IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 1:22-cv-24066-KMM

GRACE, INC., *et al.*,

Plaintiffs,

v.

CITY OF MIAMI,

Defendant.
_____/

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH CITATIONS TO THE TRIAL RECORD

Pursuant to Local Rule 16.1(k), Plaintiffs submit the following proposed findings of fact and conclusions of law with citations to the trial record.

I. LEGAL STANDARDS

A. Standing

1. To have Article III standing, Plaintiffs must demonstrate an injury-in-fact, causation, and redressability. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

2. The injury-in-fact in a racial gerrymandering case is the use of race to draw the districts: the fact that a plaintiff is classified based on their race. *Ala. Legis. Black Caucus v. Alabama* (*ALBC I*), 575 U.S. 254, 263 (2015) ("Those harms are personal. They include being personally . . . subjected to a racial classification, as well as being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group.") (cleaned up).

3. Causation is established by the City's enactment and imposition of each challenged plan, each of which took effect shortly after it was enacted.

4. Plaintiffs' injuries are redressed when they are no longer subject to a racial

classification—when they live in districts that are not drawn predominantly based on race, or where the use of race is narrowly tailored to a compelling interest.

5. "Where a plaintiff resides in a racially gerrymandered district, [] the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria, and therefore has standing to challenge the legislature's action." *United States v. Hays*, 515 U.S. 737, 744–45 (1995) (cleaned up).

6. An organization has associational standing to assert racial gerrymandering claims where the organization's members "would have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claims asserted nor the relief requested requires individual[] members' participation in the lawsuit." *ALBC I*, 575 U.S. at 269 (cleaned up).

7. When one plaintiff has demonstrated standing to sue, the Court need not inquire as to the standing of any other plaintiff. *ACLU of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1195 (11th Cir. 2009). Thus, Plaintiffs need only demonstrate that a single Individual Plaintiff—or a single member of an Organizational Plaintiff—resides in each district. Plaintiffs made this showing.

B. Racial Gerrymandering

8. "The Equal Protection Clause prohibits a State, without sufficient justification, from 'separat[ing] its citizens into different voting districts on the basis of race.'" *Bethune-Hill v. Va. State Bd. of Elections* (*Bethune-Hill II*), 580 U.S. 178, 187 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 911 (1995)).

9. Racial gerrymandering claims involve "a two-step analysis." *Cooper v. Harris*, 581 U.S. 285, 291 (2017). First, plaintiffs must prove that "race was the predominant factor motivating

the legislature's decision to place a significant number of voters within or without a particular district," and "that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations," *Bethune-Hill II*, 580 U.S. at 187 (quoting *Miller*, 515 U.S. at 916).

10. There is no "special evidentiary prerequisite" for proving racial predominance. *Cooper*, 581 U.S. at 318. Plaintiffs need not show actual conflict between district design and traditional race-neutral districting principles: "Race may predominate even when a reapportionment plan respects traditional principles." *Bethune-Hill II*, 580 U.S. at 189. Moreover, the use of race "remains suspect even if race is meant to function as a proxy for other (including political) characteristics." *Cooper*, 581 U.S. at 308 n.7.

11. To meet their burden, plaintiffs may rely on "'direct evidence' of legislative intent, 'circumstantial evidence of a district's shape and demographics,' or a mix of both." *Id.* at 291 (quoting *Miller*, 515 U.S. at 916).

12. Alternative district configurations that satisfy non-racial criteria can also be probative of racial predominance, but an alternative map is not required to prove racial predominance. *Easley v. Cromartie*, 532 U.S. 234, 249 (2001); *Cooper*, 581 U.S. at 319 ("An alternative map is merely an evidentiary tool to show that such a substantive violation has occurred; neither its presence nor its absence can itself resolve a racial gerrymandering claim."); *see also Ala. Legis. Black Caucus v. Alabama* (*ALBC II*), 231 F. Supp. 3d 1026, 1391 (M.D. Ala. 2017) (rejected alternative plans constitute evidence of racial predominance).

13. Splitting of neighborhoods and other subdivisions along racial lines "strongly suggests" racial predominance. *Covington v. North Carolina* (*Covington I*), 316 F.R.D. 117, 145, 160 (M.D.N.C. 2016), *aff'd*, 581 U.S. 1015 (2017); *Bethune-Hill v. Va. State Bd. of Elections* (*Bethune-Hill III*), 326 F.Supp.3d 128, 148 (E.D. Va. 2018) (split subdivisions indicate racial

predominance).

14. "Second, if racial considerations predominated over others, the design of the district must withstand strict scrutiny. The burden shifts to the State to prove that its race-based sorting of voters serves a 'compelling interest' and is 'narrowly tailored' to that end." *Cooper*, 581 U.S. at 292 (quoting *Bethune-Hill II*, 580 U.S. at 193). While courts assume VRA compliance is a compelling interest, "to meet the 'narrow tailoring' requirement," the State must prove it "had 'a strong basis in evidence' for concluding that the [VRA] required its action." *Id.* (citation omitted). This requires a "functional analysis of the electoral behavior within the particular . . . district," *Bethune-Hill II*, 580 U.S. at 194, and the record must support "a strong showing of a pre-enactment analysis with justifiable conclusions." *Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018).

15. "[A] State [cannot] immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." *Allen v. Milligan*, 599 U.S. 1, 22 (2023); *see also Jacksonville Branch of NAACP v. City of Jacksonville*, 635 F. Supp. 3d 1229, 1280 (M.D. Fla. 2022), *appeal dismissed*, No. 22-13544-HH, 2023 WL 2966338 (11th Cir. Jan. 12, 2023) ("[C]ore preservation and incumbency protection do not address the question of how the 'cores' of these oddly shaped districts came to be in the first place, only why they have remained so."); *Bethune-Hill v. Va. State Bd. of Elections* (*Bethune-Hill I*), 141 F. Supp. 3d 505, 545 (E.D. Va. 2015), *aff'd in part, vacated in part*, 580 U.S. 178 (2017) ("'That's the way we've always done it' may be a neutral response, but it is not a meaningful answer."). "[C]ore retention holds a special place in the predominance balance" because it "may be used to insulate the original basis for the district boundaries." *Bethune-Hill I*, 141 F. Supp. at 544; *see also Jacksonville Branch of NAACP*, 635 F. Supp. 3d at 1286.

C. Remedy and Special Elections

16. "Relief in redistricting cases is 'fashioned in the light of well-known principles of equity.' *Reynolds v. Sims*, 377 U. S. 533, 585 (1964). A district court therefore must undertake an 'equitable weighing process' to select a fitting remedy for the legal violations it has identified, *NAACP v. Hampton County Election Comm'n*, 470 U. S. 166, 183, n.36 (1985), taking account of 'what is necessary, what is fair, and what is workable,' *New York v. Cathedral Academy*, 434 U.S. 125, 129 (1977)." *North Carolina v. Covington* (*Covington II*), 581 U.S. 486, 488 (2017).

17. "[I]ndividuals . . . whose constitutional rights have been injured by improper racial gerrymandering . . . are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan." *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (cleaned up), *aff'd sub nom. Cooper*, 581 U.S. 285. "[I]t would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under" a map held to be constitutionally invalid. *Reynolds*, 377 U.S. at 585.

18. "When a federal court declares an existing apportionment scheme unconstitutional, it is . . . appropriate . . . to afford a reasonable opportunity for the legislature to . . . adopt[ ] a substitute measure." *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978).

19. When weighing whether special elections are warranted to remedy a racial gerrymander, courts consider "the severity and nature of the particular constitutional violation, the extent of the likely disruption to the ordinary processes of governance if early elections are imposed, and the need to act with proper judicial restraint when intruding on state sovereignty." *Covington II*, 581 U.S. at 488.

II. FINDINGS OF FACT

A. Individual Plaintiffs

20. Plaintiff Cooper is a Black resident of District 2 under both the 2022 Plan and 2023 Plan.[1] Pls. Ex. 59; Trial Tr. vol. 1, 20:19–20, 24:24–25:9.

21. Plaintiff Valdes is Latina, resided in District 2 under the 2022 Plan, and resides in District 5 under the 2023 Plan. Pls. Ex. 60; Trial Tr. vol. 1, 218:16–17, 219:4–220:2.

22. Plaintiff Johnson is a Black resident of District 3 under both the 2022 Plan and 2023 Plan. Pls. Ex. 61; Trial Tr. vol. 1, 94:15–18, 94:23–96:7.

23. Plaintiff Miro is a Hispanic resident of District 3 under both the 2022 Plan and 2023 Plan. Pls. Ex. 63; Trial Tr. vol. 1, 9:14–17, 10:11–11:14.

24. Plaintiff Contreras is Latina and resided in District 4 under both the 2022 Plan and 2023 Plan from the time this action was filed until about a month after the 2023 Plan was enacted, when she moved out of the City of Miami. Pls. Ex. 62, Trial Tr. vol. 1, 124:7–8. 125:14–127:10.

25. When the 2024 Plan was enacted, no Plaintiffs who resided in Miami were placed into a district other than the one in which they resided under the 2023 Plan. Trial Tr. vol. 1, 11:1–3 (Miro); 24:24–25:9 (Cooper); 96:5–7 (Johnson); 219:6–220:2 (Valdes).

B. Organizational Plaintiffs

26. Plaintiff Engage Miami, Inc. is a nonpartisan, nonprofit membership organization founded in 2015, focused on helping young people get more civically engaged. Trial Tr. vol. 1, 48:4–9, 50:25–51:12, 51:23–52:2. Engage Miami's mission is to advance justice, sustainability, and democracy in a way that is bold, local, and impactful. Trial Tr. vol. 1, 48:10–13. Engage Miami

[1] "2022 Plan" refers to the redistricting plan adopted on March 24, 2022 by Resolution 22-131. "2023 Plan" refers to the redistricting plan adopted on June 14, 2023 by Resolution 23-271.

fulfills this mission by through engagement, such as through voter registration, get out the vote efforts, leadership development, and advocacy related to this issues that its members prioritize. Trial Tr. vol. 1, 48:14–18. Engage Miami advocates for issues developed through its Young People's Policy Priorities, which their members are involved in creating. Trial Tr. vol. 1, 48:19–23, 51:23–52:2. These issue areas include democracy and voting rights, focusing on access to the vote, election protection, and fair redistricting that keeps communities of interest together, does not split neighborhoods, follows major geographic boundaries, and ensures districts have equal populations. Trial Tr. vol. 1, 48:19–49:3, 50:7–15. Engage Miami opposes the 2022 and 2023 Plans, as well as the 2023 Plan as amended by Resolution 24-1. Trial Tr. vol. 1, 49:15–17, 50:16–24, Engage Miami has members who live in all five City Commission districts under the 2022, 2023, and 2024 Plans. Trial Tr. vol. 1, 52:10–13, 60:11–14, 60:22–61:11, 66:11–67:4.

27. Plaintiff GRACE (Grove Rights and Community Equity), Inc. is a 501(c)(3) membership organization whose mission is to advocate for equitable economic development while preserving the historic Black and Bahamian community, culture, and residents of Miami's West Grove neighborhood, protecting vulnerable Black tenants and homeowners at risk of eviction and displacement, restoring the rights of the wrongfully displaced, and preserving the community, culture, and history of the West Grove and its people. Pls. Ex. 43; Trial Tr. vol. 1, 27:6–14, 80:19–81:5. As part of its mission, GRACE has advocated for the voting rights of its members, African Americans, and other voters of color in Miami. Pls. Ex. 45, 46, 57, 58; Trial Tr. vol. 1, 82:12–83:4. GRACE and its constituent organizations have members who reside in Districts 2, 3, and 5. Trial Tr. vol. 1, 80:2–3.

28. The South Dade Branch of the NAACP and Miami-Dade Branch of the NAACP are affiliate branches of the Florida State Conference of Branches Florida State Conference of

Branches and Youth Units of the NAACP, the oldest civil rights organization in Florida, formed in 1909. Pls. Ex. 47, 48; Trial Tr. vol. 1, 137:1–9, 182:15–23. Their mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. Trial Tr. vol. 1, 140:4–11, 178:5–179:7. Consistent with this mission, the NAACP Branches advocate for the voting rights of African Americans and other voters of color in Miami, including their members. Pls. Ex. 49–54, 57, 58; Trial Tr. vol. 1, 140:12–13, 140:20–141:11, 146:19–25, 149:7–14, 150:9–14, 153:6–12, 179:25–180:10, 182:24–185:5, 184:16–185:21, 217:1–14. The South Dade NAACP serves Miami-Dade County south of Flagler Street; the Miami-Dade NAACP serves Miami-Dade County north of Flagler Street. Trial Tr. vol. 1, 135:25–136:9, 204:8–12. The South Dade NAACP has members residing in Districts 2, 3, and 4. Trial Tr. vol. 1, 141:12–15, 143:7–144:1, 145:10–146:1, 170:2–171:1. The Miami-Dade NAACP has members residing in Districts 1, 2, 3, and 5. Trial Tr. vol. 1, 180:11–182:14.

C. Overview of the City Commission and Its Elections

29. Defendant City of Miami is a Florida municipality. As a municipal corporation established under Florida law, Miami has the authority to regulate and conduct its elections, including establishing its Commission district boundaries, consistent with state law. ECF 148 (J. Stip.) ¶ 1.

30. Miami is governed by a five-member City Commission and a Mayor. J. Stip. ¶ 2.

31. Except where the Miami City Charter provides otherwise, municipal elections are conducted according to the state's general election laws. J. Stip. ¶ 3.

32. Since 1997, commissioners have been elected from single-member districts. J. Stip. ¶ 4.

33. Commissioners run on a nonpartisan basis and serve four-year staggered terms,

with Districts 1, 2, and 4 last elected in 2023 and next up in 2027, and Districts 3 and 5 last elected in 2021 and next up in 2025. J. Stip. ¶ 5.

34. General municipal elections are held on the first Tuesday after the first Monday in November of odd-numbered years. J. Stip. ¶ 6.

35. Except for candidate qualifying, which is managed by the City Clerk, the Miami-Dade County Elections Department administers Miami's municipal elections. J. Stip. ¶ 7.

36. Commissioners are limited to two consecutive terms. J. Stip. ¶ 8.

37. The current commissioners are Miguel Angel Gabela (District 1), Damian Pardo (District 2), Joe Carollo (District 3), Manolo Reyes (District 4), and Christine King (District 5). J. Stip. ¶ 9.

38. The 2021–22 redistricting process produced the 2022 Plan, enacted in Resolution R-22-131. J. Stip. ¶ 10.

39. The 2023 redistricting process produced the 2023 Plan, enacted in Resolution R-23-271. J. Stip. ¶ 11.

40. On January 11, 2024, the City Commission adopted Resolution R-24-1, amending the 2023 Plan. ECF 159 at 2 ¶ 1.

41. Resolution R-24-1 moved back into District 1 four census blocks—with a total population of 48 people—that the 2023 Plan had previously moved from District 1 into District 3. ECF 159 at 2 ¶¶ 2–4.

42. The District 1 and 2 commissioners in office during the 2021–22 redistricting process were Alex Díaz de la Portilla and Ken Russell, respectively. J. Stip. ¶ 12.

43. The District 1 and 2 commissioners in office during the 2023 redistricting process were Alex Diaz de la Portilla and Sabina Covo, respectively. J. Stip. ¶ 13.

44. Díaz de la Portilla was first elected in 2019 and lost reelection in the November 2023 election held under the 2023 Plan. J. Stip. ¶ 15.

45. King was first elected in 2021 and is eligible for reelection in 2025. J. Stip. ¶ 16.

46. Reyes was first elected in a 2017 special election, was reelected to his first full term in 2019, and was reelected again in the November 2023 election held under the 2023 Plan. J. Stip. ¶ 17.

47. Carollo was first elected in 2017, was reelected in 2021 under the 2013 plan, and is ineligible for reelection when his current term ends in 2025. J. Stip. ¶ 18.

48. Russell ran for United States Congress in the 2022 election and resigned on December 29, 2022. J. Stip. ¶ 19.

49. Covo was elected in a February 2023 special election held under the 2022 Plan and lost reelection in the November 2023 election held under the 2023 Plan. J. Stip. ¶ 20.

50. Damian Pardo was first elected in the November 2023 election held under the 2023 Plan. J. Stip. ¶ 21.

51. Miguel Gabela was first elected in the November 2023 election held under the 2023 Plan. J. Stip. ¶ 22.

52. Díaz de la Portilla, Carollo, Reyes, and Gabela are Hispanic and Cuban American. Covo and Pardo are Hispanic. King is Black and not Hispanic. Russell is White and Japanese American and not Hispanic. J. Stip. ¶ 14.

D. Miami Redistricting History

53. Before 1997, the Commission was elected at-large, citywide. ECF 143 (SAC) ¶ 56; ECF 150 (Answer) ¶ 56.

54. Carollo served as Mayor when single-member districts were instituted in 1997. That

same year, he appointed a blue-ribbon panel to recommend a single-member district map for the Commission. SAC ¶ 57; Answer ¶ 57.

55. Among the members of the blue-ribbon panel were Reyes and Miguel De Grandy. SAC ¶ 58; Answer ¶ 58.

56. The blue-ribbon panel made recommendations to the Commission, which developed a map (the "1997 Plan"). SAC ¶¶ 59–60; Answer ¶¶ 59–60.

57. In September 1997, the voters adopted a charter amendment adopting single-member district elections. The 1997 Plan was implemented for the November 1997 elections. SAC ¶ 61; Answer ¶ 61.

58. As part of the decennial redistricting process, the Commission revised the City Commission map in 2003 and 2013 through Resolutions 03-448 and 13-208 (the "2003 Plan" and "2013 Plan"). SAC ¶ 62; Answer ¶ 62.

59. De Grandy and Stephen M. Cody served as the city's redistricting consultants for the 2003 and 2013 processes. SAC ¶ 63; Answer ¶ 63.

60. Race predominated in the drawing of all five districts during the 1997–2013 cycles. *See, e.g.*, Pls. Ex. 1 (11/18/21 Tr., ECF 170-1) 28:7–10, 28:15–29:3 ("[T]he original idea" of districts was "that minority voters will be politically cohesive within these districts" "to assure that there would be an African American sitting in this Commission and there would be an Anglo," and "to make sure that there were three Hispanic districts."); Pls. Ex. 3 (2/7/22 Tr., ECF 170-3) 51:18–19 (District 2 originally "was gerrymandered but it was a legal gerrymander so that you would have an Anglo elected commissioner."); Cody Dep. (ECF 166-4) 47:14–17 (Cody testifying that he drew District 5 "with as high a Black population as you can get" in past cycles); Pls. Ex. 121 (Abott Rep., ECF 173-26) at 1, 3–4, 21.

E. 2021–22 Redistricting Cycle

61. Following the 2020 Census, the Commission began its redistricting process. SAC ¶ 64; Answer ¶ 64.

62. The process began in 2021 and resulted in the passage of the 2022 Plan. J. Stip. ¶¶ 27, 43.

63. The mapmaking process proceeded through six Commission meetings and was driven by racial considerations at every turn. Pls. Ex. 1–8 (ECF 170-1 to -8); SAC ¶ 66; Answer ¶ 66.

64. The Commission again hired De Grandy and Cody as its redistricting consultants. SAC ¶ 65; Answer ¶ 65. They first met with the Commission on November 18, 2021. At that meeting, De Grandy presented an initial report on redistricting considerations and the 2020 Census demographics of the districts under the 2013 Plan. Pls. Ex. 12–14 (ECF 170-12 to -14); SAC ¶ 68; Answer ¶ 68.

65. De Grandy shared that redistricting was needed to bring the districts within the allowable population range, to have no greater than 10% difference between the smallest and largest district. Pls. Ex. 1 (11/18/21 Tr., ECF 170-1) 4:1–12.

66. Analyzing the 2013 Plan, Districts 1, 3, 4, and 5 were each under the ideal population and needed to gain population. District 2, the district in which Anglo residents were concentrated, was significantly overpopulated and needed to shed population. SAC ¶ 71–72, 75; Answer ¶ 71–72, 75.

67. Under the 2013 Plan, Districts 1, 3, and 4 were majority Hispanic, with Hispanic voting-age populations (HVAPs) of 91.0, 88.5, and 91.6%, and Hispanic citizen voting-age populations (HCVAPs) of 86.6, 86.8, and 90.1%. J. Stip. ¶ 24; SAC ¶ 73; Answer ¶ 73; Pls. Ex.

121 (Abott Rep., ECF 173-26) at 23.

68. District 5 was majority Black, with a Black voting-age population (BVAP) of 52.9% and a Black citizen voting-age population (BCVAP) of 59.4%. J. Stip. ¶ 24; SAC ¶ 74; Answer ¶ 74; Pls. Ex. 121 (Abott Rep., ECF 173-26) at 23.

69. District 2 under the 2013 Plan had the highest non-Hispanic white ("white" or "Anglo") population of the five districts, at 34.5% white voting-age population (WVAP) and 38.1% white citizen voting-age population (WCVAP). J. Stip. ¶ 24; SAC ¶ 75; Answer ¶ 75; Pls. Ex. 121 (Abott Rep., ECF 173-26) at 23.

70. At the November 18, 2021 meeting, De Grandy told commissioners that "we can consider race as one of several factors that we will be conscious of in crafting a plan," Pls. Ex. 1 (11/18/21 Tr. , ECF 170-1) 6:23, but that race "cannot be the overriding factor," Pls. Ex. 1 (11/18/21 Tr., ECF 170-1) 7:6. Despite this warning, race predominated in the drawing of the Commission's maps as the process unfolded.

71. The Commission gave De Grandy four ranked directives for map-drafting: (1) achieve substantial equality of population between districts, rather than precise mathematical equality; (2) "maintain the core constituencies of the districts;" (3) apart from what the VRA required, "the minority voters must be politically cohesive;" and (4) avoid splitting traditional communities and neighborhoods when feasible. Pls. Ex. 1 (11/18/21 Tr., ECF 170-1) 4:5–11, 17:19–20, 18:15–22, 19:22–23, 33:4–11, 35:21, 36:1–11.

72. As to the second directive, the Commission made it clear throughout the process that it sought to maintain existing districts both to carry the 2013 Plan's existing racial divisions forward. In addition, the Commission sought to exacerbate those racial divisions through further changes.

severity of the constitutional violations at issue, courts have weighed the geographic scope of the violation, the number of individuals harmed, and the duration of the harm. *See, e.g., Covington v. North Carolina* (*Covington III*), 270 F. Supp. 3d 881, 892 (M.D.N.C. 2017); *Sumter Cnty.*, 361 F. Supp. 3d at 1305; *League of Women Voters of Mich. v. Benson*, 373 F. Supp. 3d 867, 959 (E.D. Mich.), *vacated sub nom. Chatfield v. League of Women Voters of Mich.*, 140 S. Ct. 429 (2019).[4] Here, the scope could not be broader: all five Miami City Commission districts are racially gerrymandered.

The duration of Miami's racial gerrymandering is nothing short of stunning. The evidence reflects a history of racial gerrymandering dating back to the first single-member district plan in 1997. In *Covington III*, the district court on remand found it significant that the "harms ha[d] persisted for over six years, tainting three separate election cycles." 270 F. Supp. 3d at 894. The violations here lasted even longer. *Navajo Nation v. San Juan County* is also instructive. No. 2:12-cv-39, 2017 WL 6547635 (D. Utah Dec. 21, 2017), *aff'd*, 929 F.3d 1270 (10th Cir. 2019). There, the court found that race was the predominant factor in choosing to maintain the lines of a majority-minority district "for decades." *Id.* at *18–19 & n.150. Under those circumstances, the court found it clear that the violations were "severe and longstanding" enough to warrant special elections. *Id.* at *18–19. Importantly, this holding was unaffected by the fact that the districts had not been challenged in the past—the court did not ignore the reality of what had occurred in prior decades. *See id.* at *18 & n.150. Likewise, in assessing the severity of Miami's gerrymander, this Court

[4] *Benson* involved a Fourteenth Amendment challenge to alleged partisan gerrymandering. The decision was vacated following the Supreme Court's decision in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), that partisan gerrymandering does not present a justiciable claim, but the court's analysis of special elections can be instructive here.

need not ignore a history that is necessarily part of the "careful case-specific analysis" in which the Court must engage. *Covington II*, 581 U.S. at 489.

2. Ordering Special Elections Will Not Significantly Disrupt Governance

The second *Covington* factor, "the extent of the likely disruption to the ordinary processes of governance if early elections are imposed," also weighs in favor of ordering special elections. *Covington II*, 581 U.S. at 488. Plaintiffs seek special elections to be held concurrent with either the November 2024 presidential election, or the November 2025 citywide municipal election. Representatives from the City testified that such elections will have no negative impact on the ordinary operations of the City. The Miami-Dade County Supervisor of Elections likewise testified that the County Elections Department would be able to administer special elections with no trouble as long as certain deadlines are met. The cost of special elections will also be relatively modest in relation to the cost of administering elections, and not a significant concern for the City.

From the voters' perspective, adding City Commission races to an existing election carries little "risk of generating voter confusion [or] low voter turnout." *Sumter Cnty.*, 361 F. Supp. 3d at 1305. Indeed, holding special elections concurrent with either the presidential or mayoral election will minimize voter confusion and increase turnout. *See Navajo Nation*, 2017 WL 6547635, at *18 ("The special elections will proceed under the regularly scheduled 2018 election deadlines and processes, thus minimizing their impact."); *Benson*, 373 F. Supp. 3d at 959 ("Because the special Senate election would occur on a regular election day and at a regularly-scheduled interval, it would not result in any additional election being held during the calendar year.").

Finally, Florida election administrators and voters are well-acquainted with truncated terms following redistricting. In the first election following each decennial redistricting, the entire Florida Senate is on the ballot to account for shifted district lines, with some senators elected to

two-year terms instead of the ordinary four-year terms. FLA. CONST. art. III, § 15(a); *In re SJR 1176*, 83 So. 3d 597, 658 (Fla. 2012). After litigation forced changes to the Senate map in 2015, the entire Senate stood for election in 2016. The same thing occurred in the 1960s. *Swann v. Adams*, 263 F. Supp. 225, 227–28 (S.D. Fla. 1967) (truncating terms of all 165 state legislators and ordering special elections to be held in March 1967 to remedy equal protection violations). Moreover, the Legislature recently required certain county commission terms be truncated following redistricting. Fla. Stat. § 124.011(2)(a). This makes good sense. The combination of redistricting and staggered terms can disenfranchise many voters. That's what has happened in Miami. Voters who live in Districts 3 and 5 last voted in 2021; in the ordinary course, they should next vote four years later, in 2025. But if a voter is moved from one of those districts to District 1, 2, or 4, they will not be able to vote for six years (when Districts 1, 2, and 4 are next up, in 2027).

Florida's practice of truncating terms has been lauded as a model for states to follow to avoid one-person, one-vote concerns. *See* Margaret B. Weston, Comment, *One Person, No Vote: Staggered Elections, Redistricting, and Disenfranchisement*, 121 YALE L.J. 2013, 2018–25 (2012). Several other states have similar systems. *Id.* at 2018–19. Florida's statewide practice reflects two important points for the Court to consider. First, the fact that Florida law requires truncated post-redistricting terms for the state legislature and county commissions demonstrates a strong statewide policy on how to handle post-redistricting elections; granting Plaintiffs' request against this backdrop would be significantly less intrusive to governance. *See In re Apportionment Law, SJR 1E*, 414 So. 2d 1040, 1049 (Fla. 1982) (The truncation requirement "was intended as a means to implement a fair reapportionment plan at the earliest possible date."). Second, because Miami's voters are already used to voting for truncated State Senate terms after redistricting, there is less chance of confusion; that, too, makes special elections less intrusive.

Ordering special elections will reduce confusion and is particularly appropriate in this case because the scope of the changes between the 2023 Plan and a posttrial remedy is likely to be significant. *See Navajo Nation*, 2017 WL 6547635, at *18 (ordering "elections in all districts because the boundaries of the present districts and recommended districts overlap" and otherwise, "if an election was not held in all districts it would create confusion as to which representative represented which voters" (internal marks omitted)).

3. Ordering Special Elections Will Not Unduly Intrude on State Sovereignty

Ordering special elections as a remedy is consistent with judicial restraint. Sovereignty is evaluated from the standpoint of the electorate—not the elected officials sitting in unconstitutionally drawn districts. *See Benson*, 373 F. Supp. 3d at 958 ("[B]ecause sovereignty is vested in the people, by preventing the people . . . from fairly and effectively exercising their franchise, the [challenged plan] infringes on state sovereignty, further exacerbating its constitutional harm." (citation omitted)); *Covington III*, 270 F. Supp. 3d at 897 ("By unjustifiably relying on race to distort dozens of legislative district lines, and thereby potentially distort the outcome of elections and the composition and responsiveness of the legislature, the districting plans interfered with the very mechanism by which the people confer their sovereignty on the General Assembly."). The City cannot invoke sovereignty to deprive voters of the right to choose their elected officials; to the contrary, sovereignty provides a reason for special elections.

Any inconvenience of a new election to commissioners is no reason to let serious constitutional harm persist, especially when it deprives voters of their right to representation. A special election is necessary to remedy the widespread and serious constitutional harm arising from the City's racial gerrymander—as such, the principle of judicial restraint does not militate against intervention. *See Navajo Nation*, 2017 WL 6547635, at *19 (finding *Covington*'s judicial restraint

factor satisfied where special elections were "specifically aimed at remedying constitutional violations that have affected . . . voters for decades"). Miami's racial gerrymander is severe not just in duration, but also in scope and number of voters affected. Accordingly, the City's actions not only permit but also necessitate court intervention.

Finally, to the extent there are burdens on the City, they do not rise to the level of undue intrusions on sovereignty. The additional costs of holding such elections are "insignificant" to the City. Even so, any administrative costs are significantly outweighed by the interests of voters in constitutional representation. Proper representation, rather than administrative convenience, is the primary concern of the third *Covington* factor, *see Covington III*, 270 F. Supp. 3d at 895; *Benson*, 373 F. Supp. 3d at 959. Ordering special elections does not offend the principles of sovereignty and judicial restraint.

"[I]n cases involving unconstitutional . . . racial gerrymandering, numerous courts—including the Supreme Court—have concluded that shortening the terms of elected officials and ordering a special election does not unduly intrude on state sovereignty, particularly when the constitutional violation is widespread or serious." *Covington III*, 270 F. Supp. 3d. at 896 (collecting cases). This case is no different. Miami's residents have the right to vote in constitutional districts, and that right should be effectuated as quickly as practicable through special elections.

Respectfully submitted this 26th day of February, 2024,

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