

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

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

Case No. 2022-ca-000666

Plaintiffs,

v.

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

Defendants.

**GOVERNOR AND J. ALEX KELLY'S MOTION TO QUASH & FOR PROTECTION
FROM SUBPOENAS DUCES TECUM FOR DEPOSITION**

The Florida Legislature passed a bill, and the Governor vetoed it. The Florida Legislature passed another bill on the same issue (congressional redistricting), and the Governor signed it into law. The Plaintiffs have now served subpoenas duces tecum for deposition on Governor DeSantis and one of his deputy chiefs of staff, J. Alex Kelly. The Plaintiffs ask to peer behind the legislative record, public statements, and public records that serve as sources for the intent and effect behind the bill being challenged. The legislative and executive privileges—rooted in the Florida Constitution's express and structural separation of powers, as well as longstanding common law—stand in the Plaintiffs' way. The apex doctrine also applies and prohibits the Plaintiffs from compelling testimony from the Governor in this case. *See* Fla. R. Civ. P. 1.280(h).

BACKGROUND

Neither the Governor nor Mr. Kelly is a party to this case. Nevertheless, on July 26, 2022, the Plaintiffs served a notice of intent to serve a subpoena duces tecum without deposition on Governor DeSantis. **Attachment 1**; *see also* Fla. R. Civ. P. 1.351. The Plaintiffs sought documents and communications concerning the Governor's request for an advisory opinion on redistricting from the

Request 10: All documents and communications relating to Congressional redistricting with the Republican National Committee, the Florida Republican Party, including, without limitation, Joe Gruters, the National Republican Redistricting Trust, the National Republican Congressional Committee, including, without limitation, National Republican Congressional Committee Chair Tom Emmer, or any political action committee.

Response: This request concerns documents and communications covered by legislative privilege, executive privilege, and executive-communication privilege.

Attachment 3

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

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

Plaintiffs,

v.

CORD BYRD, in his official capacity as
Florida Secretary of State, ASHLEY MOODY,
in her official capacity as Florida Attorney
General, the FLORIDA SENATE, and the
FLORIDA HOUSE OF
REPRESENTATIVES,

Defendants.

Case No. 2022-ca-000666

SUBPOENA DUCES TECUM FOR DEPOSITION

THE STATE OF FLORIDA:

To: Governor Ron DeSantis, personally and in his official capacity
Executive Office of Governor Ron DeSantis
400 S Monroe St., Suite 209, Tallahassee, FL 32399

YOU ARE COMMANDED to appear at the offices of Holtzman Vogel Baran Torchinsky
& Josefiak, 119 S. Monroe Street, Suite 500, Tallahassee, FL 32301 on **August 26, 2022 at 10:00**

a.m. for the taking of your deposition in this action and to have with you at that time and place the following:

SEE ATTACHED SCHEDULE A

If you fail to appear you may be in contempt of court.

You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

Dated: August 15, 2022

By: /s/ Frederick S. Wermuth
Frederick S. Wermuth
FOR THE COURT

Subpoena issued by:
Frederick S. Wermuth
Florida Bar No. 0184111
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fweremuth@kbzwlaw.com

Counsel for Plaintiffs

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE ADA COORDINATOR, HUMAN RESOURCES, ORANGE COUNTY COURTHOUSE, 425 N. ORANGE AVE., SUITE 510, ORLANDO, FLORIDA (407) 836-2303, AT LEAST 7 DAYS BEFORE YOUR SCHEDULED COURT APPEARANCE, OR IMMEDIATELY UPON RECEIVING THIS COURT NOTIFICATION. IF THE TIME BEFORE THE SCHEDULED APPEARANCE IS LESS THAN 7 DAYS, OR IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 711.

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

- A. Notwithstanding any definition set forth below, each word, term, or phrase used in these requests is intended to have the broadest meaning permitted under the Florida Rules of Civil Procedure.
- B. Words or terms not specifically defined herein have the meaning commonly understood, and no definition is intended as exclusive.
- C. The following terms shall have the meanings indicated below:
- (1) The terms “you,” and “your” shall mean Governor Ron DeSantis, in his capacity as an individual and as Governor of Florida, and covers the Executive Office of Governor Ron DeSantis as well as present and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, representatives, attorneys, and other persons or entities acting or purporting to act on behalf of Governor Ron DeSantis or the Executive Office of Governor Ron DeSantis.
 - (2) The term “Legislature” shall mean the Florida Legislature, including but not limited to the Florida House of Representatives, the Florida Senate, the Florida Senate Committee on Reapportionment, the Florida Senate Select Subcommittee on Congressional Reapportionment, the Florida Senate Select Subcommittee on Legislative Reapportionment, the Florida House Congressional Redistricting Committee, the Florida House Congressional Redistricting Subcommittee, the Florida House State Legislative Redistricting Subcommittee, and their respective members and staff.
 - (3) The term “Fair Districts Amendments” shall mean Article III, Sections 20 and 21 of the Florida Constitution.
 - (4) The term “Enacted Plan” shall mean the congressional district plan passed by the Legislature on April 21, 2022, or any drafts or precursors thereof.
 - (5) The term “Plan P000C0079” shall mean the congressional district plan submitted to the Legislature on January 16, 2022 by Ryan Newman, Counsel to the Governor, or any drafts or precursors thereof.
 - (6) The term “Plan P000C0094” shall mean the congressional district plan submitted to the Legislature on February 14, 2022 by Ryan Newman, Counsel to the Governor, or any drafts or precursors thereof.
 - (7) The term “Plan H000C8019” shall mean the congressional district plan approved by the Legislature on March 4, 2022, or any drafts or precursors thereof.

- (8) The term “Plan H000C8015” shall mean the congressional district plan approved by the Legislature on March 4, 2022, with the recommendation that the plan take effect if the Plan H000C8019 was found unconstitutional.
- (9) The term “Proposed Plans” shall mean all congressional redistricting plans drawn, considered, reviewed, proposed, or adopted by you or the Legislature during 2022, as well as any drafts or precursors of those plans or subsequent amendments thereof.
- (10) The term “map drawer” shall mean anyone who assisted, advised, or provided input or feedback in the creation of any Proposed Plan, regardless of whether or not they were compensated for their services or participated in an official or unofficial capacity.
- (11) The term “mapping software” means any and all digital programs that may be used to assist in drawing congressional districts.
- (12) The term “person” shall mean and include natural persons, governmental entities, proprietorships, corporations, partnerships, joint ventures, and each other form of organization, entity or association.
- (13) The term “document” is used in the broadest possible sense and shall mean, without limitation, any tangible thing on or in which data are preserved by any means or in any form, including, without limiting the generality of its meaning, electronically stored information (ESI) or recorded material of any kind such as email or other electronic correspondence, including any electronic or computerized record from which information can be obtained or translated, correspondence, letters, envelopes, telegrams, facsimiles, telexes, text messages, minutes, notes or memoranda of personal or telephone conversations or conferences, telephone logs, memoranda, handwritten or stenographic notes, diaries, calendars, contracts, purchase orders, invoices, accounts, ledgers, evaluations, analyses, forecasts, statistics, estimates, reviews, working papers, reports, studies, books, magazines, newspapers, booklets, brochures, catalogs, pamphlets, instructions, circulars, bulletins, trade letters, press releases, charts, maps, geological or geophysical logs, diagrams, designs, specifications, blueprints, sketches, drawings, pictures, photographs, motion pictures, negatives, undeveloped film, video or audio tapes, belts or discs, voice recordings, transcripts or transcriptions, computer printouts, magnetically encoded cards or tapes, punched cards or tapes, microfilms, microfiches, and any other data compilations from which words, numbers, images or other information can be obtained (translated, if necessary, through appropriate devices into reasonably useable form), whether or not privileged, that is in your possession, custody or control, and shall include all originals, drafts and non-identical copies of such documents, whether sent or received or neither.
- (14) The term “communication” shall mean the transmission of any verbal or nonverbal, written or non-written message, information, sign, symbol, or behavior, and shall include the process by which such transmission occurs.

- (15) The terms “relating to” and “concerning” shall mean referring to, related to, regarding, consisting of, pertaining to, reflecting, evidencing, describing, constituting, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic, without limitation, unless otherwise specified in the Request.
- D. Notwithstanding any of the provisions below, Respondents should not produce any documents or communications that are currently publicly available on the Legislature’s or the Governor’s official websites.
- E. Unless otherwise specified, the time period for all documents or communications requested is January 1, 2021 to the present day.
- F. The following rules of construction apply to all requests for production:
- a. The terms “all” and “any” shall each be construed as encompassing any and all;
 - b. All uses of the word “each” include “every” (and vice versa);
 - c. The connective terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests all responses that might otherwise be construed to be outside of its scope, so that the fullest disclosure of information, documents, and communications is achieved;
 - d. The term “including” shall be construed without limitation;
 - e. The use of a verb in any tense encompasses the use of the verb in all tenses;
 - f. References to agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf include both current and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf; and
 - g. References to any entity include all of that entity’s agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on that entities’ behalf.
 - h. The singular number and masculine gender shall include, and be applied as, the plural or the feminine gender or neuter, and vice-versa, as the circumstances of the particular requests may make appropriate.
- G. Each request for documents or communications shall be construed according to its most inclusive meaning so that if information, a document, or a communication is responsive to

any reasonable interpretation of the request, the information, document, or communication is responsive.

- H. If you deem any request for documents or communications to call for the production of privileged or otherwise nondisclosable materials and you assert such claim, furnish a list at the time of production identifying each document or communication so withheld together with the following information:
- (1) the reason for withholding each such document, communication, or material, stated with sufficient particularity so as to permit the Court to adjudicate the validity of the claimed privilege;
 - (2) a statement of the facts constituting the basis for any claim of privilege or other ground of non-disclosure; and
 - (3) a brief description of each such document, communication, or other material, including:
 - (a) the type of document or communication;
 - (b) the date of the document or communication;
 - (c) the name of its author(s) or preparer(s) and an identification by employment and title of each such person(s);
 - (d) the name of each person to whom the document, communication, or other material was sent or who has had access to, or custody of, the document, communication, or other material, together with an identification of each such person(s);
 - (e) the subject matter of the document or communication;
 - (d) the paragraph of this request to which the document, communication, or other material is responsive; and
 - (e) in the case of any document, communication, or other material that relates in any way to a meeting or conversation, identification of such meeting or conversation and the persons attending or participating in such meeting or conversation.
- I. You are required by Florida law to produce all requested documents or communications, wherever located, that are in your possession, custody, or control, including documents or communications that you have a right to obtain, or to compel the production of, from any third party (including, but not limited to, any financial institution and telephone carrier).
- J. With respect to each request, Plaintiffs request that you identify and produce all documents

or communications that are known to you or that you can locate or discover that are in your possession, custody or control, from whatever source derived, which, directly or indirectly, relate, refer or pertain to the subject matter of the request made, including, without limitation, all such documents or communications in the files (whether they be denominated personal, business or any other files) in the possession, custody or control of you or, as applicable, of your employees, agents, representatives or other persons acting on your behalf or under your control.

- K. Plaintiffs request that, if you have no documents or communications responsive to a request, then you shall so state.
- L. If you assert that any requested document or communication has been lost, destroyed, or discarded, please identify each such document as completely as possible, and provide the following information:
 - a. the date of loss, destruction, or discarding;
 - b. the circumstances of the loss, destruction, or discarding; and
 - c. if destroyed or discarded:
 - i. the manner of destruction or discarding;
 - ii. the reason for destruction or discarding;
 - iii. the identity of the person authorizing the destruction or discarding; and
 - iv. the identity of the person who destroyed or discarded the document or communication.
- M. Plaintiffs request that you produce all responsive documents, communications, or other materials in an orderly manner (and with appropriate markings or other identification) so that Plaintiffs will be able to identify the source of the document, communication, other material, the file in which the document, communication, or other material was maintained, the person to whom such file belongs, and the specific request to which the document, communication, or other material is responsive.
- N. These requests shall be deemed to be continuing so as to require further and supplemental production if you receive or discover additional documents, communications, or other material between the time of original production and the time of any hearing, trial, or other presentation of evidence in this matter.
- O. All documents or communications are to be produced in electronic form. Documents or communications produced electronically should be produced in native format with all metadata intact. For any election or voter data file, please produce in CSV format if available. If this is not available, please produce in PDF format. For other documents or

communications, to the extent documents or communications can be accurately represented in black and white, they should be produced in single-page Tagged Image File Format (“TIFF”), together with any related field-delimited load files (e.g., Concordance DAT, CSV, OPT, LOG). Each TIFF document or communication shall be produced with an image load file in standard Opticon (*.log) format that reflects the parent / child relationship and also includes the beginning Bates number; ending Bates number; beginning Attachment Bates number; ending Attaching Bates number; custodian; date sent (for email messages); date modified (for email and non-email messages) where information is available; author (for email and non-email messages); and subject (for email messages). The TIFF images shall also be accompanied by extracted text or, for those files that do not have extracted text upon being processed (such as hard copy documents), optical character recognition (“OCR”) text data; such extracted text or OCR text data shall be provided in document level form and named after the TIFF image. Documents or communications that contain redactions shall be OCR’d after the redaction is applied to the image, and the OCR will be produced in place of extracted text at the document level. Notwithstanding the foregoing, the parties may negotiate a separate production format (including native format) for any documents or communications not reasonably producible or readable as standard image files, such as audio files or large spreadsheets.

- P. For documents or communications produced in TIFF format that originated in electronic form, metadata shall be included with the data load files described above and shall include (at a minimum) the following information: file name (including extension); original file path; page count; creation date and time; last saved date and time; last modified date and time; author; custodian of the document or communications (that is, the custodian from whom the document or communication was collected or, if collected from a shared drive or server, the name of the shared drive or server); and MD5 hash value. In addition, for email documents or communications, the data load files shall also include the following metadata: sent date; sent time; received date; received time; “to” name(s) and address(es); “from” name and address; “cc” name(s) and address(es); “bcc” name(s) and address(es); subject; names of attachment(s); and attachment(s) count. All images and load files must be named or put in folders in such a manner that all records can be imported without modification of any path or file name information.
- Q. If a responsive communication, document, or tangible thing has been prepared in copies that are not identical, or if additional copies have been made that are no longer identical, or if original identical copies are no longer identical by reason of subsequent notations on the front or back of pages thereto, each non-identical copy is a separate communication, document, or tangible thing and shall be produced.
- R. Produce any password-protected documents or communications with any applicable passwords.

RECORDS TO BE PRODUCED

1. All documents and communications related to your February 1, 2022 request to the Supreme Court of Florida for an advisory opinion regarding the Fair Districts Amendments, including but not limited to any documents or communications relating to the decision to seek the advisory opinion, or any documents or communications relating to the Supreme Court of Florida's subsequent order denying the advisory opinion.
2. All documents and communications relating to the Fair Districts Amendments, including but not limited to all documents or communications regarding the applicability of the Fair Districts Amendments or previous judicial opinions or judicial orders regarding the Fair Districts Amendments to any Proposed Plan.
3. All documents and communications relating to the drawing, consideration, or adoption of congressional districts for the 2020 congressional redistricting cycle, including but not limited to communications between and/or among your employees, staff, officers, agents, or representatives, and including but not limited to:
 - a. All documents and communications with or relating to Robert Popper;
 - b. All documents and communications with or relating to Adam Foltz, John Gore, Hans von Spakovsky, Chris Coates, Michael Barley, or Scott Kellar;
 - c. All documents and communications relating to testimony or presentations before the Legislature, including but not limited to any testimony or presentations provided by Alex Kelley.
 - d. All documents and communications between you and the Legislature related to congressional redistricting from June 1, 2021 to the present, including all documents or communications relating to meetings—both formal and informal—with the Legislature related to the drawing of congressional maps, including, without limitation, testimony, meeting minutes, data sets, maps, notes, and plans submitted to, created by, or otherwise considered by you, any member of the Legislature or their staff; minutes, agendas, or presentations from legislative hearings or meetings; and any related communications, including, but not limited to, those with any member of the Legislature (or representatives thereof).
 - e. All documents and communications relating to the March 29, 2022 memorandum from Ryan Newman entitled “Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State.”
4. All documents and communications concerning Plan P000C0079, Plan P000C0094, and any other Proposed Plan (as specified in the definition above), including but not limited to:
 - a. All documents and communications regarding the potential, expected, or likely partisan performance or electoral outcomes of any district or districts in any Proposed Plan.

- b. All documents and communications concerning any factors that were considered in the creation, consideration, and/or passage of any Proposed Plan.
 - c. All documents and communications concerning any instructions you received or provided regarding the creation of any Proposed Plan.
- 5. Documents and communications sufficient to establish all persons who assisted you in the creation of any Proposed Plan.
- 6. All documents and communications relating to information that was used to draw congressional district maps for Florida in 2022, including, without limitation, and produced in native format: shapefiles; all files or data sets used in Maptitude or other mapping software; and files pertaining to precinct names, precinct lines, partisan indexes or other partisan data, racial data, election results, population shifts, voter registration, voter affiliation, or changing census block lines for the 2018 election, 2020 election, and current redistricting cycle.
- 7. All documents and communications, including, without limitation, requests for proposals, proposals, contracts, and timesheets or invoices, relating to consultants, firms, vendors, or other third parties, including, without limitation, Adam Foltz, that were consulted, involved in, or communicated with by you, any member of the Legislature or its staff, relating to any Proposed Plan.
- 8. All documents and communications relating to drawing any Proposed Plan, with (1) any current or former member of Florida's Legislature and (2) any current or former staff of any current or former member of Florida's Legislature.
- 9. All documents and communications relating to drawing any Proposed Plan with (1) any current U.S Representative or U.S. Senator, including without limitation United States House of Representatives Republican Leadership and House Minority Leader Kevin McCarthy and (2) any current or former staff of any current U.S. Representative or U.S. Senator.
- 10. All documents and communications relating to Congressional redistricting with the Republican National Committee, the Florida Republican Party, including, without limitation, Joe Gruters, the National Republican Redistricting Trust, the National Republican Congressional Committee, including, without limitation, National Republican Congressional Committee Chair Tom Emmer, or any political action committee.

Attachment 4

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

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

Plaintiffs,

v.

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

Defendants.

Case No.: 2022-CA-000666

SUBPOENA DUCES TECUM FOR VIDEO DEPOSITION

THE STATE OF FLORIDA:

To: Governor Ron DeSantis, personally and in his official capacity
Executive Office of Governor Ron DeSantis
400 S Monroe St., Suite 209, Tallahassee, FL 32399

YOU ARE COMMANDED to appear at the offices of Holtzman Vogel Baran Torchinsky & Josefiak, 119 S. Monroe Street, Suite 500, Tallahassee, FL 32301 on **September 7, 2022 at 9:00 a.m.** The deponent shall produce for inspection and copying all documents, correspondence, notes, memoranda, record, tape, or tangible thing whatsoever that in any way relates to the subjects listed on Schedule A.

The deposition will be taken by oral examination before Phipps Reporting, licensed court reporters, or some other Notary Public or other officer authorized to administer oaths. This deposition shall be used for all allowable purposes, shall be conducted in accordance with Florida Rules of Civil Procedure, and will continue from day to day until completed. The deposition will also be recorded on videotape by Phipps Reporting.

If you fail to appear you may be in contempt of court.

You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

Dated: August 19, 2022

By: /s/ Frederick S. Wermuth
Frederick S. Wermuth
FOR THE COURT

Subpoena issued by:
Frederick S. Wermuth
Florida Bar No. 0184111
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fweremuth@kbzwlaw.com

Counsel for Plaintiffs

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE ADA COORDINATOR, HUMAN RESOURCES, LEON COUNTY COURTHOUSE, 301 S. MONROE STREET, SUITE 202B, TALLAHASSEE, FL (850) 606-2401, AT LEAST 7 DAYS BEFORE YOUR SCHEDULED COURT APPEARANCE, OR IMMEDIATELY UPON RECEIVING THIS COURT NOTIFICATION. IF THE TIME BEFORE THE SCHEDULED APPEARANCE IS LESS THAN 7 DAYS, OR IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 711.

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

- A. Notwithstanding any definition set forth below, each word, term, or phrase used in these requests is intended to have the broadest meaning permitted under the Florida Rules of Civil Procedure.
- B. Words or terms not specifically defined herein have the meaning commonly understood, and no definition is intended as exclusive.
- C. The following terms shall have the meanings indicated below:
- (1) The terms “you,” and “your” shall mean Governor Ron DeSantis, in his capacity as an individual and as Governor of Florida, and covers the Executive Office of Governor Ron DeSantis as well as present and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, representatives, attorneys, and other persons or entities acting or purporting to act on behalf of Governor Ron DeSantis or the Executive Office of Governor Ron DeSantis.
 - (2) The term “Legislature” shall mean the Florida Legislature, including but not limited to the Florida House of Representatives, the Florida Senate, the Florida Senate Committee on Reapportionment, the Florida Senate Select Subcommittee on Congressional Reapportionment, the Florida Senate Select Subcommittee on Legislative Reapportionment, the Florida House Congressional Redistricting Committee, the Florida House Congressional Redistricting Subcommittee, the Florida House State Legislative Redistricting Subcommittee, and their respective members and staff.
 - (3) The term “Fair Districts Amendments” shall mean Article III, Sections 20 and 21 of the Florida Constitution.
 - (4) The term “Enacted Plan” shall mean the congressional district plan passed by the Legislature on April 21, 2022, or any drafts or precursors thereof.
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 - (6) The term “Plan P000C0094” shall mean the congressional district plan submitted to the Legislature on February 14, 2022 by Ryan Newman, Counsel to the Governor, or any drafts or precursors thereof.
 - (7) The term “Plan H000C8019” shall mean the congressional district plan approved by the Legislature on March 4, 2022, or any drafts or precursors thereof.

- (8) The term “Plan H000C8015” shall mean the congressional district plan approved by the Legislature on March 4, 2022, with the recommendation that the plan take effect if the Plan H000C8019 was found unconstitutional.
- (9) The term “Proposed Plans” shall mean all congressional redistricting plans drawn, considered, reviewed, proposed, or adopted by you or the Legislature during 2022, as well as any drafts or precursors of those plans or subsequent amendments thereof.
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- (12) The term “person” shall mean and include natural persons, governmental entities, proprietorships, corporations, partnerships, joint ventures, and each other form of organization, entity or association.
- (13) The term “document” is used in the broadest possible sense and shall mean, without limitation, any tangible thing on or in which data are preserved by any means or in any form, including hard copies of documents and, without limiting the generality of its meaning, electronically stored information (ESI) or recorded material of any kind such as email or other electronic correspondence, including any electronic or computerized record from which information can be obtained or translated (including USB drives), correspondence, letters, envelopes, telegrams, facsimiles, telexes, text messages, minutes, notes or memoranda of personal or telephone conversations or conferences, telephone logs, memoranda, handwritten or stenographic notes, diaries, calendars, contracts, purchase orders, invoices, accounts, ledgers, evaluations, analyses, forecasts, statistics, estimates, reviews, working papers, reports, studies, books, magazines, newspapers, booklets, brochures, catalogs, pamphlets, instructions, circulars, bulletins, trade letters, press releases, charts, maps, geological or geophysical logs, diagrams, designs, specifications, blueprints, sketches, drawings, pictures, photographs, motion pictures, negatives, undeveloped film, video or audio tapes, belts or discs, voice recordings, transcripts or transcriptions, computer printouts, magnetically encoded cards or tapes, punched cards or tapes, microfilms, microfiches, and any other data compilations from which words, numbers, images or other information can be obtained (translated, if necessary, through appropriate devices into reasonably useable form), whether or not privileged, that is in your possession, custody or control, and shall include all originals, drafts and non-identical copies of such documents, whether sent or received or neither.
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- (15) The terms “relating to” and “concerning” shall mean referring to, related to, regarding, consisting of, pertaining to, reflecting, evidencing, describing, constituting, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic, without limitation, unless otherwise specified in the Request.
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 - b. All uses of the word “each” include “every” (and vice versa);
 - c. The connective terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests all responses that might otherwise be construed to be outside of its scope, so that the fullest disclosure of information, documents, and communications is achieved;
 - d. The term “including” shall be construed without limitation;
 - e. The use of a verb in any tense encompasses the use of the verb in all tenses;
 - f. References to agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf include both current and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf; and
 - g. References to any entity include all of that entity’s agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on that entities’ behalf.
 - h. The singular number and masculine gender shall include, and be applied as, the plural or the feminine gender or neuter, and vice-versa, as the circumstances of the particular requests may make appropriate.
- G. Each request for documents or communications shall be construed according to its most

inclusive meaning so that if information, a document, or a communication is responsive to any reasonable interpretation of the request, the information, document, or communication is responsive.

H. If you deem any request for documents or communications to call for the production of privileged or otherwise nondisclosable materials and you assert such claim, furnish a list at the time of production identifying each document or communication so withheld together with the following information:

- (1) the reason for withholding each such document, communication, or material, stated with sufficient particularity so as to permit the Court to adjudicate the validity of the claimed privilege;
- (2) a statement of the facts constituting the basis for any claim of privilege or other ground of non-disclosure; and
- (3) a brief description of each such document, communication, or other material, including:
 - (a) the type of document or communication;
 - (b) the date of the document or communication;
 - (c) the name of its author(s) or preparer(s) and an identification by employment and title of each such person(s);
 - (d) the name of each person to whom the document, communication, or other material was sent or who has had access to, or custody of, the document, communication, or other material, together with an identification of each such person(s);
 - (e) the subject matter of the document or communication;
 - (d) the paragraph of this request to which the document, communication, or other material is responsive; and
 - (e) in the case of any document, communication, or other material that relates in any way to a meeting or conversation, identification of such meeting or conversation and the persons attending or participating in such meeting or conversation.

I. You are required by Florida law to produce all requested documents or communications, wherever located, that are in your possession, custody, or control, including documents or communications that you have a right to obtain, or to compel the production of, from any third party (including, but not limited to, any financial institution and telephone carrier).

- J. With respect to each request, Plaintiffs request that you identify and produce all documents or communications that are known to you or that you can locate or discover that are in your possession, custody or control, from whatever source derived, which, directly or indirectly, relate, refer or pertain to the subject matter of the request made, including, without limitation, all such documents or communications in the files (whether they be denominated personal, business or any other files) in the possession, custody or control of you or, as applicable, of your employees, agents, representatives or other persons acting on your behalf or under your control.
- K. Plaintiffs request that, if you have no documents or communications responsive to a request, then you shall so state.
- L. If you assert that any requested document or communication has been lost, destroyed, or discarded, please identify each such document as completely as possible, and provide the following information:
 - a. the date of loss, destruction, or discarding;
 - b. the circumstances of the loss, destruction, or discarding; and
 - c. if destroyed or discarded:
 - i. the manner of destruction or discarding;
 - ii. the reason for destruction or discarding;
 - iii. the identity of the person authorizing the destruction or discarding; and
 - iv. the identity of the person who destroyed or discarded the document or communication.
- M. Plaintiffs request that you produce all responsive documents, communications, or other materials in an orderly manner (and with appropriate markings or other identification) so that Plaintiffs will be able to identify the source of the document, communication, other material, the file in which the document, communication, or other material was maintained, the person to whom such file belongs, and the specific request to which the document, communication, or other material is responsive.
- N. These requests shall be deemed to be continuing so as to require further and supplemental production if you receive or discover additional documents, communications, or other material between the time of original production and the time of any hearing, trial, or other presentation of evidence in this matter.
- O. All documents or communications are to be produced in electronic form. Documents or communications produced electronically should be produced in native format with all metadata intact. For any election or voter data file, please produce in CSV format if available.

If this is not available, please produce in PDF format. For other documents or communications, to the extent documents or communications can be accurately represented in black and white, they should be produced in single-page Tagged Image File Format (“TIFF”), together with any related field-delimited load files (e.g., Concordance DAT, CSV, OPT, LOG). Each TIFF document or communication shall be produced with an image load file in standard Opticon (*.log) format that reflects the parent / child relationship and also includes the beginning Bates number; ending Bates number; beginning Attachment Bates number; ending Attaching Bates number; custodian; date sent (for email messages); date modified (for email and non-email messages) where information is available; author (for email and non-email messages); and subject (for email messages). The TIFF images shall also be accompanied by extracted text or, for those files that do not have extracted text upon being processed (such as hard copy documents), optical character recognition (“OCR”) text data; such extracted text or OCR text data shall be provided in document level form and named after the TIFF image. Documents or communications that contain redactions shall be OCR’d after the redaction is applied to the image, and the OCR will be produced in place of extracted text at the document level. Notwithstanding the foregoing, the parties may negotiate a separate production format (including native format) for any documents or communications not reasonably producible or readable as standard image files, such as audio files or large spreadsheets.

- P. For documents or communications produced in TIFF format that originated in electronic form, metadata shall be included with the data load files described above and shall include (at a minimum) the following information: file name (including extension); original file path; page count; creation date and time; last saved date and time; last modified date and time; author; custodian of the document or communications (that is, the custodian from whom the document or communication was collected or, if collected from a shared drive or server, the name of the shared drive or server); and MD5 hash value. In addition, for email documents or communications, the data load files shall also include the following metadata: sent date; sent time; received date; received time; “to” name(s) and address(es); “from” name and address; “cc” name(s) and address(es); “bcc” name(s) and address(es); subject; names of attachment(s); and attachment(s) count. All images and load files must be named or put in folders in such a manner that all records can be imported without modification of any path or file name information.
- Q. If a responsive communication, document, or tangible thing has been prepared in copies that are not identical, or if additional copies have been made that are no longer identical, or if original identical copies are no longer identical by reason of subsequent notations on the front or back of pages thereto, each non-identical copy is a separate communication, document, or tangible thing and shall be produced.
- R. Produce any password-protected documents or communications with any applicable passwords.

RECORDS TO BE PRODUCED

1. All documents and communications related to your February 1, 2022 request to the Supreme Court of Florida for an advisory opinion regarding the Fair Districts Amendments, including but not limited to any documents or communications relating to the decision to seek the advisory opinion, or any documents or communications relating to the Supreme Court of Florida's subsequent order denying the advisory opinion.
2. All documents and communications relating to the Fair Districts Amendments, including but not limited to all documents or communications regarding the applicability of the Fair Districts Amendments or previous judicial opinions or judicial orders regarding the Fair Districts Amendments to any Proposed Plan.
3. All documents and communications relating to the drawing, consideration, or adoption of congressional districts for the 2020 congressional redistricting cycle, including but not limited to communications between and/or among your employees, staff, officers, agents, or representatives, and including but not limited to:
 - a. All documents and communications with or relating to Robert Popper;
 - b. All documents and communications with or relating to Adam Foltz, John Gore, Hans von Spakovsky, Chris Coates, Michael Barley, or Scott Kellar;
 - c. All documents and communications relating to testimony or presentations before the Legislature, including but not limited to any testimony or presentations provided by Alex Kelley.
 - d. All documents and communications between you and the Legislature related to congressional redistricting from June 1, 2021 to the present, including all documents or communications relating to meetings—both formal and informal—with the Legislature related to the drawing of congressional maps, including, without limitation, testimony, meeting minutes, data sets, maps, notes, and plans submitted to, created by, or otherwise considered by you, any member of the Legislature or their staff; minutes, agendas, or presentations from legislative hearings or meetings; and any related communications, including, but not limited to, those with any member of the Legislature (or representatives thereof).
 - e. All documents and communications relating to the March 29, 2022 memorandum from Ryan Newman entitled “Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State.”
4. All documents and communications concerning Plan P000C0079, Plan P000C0094, and any other Proposed Plan (as specified in the definition above), including but not limited to:

- a. All documents and communications regarding the potential, expected, or likely partisan performance or electoral outcomes of any district or districts in any Proposed Plan.
 - b. All documents and communications concerning any factors that were considered in the creation, consideration, and/or passage of any Proposed Plan.
 - c. All documents and communications concerning any instructions you received or provided regarding the creation of any Proposed Plan.
5. Documents and communications sufficient to establish all persons who assisted you in the creation of any Proposed Plan.
6. All documents and communications relating to information that was used to draw congressional district maps for Florida in 2022, including, without limitation, and produced in native format: shapefiles; all files or data sets used in Maptitude or other mapping software; and files pertaining to precinct names, precinct lines, partisan indexes or other partisan data, racial data, election results, population shifts, voter registration, voter affiliation, or changing census block lines for the 2018 election, 2020 election, and current redistricting cycle.
7. All documents and communications, including, without limitation, requests for proposals, proposals, contracts, and timesheets or invoices, relating to consultants, firms, vendors, or other third parties, including, without limitation, Adam Foltz, that were consulted, involved in, or communicated with by you, any member of the Legislature or its staff, relating to any Proposed Plan.
8. All documents and communications relating to drawing any Proposed Plan, with (1) any current or former member of Florida's Legislature and (2) any current or former staff of any current or former member of Florida's Legislature.
9. All documents and communications relating to drawing any Proposed Plan with (1) any current U.S. Representative or U.S. Senator, including without limitation United States House of Representatives Republican Leadership and House Minority Leader Kevin McCarthy and (2) any current or former staff of any current U.S. Representative or U.S. Senator.
10. All documents and communications relating to congressional redistricting with the Republican National Committee, the Florida Republican Party, including, without limitation, Joe Gruters, the National Republican Redistricting Trust, the National Republican Congressional Committee, including, without limitation, National Republican Congressional Committee Chair Tom Emmer, or any political action committee.

Attachment 5

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

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

Plaintiffs,

v.

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

Defendants.

Case No.: 2022-CA-000666

SUBPOENA DUCES TECUM FOR VIDEO DEPOSITION

THE STATE OF FLORIDA:

To: J. Alex Kelly, personally and in his official capacity as Deputy Chief of Staff to Governor DeSantis
Executive Office of Governor Ron DeSantis
400 S Monroe St., Suite 209, Tallahassee, FL 32399

YOU ARE COMMANDED to appear at the offices of Holtzman Vogel Baran Torchinsky & Josefiak, 119 S. Monroe Street, Suite 500, Tallahassee, FL 32301 on **September 7, 2022 at 12:00 p.m.** The deponent shall produce for inspection and copying all documents, correspondence, notes, memoranda, record, tape, or tangible thing whatsoever that in any way relates to the subjects listed on Schedule A.

The deposition will be taken by oral examination before Phipps Reporting, licensed court reporters, or some other Notary Public or other officer authorized to administer oaths. This deposition shall be used for all allowable purposes, shall be conducted in accordance with Florida Rules of Civil Procedure, and will continue from day to day until completed. The deposition will also be recorded on videotape by Phipps Reporting.

If you fail to appear you may be in contempt of court.

You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

Dated: August 19, 2022

By: /s/ Frederick S. Wermuth
Frederick S. Wermuth
FOR THE COURT

Subpoena issued by:
Frederick S. Wermuth
Florida Bar No. 0184111
KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwerthem@kbzwlaw.com

Counsel for Plaintiffs

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE ADA COORDINATOR, HUMAN RESOURCES, LEON COUNTY COURTHOUSE, 301 S. MONROE STREET, SUITE 202B, TALLAHASSEE, FL (850) 606-2401, AT LEAST 7 DAYS BEFORE YOUR SCHEDULED COURT APPEARANCE, OR IMMEDIATELY UPON RECEIVING THIS COURT NOTIFICATION. IF THE TIME BEFORE THE SCHEDULED APPEARANCE IS LESS THAN 7 DAYS, OR IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 711.

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

- A. Notwithstanding any definition set forth below, each word, term, or phrase used in these requests is intended to have the broadest meaning permitted under the Florida Rules of Civil Procedure.
- B. Words or terms not specifically defined herein have the meaning commonly understood, and no definition is intended as exclusive.
- C. The following terms shall have the meanings indicated below:

The terms “you,” and “your” shall mean J. Alex Kelly, in his capacity as an individual and as Deputy Chief of Staff to the Governor.

- (1) The term “Executive Office of the Governor” refers to the Office of Governor Ron DeSantis as well as well as present and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, representatives, attorneys, and other persons or entities acting or purporting to act on behalf of Governor Ron DeSantis or the Executive Office of Governor Ron DeSantis.
- (2) The term “Legislature” shall mean the Florida Legislature, including but not limited to the Florida House of Representatives, the Florida Senate, the Florida Senate Committee on Reapportionment, the Florida Senate Select Subcommittee on Congressional Reapportionment, the Florida Senate Select Subcommittee on Legislative Reapportionment, the Florida House Congressional Redistricting Committee, the Florida House Congressional Redistricting Subcommittee, the Florida House State Legislative Redistricting Subcommittee, and their respective members and staff.
- (3) The term “Fair Districts Amendments” shall mean Article III, Sections 20 and 21 of the Florida Constitution.
- (4) The term “Enacted Plan” shall mean the congressional district plan passed by the Legislature on April 21, 2022, or any drafts or precursors thereof.
- (5) The term “Plan P000C0079” shall mean the congressional district plan submitted to the Legislature on January 16, 2022 by Ryan Newman, Counsel to the Governor, or any drafts or precursors thereof.
- (6) The term “Plan P000C0094” shall mean the congressional district plan submitted to the Legislature on February 14, 2022 by Ryan Newman, Counsel to the Governor, or any drafts or precursors thereof.
- (7) The term “Plan H000C8019” shall mean the congressional district plan approved by

the Legislature on March 4, 2022, or any drafts or precursors thereof.

- (8) The term “Plan H000C8015” shall mean the congressional district plan approved by the Legislature on March 4, 2022, with the recommendation that the plan take effect if the Plan H000C8019 was found unconstitutional.
- (9) The term “Proposed Plans” shall mean all congressional redistricting plans drawn, considered, reviewed, proposed, or adopted by you or the Legislature during 2022, as well as any drafts or precursors of those plans or subsequent amendments thereof.
- (10) The term “map drawer” shall mean anyone who assisted, advised, or provided input or feedback in the creation of any Proposed Plan, regardless of whether or not they were compensated for their services or participated in an official or unofficial capacity.
- (11) The term “mapping software” means any and all digital programs that may be used to assist in drawing congressional districts.
- (12) The term “person” shall mean and include natural persons, governmental entities, proprietorships, corporations, partnerships, joint ventures, and each other form of organization, entity or association.
- (13) The term “document” is used in the broadest possible sense and shall mean, without limitation, any tangible thing on or in which data are preserved by any means or in any form, including hard copies of documents and, without limiting the generality of its meaning, electronically stored information (ESI) or recorded material of any kind such as email or other electronic correspondence, including any electronic or computerized record from which information can be obtained or translated (including USB drives), correspondence, letters, envelopes, telegrams, facsimiles, telexes, text messages, minutes, notes or memoranda of personal or telephone conversations or conferences, telephone logs, memoranda, handwritten or stenographic notes, diaries, calendars, contracts, purchase orders, invoices, accounts, ledgers, evaluations, analyses, forecasts, statistics, estimates, reviews, working papers, reports, studies, books, magazines, newspapers, booklets, brochures, catalogs, pamphlets, instructions, circulars, bulletins, trade letters, press releases, charts, maps, geological or geophysical logs, diagrams, designs, specifications, blueprints, sketches, drawings, pictures, photographs, motion pictures, negatives, undeveloped film, video or audio tapes, belts or discs, voice recordings, transcripts or transcriptions, computer printouts, magnetically encoded cards or tapes, punched cards or tapes, microfilms, microfiches, and any other data compilations from which words, numbers, images or other information can be obtained (translated, if necessary, through appropriate devices into reasonably useable form), whether or not privileged, that is in your possession, custody or control, and shall include all originals, drafts and non-identical copies of such documents, whether sent or received or neither.
- (14) The term “communication” shall mean the transmission of any verbal or nonverbal,

written or non-written message, information, sign, symbol, or behavior, and shall include the process by which such transmission occurs.

(15) The terms “relating to” and “concerning” shall mean referring to, related to, regarding, consisting of, pertaining to, reflecting, evidencing, describing, constituting, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic, without limitation, unless otherwise specified in the Request.

D. Notwithstanding any of the provisions below, Respondents should not produce any documents or communications that are currently publicly available on the Legislature’s or the Governor’s official websites.

E. Unless otherwise specified, the time period for all documents or communications requested is January 1, 2021 to the present day.

F. The following rules of construction apply to all requests for production:

- a. The terms “all” and “any” shall each be construed as encompassing any and all;
- b. All uses of the word “each” include “every” (and vice versa);
- c. The connective terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests all responses that might otherwise be construed to be outside of its scope, so that the fullest disclosure of information, documents, and communications is achieved;
- d. The term “including” shall be construed without limitation;
- e. The use of a verb in any tense encompasses the use of the verb in all tenses;
- f. References to agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf include both current and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf; and
- g. References to any entity include all of that entity’s agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on that entities’ behalf.
- h. The singular number and masculine gender shall include, and be applied as, the plural or the feminine gender or neuter, and vice-versa, as the circumstances of the particular requests may make appropriate.

- G. Each request for documents or communications shall be construed according to its most inclusive meaning so that if information, a document, or a communication is responsive to any reasonable interpretation of the request, the information, document, or communication is responsive.
- H. If you deem any request for documents or communications to call for the production of privileged or otherwise nondisclosable materials and you assert such claim, furnish a list at the time of production identifying each document or communication so withheld together with the following information:
- (1) the reason for withholding each such document, communication, or material, stated with sufficient particularity so as to permit the Court to adjudicate the validity of the claimed privilege;
 - (2) a statement of the facts constituting the basis for any claim of privilege or other ground of non-disclosure; and
 - (3) a brief description of each such document, communication, or other material, including:
 - (a) the type of document or communication;
 - (b) the date of the document or communication;
 - (c) the name of its author(s) or preparer(s) and an identification by employment and title of each such person(s);
 - (d) the name of each person to whom the document, communication, or other material was sent or who has had access to, or custody of, the document, communication, or other material, together with an identification of each such person(s);
 - (e) the subject matter of the document or communication;
 - (d) the paragraph of this request to which the document, communication, or other material is responsive; and
 - (e) in the case of any document, communication, or other material that relates in any way to a meeting or conversation, identification of such meeting or conversation and the persons attending or participating in such meeting or conversation.
- I. You are required by Florida law to produce all requested documents or communications, wherever located, that are in your possession, custody, or control, including documents or communications that you have a right to obtain, or to compel the production of, from any third

party (including, but not limited to, any financial institution and telephone carrier).

- J. With respect to each request, Plaintiffs request that you identify and produce all documents or communications that are known to you or that you can locate or discover that are in your possession, custody or control, from whatever source derived, which, directly or indirectly, relate, refer or pertain to the subject matter of the request made, including, without limitation, all such documents or communications in the files (whether they be denominated personal, business or any other files) in the possession, custody or control of you or, as applicable, of your employees, agents, representatives or other persons acting on your behalf or under your control.
- K. Plaintiffs request that, if you have no documents or communications responsive to a request, then you shall so state.
- L. If you assert that any requested document or communication has been lost, destroyed, or discarded, please identify each such document as completely as possible, and provide the following information:
 - a. the date of loss, destruction, or discarding;
 - b. the circumstances of the loss, destruction, or discarding; and
 - c. if destroyed or discarded:
 - i. the manner of destruction or discarding;
 - ii. the reason for destruction or discarding;
 - iii. the identity of the person authorizing the destruction or discarding; and
 - iv. the identity of the person who destroyed or discarded the document or communication.
- M. Plaintiffs request that you produce all responsive documents, communications, or other materials in an orderly manner (and with appropriate markings or other identification) so that Plaintiffs will be able to identify the source of the document, communication, other material, the file in which the document, communication, or other material was maintained, the person to whom such file belongs, and the specific request to which the document, communication, or other material is responsive.
- N. These requests shall be deemed to be continuing so as to require further and supplemental production if you receive or discover additional documents, communications, or other material between the time of original production and the time of any hearing, trial, or other presentation of evidence in this matter.
- O. All documents or communications are to be produced in electronic form. Documents or

communications produced electronically should be produced in native format with all metadata intact. For any election or voter data file, please produce in CSV format if available. If this is not available, please produce in PDF format. For other documents or communications, to the extent documents or communications can be accurately represented in black and white, they should be produced in single-page Tagged Image File Format (“TIFF”), together with any related field-delimited load files (e.g., Concordance DAT, CSV, OPT, LOG). Each TIFF document or communication shall be produced with an image load file in standard Opticon (*.log) format that reflects the parent / child relationship and also includes the beginning Bates number; ending Bates number; beginning Attachment Bates number; ending Attaching Bates number; custodian; date sent (for email messages); date modified (for email and non-email messages) where information is available; author (for email and non-email messages); and subject (for email messages). The TIFF images shall also be accompanied by extracted text or, for those files that do not have extracted text upon being processed (such as hard copy documents), optical character recognition (“OCR”) text data; such extracted text or OCR text data shall be provided in document level form and named after the TIFF image. Documents or communications that contain redactions shall be OCR’d after the redaction is applied to the image, and the OCR will be produced in place of extracted text at the document level. Notwithstanding the foregoing, the parties may negotiate a separate production format (including native format) for any documents or communications not reasonably producible or readable as standard image files, such as audio files or large spreadsheets.

- P. For documents or communications produced in TIFF format that originated in electronic form, metadata shall be included with the data load files described above and shall include (at a minimum) the following information: file name (including extension); original file path; page count; creation date and time; last saved date and time; last modified date and time; author; custodian of the document or communications (that is, the custodian from whom the document or communication was collected or, if collected from a shared drive or server, the name of the shared drive or server); and MD5 hash value. In addition, for email documents or communications, the data load files shall also include the following metadata: sent date; sent time; received date; received time; “to” name(s) and address(es); “from” name and address; “cc” name(s) and address(es); “bcc” name(s) and address(es); subject; names of attachment(s); and attachment(s) count. All images and load files must be named or put in folders in such a manner that all records can be imported without modification of any path or file name information.
- Q. If a responsive communication, document, or tangible thing has been prepared in copies that are not identical, or if additional copies have been made that are no longer identical, or if original identical copies are no longer identical by reason of subsequent notations on the front or back of pages thereto, each non-identical copy is a separate communication, document, or tangible thing and shall be produced.
- R. Produce any password-protected documents or communications with any applicable passwords.

RECORDS TO BE PRODUCED

1. All documents and communications related to the Executive Office of the Governor’s February 1, 2022 request to the Supreme Court of Florida for an advisory opinion regarding the Fair Districts Amendments, including but not limited to any documents or communications relating to the decision to seek the advisory opinion, or any documents or communications relating to the Supreme Court of Florida’s subsequent order denying the advisory opinion.
2. All documents and communications relating to the Fair Districts Amendments, including but not limited to all documents or communications regarding the applicability of the Fair Districts Amendments or previous judicial opinions or judicial orders regarding the Fair Districts Amendments to any Proposed Plan.
3. All documents and communications relating to the drawing, consideration, or adoption of congressional districts for the 2020 congressional redistricting cycle, including but not limited to communications between and/or among your superiors, employees, staff, officers, agents, or representatives, and including but not limited to:
 - a. All documents and communications with or relating to Robert Popper;
 - b. All documents and communications with or relating to Adam Foltz, John Gore, Hans von Spakovsky, Chris Coates, Michael Barley, or Scott Kellar;
 - c. All documents and communications relating to testimony or presentations before the Legislature concerning congressional redistricting.
 - d. All documents and communications between you and the Legislature related to congressional redistricting from June 1, 2021 to the present, including all documents or communications relating to meetings—both formal and informal—with the Legislature related to the drawing of congressional maps, including, without limitation, testimony, meeting minutes, data sets, maps, notes, and plans submitted to, created by, or otherwise considered by you, any member of the Legislature or their staff; minutes, agendas, or presentations from legislative hearings or meetings; and any related communications, including, but not limited to, those with any member of the Legislature (or representatives thereof).
 - e. All documents and communications relating to the March 29, 2022 memorandum from Ryan Newman entitled “Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State.”
4. All documents and communications concerning Plan P000C0079, Plan P000C0094, and any other Proposed Plan (as specified in the definition above), including but not limited to:
 - a. All documents and communications regarding the potential, expected, or likely partisan performance or electoral outcomes of any district or districts in any Proposed Plan.

- b. All documents and communications concerning any factors that were considered in the creation, consideration, and/or passage of any Proposed Plan.
 - c. All documents and communications concerning any instructions you received or provided regarding the creation of any Proposed Plan.
- 5. Documents and communications sufficient to establish all persons who assisted you in the creation of any Proposed Plan.
- 6. All documents and communications relating to information that was used to draw congressional district maps for Florida in 2022, including, without limitation, and produced in native format: shapefiles; all files or data sets used in Maptitude or other mapping software; and files pertaining to precinct names, precinct lines, partisan indexes or other partisan data, racial data, election results, population shifts, voter registration, voter affiliation, or changing census block lines for the 2018 election, 2020 election, and current redistricting cycle.
- 7. All documents and communications, including, without limitation, requests for proposals, proposals, contracts, and timesheets or invoices, relating to consultants, firms, vendors, or other third parties, including, without limitation, Adam Foltz, that were consulted, involved in, or communicated with by you, any member of the Legislature or its staff, relating to any Proposed Plan.
- 8. All documents and communications relating to drawing any Proposed Plan, with (1) any current or former member of Florida's Legislature and (2) any current or former staff of any current or former member of Florida's Legislature.
- 9. All documents and communications relating to drawing any Proposed Plan with (1) any current U.S Representative or U.S. Senator, including without limitation United States House of Representatives Republican Leadership and House Minority Leader Kevin McCarthy and (2) any current or former staff of any current U.S. Representative or U.S. Senator.
- 10. All documents and communications relating to congressional redistricting with the Republican National Committee, the Florida Republican Party, including, without limitation, Joe Gruters, the National Republican Redistricting Trust, the National Republican Congressional Committee, including, without limitation, National Republican Congressional Committee Chair Tom Emmer, or any political action committee.

Attachment 6



RON DESANTIS
GOVERNOR

March 29, 2022

Secretary Laurel Lee
Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

2022 MAR 29 AM 11:58
OFFICE OF THE SECRETARY OF STATE
TALLAHASSEE, FL

Dear Secretary Lee:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8 of the Constitution of Florida, I do hereby veto and transmit my objection to **CS/SB 102**, enacted during the 124th Session of the Legislature of Florida, during Regular Session 2022 and entitled:

An act relating to establishing the congressional districts of the state

As presented in both the primary and secondary maps enacted by the Legislature, Congressional District 5 violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution for the reasons set forth in the attached memorandum. Although I understand the Legislature's desire to comply with the Florida Constitution, the Legislature is not absolved of its duty to comply with the U.S. Constitution. Where the U.S. and Florida Constitutions conflict, the U.S. Constitution must prevail.

Accordingly, I withhold my approval of **CS/SB 102** and do hereby veto the same.

Sincerely,



Ron DeSantis
Governor



RON DESANTIS
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-717-9418

MEMORANDUM

RECEIVED
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To: Ron DeSantis, Governor of Florida

From: Ryan Newman, General Counsel, Executive Office of the Governor **RDN**

Date: March 29, 2022

Re: Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State

Congressional District 5 in both the primary and secondary maps enacted by the Legislature violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it assigns voters primarily on the basis of race but is not narrowly tailored to achieve a compelling state interest.

“Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools,” the U.S. Supreme Court has made clear that the State also “may not separate its citizens into different voting districts on the basis of race.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (internal citations omitted). “When the State assigns voters on the basis of race,” the Court explained, “it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, ‘think alike, share the same political interests, and will prefer the same candidates at the polls.’” *Id.* at 911-12 (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)).

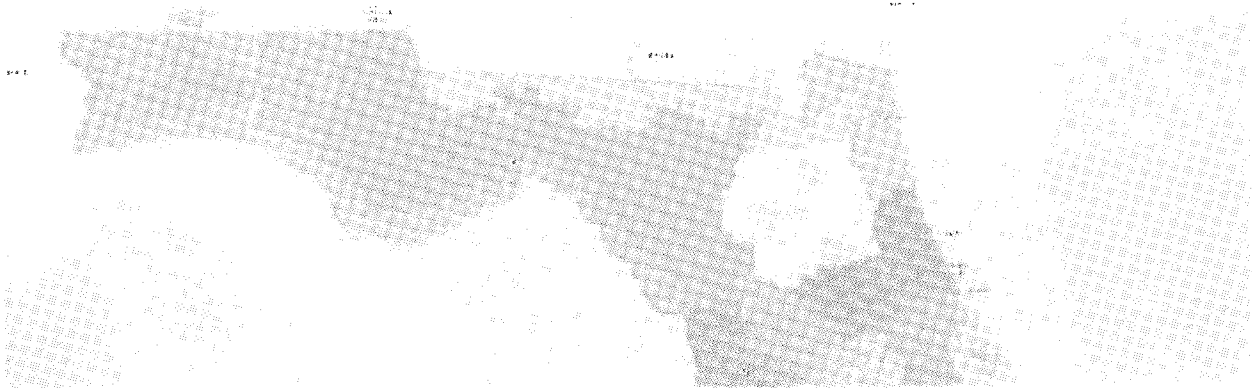
For these reasons, the Court has interpreted the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution to prohibit state legislatures from using race as the “predominant factor motivating [their] decision to place a significant number of voters within or without a particular district,” *id.* at 916, unless they can prove that their “race-based sorting of voters serves a ‘compelling interest’ and is ‘narrowly tailored’ to that end,” *Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017) (citation omitted). That race was the predominant factor motivating a legislature’s line-drawing decision can be shown “either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose.” *Miller*, 515 U.S. at 916.

Although non-adherence to traditional districting principles, which results in a non-compact, unusually shaped district, is relevant evidence that race was the predominant motivation of a legislature, such evidence is not required to establish a constitutional violation. “Race may predominate even when a reapportionment plan respects traditional principles, . . . if ‘[r]ace was the criterion that, in the State’s view, could not be compromised,’ and race-neutral considerations ‘came into play only after the race-based decision had been made.’” *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 798 (2017) (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (alteration in original)). “The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not.” *Id.* at 799. A legislature “could construct a plethora of potential maps that look consistent with traditional, race-neutral principles,” but “if race for its own sake is the overriding reason for choosing one map over others, race still may predominate.” *Id.* It is the “racial purpose of state action, not its stark manifestation,” that offends the Equal Protection Clause. *Miller*, 515 U.S. at 913.

In light of these well-established constitutional principles, the congressional redistricting bill enacted by the Legislature violates the U.S. Constitution. The bill contains a primary map and secondary map that include a racially gerrymandered district – Congressional District 5 – that is not narrowly tailored to achieve a compelling state interest. *See generally* Fla. H.R. Comm. on Redist., recording of proceedings, at 0:00-2:55:19 (Feb. 25, 2022), <https://thefloridachannel.org/videos/2-25-22-house-redistricting-committee/> (committee presentation and discussion of the maps later passed by the Legislature).

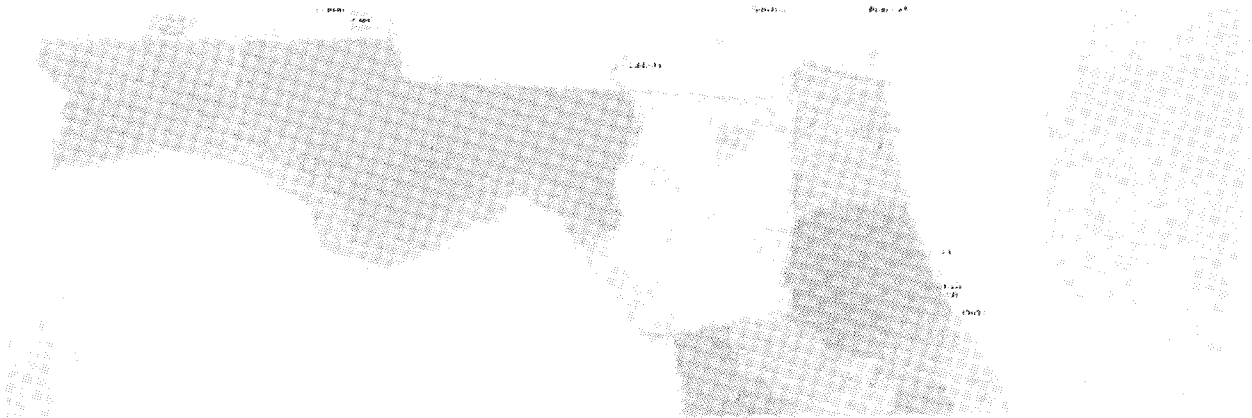
In the secondary map, which was the original map reported out of the House Congressional Redistricting Subcommittee, District 5 is a sprawling district that stretches approximately 200 miles from East to West and cuts across eight counties to connect a minority population in Jacksonville with a separate and distinct minority population in Leon and Gadsden Counties. The district is not compact, does not conform to usual political or geographic boundaries, and is bizarrely shaped to include minority populations in western Leon County and Gadsden County while excluding non-minority populations in eastern Leon County. Because this version of District 5 plainly subordinates traditional districting criteria to avoid diminishment of minority voting age population, there is no question that race was “the predominant factor motivating the legislature’s decision” to draw this district. *Miller*, 515 U.S. at 916.

District 5 in the Secondary Map (Purple)



In response to federal constitutional concerns about the unusual shape of District 5 as it was originally drawn, and which is now reflected in the secondary map, the House Redistricting Committee drew a new version of District 5, which is reflected in the primary map. This configuration of the district is more compact but has caused the adjacent district—District 4—to take on a bizarre doughnut shape that almost completely surrounds District 5. The reason for this unusual configuration is the Legislature’s desire to maximize the black voting age population in District 5. The Chair of the House Redistricting Committee confirmed this motivation when he explained that the new District 5 was drawn to “protect[] a black minority seat in north Florida.” Fla. H.R. Comm. on Redist., recording of proceedings, at 19:15-19:26 (Feb. 25, 2022).

District 5 in the Primary Map (Purple)



Despite the Legislature’s attempt to address the federal constitutional concerns by drawing a more compact district, the constitutional defect nevertheless persists. Where “race was the criterion that, in the State’s view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made,” it follows that race was the predominant factor, even though the district

otherwise respects traditional districting principles. *Bethune-Hill*, 137 S. Ct. at 798 (cleaned up).

Such was the case here. Even for the more compact district, the Legislature believed (albeit incorrectly) that the Florida Constitution required it to ensure “a black minority seat in north Florida.” Fla. H.R. Comm. on Redist., recording of proceedings, at 19:15-19:26 (Feb. 25, 2022). Specifically, according to the House Redistricting Chair, the primary map’s version of District 5 is the House’s “attempt at continuing to protect the minority group’s ability to elect a candidate of their choice.” *Id.* at 19:45-19:54. The Legislature thus used “an express racial target” for District 5 of a black voting age population sufficiently large to elect a candidate of its choice. *Bethune-Hill*, 137 S. Ct. at 800.

Because racial considerations predominated even in drawing the new District 5, the Legislature must satisfy strict scrutiny, the U.S. Supreme Court’s “most rigorous and exacting standard of constitutional review.” *Miller*, 515 U.S. at 920. And to satisfy strict scrutiny, the Legislature “must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.” *Id.* That, the Legislature cannot do.

There is no good reason to believe that District 5 needed to be drawn as a minority-performing district to comply with Section 2 of the Voting Rights Act (VRA), because the relevant minority group is not sufficiently large to constitute a majority in a geographically compact area. In the primary map, the black voting age population of District 5 is 35.32%, and even in the secondary map, with the racially gerrymandered, non-compact version of District 5, the black voting age population increases only to 43.48%. Compare Fla. Redist. 2022, H000C8019, <https://bit.ly/3uczOXb> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022), with Fla. Redist. 2022, H000C8015, <https://bit.ly/36hFRBB> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022). “When a minority group is not sufficiently large to make up a majority in a reasonably shaped district, § 2 simply does not apply.” *Cooper*, 137 S. Ct. at 1472 (citing *Bartlett v. Strickland*, 556 U.S. 1, 18-20 (2009) (plurality opinion)); see also *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (explaining that one of the threshold conditions for proving vote dilution under Section 2 is that the minority group is “sufficiently large and geographically compact to constitute a majority”).

Nor is there good reason to believe that District 5 is required to be drawn to comply with Section 5 of the VRA. Section 5 is no longer operative now that the U.S. Supreme Court invalidated the VRA’s formula for determining which jurisdictions are subject to Section 5. See *Shelby Cnty. v. Holder*, 570 U.S. 529, 553-57 (2013); see also *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 279 (2015) (suggesting that continued compliance with Section 5 may not remain a compelling interest in light of *Shelby County*). In any event, even before the coverage formula was invalidated, the State of

Florida was not a covered jurisdiction subject to Section 5. *See In re Senate Joint Resolution of Legislative Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 624 (Fla. 2012). Only five counties in Florida were covered – Collier, Hardee, Hendry, Hillsborough, and Monroe – and none of them are in northern Florida where District 5 is located. *See id.*

The only justification left for drawing a race-based district is compliance with Article III, Section 20(a) of the Florida Constitution. But District 5 does not comply with this provision. Article III, Section 20(a) provides that “districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.” The Florida Supreme Court has noted that these “dual constitutional imperatives follow almost verbatim the requirements embodied in the Federal Voting Rights Act.” *Id.* at 619 (cleaned up). The first imperative, which prohibits districts that deny or abridge the equal opportunity of minority groups to participate in the political process, is modeled after Section 2 of the VRA, and the second imperative, which prohibits districts that diminish the ability of minority groups to elect representatives of their choice, is modeled after Section 5. *Id.* at 619-20.

Like the VRA, these provisions of the Florida Constitution “aim[] at safeguarding the voting strength of minority groups against both impermissible dilution and retrogression.” *Id.* at 620. Although judicial interpretation of the VRA is relevant to understanding the Florida Constitution’s non-dilution and non-diminishment provisions, the Florida Supreme Court nonetheless recognizes its “independent constitutional obligation” to interpret these provisions. *Id.* at 621.

Relevant here is the Florida Constitution’s non-diminishment requirement. Unlike Section 5 of the VRA, this requirement “applies to the entire state.” *Id.* at 620. Under this standard, the Legislature “cannot eliminate majority-minority districts or weaken other historically performing minority districts where doing so would actually diminish a minority group’s ability to elect its preferred candidates.” *Id.* at 625. The existing districts “serve[] as the ‘benchmark’ against which the ‘effect’ of voting changes is measured.” *Id.* at 624 (cleaned up). Where a voting change leaves a minority group “less able to elect a preferred candidate of choice” than the benchmark, that change violates the non-diminishment standard. *Id.* at 625 (internal quotation marks omitted); *see also id.* at 702 (Canady, C.J., concurring in part and dissenting in part) (noting that the dictionary definition of “diminish” means “to make less or cause to appear less” (citation omitted)).

The Florida Supreme Court has acknowledged that “a slight change in percentage of the minority group’s population in a given district does not necessarily have a cognizable effect on a minority group’s ability to elect its preferred candidate of choice.” *Id.* at 625. The minority population percentage in each district need not be

“fixed” in perpetuity. *Id.* at 627. But where the reduction in minority population in a given district is more than “slight,” such that the ability of the minority population to elect a candidate of choice has been reduced (even if not eliminated), the Legislature has violated the Florida Constitution’s non-diminishment requirement as interpreted by the Florida Supreme Court.

Given these principles, there is no good reason to believe that District 5, as presented in the primary map, complies with the Florida Constitution’s non-diminishment requirement. The benchmark district contains a black voting age population of 46.20%, whereas the black voting age population of District 5 in the primary map is only 35.32%.¹ Compare Fla. Redist. 2022, FLCD2016, <https://bit.ly/3Iv6FeW> (available at floridareistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022), with Fla. Redist. 2022, H000C8019, <https://bit.ly/3uczOXb> (available at floridareistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022). This nearly eleven percentage point drop is more than slight, and while the House Redistricting Chair represented that the black population of the district could still elect a candidate of choice, *see* Fla. H.R. Comm. on Redist., recording of proceedings, at 59:44-1:00:17 (Feb. 25, 2022), there appears to be little dispute that the ability of the black population to elect such a candidate had nevertheless been reduced, *see id.* at 1:00:18-1:00:58 (noting that the benchmark district performed for the minority candidate of choice in 14 of 14 previous elections and that the new district would not perform for the minority candidate of choice in one-third of the same elections).

Moreover, the House Redistricting Chair claimed that the only criterion that mattered was whether the new district still performed at all. *See id.* at 1:06:09-1:06:30 (“It is not a diminishment unless the district does not perform.”); *see also id.* at 1:05:05-1:05:13 (“Is it less likely to perform? Honestly, I don’t know.”). But that view is plainly inconsistent with the Florida Supreme Court precedent described above, which prohibits any voting change that leaves a minority group “less able to elect a preferred candidate of choice.” *Apportionment I*, 83 So. 3d at 625 (internal quotation marks omitted). In sum, because the reduction of black voting age population is more than slight and because such reduction appears to have diminished the ability of black voters to elect a candidate of their choice, District 5 does not comply with the non-diminishment requirement of Article III, Section 20(a) of the Florida Constitution. Therefore, compliance with the Florida Constitution cannot supply the compelling reason to justify the Legislature’s use of race in drawing District 5 in the primary map.

¹ The benchmark district itself is a sprawling, non-compact racial gerrymander that connects minority communities from two distinct regions of the State; however, for purposes of this point, I assume that the district can be used as a valid benchmark against which to judge the new maps.

In the secondary map, by contrast, District 5 complies with the Florida Constitution's non-diminishment requirement, but in doing so, it violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The U.S. Supreme Court has warned that a "reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid." *Shaw*, 509 U.S. at 647. As described earlier, District 5 in the secondary map does precisely this.

That the district is believed to be necessary to comply with the Florida Constitution's non-diminishment requirement does not alone suffice to justify the use of race in drawing bizarre, non-compact district boundaries for the sole purpose of cobbling together disparate minority populations from across northern Florida to form a minority-performing district. Mere compliance with a state constitutional requirement to engage in race-based districting is not, without more, a compelling interest sufficient to satisfy strict scrutiny. The Fourteenth and Fifteenth Amendments to the U.S. Constitution and the VRA, which enforces the Fifteenth Amendment, exist to *prevent* states from engaging in racially discriminatory electoral practices. Indeed, one such weapon that states long used, and that the VRA was designed to combat, "was the racial gerrymander – the deliberate and arbitrary distortion of district boundaries for racial purposes." *Id.* at 640 (cleaned up).

Here, the Florida Constitution's non-diminishment standard would be satisfied only by a sprawling, non-compact district that spans 200 miles and repeatedly violates traditional political boundaries to join minority communities from disparate geographic areas. Such a district is not narrowly tailored to achieve the compelling interest of protecting the voting rights of a minority community in a reasonably cohesive geographic area. As applied to District 5 in the secondary map, therefore, the Florida Constitution's non-diminishment standard cannot survive strict scrutiny and clearly violates the U.S. Constitution.

For the foregoing reasons, Congressional District 5 in both maps is unlawful.

Attachment 7

SB 2-C Congressional Plan 0109

J. ALEX KELLY
EXECUTIVE OFFICE
OF THE GOVERNOR
4.19.22



Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

DISTRICTS IDENTICAL IN PLANS 8019 & 0109

10 Districts Identical:

- 1-2 (Panhandle)
- 20-25 (Southeast)
- 27-28 (Southeast)

IMPROVEMENTS IN PLAN 8019

18 Districts Improved:

- 3-19
- 26 (Southwestern portions)

Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

- Starting with the Legislature's Primary Plan 8019:
 - Maintained the same number of performing majority-minority districts.
 - Maintained the Legislature's Panhandle districts.
 - Maintained the Legislature's Southeast districts.
 - Addressed federal constitutional concerns by using the EOG's Northeast districts (w/ minor improvements).
 - Tier 2 improvements through a compromise (hybrid of the Legislature's and EOG's plans) for Gulf Coast counties, stretching from Citrus to Lee counties and impacting some inland counties.
 - Tier 2 improvements by returning to concepts from the House Congressional Redistricting Subcommittee's Central Florida in Plan 8011, with inclusion of one concept from the Senate's Plan 8060.
 - Tier 2 improvements to boundaries by eliminating EOG's adherence to Census Designated Places and adopting the Legislature's Tier 2 focus on use of roadways and waterways.

Tier 2 Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

SB 102 PRIMARY PLAN 8019

Counties Kept Whole: 49

18 counties split 48 ways

Differences:

Where there are differences in county splits, 7 counties split 17 ways (Citrus, Collier, Hillsborough, Marion, Polk, Sarasota, Volusia)

FL's 7 largest counties split 24 ways (Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas)

SB 2-C PLAN 0109

Counties Kept Whole: 50

17 counties split 46 ways

Differences:

Where there are differences in county splits, 7 counties split 16 ways (Citrus, Collier, Hillsborough, Marion, Polk, Sarasota, Volusia)

FL's 7 largest counties split 23 ways (Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas)

Tier 2 Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

SB 102 PRIMARY PLAN 8019

- Boundaries: 87.50% use of Tier 2 boundaries
- Therefore: 12.50% Non-Geo/Pol boundary lines

SB 2-C PLAN 0109

- Boundaries: 88.50% use of Tier 2 boundaries
- Therefore: 11.50% Non-Geo/Pol boundary lines

Tier 2 Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

SB 102 PRIMARY PLAN 8019

SB 2-C PLAN 0109

Compactness:

Reock: 0.48

Area/Convex Hull: 0.82

Polsby Popper: 0.42

Least mathematically compact CD 4's Polsby Popper is 0.17 (below 0.20)

Compactness:

Reock: 0.47

Area/Convex Hull: 0.81

Polsby Popper: 0.43

Only Plan w/ all CDs > 0.20 Reock & Polsby Popper

Improved visual compactness for several CDs

Tier 2 Comparing SB 2-C Plan 0109 to SB 102 Primary Plan 8019

SB 102 PRIMARY PLAN 8019

City Splits: 16

Differences:

- Cape Coral (Lee) – split in 2 CDs
- Plant City (Hillsborough) – split in 2 CDs
- Port Orange (Volusia) – split in 2 CDs
- Lakeland (Polk) – whole
- Longboat Key (Manatee & Sarasota) – whole
- St. Petersburg (Pinellas) – whole

SB 2-C PLAN 0109

City Splits: 16

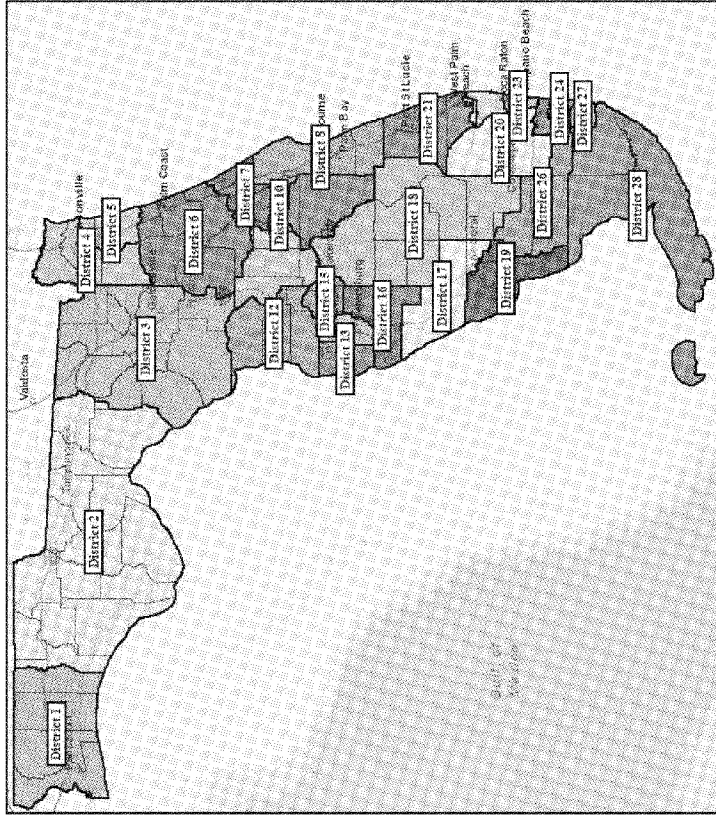
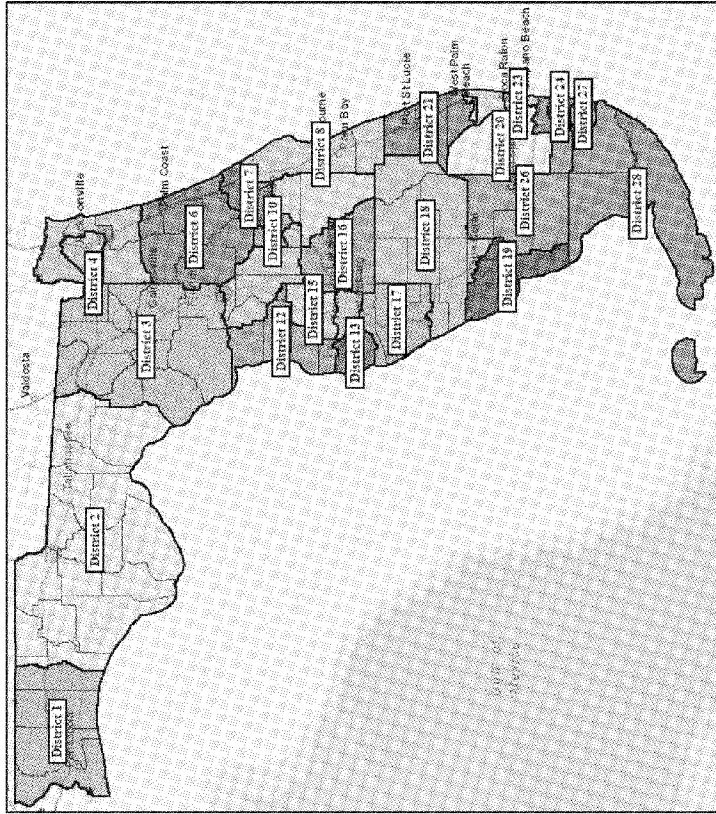
Differences:

- Cape Coral (Lee) – whole
- Plant City (Hillsborough) – whole
- Port Orange (Volusia) – whole
- Lakeland (Polk) – split in 2 CDs
- Longboat Key (Manatee & Sarasota) – split in 2 CDs (due to keeping Sarasota County whole)
- St. Petersburg (Pinellas) – split in 2 CDs

Statewide

SB 102 PRIMARY PLAN 8019

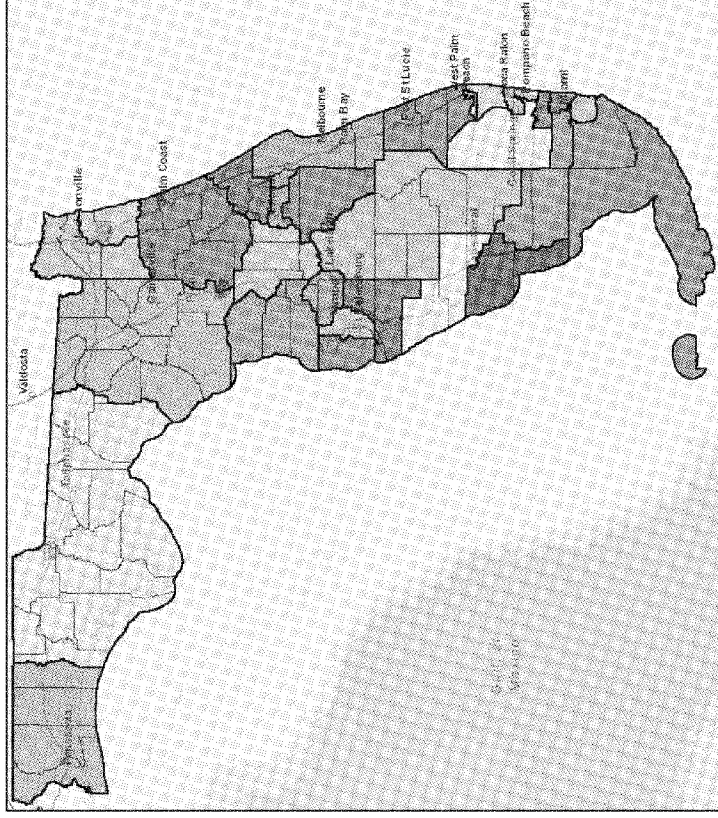
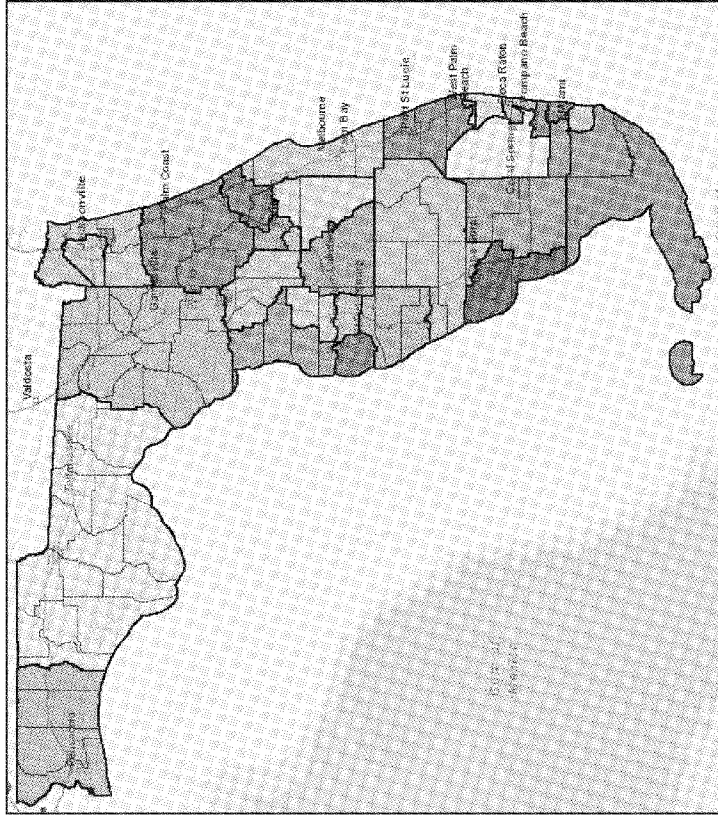
SB 2-C PLAN 0109



Statewide Without District Labels

SB 102 PRIMARY PLAN 8019

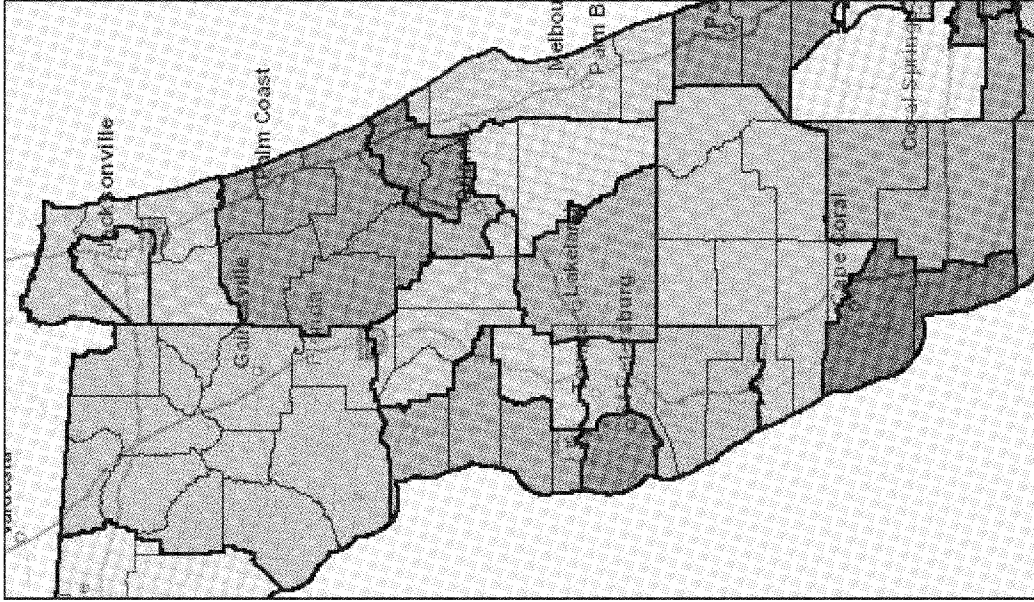
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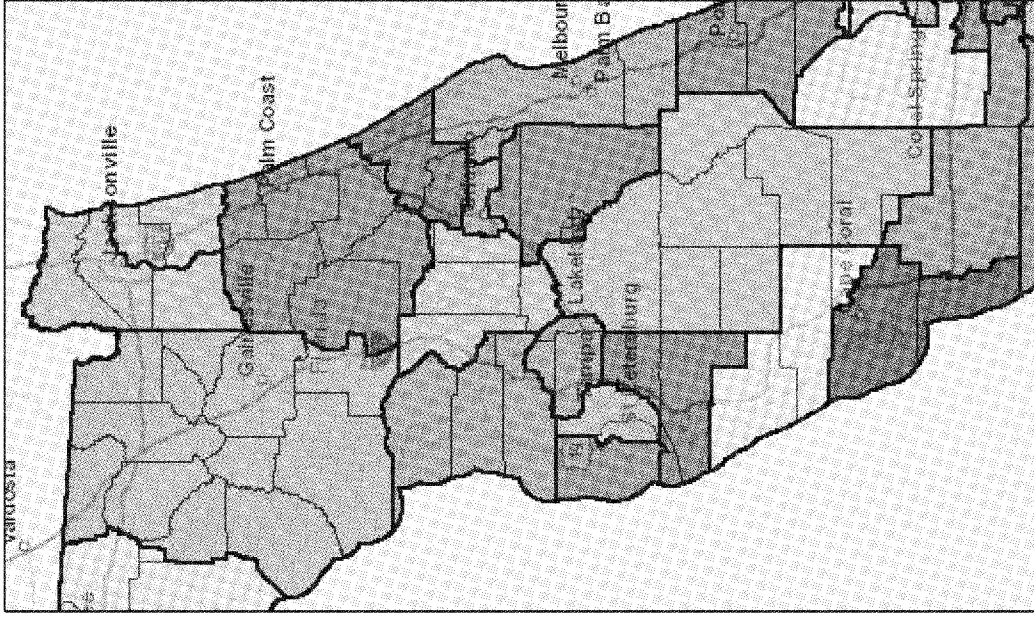
Focusing on the 18 Districts with Changes

Without District Labels

SB 102 Primary Plan 8019



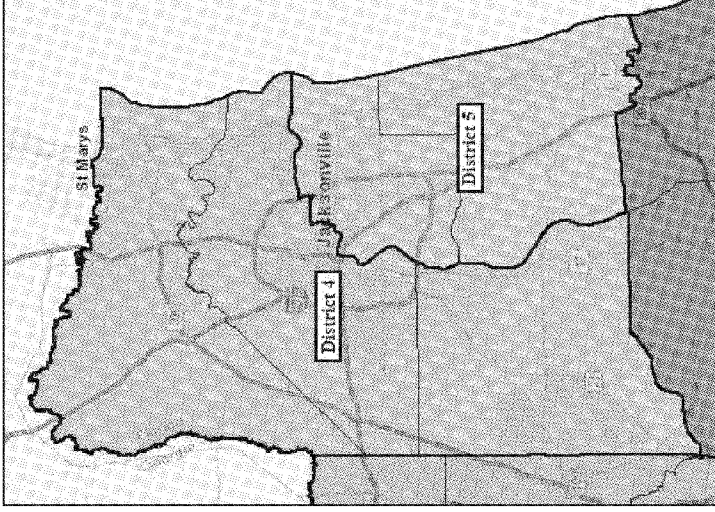
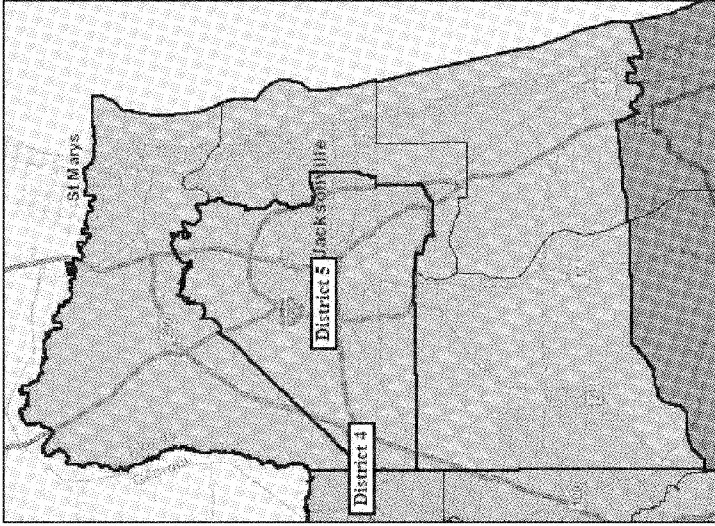
SB 2-C Plan 0109



Districts 4-5

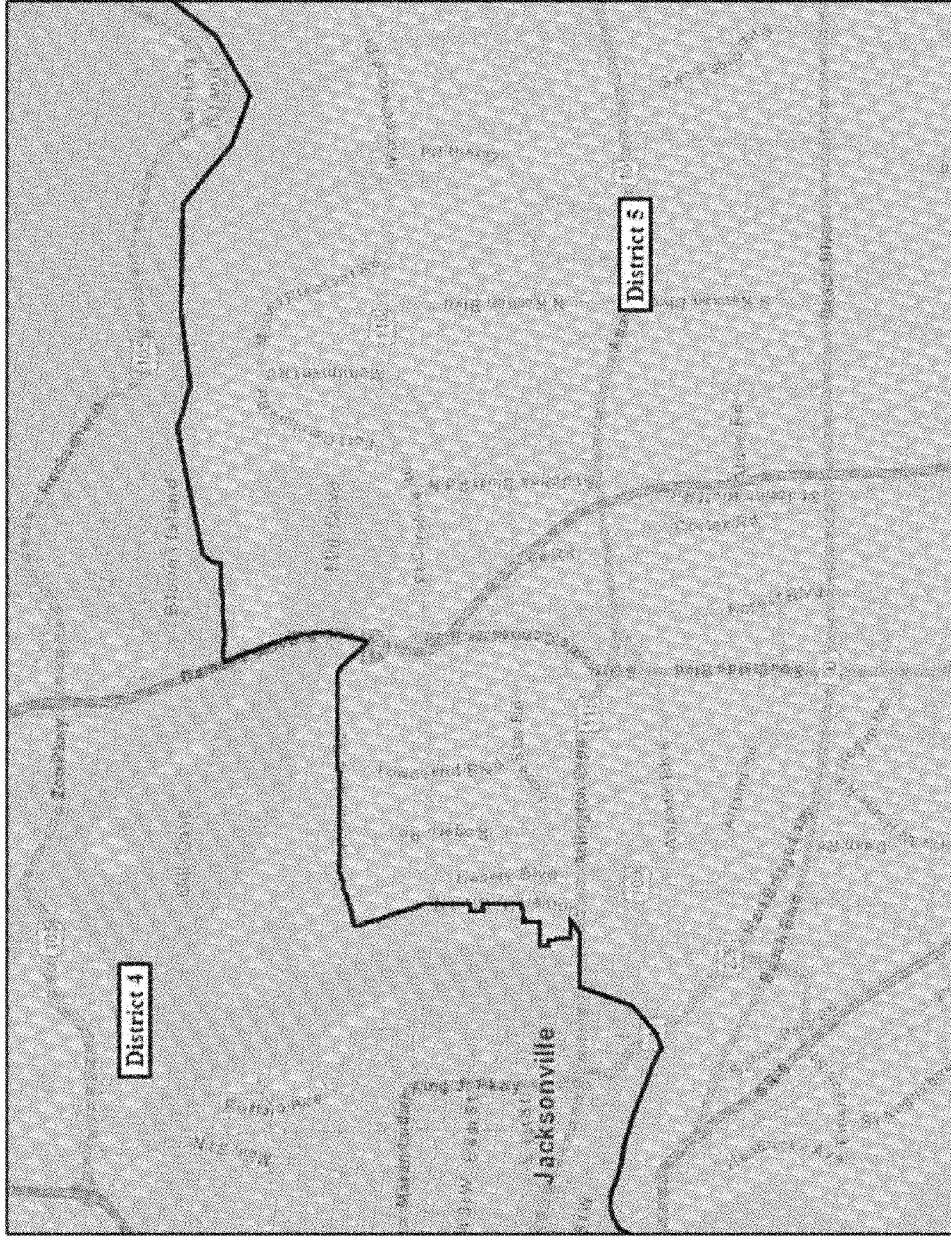
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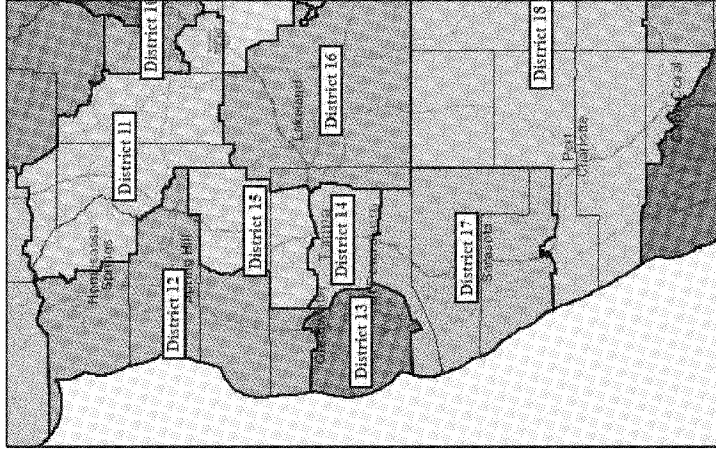
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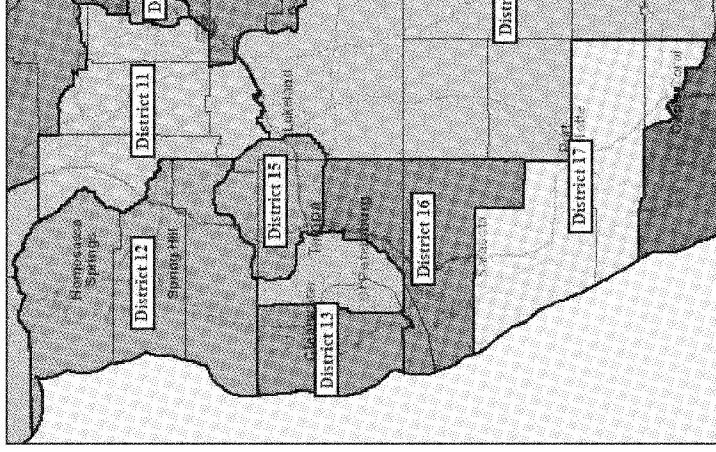


Districts 11-18

SB 102 PRIMARY PLAN 8019



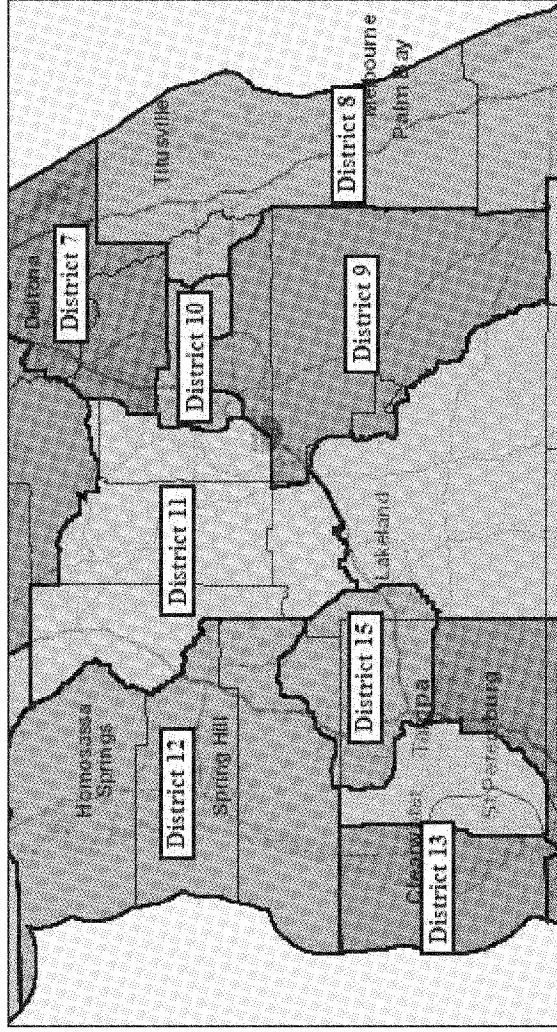
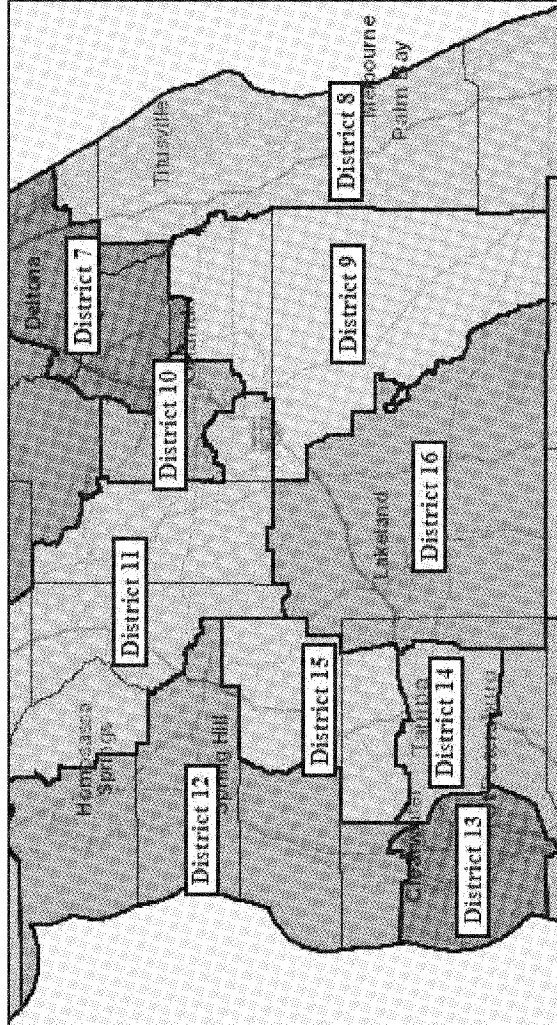
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The I-4 Corridor and Tier 2 Improvements

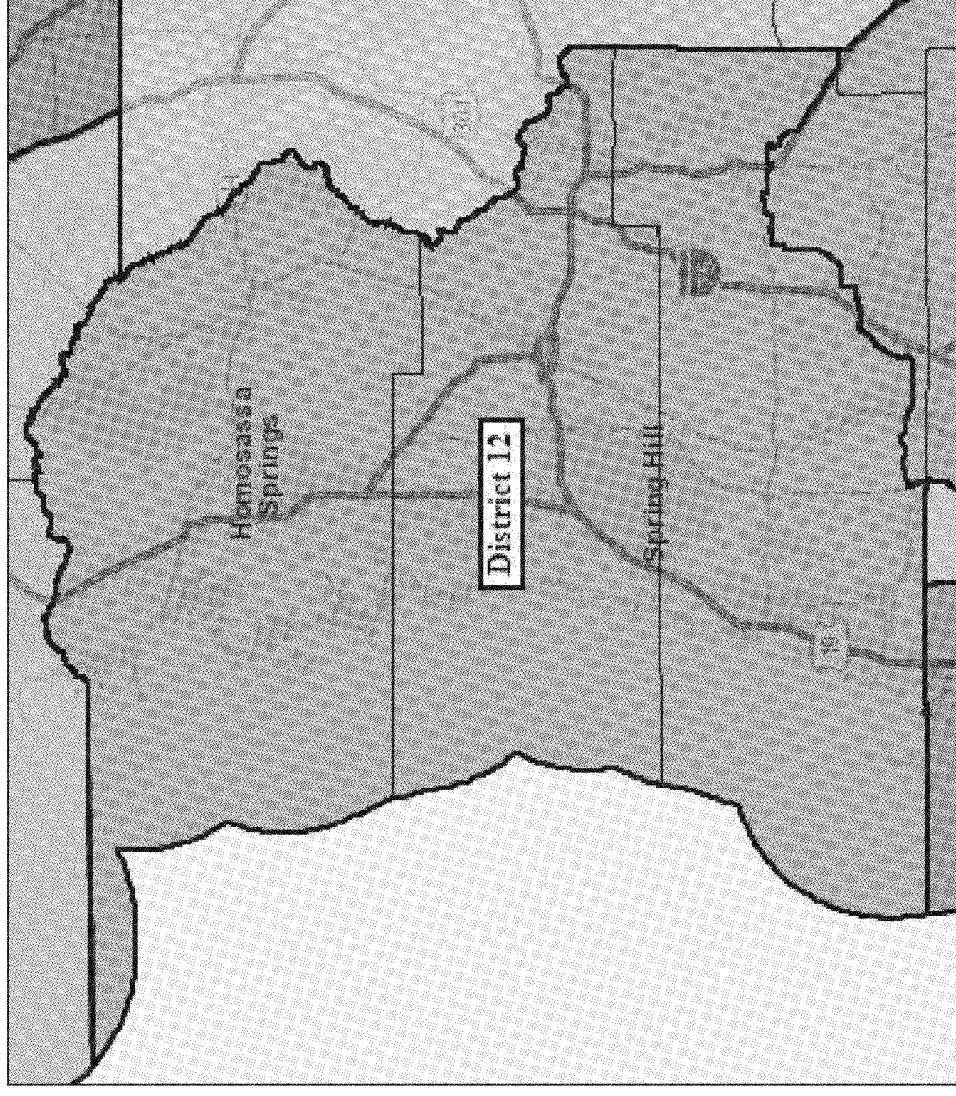
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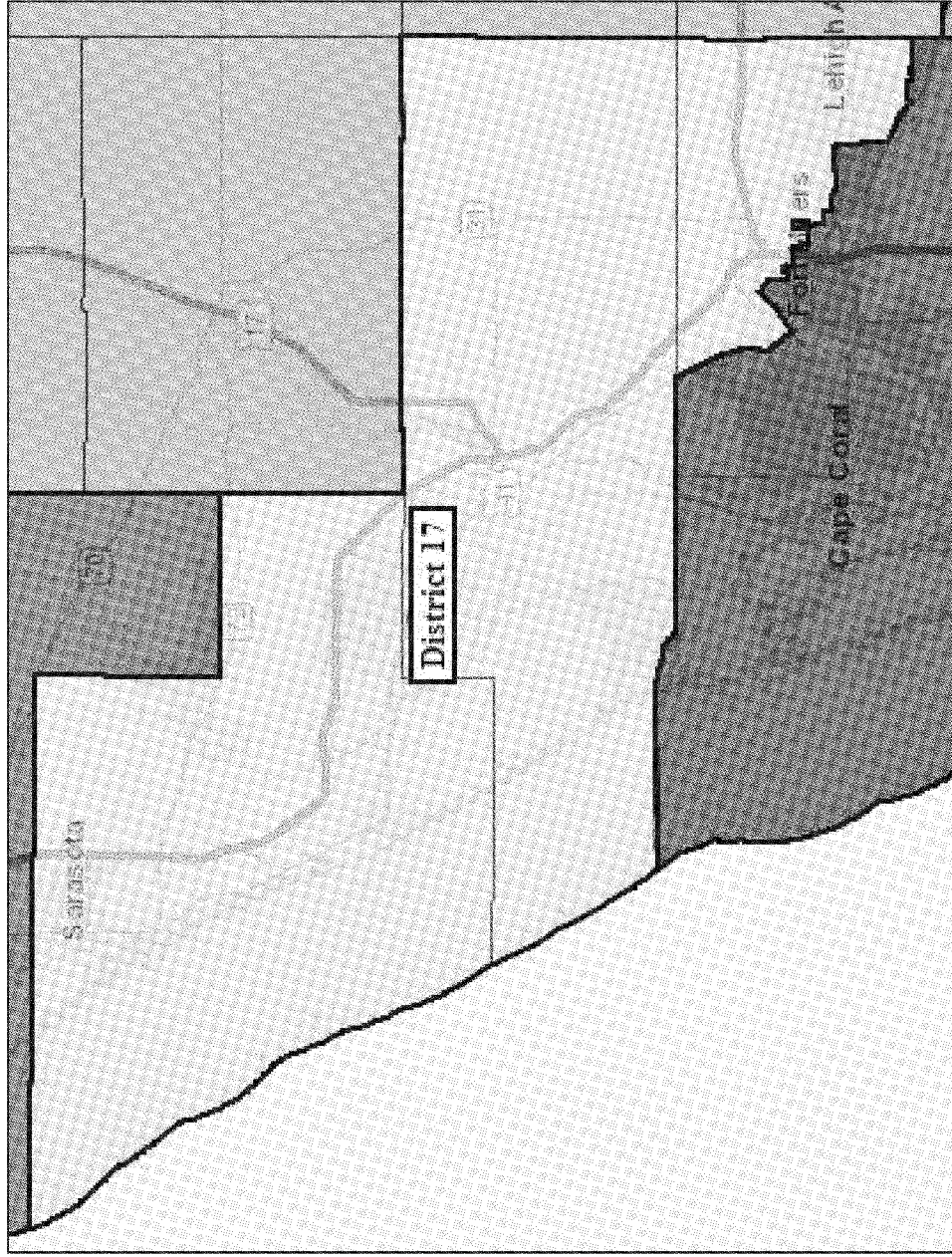
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District 12



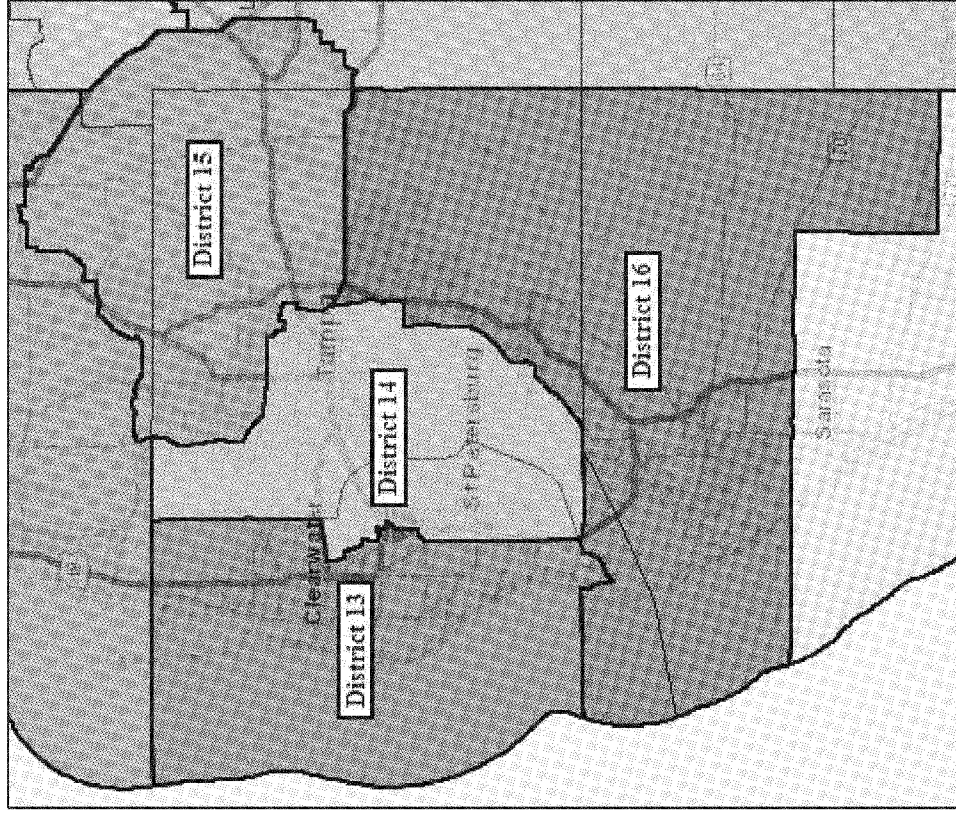
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District 17



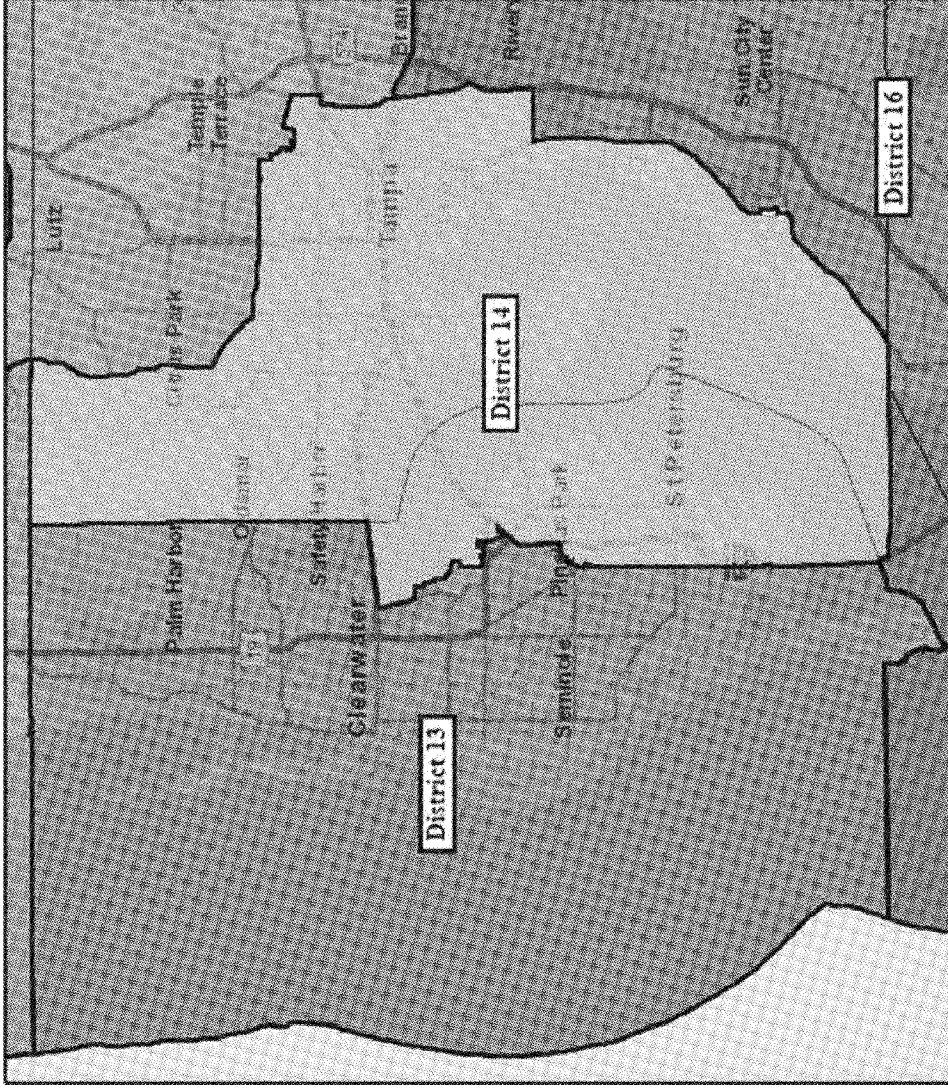
SB 2-C Plan 0109

Districts 13-16



SB 2-C Plan 0109

Districts 13-16



SB 2-C Plan 0109

Districts 12, 14-15

Temple Terrace is highlighted



SB 2-C Plan 0109

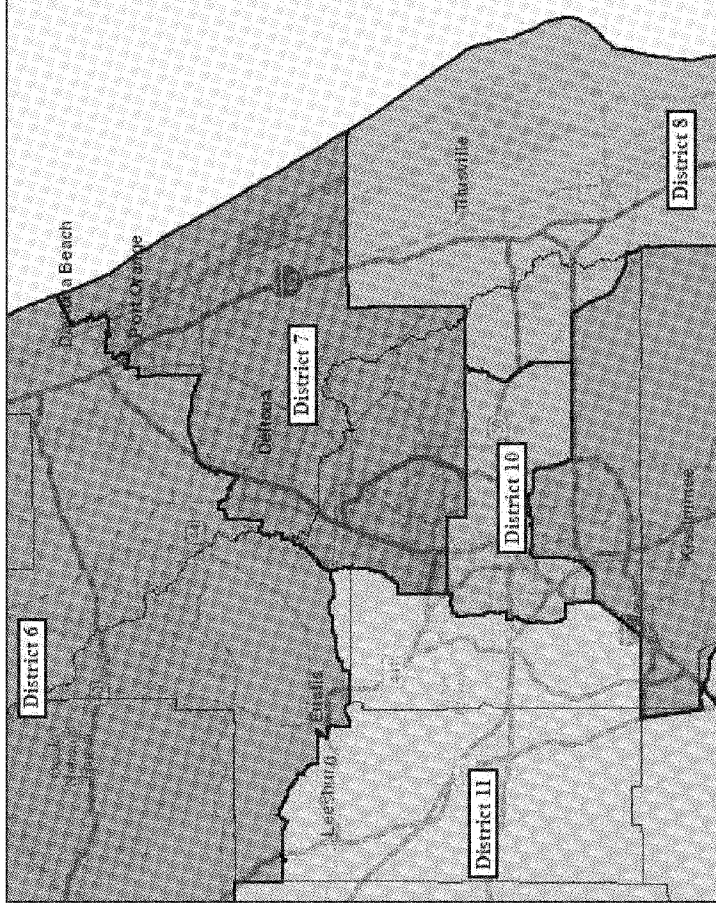
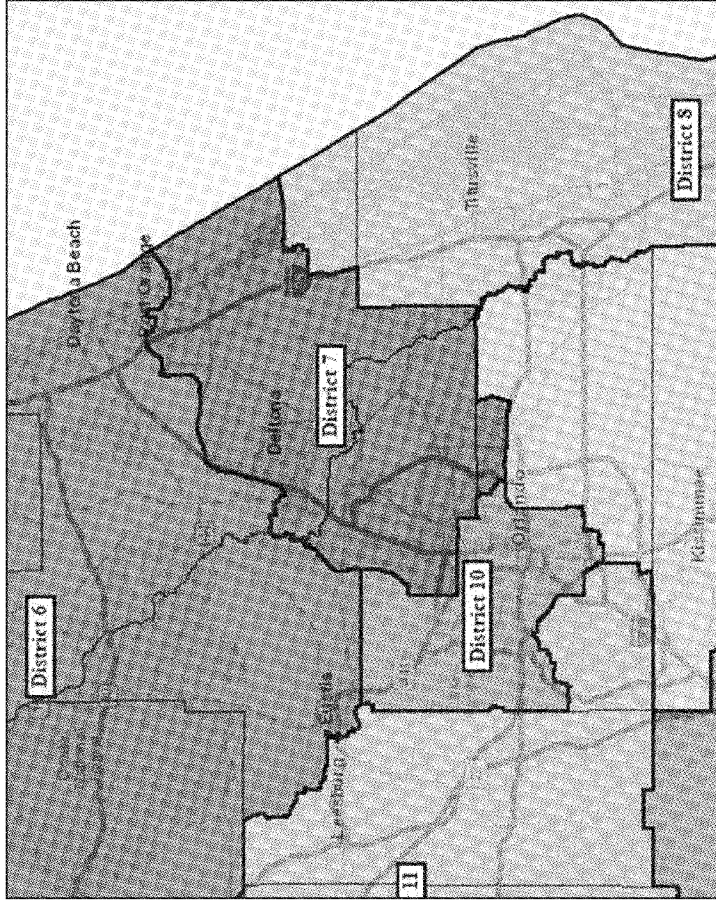
Districts 14-16



Districts 6-11

SB 102 PRIMARY PLAN 8019

SB 2-C PLAN 0109



SB 2-C Plan 0109

Districts 7-11

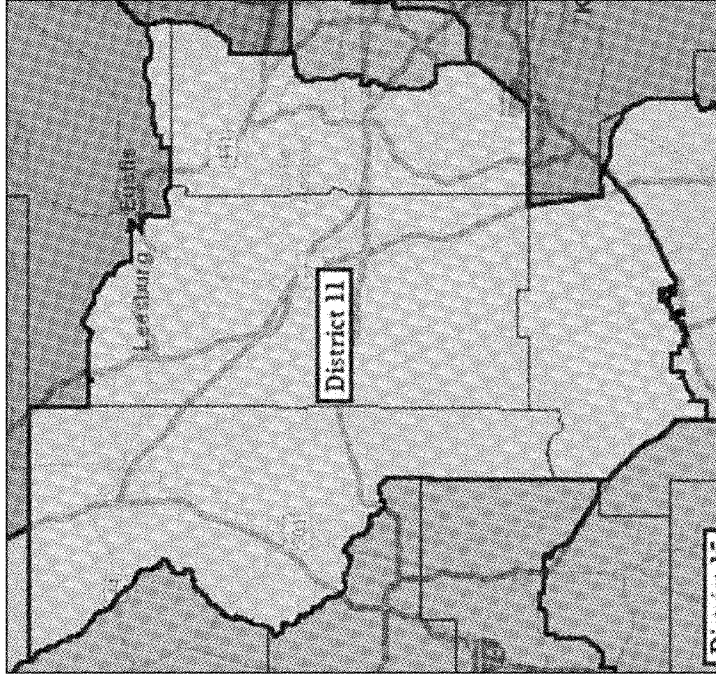
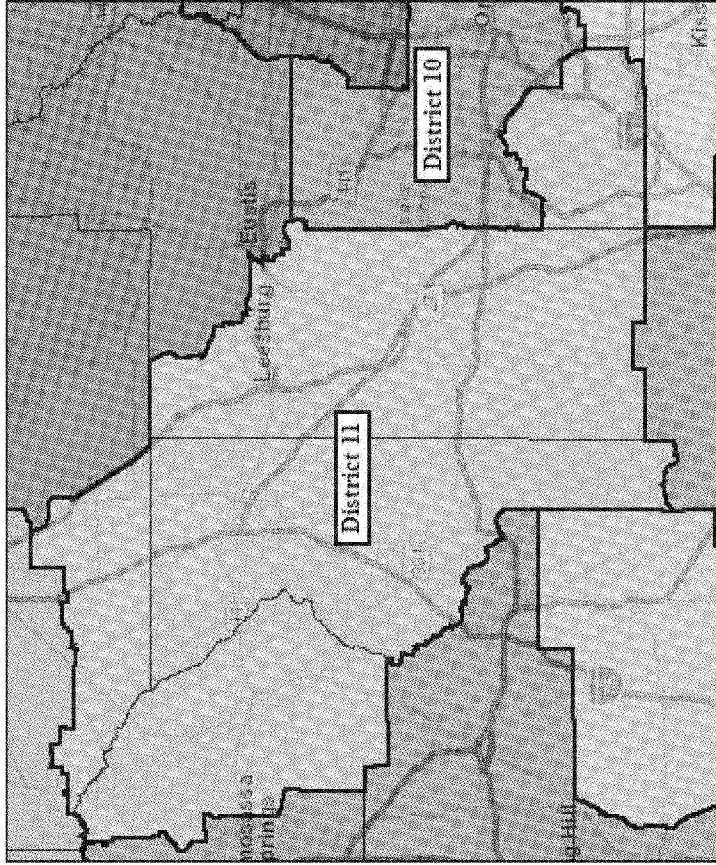
Edgewood is highlighted



Districts 6, 10-12

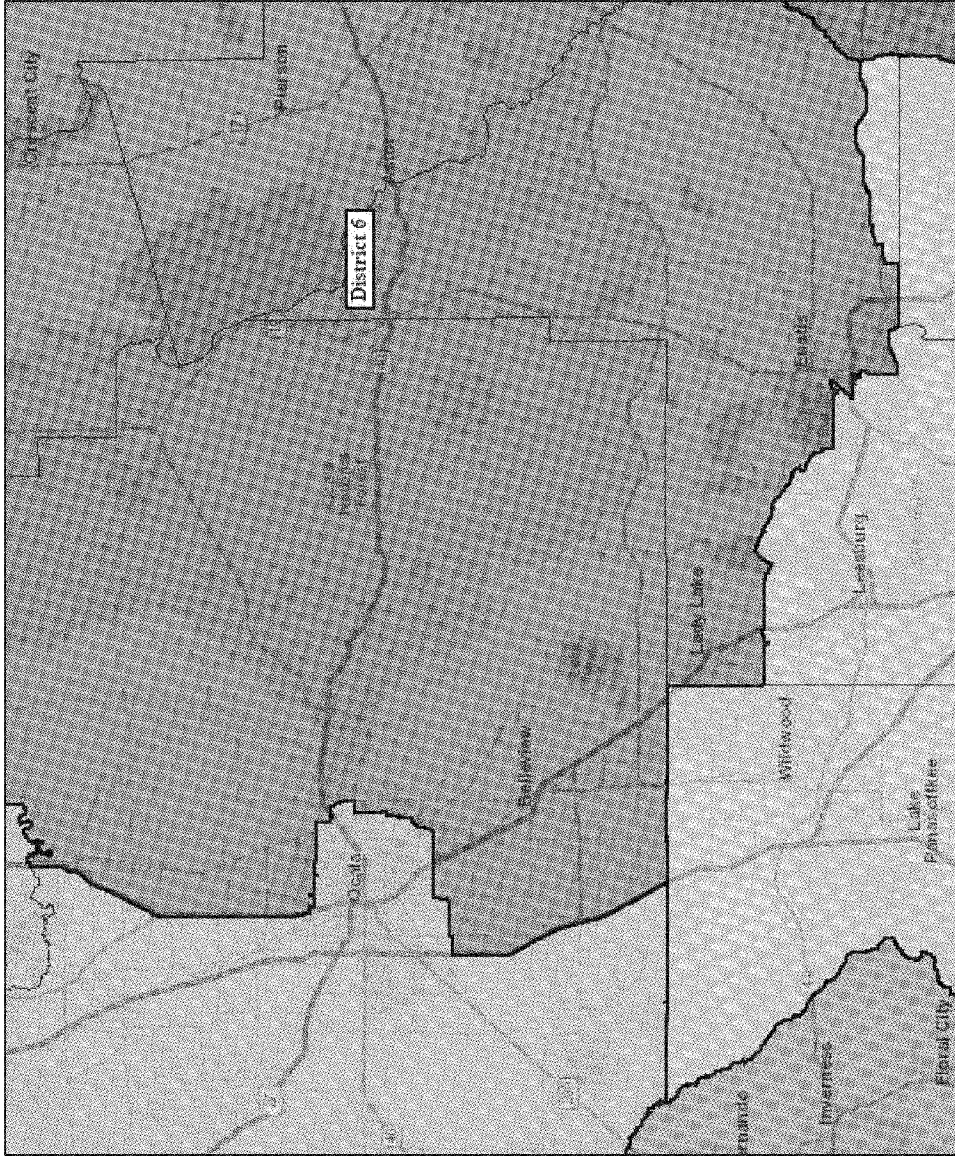
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SB 2-C PLAN 0109



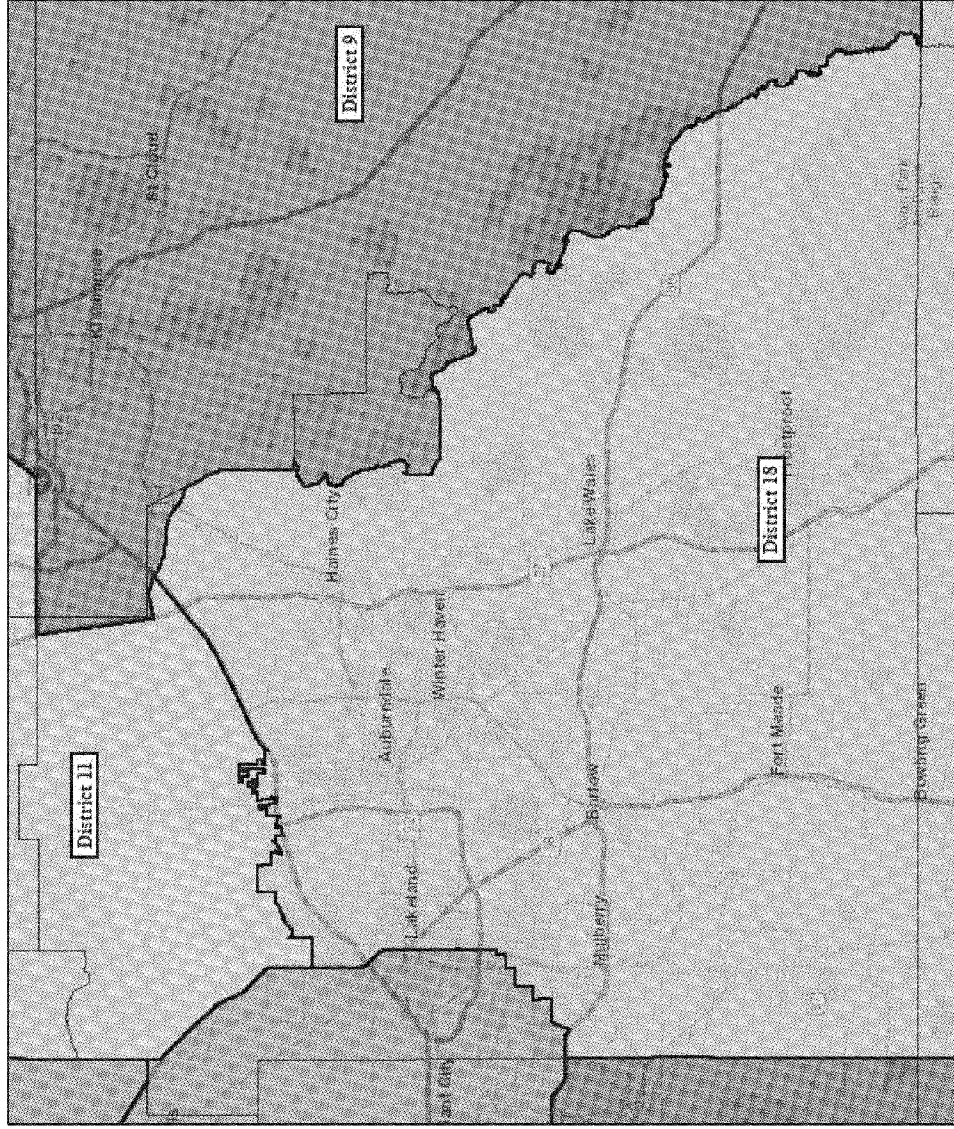
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Districts 3, 6, 11



SB 2-C Plan 0109

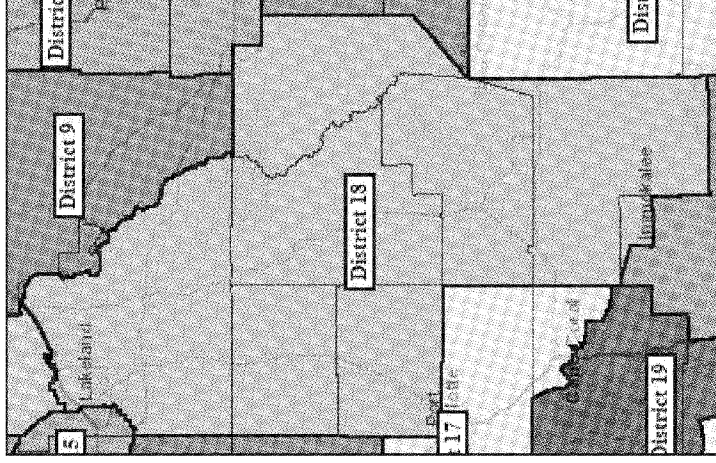
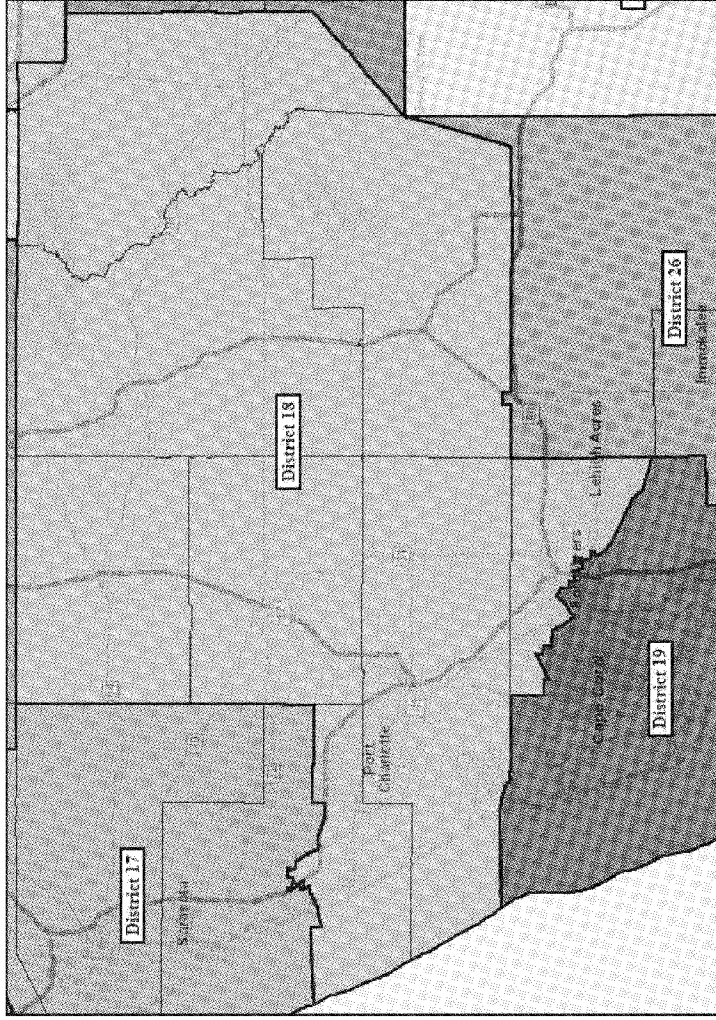
Districts 9, 11, 15, 18



Districts 17-19, 26

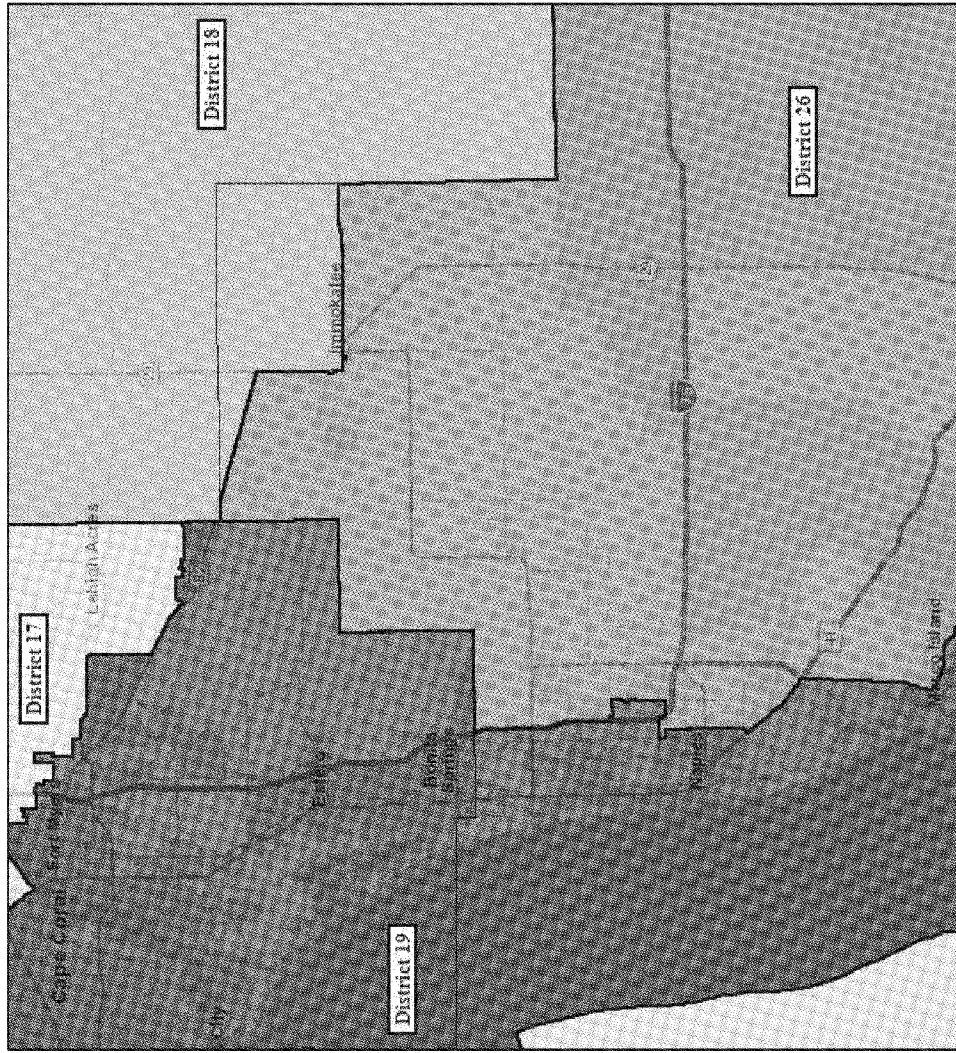
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SB 2-C Plan 0109

Districts 17-19, 26



Robert D. Popper
Senior Attorney
Director, Voting Integrity
Judicial Watch, Inc.

February 18, 2022

My name is Robert D. Popper. I am a Senior Attorney and Director of voting integrity efforts at Judicial Watch, Inc. Judicial Watch is a Washington, D.C.-based public interest nonprofit dedicated to promoting transparency, accountability, and integrity in government, politics, and the law.

I was admitted to the Bar in New York in 1990, and I have been practicing as a litigator for 32 years. I have special knowledge and expertise in the area of voting law and have written both popular and scholarly articles on the subject.¹ I have particular expertise in the areas of racial and political gerrymandering. In 1991, with Professor Daniel Polsby, I wrote an article describing a mathematical way to measure the geographic compactness of congressional districts.² This standard is now known as the “Polsby/Popper” criterion and is one of the most widely used tests of district compactness. In 1997, I brought a lawsuit that ultimately led to New York’s 12th Congressional District being enjoined as an unconstitutional racial

¹ See, e.g., *How H.R.1 Intends to Overturn Supreme Court Rulings on Elections*, THE HILL, March 21, 2021; *The Voter Suppression Myth Takes Another Hit*, WALL ST. J., December 28, 2014; *Florida Gets Another Chance to Appeal for the Right to Clean Voter Rolls, They Should Take It*, THE DAILY CALLER, December 11, 2014; *Political Fraud About Voter Fraud*, WALL ST. J., April 27, 2014; *Little-Noticed Provision Would Dramatically Expand DOJ’s Authority at the Polls*, THE DAILY CALLER, March 28, 2014; and, with Professor Daniel D. Polsby, *Guinier’s Theory of Political Market Failure*, 77 SOC. SCI. Q. 14 (1996); *Racial Lines*, NAT. REV. 53, February 20, 1995; *Ugly: An Inquiry into the Problem of Racial Gerrymandering Under the Voting Rights Act*, 92 MICH. L. REV. 652 (1993); *Gerrymandering: Harms and a New Solution*, Heartland Institute Monograph (1990).

² Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 YALE L. & POL’Y REV. 301 (1991).

gerrymander.³

In 2005, I joined the Voting Section of the Civil Rights Division of the U.S. Department of Justice, where I worked for eight years. In 2008, I received a Special Commendation Award for my efforts in enforcing Section 7 of the National Voter Registration Act of 1993 (“NVRA”), which requires state offices providing public assistance to offer those receiving it the opportunity to register to vote. That same year, I was promoted to Deputy Chief of the Voting Section. In my time at DOJ, I managed voting rights investigations, litigations, consent decrees, and settlements in dozens of states. I helped to enforce all the statutes the Department is charged with enforcing, including the NVRA, the Help America Vote Act of 2002, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, and the Military and Overseas Voter Empowerment Act of 2009. I managed lawsuits enforcing the Voting Rights Act of 1965, as amended, including the minority language provisions of Section 203; the preclearance provisions of Section 5; the anti-intimidation provisions of Section 11; and both vote denial and vote dilution claims under Section 2.

In 2013, I joined Judicial Watch. In my time there, I have filed voting rights lawsuits in federal and state courts alleging claims under the First, Fourteenth, and Fifteenth Amendments, Section 2 of the Voting Rights Act, the NVRA, and a number of state constitutional provisions. Among other things, I am currently representing plaintiffs pursuing gerrymandering claims in Maryland State court.

In preparation for my testimony, I looked at Florida’s proposed congressional districts in maps drawn by the Florida House Redistricting Committee (*see* H000C8011, dated

³ *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997) (three-judge court), *aff’d mem.*, 521 U.S. 801 (1997).

2/10/2022; H000C8003, dated 11/29/2021; H000C8001, 11/29/2021, available at <https://redistrictingplans.flsenate.gov/>). In sum, my testimony is that proposed Congressional District 3 is highly vulnerable to being enjoined in a lawsuit that could be filed in federal court on the basis of principles embodied in the landmark ruling of *Shaw v. Reno*, 509 U.S. 630 (1993) and its progeny.

In *Shaw*, the Supreme Court first held that “redistricting legislation that is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling justification” states a federal, constitutional claim “under the Equal Protection Clause.” 509 U.S. at 642. Two years later in *Miller v. Johnson*, 515 U.S. 900 (1995), the Supreme Court upheld a lower court ruling invalidating a Georgia district on the basis of *Shaw*. The Court explained that “the essence of the equal protection claim recognized in *Shaw* is that the State has used race as a basis for separating voters into districts.” 515 U.S. at 911. Assigning voters on that basis “embod[ies] stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution.” *Id.* at 912.

The racial intent behind the district challenged in *Miller* was apparent “when its shape is considered in conjunction with its racial and population densities.” *Id.* at 917. Because “[r]ace was ... the predominant, overriding factor” in its design, the district could not be “upheld unless it satisfies strict scrutiny, our most rigorous and exacting standard of constitutional review.” *Id.* at 920. “To satisfy strict scrutiny, the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.” *Id.* The Court noted in particular that “creating a third majority-black district to satisfy the Justice

Department’s preclearance demands” under Section 5 of the Voting Rights Act was not enough under the circumstances to justify the challenged district:

As we suggested in *Shaw*, compliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws. ... The congressional plan challenged here was not required by the Voting Rights Act under a correct reading of the statute.

Id. at 921.

More recently, in *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 797-98 (2017), the Court made clear that a plaintiff challenging a district under *Shaw* was *not* required to “establish, as a prerequisite to showing racial predominance, an actual conflict between the enacted plan and traditional redistricting principles.” The Court recognized that “the ‘constitutional violation’ in racial gerrymandering cases stems from the ‘racial purpose of state action, not its stark manifestation.’” *Id.* at 798 (citation omitted). *Bethune-Hill* is also noteworthy in that the Court, under a deferential review for “clear error,” did not overturn the district court’s finding that a district with 55% BVAP was necessary to avoid liability under Section 5 of the Voting Rights Act. But the Court in another case summarized *Bethune-Hill*’s findings as follows:

[W]here we have accepted a State’s “good reasons” for using race in drawing district lines, the State made *a strong showing of a pre-enactment analysis with justifiable conclusions*. In *Bethune-Hill*, the State established that the primary mapdrawer “discussed the district with incumbents from other majority-minority districts[,] ... considered turnout rates, the results of the recent contested primary and general elections,” and the district’s large prison population. ... The State established that it had performed a “functional analysis,” and acted to achieve an “informed bipartisan consensus.”

Abbott v. Perez, 138 S. Ct. 2305, 2335 (2018) (emphasis added). Significantly, the Court in *Abbott* rejected a proposed justification for a race-based district where the State of Texas

argued that it was necessary to comply with Section 2 of the Voting Rights Act, but had not made the required strong showing. *Id.* at 2334. Similarly, in *Cooper v. Harris*, 137 S. Ct. 1455, 1470 (2017), the Court rejected a claim that a race-based district was necessary to comply with Section 2 when the State of North Carolina could not show the preconditions required to make such a claim.

Turning to Congressional District 3 in the proposed plan, I believe it will be vulnerable to a serious—and probably a winning—*Shaw*-type claim under the Fourteenth Amendment. I understand that there will be little dispute that the district was drawn with its racial characteristics as the predominant consideration. I also understand that the shape of the district will be well-explained by the effort to include African-American populations around Tallahassee and Jacksonville. Moreover, the district clearly violates traditional districting criteria. Its Popper-Polsby score is 10%, and its Reock score is 11%. These are very low compactness scores for any U.S. congressional district, and in both cases these are the lowest compactness scores in the State of Florida.⁴

I also believe that the defenders of District 3 will be unable to justify the district so as to satisfy their burden of strict scrutiny. To begin with, I am unaware of the existence of any sort of “a strong showing of a pre-enactment analysis with justifiable conclusions.” *Abbott*, 138 S. Ct. at 2335. But further, even if the race-based character of the districts could be justified under federal or Florida law, the district’s noncompactness will compel the legal conclusion that it is not “narrowly tailored” to achieve its goals, as it must be to satisfy strict

⁴ District 3 also has the third worst Area/Convex Hull score in the State. However, I do not consider the Area/Convex Hull test to be a reliable compactness measure. There are too many district indentations and distortions it simply cannot “see.” Accordingly, it is too forgiving.

scrutiny. *See Miller*, 515 U.S. at 921 (“The congressional plan challenged here was not required by the Voting Rights Act under a correct reading of the statute.”).

As a final point, the fact that the BVAP in District 3 is at around 44% according to the House Committee’s online information (or 42% according to the Princeton Gerrymandering Project) will defeat the State’s ability to justify the district. The Supreme Court has held that no Section 2 claim is possible where the minority VAP is less than 50%. *Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009) (“It remains the rule ... that a party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent.”). The Supreme Court has at least suggested that the same rule applies in the context of Section 5. *Perry v. Perez*, 565 U.S. 388, 398-99 (2012) (“The court’s order suggests that it may have intentionally drawn ... a ‘minority coalition opportunity district’ in which the court expected two different minority groups to band together to form an electoral majority”; and, if so, “it had no basis for doing so. *Cf. Bartlett ...*”). *See also In re Senate Joint Resolution of Legislative Apportionment* 1176, 83 So. 3d 597, 625 (2012) (“Just as Section 2 jurisprudence guides the Court in analyzing the state vote dilution claims, when we interpret our state provision prohibiting the diminishment of racial or language minorities’ ability to elect representatives of choice, we are guided by any jurisprudence interpreting Section 5.”).

In sum, if I were asked by a client whether Congressional District 3 complies with the federal constitution, my answer would be an emphatic no.

R. D. P.

During the 2022 Regular Session of the Florida Legislature, Robert Popper made a presentation to the Florida House of Representatives.

Audio and video options of his February 18, 2022 presentation are available through this link: <https://bit.ly/3wWdq6z>.

During the April 2022 Special Legislative Session of the Florida Legislature, J. Alex Kelly made presentations to both chambers of the Florida Legislature.

Audio and video options of his April 19, 2022 Florida Senate presentation are available through this link: <https://bit.ly/3cOu9Sk>.

Audio and video options of his April 19, 2022 Florida House of Representatives presentation are available through this link: <https://bit.ly/3wWdq6z>.

Attachment 8

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

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

Case No. 2022-ca-000666

Plaintiffs,

v.

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

Defendants.

DECLARATION OF GOVERNOR RON DESANTIS

I, Ron DeSantis, hereby declare as follows:

1. I am over the age of eighteen and am otherwise competent to make the statements in this declaration.
2. I have personal knowledge of the matters contained herein.
3. I am the Governor of Florida and was sworn in on January 8, 2019. Under article IV, section 1(a) of the Florida Constitution, the Governor is vested with the “supreme executive power” of the State of Florida, is the “commander-in-chief of all military forces of the state not in active service of the United States,” and is the “chief administrative officer of the state.” As such, I am the highest executive official in the State.
4. I am aware that this lawsuit challenges the constitutionality of the State’s enacted congressional district map under the Florida Constitution. I am further aware that the lawsuit claims that the map was enacted with an unconstitutional purpose and effect.
5. During this redistricting cycle, the Executive Office of the Governor proposed congressional district maps to the Florida Legislature for its consideration.

6. On March 29, 2022, I vetoed CS/SB 102, which was passed by the Florida Legislature and contained a primary and an alternate congressional district map. I set forth the reasons for my veto in the veto message to the Legislature and accompanying legal memorandum from my General Counsel.

7. On the same day, I also called a special session of the Florida Legislature for the “purpose of considering legislation relating to the establishment of congressional districts for the State of Florida and any legal challenges thereto, including the appropriation of additional funding for pending and prospective redistricting litigation.” March 29, 2022 Special Session Proclamation.

8. The Executive Office of the Governor proposed a new map for the special session. This map, which became SB 2C, included 10 districts that were taken directly from CS/SB 102 and 18 districts that improved upon CS/SB 102.

9. On April 19, 2022, my staff provided hours of exhaustive explanation about SB 2C to the Senate Committee on Reapportionment and the House Congressional Redistricting Subcommittee.

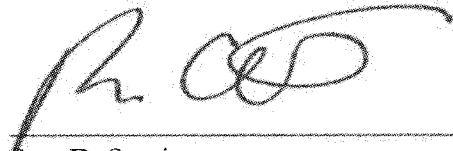
10. The Florida Legislature passed SB 2C on April 21, 2022, and on April 22, I signed it into law.

11. Throughout the redistricting process, I acted through or with the assistance of my staff. As such, any actions taken by me or the Executive Office of the Governor, including the reasons for such actions—whether proposing congressional district maps, exercising the veto power, calling a special session, or signing a new map into law—are not uniquely known to me. Members of the Executive Office of the Governor have the requisite personal knowledge of these actions and could answer any relevant deposition questions if such information cannot be obtained elsewhere.

12. Given the intensity of my duties and schedule, any deposition of me would be unduly burdensome and would unreasonably interfere with my responsibilities as the State’s chief executive.

This declaration is made pursuant to Florida Rule of Civil Procedure 1.280(h). I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge and belief.

Executed this 6th day of September, 2022.

A handwritten signature in black ink, appearing to read 'Ron DeSantis', is written above a horizontal line.

Ron DeSantis
Governor of Florida