legislature to determine how to redraw [Districts 21 and 22], with the understanding that tier-two compliance could be improved . . . ."). Nowhere in *Apportionment VII*, however, did the Court state that District 26 must be drawn as a Democratic district. This Court declines to infer that instruction.

Notably, none of the map-drawers who read *Apportionment VII* appeared to understand that decision to require a particular partisan outcome. The legislative map-drawers believed that any effort to manipulate the ratio of Democrats to Republicans would have been a clear violation of the Constitution. T2 at 206:2-11. They therefore did not compare the partisan performance of

the redrawn district to that of the invalidated district, or even know whether the redrawn district was more Democratic or more Republican than its predecessor. *Id*. at 178:9-179:5, 259:15-260:16. Similarly, the Coalition Plaintiffs' map-drawer, John O'Neill, testified on direct examination that the Supreme Court's direction regarding District 26 was that Homestead not be split:

> Q . . . So focusing on the first page of Joint Trial Exhibit 8, how did you approach your efforts to draw those districts?
>
> A So the first thing that I did in drawing these districts was I reviewed the Supreme Court's directions in the July decision.
>
> Q What did you understand those directions to be?
>
> A So with regard to the southern Florida area, the Supreme Court had directed that Hendry County needed to be kept whole, whether within District 20 or 25, that Districts 21 and 22 needed to be redrawn in a more compact, more constitutionally compliant manner, and the city of Homestead needed to be kept whole whether in District 26 or 27.

T5 at 626:12-627:1. He did not testify that District 26 must be politically recalibrated, as the Supreme Court did not give that instruction. In fact, Mr. O'Neill further testified that he drew District 26 and 27 in CP-1, CP-2, and CP-3 without any political data and that he did not import political data into his redistricting software application until CP-1, CP-2, and CP-3 had been completed and filed with this Court. *Id*. at 636:9-12, 648:7-649:1, 681:7-16. Neither Mr. Poreda nor Mr. O'Neill read *Apportionment VII* to require the affirmative creation of a Democratic district.

To dictate the partisan composition of a district and to require the district to be drawn purposely to favor a political party would be adverse to the constitutional prohibition on an intent to favor or disfavor a political party. The Supreme Court has rejected the view that the Constitution requires the affirmative creation of a redistricting plan that achieves a particular partisan result. *Apportionment VII*, 2015 WL 4130852, at *1 ("[T]his Court's role is not to select a redistricting map that performs better for one political party or another, but is instead to uphold the purposes of the constitutional provision approved by Florida voters to outlaw partisan intent in

redistricting."); *id*. at *13 ("'Florida's constitutional provision prohibits intent, not effect,' which is to say that a map that has the effect or result of favoring one political party over another is not per se unconstitutional in the absence of improper intent." (quoting *Apportionment I*, 83 So. 3d at 684-85)); *Apportionment I*, 83 So. 3d at 643 ("The Florida Constitution does not require the affirmative creation of a fair plan, but rather a neutral one in which no improper intent was involved."). Under the constitutional mandate of neutrality, the proper and constitutional remedy for a district drawn with an intent to favor a political party is a district drawn without improper intent—not a district drawn with an equally unconstitutional intent to favor the other political party. The remedy is to draw the unbiased district that should have been drawn in the first place.

Plaintiffs argue that the Supreme Court identified two violations—a tier-two violation (the split of Homestead) and a tier-one violation (partisan intent)—and that both violations must be remedied. But the Supreme Court's tier-one and tier-two concerns were not unrelated. Rather, in the Court's view, the split of Homestead was the *means* by which the intended partisan result was effected. Elimination of the split of Homestead would eliminate the improper intent.

The partisan effect that the Supreme Court attributed to the split of Homestead does not exist in the House Map. The Supreme Court noted that, when Homestead was split, one Republican-leaning district and one Democratic-leaning district became two Republican-leaning districts. 2015 WL 4130852, at *14. Both districts were "Republican under the 2008 presidential and 2010 gubernatorial elections but Democratic under the 2012 presidential election." *Id*. at *14 n.19. In the House Map, District 26 remains Republican under the 2008 presidential and

2010 gubernatorial elections and Democratic under the 2012 presidential election, but District 27 is Democratic under all three elections. J. Ex. 5 at 6.[6]

The choices that the map-drawers made—and did *not* make—confirm their non-partisan intent. First, if the map-drawers had intended to preserve two Republican-leaning districts, they would have chosen the draft that placed Homestead into District 27. Like the benchmark, that draft contained two Republican-leaning districts. The draft that the map-drawers chose did not:

	Draft 1 (Homestead in CD26)		**Draft 2 (Homestead in CD27)**	
	District 26	**District 27**	**District 26**	**District 27**
Obama 2012	52.0%	54.7%	52.1%	54.8%
Sink 2012	48.0%	50.3%	49.1%	49.2%
Obama 2008	48.3%	50.4%	48.8%	49.98%

H. Ex. 80 at 3; H. Ex. 103 at 3. Second, after Mr. O'Neill testified that he was unable to draw a more Republican District 26 than District 26 in the House Map, T5 at 647:18-649:10, Mr. Poreda, called as a rebuttal witness, testified that, in 10 or 20 minutes over the lunch break, at the direction of counsel, he was able to draw a District 26 that increased Republican performance by approximately 2% in the 2008 presidential, 2010 gubernatorial, and 2012 presidential elections. T6 at 696:10-698:11. These facts further contradict Plaintiffs' hypothesis of improper intent.

B. Districts 21 and 22.

The Romo Plaintiffs contend that the Legislature drew the boundary between Districts 21 and 22 with an intent to pair—and therefore disfavor—incumbent Congressman Ted Deutch and Congresswoman Lois Frankel. The Romo Plaintiffs presented no evidence of improper intent, while the Legislature carried its burden to demonstrate that the boundary was properly drawn.

[6] As Dr. Ansolabehere recognized, in any exchange of population between Districts 26 and 27, there will be an inverse relationship between the political performance of the two districts, both of which are competitive districts in the House Map. T4 at 447:1-13, 451:23-452:21. As one becomes more Republican, the other becomes more Democratic. In the Romo Map, for example, the Republican performance of District 26 decreases by approximately 3%, but the Republican performance of District 27 *increases* by approximately 3%. J. Ex. 5 at 6; J. Ex. 11 at 6.

In the 2002 benchmark plan, Districts 21 and 22 were configured vertically. In *Apportionment VII*, the Court noted that a "stacked" configuration of the districts would increase their compactness, and it depicted a House draft in which the districts had been stacked. 2015 WL 4130852, at *43. While the Court did not order stacked districts, it directed the Legislature to redraw these districts "with the understanding that tier-two compliance could be improved." *Id*.

The Legislature's map-drawers readily concluded that it would be impossible to retain the vertical configuration of Districts 21 and 22 and at the same time "effectively improve the compactness of those districts." T2 at 119:20-121:15. They drew a stacked configuration that was "substantially more compact" than the predecessor districts and, in light of those results and the depiction of a stacked configuration in *Apportionment VII*, elected to incorporate the stacked configuration into the Base Map. *Id*. at 226:3-227:3. Indeed, as the Romo Plaintiffs' expert, Dr. Ansolabehere, conceded, the compactness scores of Districts 21 and 22 increased substantially:

	District 21		**District 22**	
	Reock	**Convex Hull**	**Reock**	**Convex Hull**
Benchmark	0.28	0.60	0.18	0.61
House Map	0.37	0.64	0.41	0.70

J. Ex. 3 at 2; J. Ex. 5 at 2. Dr. Ansolabehere, who retained the vertical alignment in the Romo Map, was unable to appreciably improve the compactness of Districts 21 and 22, while his configuration split two more cities (Atlantis and Coconut Creek) than the House Map. J. Ex. at 2-3.

Mr. Poreda testified, moreover, that the map-drawers did not know where the incumbents resided and did not consider whether incumbents were paired in the Base Map. T2 at 197:23-198:7. Mr. Poreda correctly concluded that consideration of incumbent addresses in the map-drawing process would have introduced facts that could only be misused. *Id*. at 197-23-199:2.

The Romo Plaintiffs offer no evidence that the incumbents were intentionally paired. Dr. Ansolabehere could cite no evidence to that effect—other than the "existence of the pairing"—

and admitted that he had no knowledge of the intent of the map-drawers. T4 at 474:9-16, 483:7-23. Dr. Ansolabehere noted a "jog down" west of Boca Raton along the boundary between the two districts, and implied that the "jog" might have been drawn intentionally to pair the incumbents. T4 at 455:7-456:4, 483:7-19. But Dr. Ansolabehere attempted to eliminate the "jog" and found that the "jog" was necessary to keep Boca Raton whole. *Id*. Indeed, Mr. Poreda and Mr. Ferrin testified that the district boundary jogs in order to keep Boca Raton whole without exceeding the ideal district population. T2 at 122:1-14, T5 at 531:9-22. Mr. Poreda explained the "jog" around Boca Raton when the Base Map was presented at the joint meeting of the House Select Committee on Redistricting and the Senate Committee on Reapportionment. H. Ex. 126 at 145.

The Court concludes, therefore, that Districts 21 and 22 were not drawn with improper intent. Having addressed Plaintiffs' constitutional challenges to the House Map, the Court proceeds in Section II of this Order to consider the constitutional challenges that affect Plaintiffs' maps in common. The Court then proceeds in Section III to compare the House Map to Plaintiffs' maps, as well as to the Senate Map and the Galvano Map, and to conclude that the House Map best fulfills the specific directions of the Supreme Court and all constitutional requirements.

II. PLAINTIFFS' MAPS ARE UNCONSTITUTIONAL.

While the House Map is constitutional, Plaintiffs' maps suffer from multiple constitutional infirmities. In this section, the Court examines two deficiencies that affect all four of the maps that Plaintiffs propose. First, District 26 in Plaintiffs' maps diminishes the ability of Hispanics to elect the candidates of their choice. Simply put, in each of the four maps, the Hispanic candidate of choice is not likely to prevail in a contested Democratic primary, while the Democratic nominee is likely to prevail in the general election. Plaintiffs' maps, therefore, do not offer the Hispanic candidate of choice a path to nomination and election. In addition, Plaintiffs' maps

are rife with objective indicators of improper intent which, when viewed together, demonstrate a clear pattern. For these reasons, the Court cannot recommend adoption of Plaintiffs' maps.

A. Retrogression.

In its simplest form, the diminishment standard asks two questions:

- Is the minority candidate of choice likely to win a contested primary?
- Is that nominee likely to win the general election?

The Supreme Court articulated these questions in *Apportionment VII*. There, the Court held that a horizontal District 5 did not diminish the ability of blacks to elect their preferred candidates. Two findings supported that determination: (1) the black candidate was likely to win a contested Democratic primary; and (2) the Democratic nominee was likely to win the general election:

> The challengers' proposed East-West configuration of the district has a BVAP of 45.12%—higher than the BVAP in the initial draft district drawn by Alex Kelly. This is well within the range of the 42.7%, 46.7%, and 46.9% BVAP percentages that were addressed by the federal court in *Martinez* and considered to be sufficient to "afford black voters a reasonable opportunity to elect candidates of choice" and to "in fact perform for black candidates of choice." *Id.* "This is so in part because," the federal court in *Martinez* stated,
>
> > blacks constitute 61.3% of registered Democrats in [the predecessor to District 5], and Democrats constitute 63.8% of registered voters. Republicans constitute only 22.7% of registered voters. Actual voting also is strongly Democratic; in the 2000 presidential election, voters in [the predecessor to District 5] voted 63.7% for Mr. Gore and 34.2% for Mr. Bush. ***The black candidate of choice is likely to win a contested Democratic primary, and the Democratic nominee is likely to win the general election***.
>
> *Id.* at 1308.
>
> The same logic applies to an East-West configuration of the district. Black voters constitute 66.1% of registered Democrats under this configuration, and Democrats constitute 61.1% of registered voters. Republicans, by contrast, constitute only 23.0% of registered voters. This compares very favorably to the same respective numbers in the 2002 district upheld by the federal court in *Martinez.*
>
> ***Thus, in an East-West orientation of the district, the black candidate of choice is still likely to win a contested Democratic primary***, since black voters constitute

> 66.1% of registered Democrats. ***And the Democratic candidate is still likely to win the general election***, since Democratic voters outnumber Republicans 61.1% to 23.0%. In other words, just as noted in Martinez as a basis for concluding that the prior version of District 5 afforded black voters a reasonable opportunity to elect a candidate of choice, ***"[t]he black candidate of choice is likely to win a contested Democratic primary, and the Democratic nominee is likely to win the general election."*** *Martinez*, 234 F. Supp. 2d at 1308.

2015 WL 4130852, at *37 (emphasis added).[7]

Plaintiffs' iterations of District 26 do not satisfy this analysis. In each, the Democratic nominee is "likely" to win the general election. The Democratic candidate prevailed in the 2008 presidential, 2010 gubernatorial, and 2012 presidential elections. J. Ex. 8 at 6; J. Ex. 9 at 6; J. Ex. 10 at 6; J. Ex. 11 at 6. In the most recent of those elections, President Obama's margin of victory ranged from 9.6% to as much as 11.6%. J. Ex. 8 at 6; J. Ex. 9 at 6; J. Ex. 10 at 6; J. Ex. 11 at 6. Plaintiffs' iterations of District 26 give an advantage and a better-than-even chance of success to the Democratic nominee. In other words, the Democratic nominee is "likely" to win.

But critically, the Hispanic candidate of choice is not "likely" to win a contested Democratic primary. According to the most recent data available in MyDistrictBuilder, Hispanics comprised between 21.7% and 22.8% of the actual Democratic primary electorate in Plaintiffs' districts, while blacks comprised between 27.0% and 28.9% of the same electorate, and whites were most of the remainder. J. Ex. 8 at 5; J. Ex. 9 at 5; J. Ex. 10 at 5; J. Ex. 11 at 5. In none of Plaintiffs' iterations do Hispanics control the primary; in fact, Hispanics are only the third largest demographic in the Democratic primary electorate, after whites and blacks. As the third largest demographic, Hispanics do not control and are not likely to win a contested Democratic primary.

[7] *See also Apportionment I*, 83 So. 3d at 667 ("Black voters would have also controlled the Democratic primary, with 67.3% of the Democrats voting in the primary being black. This analysis indicates that the district will likely afford black voters the ability to elect candidates of their choice."); *id*. at 668 ("Black voters would have also controlled the Democratic primary, with 64.3% of the Democrats voting in the primary being black. This analysis indicates that the district will likely afford black voters the ability to elect candidates of their choice.").

Plaintiffs, therefore, cannot satisfy the two-step inquiry set forth in *Apportionment I* and *Apportionment VII*. The Hispanic candidate of choice is not likely to win a contested Democratic primary, while the Democratic nominee is likely to win the general election. On the other side, because Hispanics comprise between 60.8% and 62.4% of the Republican primary electorate in Plaintiffs' proposals, J. Ex. 8 at 5; J. Ex. 9 at 5; J. Ex. 10 at 5; J. Ex. 11 at 5, the Hispanic candidate of choice is likely to win a contested Republican primary. But the Republican nominee is not likely to win the general election. Stated otherwise, Democratic Hispanics are obstructed in the Democratic primary; Republican Hispanics are obstructed in the general election.

By analogy, if blacks in District 5 had controlled the Democratic primary, but the Republican nominee was likely to win the general election, then the Supreme Court would not have concluded that the district satisfies the diminishment standard. Likewise, if District 5 had performed for Democrats in the general election, but blacks comprised 22% of the Democratic primary electorate, then the district would have diminished. The district would not have presented blacks with a path to nomination and election. The same logic applies to Hispanic districts.

The fact that black and Hispanic voters do not vote cohesively in South Florida reinforces these conclusions. Dr. Liu and Dr. Moreno testified that voting between blacks and Hispanics in South Florida is polarized. S. Ex. 2-1; T3 at 321:22-322:2, 347:22-348:20.[8] Hispanic candidates cannot rely upon an electoral coalition with black voters to secure the Democratic nomination.

[8] In their cross-examination of Dr. Liu, Plaintiffs appeared to misunderstand the object of Dr. Liu's report. Dr. Liu was not engaged to predict the winner of particular elections, or even to assess whether whites and blacks will coalesce to defeat the Hispanic candidate of choice, but to evaluate whether blacks and Hispanics vote cohesively. T3 at 340:1-5. Plaintiffs offered no evidence to contradict Dr. Liu and Dr. Moreno's conclusion that blacks and Hispanics in South Florida do not vote cohesively. In fact, Dr. Ansolabehere expressly referenced this testimony and did not question its correctness. T4 at 437:15-17.

Plaintiffs failed to perform the basic two-step analysis described in *Apportionment VII*. Dr. Ansolabehere and Dr. Lichtman presented no analysis of the relevant primary election. The only analysis that Dr. Ansolabehere presented is that District 26 is a majority-Hispanic district, T4 at 436:23-4373, which is a woefully insufficient analysis, *Apportionment I*, 83 So. 3d at 625, 627 (explaining that population data alone cannot establish non-retrogression). Similarly, Dr. Lichtman's 17-page report contains no assessment of Hispanic turnout in the Democratic primary. Neither expert demonstrated that Hispanics control the Democratic primary or that the Hispanic candidate of choice is likely to prevail in a Democratic primary. Neither one attempted to present a plausible scenario in which a candidate of choice of the third-ranking demographic in the Democratic primary (Hispanics) would be "likely" to receive the nomination. While both experts claimed to have considered primary-election data, neither elaborated on his findings.[9]

Instead, Plaintiffs relied heavily on certain points of similarity between their proposed districts and the benchmark district enacted in 2012 and reenacted in 2014. Plaintiffs argue that, in their districts, the Hispanic VAP and the composition of the Democratic primary electorate are similar to those in Benchmark District 26. But Plaintiffs ignore the difference in the general-election performance of the districts. Benchmark District 26 was a competitive district in which a candidate of either party could prevail, and in which Hispanic independents, who tend to support Hispanic candidates regardless of the candidate's party affiliation, would enable a Hispanic candidate to win the general election. T3 at 350:13-351:15, 354:15-355:12. A Hispanic candidate was all but certain to emerge from the Republican primary, and the Hispanic candidate was likely to prevail in the general. J. Ex. 3 at 2-3; T3 at 356:2-22. If a Hispanic candidate happened to emerge from the Democratic primary, then, with the support of Hispanic independents, that

[9] Because Dr. Lichtman and Dr. Ansolabehere presented no analysis of primary elections, their testimony was fatally insufficient, and no cross-examination was necessary.

candidate could also prevail in the general. J. Ex. 3 at 2-3. But the performance of the district for the Hispanic candidate of choice did not depend on the nomination of a Hispanic Democrat. In Plaintiffs' maps, because the district performs for Democrats in the general election, it does. In comparison with the prior district, the Democratic primary increases in significance and becomes the more relevant primary for purposes of a diminishment analysis. T3 at 350:13-351:5.

It does not follow that District 26 cannot be a Democratic district. It simply follows that, if the district is likely to elect the Democratic nominee, Hispanics must be likely to nominate the candidate of their choice in a contested Democratic primary. And, in Plaintiffs' proposed districts, it is not "likely" that the Hispanic candidate of choice will be the Democratic nominee.

Mr. Poreda concluded that District 26 in Plaintiffs' maps diminishes. He explained that the benchmark district was a competitive district that allowed the nominee of either political party to prevail. T2 at 211:2-213:21. The Hispanic candidate of choice was highly likely to prevail in the Republican primary, and the general election would therefore feature at least one and perhaps two Hispanic candidates. *Id.* In Plaintiffs' maps, District 26 is no longer a toss-up district in the general election; instead, the Democratic nominee is likely to prevail in the general election. *Id.* Thus, a functional analysis "must look more closely" at the Democratic primary, where Hispanics comprise little more than one-fifth of the electorate and "more than likely" would not be able to nominate their candidate of choice. *Id.* The more likely scenario was the nomination of a white or black Democrat, who would then be likely to prevail in the general election. *Id.*

Plaintiffs' reliance on the Hispanic VAP of their proposed districts does not establish that Hispanic-preferred candidates have a path to nomination and election. The Supreme Court has made clear that population numbers alone are insufficient to establish compliance with the minority-protection provisions of the Florida Constitution. *Apportionment VII*, 2015 WL 4130852,

at *38; *Apportionment I*, 83 So. 3d at 625, 627. As Dr. Moreno testified, "just because you have a similar VAP doesn't mean you have a similar map." Similarly, voter-registration rates can be unreliable where voter-turnout rates differ among racial or ethnic groups. For example, in 2010, in Plaintiffs' iterations of District 26, Hispanics comprised between 41.8% and 42.5% of registered Democrats, but no more than 22.8% of the actual Democratic primary electorate. J. Ex. 8 at 5; J. Ex. 9 at 5; J. Ex. 10 at 5; J. Ex. 11 at 5. By contrast, blacks comprised between 22.6% and 25.1% of registered Democrats in Plaintiffs' iterations of District 26, but no less than 27.0% of the actual Democratic primary voters. J. Ex. 8 at 5; J. Ex. 9 at 5; J. Ex. 10 at 5; J. Ex. 11 at 5.

Dr. Moreno's expert testimony confirms these conclusions. Dr. Moreno, who has studied the participation of South Florida Hispanics in the political process since 1987, explained that, in Plaintiffs' proposed remedial plans, "the relevancy of the Democratic primary increases" because District 26 "goes from a toss-up district to a lean Democratic district." T3 at 346:12-23, 350:13-351:15. In the general election, "a Democratic candidate will have an advantage . . . against a Republican candidate." *Id.* It is therefore "important that, in a Democratic primary, the Hispanic Democratic [has] a chance to prevail." *Id.* As the third largest demographic in the Democratic primary, however, Hispanics would not control the Democratic primary, *id.* at 351:1-22, nor is there any precedent for a coalition between black and Hispanic voters, *id.* at 347:22-348:20.

Dr. Moreno also distinguished Benchmark District 26. He explained that Benchmark District 26 was a competitive district in which the nomination of at least a Republican Hispanic was "guaranteed." *Id.* at 356:2-22. Thus, in the general election, Hispanic independents would have supported a fellow Hispanic, regardless of party affiliation, and ensured the success of the Hispanic candidate, whether Republican or Democratic. *Id.* at 354:15-355:12. Dr. Moreno also observed that, in competitive Benchmark District 26, the Democratic Party establishment had an

incentive to (and did in fact) recruit and support Hispanic candidates in the primary in order to attract Hispanic independents in the general election. *Id*. at 353:18-354:14, 355:13-15, 356:15-357:6. The general election might have presented not only one, but two Hispanic candidates.

Dr. Moreno cited State House District 113 as an example of a district with a large Hispanic population that elects a white representative. House District 113 is a Democratic district with a 67% Hispanic VAP, but Hispanics comprise only 32% of the Democratic primary electorate. *Id*. at 358:4-359:5. According to Dr. Moreno, District 113 has not produced a "serious Hispanic candidate." *Id.* Notably, Hispanics are a larger percentage of the Democratic primary electorate in House District 113 (32%) than in Plaintiffs' various iterations of District 26. Similarly, County Commission District 9, which includes the Richmond Heights communities that Plaintiffs transfer to District 26, does not elect a Hispanic, despite a Hispanic plurality of registered voters. *Id*. at 359:6-360:12. Dr. Moreno also noted that several prominent white and black politicians with possible congressional ambitions reside in Plaintiffs' proposed districts, while the district includes few Hispanic Democrats with the means to run a successful congressional campaign. *Id*. at 361:9-18. In Miami-Dade County, no Hispanic Democrats serve on the county commission or school board, and only one serves in the Florida Legislature. *Id*. at 362:10-363:2.

While Plaintiffs describe this portion of Dr. Moreno's testimony as "anecdotes," these facts underscore the critical, two-fold conclusion that Plaintiffs failed to refute: (1) that the Hispanic candidate of choice is not likely to win a contested Democratic primary; and (2) that the Democratic nominee is likely to win the general election. Though it finds confirmation in Dr. Moreno's local knowledge, this conclusion rests firmly on undisputed data. The Supreme Court, moreover, has not precluded reliance on information outside of the facial functional analysis performed in *Apportionment I* and *Apportionment VII*. For example, in *Apportionment II*, the Court

noted that, while its functional analysis did not include an analysis of racial polarization, an assessment of racial polarization could be considered and would be "undoubtedly relevant to a functional analysis of minority voting behavior." 89 So. 3d at 883. The Supreme Court did not strictly cabin the facts that might be considered in an evaluation of minority performance. *Cf. Thornburg v. Gingles*, 478 U.S. 30, 79 (1986) (explaining that Section 2 of the Voting Rights Act requires an "intensely local appraisal of the design and impact" of electoral mechanisms).

The Coalition Plaintiffs criticize Dr. Moreno because his expert report did not compare their proposed districts to Benchmark District 26. Plaintiffs differ among themselves, however, in their interpretation of the diminishment standard. According to the Coalition Plaintiffs, the diminishment standard requires a comparison to the benchmark district. According to the Romo Plaintiffs, the diminishment standard asks whether the proposed district, examined in isolation, affords minorities an ability to elect—be it greater or less than before. The Court need not address the disagreement, as Plaintiffs' proposed districts satisfy neither standard. If the Hispanic-preferred candidate is not likely to win a contested Democratic primary, and the Democratic nominee is likely to win the general election, then the ability of Hispanics to nominate and elect their preferred candidates—an ability that existed in Benchmark District 26—is diminished.

B. Improper Partisan Intent.

In light of the diminishment in the ability of Hispanics to elect their preferred candidates in District 26, the Court cannot recommend Plaintiffs' proposed remedial plans. The Court also entertains grave concerns, however, with the intent of Plaintiffs' proposed remedial plans. Both direct and circumstantial evidence indicate that Plaintiffs' proposed remedial plans were drawn with an intent to favor or disfavor a political party or incumbents, contrary to tier-one principles.

First, during the special session, the Coalition Plaintiffs complained in a letter to the Speaker of the House and the Senate President that the "Democratic performance index" of Dis-

trict 26 in the Base Map was insufficient. H. Ex. 155. In the same letter, the Coalition Plaintiffs declared that professional staff had manipulated the boundaries of District 26 in favor the Republican Party, and suggested a change that "would have made the district more Democratic." *Id*.

While Plaintiffs argue that the Supreme Court directed the Legislature to draw a "more Democratic" district, the Court's clear instruction to the Legislature was to reunite the City of Homestead. 2015 WL 4130852, at *41 ("Because the Legislature's asserted justification for its configuration of these districts—to protect minority voting rights—simply cannot be justified, these districts must be redrawn to avoid splitting Homestead."). Because the Court found that the split of Homestead was the means by which the Republican Party was favored, elimination of the split would remedy the tier-one violation. The cure for a tier-one violation is ***not*** the commission of another tier-one violation. If a district is drawn with the intent to favor the Republican Party, the remedy is not to draw a district with the intent to favor the Democratic Party. Rather, the remedy was to draw a district that eliminated the split of Homestead, and then to draw a district without an intent to favor either party. The Coalition Plaintiffs' interpretation, which requires the affirmative creation of a Democratic district, casts doubt on the intent of their maps.

Second, the Supreme Court contemplated that the challengers would present their maps for legislative consideration during the special session, but Plaintiffs declined to participate in that public process. In *Apportionment VII*, the Court encouraged the Legislature to "provide a mechanism for the challengers and others to submit alternative maps and any testimony regarding those maps for consideration" and to "allow debate on the merits of the alternative maps." 2015 WL 4130852, at *46. The Legislature provided that mechanism and invited all members of the public to participate, and members of the public submitted several maps. T1 at 80:7-82:23. Plaintiffs elected not to participate in the transparent process established by the Legislature and

neither testified before committees nor offered maps to the Legislature for debate and discussion. *Id*. Plaintiffs declined to participate in the public process as intended by the Supreme Court.

Third, despite their strong advocacy for an open, public, and transparent redistricting process, Plaintiffs' proposed remedial plans were drawn, reviewed, discussed, modified, and approved behind closed doors, removed from public view. John O'Neill, who drew the Coalition Plaintiffs' maps, testified that, despite the Coalition Plaintiffs' advocacy for such methods, his map-drawing sessions were not recorded, transcribed, or broadcast; he was not asked to retain draft maps; and he has not produced to the parties or the public his emails or draft maps. T6 at 656:24-658:7. In fact, Mr. O'Neill was unable to remember whether the Coalition Plaintiffs had asked him to avoid the use of email or to communicate by telephone. T6 at 657:22-658:1. Plaintiffs then urged the Supreme Court not to permit discovery. *See* Romo Appellants' Response to House's Motion for Reconsideration, *League of Women Voters of Fla. v. Detzner*, No. SC14-1905 (Fla. Sept. 18, 2015); Coalition Appellants' Response to House's Motion for Reconsideration, *League of Women Voters of Fla. v. Detzner*, No. SC14-1905 (Fla. Sept. 17, 2015); Coalition Appellants' Response to House's Motion for Further Relinquishment of Jurisdiction at 4-6, *League of Women Voters of Fla. v. Detzner*, No. SC14-1905 (Fla. Aug. 27, 2015). To recommend their maps without any opportunity for discovery would violate principles of due process.

Mr. O'Neill testified, for example, that he shared drafts with counsel for the Coalition Plaintiffs, received instructions from counsel, and then made revisions in accordance with counsel's instructions.[10] Counsel had access to political data, as evidenced by the Coalition Plaintiffs' letter to the Legislature, which criticizes the "Democratic performance index" of the Base Map and suggests alterations that would have made the district "more Democratic." H. Ex. 155. Dur-

[10] These drafts were not provided to the Court or the parties. T6 at 656:24-657:6.

ing the map-drawing process, Mr. O'Neill himself became aware of the political composition of the specific communities (Franklin Heights, Palmetto Estates, and West Perrine) that the Coalition Plaintiffs asked the Legislature to place in District 26 to make the district "more Democratic." *Id.*; T6 at 674:25-675:6. In one of the maps that Mr. O'Neill drew (CP-1), the boundary of District 26 unnaturally deviates from the Florida Turnpike in order to place Palmetto Estates and West Perrine into District 26. These facts suggest that Mr. O'Neill—and those who provided instructions and influenced the ultimate maps—were not guided solely by non-partisan criteria.

Fourth, despite their opposition to the participation of political operatives in the redistricting process, Plaintiffs entrusted the preparation of their proposed maps to political operatives. The Coalition Plaintiffs engaged Strategic Telemetry, a self-described "Democratic firm" headquartered in Washington, D.C. Dreschler Dep. at 297:9-298:16; T5 at 623:17-624:6, 665:20-21. Strategic Telemetry specializes in microtargeting, which enables political campaigns to assess the likelihood that particular voters will turn out to vote and to support particular candidates. *Id.* at 29:4-33:23; Wieneke Dep. at 13:13-16:1. Its clients have included the Florida Democratic Party, the Democratic National Committee (the "DNC"), the Democratic Congressional Campaign Committee (the "DCCC"), and the 2004 and 2008 presidential campaigns of John Kerry and Barack Obama. Dreschler Dep. at 34:15-36:7 & Ex. 1; Wieneke Dep. at 16:2-6. Strategic Telemetry's services for political candidates in the United States are provided predominantly to Democratic candidates. Wieneke Dep. at 23:12-24:13. Its founder, Ken Strasma, served as technical liaison to the DNC's legislative redistricting office during the last redistricting cycle, and worked on IMPAC 2000—the Democratic Party's national congressional redistricting operation. Dreschler Dep. at 61:13-62:14. The Coalition Plaintiffs engaged Strategic Telemetry to draw the proposed remedial plans offered in this proceeding despite these partisan credentials.

The Romo Plaintiffs' counsel discussed their proposed remedial plan with the DCCC and NCEC Services, Inc. Romo Plaintiffs' Notice of Service of Proposed Remedial Plan at 2, *Romo v. Detzner*, No. 2012-CA-000490 (Fla. 2d Cir. Ct. Sept. 14, 2015). The DCCC is the official campaign arm of congressional Democrats. Zuzenak Dep. at 15:4-16:7 & Ex. 2. It is the only political committee whose principal mission is to support Democratic candidates for Congress at every step. *Id*. NCEC has long served as an electoral targeting repository for the Democratic Party and the progressive movement. Hawkins Dep. at 47:13-18, 50:11-51:12 & Ex. 2. It boasts that it has helped to elect hundreds of progressive candidates to Congress. *Id*. at 33:6-10. It has served state and local Democratic Parties, the DCCC, and the National Democratic Redistricting Trust, but not Republican Party entities or candidates. *Id*. at 42:6-45:14. Dr. Ansolabehere, who drew the Romo Plaintiffs' maps, had conversations with counsel about the map, but was not advised of counsel's simultaneous conversations with the DCCC. T4 at 430:11-13, 488:25-489:11.

Dr. Ansolabehere admitted that he drew districts with the intent to favor incumbents. With incumbent addresses in hand, Dr. Ansolabehere identified a district in the Base Map that paired two incumbents. T4 at 454:12-16. Despite a lack of evidence that legislative staff intended to pair incumbents or even knew where incumbents resided, Dr. Ansolabehere rearranged the district boundary and ensured that the incumbents were unpaired in the Romo Map. *Id*. at 430:14-22, 458:2-8, 473:19-474:16, 482:13-19, 484:15-17. Of course, in *Apportionment I*, the Supreme Court regarded the presence of paired incumbents in the House plan as an indication of incumbent-neutral redistricting, and the absence of paired incumbents in the Senate plan as an indication of improper intent. 83 So. 3d at 644 ("It is undisputed that the House plan pits both Democratic and Republican incumbents against each other."); *id*. at 654 ("First, the Coalition alleges that the Senate plan does not pit incumbents against each other, and the Senate has not

contested this. This Court was provided with the addresses of 21 incumbents and has confirmed that of the addresses provided, none of the incumbents would run against another incumbent."). To draw districts with the intent to undo incumbent pairings is a flagrant violation of Tier One.

Plaintiffs' words and deeds are once again in conflict. While insisting on an open and transparent legislative process free from improper intent, Plaintiffs drew their own alternative maps in complete secrecy and in concert with partisan operatives. Because their maps emerge from a closed and tainted process, the Court cannot recommend them for adoption by the Supreme Court. The constitutional prohibition on improper intent is not limited to the Legislature, but speaks in the passive voice and applies to all districts imposed on the State of Florida: "No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent . . . ." Art. III, § 20(a), Fla. Const. Because the Court concludes that Plaintiffs' maps were drawn with improper intent, it cannot recommend them for adoption.

III. THE HOUSE MAP BEST FULFILLS THE SUPREME COURT'S DIRECTIONS AND ALL CONSTITUTIONAL REQUIREMENTS.

In addition to the reasons outlined above, the Court recommends the House Map in preference to the other proposals that the parties have presented. The Court concludes that the House Map best fulfills the Supreme Court's specific directions and all constitutional requirements.

A. CP-1.

This Court recommends the House Map rather than CP-1 for adoption by the Supreme Court. While CP-1 preserves seven more municipalities and slightly increases the compactness metrics of South Florida, the Court cannot recommend CP-1 for the reasons set forth below.

First, as explained above, District 26 in CP-1 diminishes the ability of Hispanics to elect the candidates of their choice. In its simplest form, the diminishment standard asks (1) whether

the minority candidate of choice is "likely" to win a contested primary; and (2) whether that nominee is "likely" to win the general election. *Apportionment VII*, 2015 WL 4130852, at *37.

In CP-1, the Hispanic candidate is not likely to win a contested Democratic primary for the simple reason that Hispanics comprise only 22.8% of the actual primary electorate. J. Ex. 8 at 5. At the same time, the Democratic nominee—not the Republican—is "likely" to win the general election. President Obama defeated Mitt Romney by a commanding 11.6% margin in the 2012 presidential election. *Id*. at 6. President Obama also defeated John McCain in the 2008 presidential election, and Alex Sink defeated Rick Scott in the 2010 gubernatorial election. *Id*.

CP-1 does not, therefore, afford the Hispanic candidate of choice in District 26 a path to nomination and election. As the third-largest demographic, Hispanics do not control the Democratic primary, and the Hispanic candidate of choice is therefore not likely to prevail. Blacks comprise a much larger share of the Democratic primary electorate (28.9%), *id*. at 5, and do not vote cohesively within Hispanics. S. Ex. 2-1. While Hispanics comprise 62.4% of the Republican primary electorate and therefore control the Republican primary, *id*., the Republican nominee is not likely to win the general election. And, as noted above, neither Dr. Lichtman nor Dr. Ansolabehere articulated a plausible path to nomination and election for the Hispanic candidate.

Plaintiffs compare the composition of the Democratic primary electorate in their District 26 to that of the Democratic primary electorate in Benchmark District 26, but Benchmark District 26 was not a Democratic district in the general election. In Benchmark District 26, the Republican primary was all but certain to nominate the Hispanic candidate of choice, and, in a competitive district, Hispanic independents were able to decide the election in favor of the Hispanic candidate, whether Republican or Democratic. J. Ex. 3 at 3; T3 at 354:15-355:12. The

Hispanic candidate had a path to nomination and election. Plaintiffs ignore the new significance of the Democratic primary in a district that is likely to elect the Democrat in the general election.

Among CP-1, CP-2, and CP-3, Dr. Moreno was most concerned about diminishment in CP-1. T3 at 365:3-13. In District 26, President Obama's margin of victory in 2012 was larger in CP-1 (11.6%) than in either CP-2 (9.6%) or CP-3 (9.6%). J. Ex. 8 at 6; J. Ex. 9 at 6; J. Ex. 10 at 6. And the African-American share of the Democratic primary electorate is larger in CP-1 (28.9%) than in either CP-2 (27.5%) and CP-3 (27.7%). J. Ex. 8 at 5; J. Ex. 9 at 5; J. Ex. 10. The Hispanic candidate of choice is therefore all the less likely to prevail in the Democratic primary, and the Democratic nominee is all the more likely to prevail in the general election.

In addition, as noted above, the Court is troubled by the circumstantial evidence of improper intent in the Coalition Plaintiffs' remedial plans, including CP-1. In CP-1 in particular, the boundary of District 26 includes an unnatural deviation from the Florida Turnpike in order to place Palmetto Estates and West Perrine into District 26. Palmetto Estates and West Perrine are the same communities that the Coalition Plaintiffs, in their letter, urged the Legislature to place into District 26 for the express purpose of making the district "more Democratic." H. Ex. 155.

CP-1 also contravenes tier-two principles. The Supreme Court and this Court have made clear that appendages and finger-like extensions are repugnant to the constitutional mandate of compactness. An evaluation of compactness "begins by looking at the shape of a district." *Apportionment I*, 83 So. 3d at 634. A district "should not have an unusual shape, a bizarre design, or an unnecessary appendage unless it is necessary to comply with some other requirement." *Id.*; *accord id.* at 636 (noting that "bizarrely shaped districts require close examination" (marks omitted)). Districts that contain "finger-like extensions, narrow and bizarrely shaped tentacles, and hook-like shapes . . . are constitutionally suspect and often indicative of racial and partisan ger-

rymandering." *Id*. at 638. Thus, in *Apportionment I*, the Supreme Court struck down several Senate districts in part because those districts featured "visually bizarre and unusual shapes." *Id*.

In *Apportionment I*, the Court invalidated Senate District 10 because it contained an odd-shaped, 12-mile appendage. 83 So. 3d at 670. The district was "visually non-compact as a result of the bizarrely shaped appendage." *Id*. at 671. While the Court also found a tier-one violation because the appendage contained an incumbent's home, it specifically faulted the district's "bizarre shape." *Id*. at 672. Similarly, in its Final Judgment, this Court invalidated Congressional Districts 5 and 10 in part because those districts contained unusual appendages. As the Court noted in relation to District 10: "Such appendages render a district not compact pursuant to tier-two standards and should be avoided unless necessary to comply with tier-one requirements." Final Judgment at 32, *Romo v. Detzner*, No. 2012-CA-000490 (Fla. 2d Cir. Ct. July 10, 2014).

In CP-1, the addition of an appendage to District 20 violates the compactness mandate. On the southern end of the district, the Coalition Plaintiffs add a 15-mile appendage that extends east to the City of West Park. Mr. Poreda and Mr. Takacs expressed appropriate concern about the addition of a third appendage to District 20; in fact, legislative staff had considered such an addition to the district but, in light of court decisions that invalidated districts with appendages, declined to pursue that option. T2 at 157:14-159:23, 204:22-205:15, 213:22-214:3, 231:17-232:12. Mr. Poreda explained that a predecessor district (District 23 in the plan enacted in 2002) had contained a third appendage in the same region of the State, and that the contours of the predecessor district had been roundly criticized. T2 at 204:6-21. The Court agrees and concludes that the appendage added to District 20 violates the constitutional requirement of compactness.

Plaintiffs argue that the third appendage allows the district's two existing appendages (which are necessary to achieve the requisite minority population) to be shortened, and therefore

allows additional municipalities to be made whole. Plaintiffs err for two reasons. First, while compactness and the preservation of political boundaries are both tier-two criteria, the compactness requirement is absolute, while the political-boundaries requirement is qualified. *Apportionment I*, 83 So. 3d at 636 ("Unlike the mandate of compactness, [the requirement to utilize political and geographical boundaries] is modified by the phrase 'where feasible,' suggesting that in balancing this criterion with compactness, more flexibility is permitted."); *id*. at 656 ("We again note that while the existing boundaries requirement is stated as 'where feasible' and the equal population requirement is stated in terms of 'as is practicable,' the compactness requirement does not contain those modifiers; rather, the constitutional expression is that 'districts shall be compact.'"); *id*. at 664 ("While the equal population and political and geographical boundaries requirements are stated in terms of 'as nearly as is practicable' or 'where feasible,' the compactness requirement is not modified by such qualifiers but framed in terms of 'shall.'"); Final Judgment at 18, *Romo v. Detzner*, No. 2012-CA-000490 (Fla. 2d Cir. Ct. July 10, 2014) ("[The requirement to utilize political and geographical boundaries] is more flexible than the compactness requirement. . . . [A]lthough no priority of importance is given to either, the requirement to use existing boundaries contains the modifier, 'where feasible.'"); *id*. at 34 n.14 ("It is true that CD 9 in plan 9043 did not keep Osceola County whole. The goal of keeping cities and counties whole is laudable and required where 'feasible.' Compactness on the other hand has no such modifier in its constitutional prescription, 'suggesting that in balancing this criterion with compactness, more flexibility is permitted.'"). The compactness standard cannot be disregarded in an effort to preserve municipalities; compactness is the non-negotiable tier-two mandate, while the preservation of counties and municipalities must be accomplished only "where feasible."

Second, the fact that District 20 already contains two necessary appendages does not excuse the creation of a third, unnecessary appendage. The Supreme Court has explained that, while tier-two criteria must yield to tier-one criteria in cases of conflict, tier-two principles must not be subordinated further than necessary to accomplish tier-one objectives. *See Apportionment I*, 83 So. 3d at 640 ("The fact that the tier-two principles expressly yield to this requirement in tier one demonstrates that the Florida Constitution specifically contemplates this need, but only to the extent necessary."). Neither the preservation of municipalities nor the previous existence of two appendages justifies the addition of a new, non-compact, 15-mile finger-like appendage.

Plaintiffs argue that the third appendage has no adverse effect on District 20's compactness scores, but that argument misses the mark. First, the leading criterion of compactness is a visual assessment. *See Apportionment I*, 83 So. 3d at 635 ("In addition to a visual examination of a district's geometric shape, quantitative geometric measures of compactness have been used to assist courts in assessing compactness."). As Mr. Takacs explained, "that's where visual compactness can come into play. Sometimes you can look at two districts that are metrically identical, but one can have an extra portion of it or another attribute to it that would" render the district problematic. T2 at 266:9-15. Therefore, in invalidating Senate District 10, the Supreme Court cited the unusual appearance of the appendage—not the district's compactness scores. *See id*. at 669-71. Indeed, the Court expressly noted that District 10 was visually non-compact, but it did not enumerate District 10 among the districts with low compactness scores. *See id*. at 656. Similarly, Congressional District 10 was numerically compact, but this Court concluded that its visually non-compact appendage violated tier-two principles: "District 10 is overall fairly compact. It has a Reock Score of .39 and a Convex Hull Score of .73. However, there is an odd-

shaped appendage which wraps under and around District 5, running between District 5 and 9." Final Judgment at 32, *Romo v. Detzner*, No. 2012-CA-000490 (Fla. 2d Cir. Ct. July 10, 2014).

The same is true here. Like Senate District 10 and Congressional District 10, District 20 in CP-1 is non-compact because it contains an unnecessary, 15-mile appendage. While tier-two standards must be balanced, the compactness mandate cannot be violated outright in the service of another tier-two requirement. The creation of a 15-mile appendage stands in direct opposition to this Court's and the Supreme Court's clear precedents. Because CP-1 violates the compactness standard while the House Map does not, the Court cannot recommend CP-1 for adoption.

B. CP-2, CP-3, and the Romo Map.

The Court finds no reason to recommend CP-2, CP-3, or the Romo Map. The House Map satisfies tier-one standards and equals or exceeds CP-2, CP-3, and the Romo Map in tier-two indicators. Plaintiffs' maps, moreover, suffer from the tier-one defects noted above, including a diminishment in the ability of Hispanics in District 26 to elect their preferred candidates. Consistent with the Supreme Court's direction to focus on the maps that passed the House and Senate during the special session, the Court cannot recommend CP-2, CP-3, or the Romo Map.

CP-2, CP-3, and the Romo Map do not exceed the compactness of the House Map:

	District 26		**District 27**	
	Reock	**Convex Hull**	**Reock**	**Convex Hull**
House Map	0.18	0.46	0.46	0.82
CP-2	0.18	0.46	0.46	0.81
CP-3	0.18	0.46	0.46	0.82
Romo Map	0.18	0.46	0.44	0.78

J. Ex. 5 at 2; J. Ex. 9 at 2; J. Ex. 10 at 2; J. Ex. 11 at 2. CP-2 and CP-3 split the same 18 counties and 20 municipalities as the House Map. J. Ex. 5 at 3; J. Ex. 9 at 3; J. Ex. 10 at 3. The Romo Map splits three additional municipalities—Atlantis, Coconut Creek, and Doral. J. Ex. 5 at 3; J.

Ex. 11 at 3. It also introduces one additional split into Lake Worth, dividing it into three sections rather than two, and one additional split into Broward County. J. Ex. 5 at 3; J. Ex. 11 at 3.

The Coalition Plaintiffs contend that the boundary between Districts 26 and 27 adheres more closely to geographical boundaries than the same boundary in the House Map. Mr. O'Neill testified that the boundary between these districts follows "major roads" for an additional 4.4 miles in CP-2 and an additional 2.5 miles in CP-3. T5 at 642:19-643:10, 646:19-647:10. This argument is unpersuasive for several reasons. First, the Supreme Court has never assessed tier-two compliance by measuring the distance that a district boundary tracks particular political or geographical boundaries. This Court declines to do so, especially in light of the minimal differences on which the Coalition Plaintiffs rely. Second, the Coalition Plaintiffs offered no evidence to support their categorization of roads as geographical boundaries or not geographical boundaries. The Supreme Court has defined "geographical boundaries" to mean boundaries that are "easily ascertainable and commonly understood, such as rivers, railways, interstates, and state roads." *Apportionment I*, 83 So. 3d at 638. The Coalition Plaintiffs appear to rely implicitly on Maptitude's identification of "county roads, state roads, and highways," without any assessment to determine whether that collection of roads is either overinclusive or underinclusive. T6 at 670:16-671:7. Indeed, Mr. Poreda and Mr. Ferrin cogently disputed the Coalition Plaintiffs' characterization of Southwest 97th Avenue (which features a hospital, a high school, and a city park) and Card Sound Road as boundaries that are not "easily ascertainable and commonly understood." T1 at 91:15-92:8; T2 at 171:23-172:13, 181:6-182:6; T5 at 528:2-14, 589:1-22, 607:23-608:4. Mr. O'Neill conceded that he has never been to Miami and is aware of no facts—including the number of lanes of which each road consists or the volume of traffic that the road supports—that would enable him to determine whether any road in Miami-Dade County is an

"easily ascertainable and commonly understood" boundary. T6 at 671:14-17, 674:3-12. Unlike CP-2 and CP-3, the House Map utilizes the Turnpike rather than solely an assortment of state or county roads, and therefore follows the largest and most prominent road in the region. T1 at 88:25-89:9; T2 at 159:5-17, 183:19-184:13, 223:22-224:7, 224:20-24; T5 at 527:20-528:1, 591:8-13. In fact, CP-1 follows the Turnpike for a substantial distance. T6 at 675:16-676:16.

Districts 21 and 22 in the Romo Map suffer from peculiar deficiencies. While the Supreme Court did not require these districts to be redrawn in a "stacked" configuration, it did insist on improved tier-two metrics. *Apportionment VII*, 2015 WL 4130852, at *43 ("[W]e leave it for the Legislature to determine how to redraw these two districts, with the understanding that tier-two compliance could be improved . . . ."). The Romo Map maintains a vertical configuration and does not improve tier-two metrics. The compactness scores are practically unchanged from the invalidated map, and the boundary between the districts splits two municipalities—Atlantis and Coconut Creek—that were not previously split, and which are not split in the House Map. At the same time, as Dr. Ansolabehere conceded and the next table shows, the House Map made "significant" improvements in the compactness of Districts 21 and 22. T4 at 469:4-470:1.

	District 21		**District 22**	
	Reock	**Convex Hull**	**Reock**	**Convex Hull**
Enacted Map	0.28	0.60	0.18	0.61
Romo Map	0.29	0.60	0.18	0.64
Legislative Map	0.37	0.64	0.41	0.70

J. Ex. 5 at 2; J. Ex. 11 at 2.

Dr. Ansolabehere agreed that Districts 21 and 22 in the Romo Map split more municipalities and are "much less compact" than in the House Map, but claimed to have been concerned that the House Map paired two incumbents—Congressman Ted Deutch and Congresswoman Lois Frankel. T4 at 457:12-458:8. Dr. Ansolabehere set about to "fix" the pairing of incum-

bents. *Id*. at 458:2-8, 484:15-17. He redrew the districts vertically and, with a list of incumbent addresses obtained from counsel (who, meanwhile, were conversing with the DCCC), confirmed that he had successfully unpaired the incumbents. *Id*. at 430:14-22, 473:19-474:1, 482:13-19. Dr. Ansolabehere claimed not to know whether the Romo Plaintiffs' counsel spoke with the DCCC about the Democratic incumbents who were paired in the House Map. *Id*. at 489:15-20.

The trouble for the Romo Map is that Dr. Ansolabehere's intentional unpairing of incumbents is incumbent favoritism and unconstitutional. Dr. Ansolabehere could cite no evidence to suggest that the pairing of incumbents in the Base Map was intentional—other than the "existence of the pairing"—and admitted that he had no knowledge of the intent of the map-drawers. *Id*. at 474:9-16, 483:7-23. Dr. Ansolabehere had no factual basis to conclude that Congressman Deutch and Congresswoman Frankel were intentionally disfavored, *cf. Apportionment I*, 83 So. 3d at 650 (refusing to infer improper intent from the mere fact that the State House plan placed a House incumbent's home one block outside of his district), and his effort to unpair the incumbents is nothing more than a veiled attempt to favor those incumbents. The fact that Republican Congressman Dan Webster also complained that the Base Map disfavored him supports the inference that the districts were drawn without regard to incumbency. *See* H. Ex. 126 at 111-15.

In *Apportionment I*, the Court regarded the incumbent pairings in the House plan as evidence of an incumbent-neutral redistricting, 83 So. 3d at 644 ("It is undisputed that the House plan pits both Democratic and Republican incumbents against each other."), while it viewed the absence of pairings in the Senate plan as evidence of favoritism, *id*. at 654 ("[T]he Coalition alleges that the Senate plan does not pit incumbents against each other, and the Senate has not contested this. This Court was provided with the addresses of 21 incumbents and has confirmed that of the addresses provided, none of the incumbents would run against another incumbent."). The

challengers did not complain about the pairings in the House plan, and the Court did not order the House to unpair the incumbents. While the Legislature bears the burden of proof in this case, this Court has concluded that the House Map was not drawn with an intent to favor or disfavor incumbents or political parties. The intent to favor or disfavor belonged to Dr. Ansolabehere.

Dr. Ansolabehere referenced communities of interest as a justification for his restoration of the vertical configuration, T4 at 456:7-457:11, but he agreed that communities of interest are of no constitutional significance, *id*. at 470:17-472:18.[11] The Supreme Court has explained that "maintaining communities of interest is not a constitutional requirement, and comporting with such a principle should not come at the expense of complying with constitutional imperatives, such as compactness." *Apportionment I*, 83 So. 3d at 664. Indeed, Dr. Ansolabehere's stated desire to establish parallel districts in order to protect "coastal communities" is the precise justification that the Supreme Court rejected when it invalidated Senate Districts 2 and 4 in *Apportionment I*. *See* 83 So. 3d at 665 (invalidating parallel Senate districts that "sacrificed compactness—a constitutional imperative—in order to keep coastal communities together"). Dr. Ansolabehere was not at liberty, therefore, on the strength of a communities-of-interest principle, to ignore the Supreme Court's clear directive to increase the tier-two metrics of Districts 21 and 22.

C. The Senate Map.

In its Order of September 4, 2015, the Supreme Court directed this Court to focus especially on the maps passed during the special session by the House and Senate and the "areas of

[11] Dr. Ansolabehere's reliance on the communities of interest identified in legislative testimony by members of the public as support for the maintenance of a less compact vertical configuration is difficult to reconcile with his trial testimony. Last year, Dr. Ansolabehere argued that the vertical configuration of District 5 should be abandoned despite the communities of interest that, according to members of the public, united that district. *See, e.g.*, Trial Tr. at 1826:22-1827:1, 1890:17-1881:1.

agreement" between them. The Court has compared the House Map and the Senate Map and, for the reasons set forth below, recommends the House Map for adoption by the Supreme Court.

The Senate agrees that the House Map complies with Tier One. *See* The Florida Senate's Response to the Florida House of Representatives' Proposed Remedial Plan at 1-2, *Romo v. Detzner*, No. 2012-CA-000490 (Fla. 2d Cir. Ct. Sept. 18, 2015). Both maps divide 18 counties and 20 municipalities. Compactness tips the scales, and, in this respect, the House Map is superior. While the Senate notes that the overall compactness of the two maps is nearly the same, all numerical metrics indicate that the House Map is more compact in the six districts that are different in the two maps. Thus, the average Reock, Convex Hull, and Polsby-Popper scores of the six districts are greater—and the average lengths and perimeters are less—in the House Map:

HOUSE MAP (9071)					
	LENGTH (MILES)	**PERIMETER (MILES)**	**REOCK**	**CONVEX HULL**	**POLSBY-POPPER**
District 9	**69**	**269**	**0.63**	**0.87**	**0.46**
District 10	36	**115**	0.49	**0.89**	**0.49**
District 11	84	**332**	0.52	0.80	**0.33**
District 15	67	240	0.33	0.76	0.26
District 16	**58**	200	**0.64**	**0.90**	**0.52**
District 17	118	**416**	0.57	**0.79**	**0.46**
AVERAGE	**72.0**	**262.0**	**0.53**	**0.84**	**0.42**

SENATE MAP (9062)					
	LENGTH (MILES)	**PERIMETER (MILES)**	**REOCK**	**CONVEX HULL**	**POLSBY-POPPER**
District 9	78	293	0.56	0.85	0.39
District 10	36	151	**0.64**	0.85	0.36
District 11	84	344	**0.53**	**0.81**	0.32
District 15	**66**	**206**	**0.34**	**0.78**	**0.34**
District 16	63	**186**	0.40	0.81	0.45
District 17	**116**	478	**0.61**	0.77	0.36
AVERAGE	**73.8**	**276.3**	**0.51**	**0.81**	**0.37**

J. Ex. 5 at 2; J. Ex. 6 at 2. Though not dramatic, the differences are consistent. The visual compactness of the same six districts is likewise superior in the House Map. The smoother boundaries of the six districts in the House Map enhance the visual compactness of the House's districts.

The Senate would exclude District 16 from the comparison of compactness metrics, *see* T5 at 602:11-604:9, but there is no good reason to exclude District 16. The Court must recommend a complete plan. District 16 is one of the districts that differ between the House Map and Senate Map, and its compactness must be considered. But even if District 16 were excluded, the House Map would be more compact by most of the individual data points in the tables above.

The Senate notes that the Senate Map does not divide Sarasota County, while the House Map does. But the Senate Map divides Manatee County, while the House Map does not. Some Senators were especially solicitous to reunite Sarasota County, T3 at 298:20-299:4, 307:13-20; T4 at 506:15-21, but, from a constitutional perspective, the two counties stand on equal footing.

The Senate also contends that its configuration is superior because it concentrates more of the population of Hillsborough County into fewer districts. Both maps divide Hillsborough County into four districts, but the Senate Map places 56.7% of the county's population into one district (District 14), 42.4% into a second district (District 15), 0.9% into a third (District 12), and none into the fourth (District 16), while the House Map places 56.7% of the county's population into one district (District 14), 29.6% into a second district (District 15), 12.8% into a third (District 16), and 0.9% into a fourth (District 12). H. Exs. 5 & 17. This Court, however, has found no support for the Senate's position that the Constitution requires a particular distribution or concentration of population among a county's congressional districts. The distribution of population among Hillsborough County's four districts—whether divided equally or unequally among those districts—is not a matter of constitutional significance. Indeed, the Senate Map di-

vides Polk County's population almost equally among Polk County's three districts, placing 39.6% of the county's population into District 17, 31.4% into District 9, and 29.1% into District 15. H. Ex. 17. By the Senate's standard, the Constitution would have required one or two of these districts to be aggrandized at the expense of the others. No precedent supports that reading.

The House does not allege that the Senate Map was drawn with an intent to favor or disfavor a political party or an incumbent, and this Court does not conclude that it was. The intent of the amendments that the Senate made to the Base Map is not clear, however, because the Senate's justifications are unpersuasive. The Senator from eastern Hillsborough County testified that one of his "aspirational goals" was to "consolidate" eastern Hillsborough County within a single congressional district, since, in the Base Map, Hillsborough County was a "donor" county—a county splintered by the convergence of a number of districts. T3 at 291:22-25, 294:13-24, 299:21-300:2, 307:13-14, 308:19-309:3. In fact, in the Base Map, Hillsborough County was already one of only two counties in the State that contained all of one district (District 14) and most of the population of a second district (District 15). H. Ex. 11. The Senate Map increased Hillsborough County's share of District 15 from 52.2 to 74.9% of the district. H. Exs. 11 & 17.

At the same time, while the Senate Map was designed to address the perceived "donor" status of Hillsborough County, it did not address the "donor" status of other counties in the map. For example, in the Senate Map, Lake County is 11.2% of the population of District 6, 11.2% of District 10, and 20.3% of District 11. H. Ex. 17. Marion County is 6.3% of the population of District 2, 20.1% of District 3, and 21.2% of District 11. *Id.* Polk County, which is adjacent to Hillsborough, is 27.1% of the population of District 9, 25.1% of District 15, and 34.2% of District 17. *Id.* The Senate Map did not attempt to alleviate the fragmentation of these counties. And it exacerbated the "donor" status of Orange County by extending District 10, which, in the

Base Map, was wholly within Orange, in part into Lake County. Deprived of a whole district, Orange County was 88.8% of District 10, 39.3% of District 7, 34.3% of District 9, and 2.2% of District 8. *Id.* The justification advanced in support of the consolidation of eastern Hillsborough County changed several times during the special session, was inconsistent with the map-drawing methodology otherwise used in creating the Senate Map, and finds little support in the record.

The Court also heard testimony that Senator Joyner's request for an increased minority population in District 14 (though ultimately not reflected in the Senate Map) was an additional impetus to the efforts to amend districts in Hillsborough County. T3 at 294:25-295:6, 297:10-22, 307:16-20. But Senator Joyner withdrew her request on August 13, 2015, at the Senate committee's first meeting after its initial joint meeting with the House committee. H. Ex. 131 at 145-46.

The Senate Map also reflected Senator Bradley's "concerns" that the Base Map had divided Sarasota County. T3 at 294:25-295:6, 297:10-22, 298:23-299:4. The Court heard testimony that the restoration of Sarasota County within a single district was a "predominant goal" of the Senate. T4 at 506:15-21. But while it reunited Sarasota County, the Senate Map split adjacent Manatee County, and the Senate did not explain why the preservation of Sarasota County outweighed the preservation of Manatee County. While the Senate noted that the Supreme Court did not require District 16 to be redrawn, T3 at 300:3-13, 309:4-17, it did not restore the exact boundaries of the prior district (it added an unpopulated area of Hillsborough County that was not included in the benchmark), and redrawn District 16 restored the split of Manatee County.

Compactness and a clear and consistent methodology differentiate the House Map from the Senate Map. Because the House Map is more consistently compact, the Court elects to recommend the House Map for adoption.

D. The Galvano Map.

The House Map is also preferable to the Galvano Map. First, the Supreme Court directed this Court to focus especially on the maps passed by the House and Senate during the special session. Order at 2, *League of Women Voters of Fla. v. Detzner*, No. SC14-1905 (Fla. Sept. 4, 2015). The Galvano Map was drawn after the session and of course was not filed, debated, or voted on by the Senate. T4 at 505:24-507:17. Though offered by the Senate, the Galvano Map comes before this Court as the product of an individual Senator and not of the Senate as a whole.

By placing Sarasota and Manatee Counties into different districts, the Galvano Map reunites Sarasota County and keeps Manatee County whole, and thus preserves one more county than the House Map. In doing so, however, the Galvano Map splits Longboat Key, which straddles the boundary between Sarasota and Manatee Counties, and decreases the visual and numerical compactness of the four districts that differ between the House Map and the Galvano Map.

In the Galvano Map, District 17 assumes an unorthodox J-shape as it extends southeast from Sarasota County to Lee County and then north to Polk County. Mr. Takacs testified, and the Court agrees, that the J-shape of District 17 seems visually non-compact. T1 at 236:10-20. While the Senate argues that most of the counties in District 17 are whole and that the J-shape results from the boundaries of the counties that were combined to form the district, not every combination of counties is visually compact. *Cf. Apportionment I*, 83 So. 3d at 634 ("As a geographical inquiry, a review of compactness begins by looking at the shape of a district; the object of the compactness criterion is that a district should not yield bizarre designs." (marks omitted)). District 9 in the Galvano Map is also less compact visually than its analogue in the House Map. It extends from the East-West Expressway in Orlando to the southwest perimeter of Lake Okeechobee in Glades County and creates a second elongated district in the central part of the State.

A comparison of numerical compactness measures confirms this visual impression. As the tables below demonstrate, the average compactness of the four districts that differ between the House Map and the Galvano Map is greater in the House Map by every numerical measure:

HOUSE MAP (9071)					
	LENGTH (MILES)	PERIMETER (MILES)	REOCK	CONVEX HULL	POLSBY-POPPER
District 9	**69**	**269**	**0.63**	**0.87**	**0.46**
District 15	67	**240**	0.33	**0.76**	**0.26**
District 16	58	**200**	**0.64**	**0.90**	**0.52**
District 17	118	416	**0.57**	**0.79**	**0.46**
AVERAGE	**78.0**	**281.3**	**0.54**	**0.83**	**0.43**

GALVANO MAP (9066)					
	LENGTH (MILES)	PERIMETER (MILES)	REOCK	CONVEX HULL	POLSBY-POPPER
District 9	126	400	0.42	0.86	0.42
District 15	**61**	272	**0.50**	0.74	0.25
District 16	**56**	209	0.62	0.82	0.44
District 17	**91**	**333**	0.52	0.77	0.39
AVERAGE	**83.5**	**303.5**	**0.52**	**0.80**	**0.38**

J. Ex. 5 at 2; J. Ex. 7 at 2.

In weighing the Galvano Map, with its additional whole county, against the House Map, with its superior compactness and one additional whole municipality, the Court is guided by two principles. First, as discussed above, while compactness and the preservation of political boundaries are coequal tier-two criteria, the compactness requirement is absolute, while the political-boundaries requirement is qualified. The superior compactness of the House Map thus acquires greater weight. Second, even if the two maps were otherwise in equipoise, the Court would recommend the House Map because the House Map, unlike the Galvano Map, was considered and passed by a legislative chamber, while the Galvano Map was created after the special session concluded and the Legislature adjourned. T4 at 505:24-507:17. In its Order of September 4,

2015, the Supreme Court directed this Court to focus especially on maps passed during the special session by the House and the Senate. Order at 2; *see also id*. at 5 (Labarga, C.J., concurring) ("We remain mindful that the task of congressional redistricting under our current constitutional structure falls first and foremost upon the Legislature."); *id*. at 7 (Lewis, J., concurring in part and dissenting in part) (dissenting to the extent the Supreme Court's instruction "directs the focus on only one particular item of evidence"). Because the Galvano Map was not debated, subjected to the legislative process, and passed by either chamber, the Court recommends the House Map. Finally, the Court notes that the Galvano Map includes an open congressional district in eastern Hillsborough County and Manatee County, H. Ex. 247, which revives the same unanswered questions engendered by the Senate Map's modifications to eastern Hillsborough County.

CONCLUSION

For the reasons set forth above, the Court concludes that the House Map best fulfills the Supreme Court's specific directions and all constitutional requirements. The Court accordingly recommends adoption of the House Map.

DONE AND ORDERED this ___ day of October, 2015.

TERRY P. LEWIS, Circuit Judge

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All Counsel of Record