

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

COMMON CAUSE FLORIDA et al.,

Plaintiffs,

and

MICHAEL ARTEAGA, LENI  
FERNANDEZ, ANDREA  
HERSHORIN, JEAN ROBERT  
LOUIS, MELVA BENTLEY ROSS,  
DENNY TRONCOSO, BRANDON  
NELSON, GERALDINE WARE, and  
NINA WOLFSON,

Intervenor-Plaintiffs,

v.

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

Defendant.

Case No. 4:22-cv-00109-AW-MAF

**INTERVENOR-PLAINTIFFS' COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

Intervenor-Plaintiffs Michael Arteaga, Leni Fernandez, Andrea Hershoin,  
Jean Robert Louis, Melva Bentley Ross, Denny Troncoso, Brandon Nelson,  
Geraldine Ware, and Nina Wolfson file this Complaint for Declaratory and

Injunctive Relief against Defendant Laurel M. Lee, in her official capacity as Florida Secretary of State, and hereby state and allege as follows:<sup>1</sup>

### **NATURE OF THE ACTION**

1. This action challenges Florida's current congressional districts as unconstitutionally malapportioned. Because of Florida's significant population growth over the last decade, its current congressional districts are significantly under- and overpopulated and in need of reapportionment. The Florida Legislature and Governor Ron DeSantis, however, have not reached consensus on a congressional redistricting plan to remedy these population imbalances. Intervenor-Plaintiffs therefore ask this Court to declare Florida's current congressional districting plan unconstitutional; enjoin Defendant from using the current congressional districting plan in any future elections; and implement a new congressional districting plan that adheres to the constitutional requirement of one person, one vote, should the Legislature and Governor fail to do so.

2. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President. These data confirmed that population

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<sup>1</sup> Pursuant to this Court's order of April 6, 2022, granting their intervention, *see* ECF No. 66, Intervenor-Plaintiffs file this Complaint against only Defendant Laurel M. Lee, in her official capacity as Florida Secretary of State. In filing this Complaint, Intervenor-Plaintiffs have also updated their allegations to reflect the fact that Governor Ron DeSantis has now vetoed the Florida Legislature's congressional plan, which he had not done at the time they attached their proposed complaint to their intervention motion. By updating their Complaint in this way, Intervenor-Plaintiffs in no way intend to expand the scope of this litigation.

shifts during the last decade have rendered Florida's congressional districts unconstitutionally malapportioned. *Cf. Clark v. Putnam County*, 293 F.3d 1261, 1263–64 (11th Cir. 2002) (“The 1990 census revealed that, as a result of these population shifts, the County’s four electoral districts had become seriously malapportioned.”).

3. Specifically, the current configuration of Florida's congressional districts, adopted by the Florida Supreme Court in *League of Women Voters of Florida v. Detzner*, 179 So. 3d 258 (Fla. 2015), violates Article I, Section 2 of the U.S. Constitution. Because it is unconstitutional, the current congressional districting plan cannot be used in any upcoming elections, including the 2022 midterms.

4. In Florida, congressional districting plans must be enacted through legislation, which requires the consent of both chambers of the Legislature and Governor (unless both legislative chambers override the Governor's veto by a two-thirds vote). *See Fla. Const. art. III, § 20(b); Martinez v. Bush*, 234 F. Supp. 2d 1275, 1278 (S.D. Fla. 2002) (per curiam) (three-judge court).

5. There is significant uncertainty concerning whether Florida's political branches will reach consensus and enact a lawful congressional redistricting plan in time for the upcoming 2022 elections. On March 29, 2022, the Governor vetoed the Legislature's proposed congressional districting plan, exactly as he promised to for nearly a month.

6. The Governor and the Legislature have reached an impasse as to Congressional District 5 (“CD-5”). Since early February, the Governor has threatened to veto any congressional map that contains the configuration of CD-5 currently present in the Legislature’s preferred congressional districting plan, or any similar configuration, on the baseless ground that CD-5 is an unconstitutional racial gerrymander.

7. To make his point, the Governor petitioned the Florida Supreme Court to issue an advisory opinion in support of his claim—an invitation that the court declined to accept. *See Advisory Op. to Governor Re: Whether Article III, Section 20(A) of Fla. Const. Requires Retention of Dist. In N. Fla.*, No. SC22-139, slip op. at 4 (Fla. Feb. 10, 2022).

8. Even still, the very next day the Governor vowed that he “will not be signing any congressional map that has” the configuration of CD-5 proposed by the Legislature. He said so again on February 28, stating, “I’ve said very clearly that I will veto maps that include some of these unconstitutional districts. And that is a guarantee. They can take that to the bank.” And he said so again on March 4, while the Florida House of Representatives debated the state’s congressional plan: “I will veto the congressional reapportionment plan currently being debated by the House. [Dead on arrival].” The House and Senate nevertheless approved that congressional districting plan only hours later—and the Governor subsequently vetoed it.

9. Given this history, there is a significant likelihood that the Governor and the Legislature will not resolve their differences in the upcoming special session.

10. Given the existing impasse, this Court should intervene to protect the constitutional rights of Intervenor-Plaintiffs and voters across the state. This Court should assume jurisdiction now and establish a schedule that will enable it to adopt a remedial congressional districting plan in the near-certain event that the political branches fail to do so.

### **JURISDICTION, PARTIES, AND VENUE**

11. Intervenor-Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of rights secured by the U.S. Constitution. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because certain matters in controversy arise under the Constitution and laws of the United States and involve the assertion of a deprivation, under color of state law, of a right under the Constitution of the United States.

12. This Court has personal jurisdiction over the Defendant, who is sued in her official capacity and resides within this state.

13. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events that gave rise to Plaintiffs' claims occurred in this judicial district.

14. This Court has the authority to enter a declaratory judgment and provide preliminary and permanent injunctive relief pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. §§ 2201 and 2202.

15. Intervenor-Plaintiffs are citizens of the United States and are registered to vote in Florida. Intervenor-Plaintiffs intend to vote in the upcoming 2022 primary and general elections. Intervenor-Plaintiffs currently reside in the following congressional districts under the enacted map.

| <b>Intervenor-Plaintiff</b> | <b>County of Residence</b> | <b>Congressional District</b> |
|-----------------------------|----------------------------|-------------------------------|
| Michael Arteaga             | Orange                     | CD-9                          |
| Melva Bentley Ross          | Orange                     | CD-10                         |
| Brandon Nelson              | Orange                     | CD-10                         |
| Andrea Hershorin            | Duval                      | CD-04                         |
| Jean Robert Louis           | Hillsborough               | CD-15                         |
| Leni Fernandez              | Pinellas                   | CD-12                         |
| Denny Troncoso              | Marion                     | CD-11                         |
| Geraldine Ware              | Lee                        | CD-19                         |
| Nina Wolfson                | Hillsborough               | CD-15                         |

16. As **Exhibit 1** demonstrates, Intervenor-Plaintiffs reside in districts that are overpopulated.

17. Defendant Laurel M. Lee is sued in her official capacity as the Florida Secretary of State. Secretary Lee is Florida's chief election officer and is charged with administering and overseeing the state's elections. *See Fla. Stat. § 97.012.*

## FACTUAL ALLEGATIONS

### **I. Florida's current congressional districts were drawn using 2010 Census data.**

18. On December 2, 2015, the Florida Supreme Court adopted the state's current congressional district plan, which was drawn based on 2010 Census data.

19. According to the 2010 Census, Florida had a population of 18,801,310. A decade ago, the ideal population for each of Florida's 27 congressional districts was 696,345 persons—the state's total population divided by the number of districts.

20. The current congressional district plan adopted in 2015 has been used in every election cycle since.

### **II. As a result of significant population shifts in the past decade, Florida's congressional districts are now unconstitutionally malapportioned.**

21. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President, and on August 12, 2021, census-block results for the 2020 Census were delivered to Florida lawmakers.

22. The results of the 2020 Census report that Florida's resident population, as of April 2020, is 21,538,187—an increase of more than 2.7 million people from the 2010 Census results.

23. As specified in **Exhibit 1**, the 2020 Census data further demonstrate that population shifts since 2010 have rendered Congressional Districts 2, 3, 5, 6, 7,

8, 13, 14, 17, 18, 20, 21, 22, 23, 24, 25, 26, and 27 significantly underpopulated, and Congressional Districts 1, 4, 9, 10, 11, 12, 15, 16, and 19 significantly overpopulated.

24. Due to these population shifts, Florida's existing congressional districts are unconstitutionally malapportioned. And because the 2020 Census has now been completed, the 2010 population data used to draw Florida's current congressional districts are obsolete, and any prior justifications for the existing map's deviations from population equality are inapplicable.

25. If used in any future elections, the current congressional district plan will unconstitutionally dilute the strength of Intervenor-Plaintiffs' votes because Intervenor-Plaintiffs live in districts with populations that are significantly larger than those in which other voters live.

26. Moreover, in addition to being malapportioned, Florida's current congressional districting plan contains one fewer district than the number of districts to which Floridians are entitled.

27. Because of the increase in Florida's population, the state has been apportioned an additional congressional district: it now has 28 seats in the U.S. House of Representatives, one more than the 27 it was apportioned following the 2010 Census.<sup>2</sup>

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<sup>2</sup> Under a 28-district plan, the ideal population for each of Florida's congressional districts is 769,221.



28. Federal law provides that a state should have “a number of [congressional] districts equal to the number of Representatives to which such State is so entitled.” 2 U.S.C. § 2c.

29. It is therefore unlawful for any elections to be held under Florida’s current 27-seat congressional map.

**III. There is a significant likelihood that Florida’s political branches will not enact a new congressional districting plan in time for the 2022 midterm elections.**

30. The Legislature and Governor have had months to reach agreement on a congressional redistricting plan but have yet to do so. This division reach its peak on March 29, when the Governor finally vetoed the plan passed by the Legislature.

31. There is a significant probability that the political branches will not overcome their division. For months now, the Governor has expressly opposed and threatened to veto the Legislature’s proposal on the back of his baseless claim that the Legislature’s CD-5 is an unconstitutional racial gerrymander.

32. He did so on February 11, 2022, declaring that he would veto any plan that contains a version of CD-5 adopted by the Legislature and again in the weeks that followed, including mere hours before the Legislature voted to approve the proposed congressional districting plan:



33. The Governor's opposition to the Legislature's plan was not limited to press events and social media. To derail the legislative process, he asked the Florida Supreme Court to provide an advisory opinion on the constitutionality of CD-5, which the Court declined to entertain. The Governor submitted several proposed congressional districting plans to the Legislature, all of which included a drastically reconfigured CD-5. And a proxy for the Governor argued during a public redistricting subcommittee hearing that CD-5 is unconstitutional.

34. In the face of the Governor's opposition, the Legislature stood fast, passing the very map the Governor promised to veto only hours earlier. And they did so after rejecting the Governor's view on the merits. During countless hours of committee and floor hearings, the Legislature defended its proposed map as fully compliant with federal and state laws, maintaining that its proposal was drawn pursuant to technical redistricting analysis.

35. In light of this history, there is little hope that the Governor and the Legislature will reach an agreement in the upcoming special session. And because supporters of the Legislature's plan do not have enough votes to override a veto,

Florida is at risk of being left without a congressional districting plan to remedy its malapportioned districts.

**IV. Florida needs a new congressional map, immediately.**

36. Voters, candidates, and Florida’s election administration apparatus need a lawful congressional districting plan to ensure the orderly administration of the 2022 midterm elections.

37. Florida’s new 28-district congressional districting plan must be implemented as soon as possible. Potential congressional candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing the state’s new district boundaries, and the filing deadline for the primary election is June 17, 2022.

38. Moreover, without a valid congressional districting plan, voters will be deprived of time to organize and support candidates running in their new districts.

39. Under these circumstances, judicial intervention is needed to ensure that a lawful congressional districting plan is in place ahead of the upcoming midterm elections.

**CLAIMS FOR RELIEF**

**COUNT I**

**Violation of Article I, Section 2 of the U.S. Constitution  
Congressional Malapportionment**

40. Intervenor-Plaintiffs reallege and reincorporate by reference paragraphs 1 through 44 of this Complaint as though fully set forth herein.

41. Article I, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives “shall be apportioned among the several States . . . according to their respective Numbers.” This provision “intends that when qualified voters elect member of Congress each vote be given as much weight as any other vote,” *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964), meaning that congressional districts must “achieve population equality ‘as nearly as is practicable.’” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry*, 376 U.S. at 7–8).

42. Article I, Section 2 thus “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.” *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). Any variation from exact population equality must be narrowly justified. *See id.* at 731.

43. When Florida’s current congressional district plan was implemented in 2015, the deviation in population among districts was no more than one person. Now, the population deviation is as high as 157,000 people.

44. Given the significant population shifts that have occurred since the 2010 Census—and Florida’s gain of an additional congressional seat—the current congressional districts are now unlawfully malapportioned. No justification can be offered for deviations among the congressional districts given that these districts were drawn using outdated 2010 population data.

45. Any future use of Florida's current congressional district plan would violate Intervenor-Plaintiffs' constitutional right to an undiluted vote.

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

a. Declaring that the current configuration of Florida's congressional districts violates Article I, Section 2 of the U.S. Constitution;

b. Enjoining Defendant, her respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to Florida's current congressional districting plan;

c. Adopting a new congressional districting plan that complies with Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c;

d. Awarding Intervenor-Plaintiffs their costs, disbursements, and reasonable attorneys' fees; and

e. Granting such other and further relief as the Court deems just and proper.

**COUNT II**  
**Violation of 2 U.S.C. § 2c**  
**Congressional Malapportionment**

46. Intervenor-Plaintiffs reallege and reincorporate by reference paragraphs 1 through 44 of this Complaint as though fully set forth herein.

47. 2 U.S.C. § 2c provides that, in a state containing “more than one Representative,” “there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled.”

48. Florida’s current congressional district plan contains 27 districts. But following the 2020 Census, the state was apportioned 28 seats in the U.S. House of Representatives. As a result, the current congressional district plan violates Section 2c’s requirement that the number of congressional districts be “equal to the number of Representatives to which [Florida] is so entitled.”

49. Any future use of Florida’s current congressional district plan would violate 2 U.S.C. § 2c and unlawfully dilute Intervenor-Plaintiffs’ votes.

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

a. Declaring that the current configuration of Florida’s congressional districts violates 2 U.S.C. § 2c;

b. Enjoining Defendant, her respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to Florida’s current congressional districting plan;

c. Adopting a new congressional districting plan that complies with Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c;

d. Awarding Intervenor-Plaintiffs their costs, disbursements, and reasonable attorneys' fees; and

e. Granting such other and further relief as the Court deems just and proper.

Dated: April 13, 2022

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 13, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Frederick S. Wermuth  
Frederick S. Wermuth  
Florida Bar No. 0184111



**EXHIBIT 1**

| <b>District</b> | <b>2010 Population</b> | <b>2020 Population</b> | <b>Percent Deviation</b> |
|-----------------|------------------------|------------------------|--------------------------|
| 1               | 696,345                | 807,881                | 1.27%                    |
| 2               | 696,345                | 727,858                | -8.76%                   |
| 3               | 696,345                | 766,133                | -3.96%                   |
| 4               | 696,345                | 871,951                | 9.31%                    |
| 5               | 696,345                | 748,841                | -6.13%                   |
| 6               | 696,345                | 796,187                | -0.19%                   |
| 7               | 696,345                | 787,847                | -1.24%                   |
| 8               | 696,344                | 783,626                | -1.77%                   |
| 9               | 696,344                | 955,656                | 19.8%                    |
| 10              | 696,345                | 874,602                | 9.64%                    |
| 11              | 696,344                | 820,902                | 2.91%                    |
| 12              | 696,345                | 807,093                | 1.18%                    |
| 13              | 696,345                | 727,509                | -8.80%                   |
| 14              | 696,345                | 787,447                | -1.29%                   |
| 15              | 696,345                | 819,838                | 2.77%                    |
| 16              | 696,345                | 884,047                | 10.82%                   |
| 17              | 696,345                | 779,916                | -2.23%                   |
| 18              | 696,344                | 794,724                | -0.37%                   |
| 19              | 696,345                | 834,990                | 4.67%                    |
| 20              | 696,344                | 776,352                | -2.68%                   |
| 21              | 696,345                | 787,939                | -1.23%                   |
| 22              | 696,345                | 785,762                | -1.50%                   |
| 23              | 696,345                | 769,338                | -3.56%                   |
| 24              | 696,345                | 742,553                | -6.91%                   |
| 25              | 696,345                | 771,456                | -3.29%                   |
| 26              | 696,345                | 787,914                | -1.23%                   |
| 27              | 696,345                | 739,825                | -7.26%                   |