IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Common Cause Florida, FairDistricts Now, Dorothy Inman-Johnson, Brenda Holt, Leo R. Stoney, Myrna Young, and Nancy Ratzan,

Plaintiffs,

v.

Laurel M. Lee, in her official capacity as Florida Secretary of State,

Defendant.

Case No.: 4:22-cv-109-AW-MAF

PLAINTIFFS' RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE AND MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

Plaintiffs Common Cause Florida, FairDistricts Now, Dorothy Inman-Johnson, Brenda Holt, Leo R. Stoney, Myrna Young, and Nancy Ratzan (collectively, "Plaintiffs") respectfully submit this response to the Court's April 25, 2022 Order to Show Cause why the Court should not dismiss this action as moot, and move pursuant to Federal Rule of Civil Procedure 15(a)(2) for leave to file an amended complaint in the form attached hereto as Exhibit A.

INTRODUCTION

The Court should grant Plaintiffs leave to file an amended complaint to challenge the constitutionality of Florida's new congressional district plan, which will obviate the need to act on Defendant's suggestion of mootness. Until last week, the Florida Legislature and Governor DeSantis were at an impasse in the process of adopting a new congressional district plan for use in the 2022 statewide primary elections. After months of being urged by Governor DeSantis to adopt a map infected by racial discrimination against Black Floridians, the Florida Legislature recently acquiesced to the Governor's demands at the special legislative session.

Although the new congressional district plan moots the malapportionment claims in Plaintiffs' original complaint, Plaintiffs now seek to amend their complaint to add claims for intentional discrimination challenging the constitutionality of the new map. By supplementing the factual allegations in the original complaint, Plaintiffs' proposed amended complaint details how Defendant's congressional district plan violates the Fourteenth and Fifteenth Amendments to the United States Constitution by intentionally destroying Black opportunity districts in Florida and splintering Black communities of interest throughout the State. *See* Ex. A.

Permitting Plaintiffs to file their amended complaint is the most efficient path forward: it would serve judicial economy to adjudicate the entire controversy between the parties in one action, and proceeding in this way would not prejudice Defendant because this case is still in its early stages. Alternatively, if the Court is not inclined to permit Plaintiffs to amend their complaint, Plaintiffs intend to file their proposed amended complaint as a new action and designate the new action as similar to the instant proceeding under Local Rule 5.6(A).

FACTUAL BACKGROUND

Plaintiffs initiated this action on March 11, 2022 to challenge Florida's then-existing congressional districts, which were rendered unconstitutionally malapportioned by a decade of population shifts. Dkt. No. 1. Following the delivery of the 2020 Census data to be used for the 2022 statewide elections, the Florida Legislature and Governor DeSantis reached an impasse on the new congressional district plan. Dkt. No. 1 at ¶ 3.

Plaintiffs' original complaint contained detailed allegations concerning the Florida Legislature's process after it was tasked with drawing a new congressional map. *See, e.g.*, Dkt. No. 1 at ¶¶ 32–36. Plaintiffs also explained how Governor DeSantis interfered in the redistricting process, proposing his own, constitutionally noncompliant map, which veered the Legislature off its course. *Id.* at ¶¶ 37–45. The original complaint alleged that Governor DeSantis was intent on eliminating

congressional districts where Black voters have historically exercised voting power to elect representatives of their choice, and that the Governor made repeated public statements leaving no doubt that he would veto any congressional redistricting bill that would preserve such districts. *Id*. at ¶ 42. Given Florida's malapportioned congressional districts at the time and the impasse between the Governor and the Legislature, Plaintiffs brought claims for violations of Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c. *Id*. at ¶¶ 62–71. Pursuant to 28 U.S.C. § 2284(a), a three-judge panel was convened to adjudicate this lawsuit. Dkt. No. 6.

When Plaintiffs filed their complaint, Plaintiffs named as Defendants Secretary Lee, members of the Florida House and Senate (the "Legislator Defendants"), as well as Governor DeSantis, assuming that these defendants would be interested in participating in a case that could lead to new Florida congressional maps. However, after the Legislator Defendants moved to dismiss the complaint, Plaintiffs voluntarily dismissed the Legislator Defendants without conceding the validity of their motion to avoid unnecessary motion practice that would unduly delay the proceedings. Dkt. Nos. 50, 57. Governor DeSantis did not move to dismiss, but Plaintiffs voluntarily dismissed Governor DeSantis at his request. Dkt. No. 58. The proposed amended complaint re-names the Governor as a defendant.

Since this complaint was filed, the redistricting process in Florida continued to be dominated by the Governor's desire to destroy congressional districts where Black voters have historically elected representatives of their choice. Although the Florida Legislature attempted to redraw maps that would partially meet the Governor's demands, while attempting to preserve some Black opportunity districts, the Governor vetoed the Legislature's maps and convened a Special Legislative Session from April 19–22, 2022.

During the Special Legislative Session, the Florida Legislature acquiesced to the Governor's demands. Over the protest of the chamber's Black representatives, the Florida Legislature accepted the Governor's congressional district plan (the "Enacted Plan") without making a single change to it. The Enacted Plan followed through on the Governor's repeated statements of his intention to, among other things, destroy Congressional District 5, which has consistently elected a Black representative to Congress since 2016 and which was a court-approved successor to a district that had performed for North Florida Black voters since 1992.

On April 22, 2022, Defendant Lee suggested that this action is now moot because the Enacted Plan resolved Plaintiffs' allegations of malapportionment and there is no longer any live controversy to be adjudicated. Dkt. No. 86. On April 25, 2022, the Court entered an Order to Show Cause why the Court should not

dismiss the case without prejudice as moot and ordered Plaintiffs to file a response to the Order to Show Cause by April 29, 2022. Dkt. No. 87.

ARGUMENT

This action has always concerned the constitutionality of Florida's congressional district plan. Although Plaintiffs' original claims under Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c are now moot, the Court should grant Plaintiffs leave to amend their complaint to assert updated claims based on intervening facts challenging the constitutionality of the new congressional district plan.

I. Leave to Amend Should Be Freely Given.

Where, as here, a deadline for amending the complaint has not passed, Rule 15(a)(2) provides that courts should "freely give leave" to amend the complaint. Fed. R. Civ. P. 15(a)(2); *see Foman v. Davis*, 371 U.S. 178, 182 (1962) ("In the absence of any apparent or declared [improper] reason [for amendment] . . . the leave sought should, as the rules require, be 'freely given.'"); *Sosa v. Airprint Sys.*, 133 F.3d 1417, 1419 (11th Cir. 1998) (explaining the "liberal amendment standard" of Rule 15(a)). Pursuant to Rule 15(a)(2), "the discretion of the District Court is not broad enough to permit denial" unless "a substantial reason exists to deny leave to amend." *Fla. Evergreen Foliage v. E.I. DuPont De Nemours & Co.*,

470 F.3d 1036, 1041 (11th Cir. 2006) (quoting *Shipner v. Eastern Air Lines, Inc.*, 868 F.2d 401, 407 (11th Cir. 1989)).

Amendment to add new claims is proper where, as here, initial claims are rendered moot by events subsequent to the filing of the original complaint. *See, e.g., McKinley v. Kaplan*, 177 F.3d 1253, 1258 (11th Cir. 1999) (reversing district court's denial of motion for leave to amend complaint after original claims were moot, and noting there is "nothing illegitimate about a plaintiff seeking a new type of relief when intervening events occur during the pendency of litigation that makes the originally sought relief impossible."); *In re Adler, Coleman Clearing Corp.*, No. 06-80157-CIV, 2008 WL 11411962, at *3 (S.D. Fla. Aug. 13, 2008) (granting leave to amend complaint to add new claim after claims became moot, even where the court did "not agree that the new claim relates to the original complaint.").

II. Plaintiffs Should Be Permitted to Amend Their Complaint to Re-Name the Governor, Add One Co-Plaintiff, and Allege New Claims.

Plaintiffs should be permitted to amend their complaint to re-name the Governor as a defendant and to allege new claims of intentional discrimination in violation of the Fourteenth and Fifteenth Amendments. Barring exceptional circumstances inapplicable here, "the Federal Rules of Civil Procedure liberally allow a plaintiff to join a new defendant." *Dever v. Family Dollar Stores of Ga., LLC*, 755 F. App'x 866, 869 (11th Cir. 2018). Here, the Governor was a party to

the original complaint and never moved to be dismissed from that case. He will suffer no unfair surprise by being named in an amended complaint challenging the new congressional district plan that he endorsed. The proposed amended complaint describes the Governor's conduct giving rise to the claims, including, where relevant, his role and participation in the violations of the Fourteenth and Fifteenth Amendments. *See* Ex A, ¶¶ 49–74. It also explains his responsibility for enforcing the Enacting Plan that Plaintiffs seek to enjoin. Ex A, ¶¶ 7, 58.

Ex parte Young provides for federal jurisdiction against a state actor who is responsible for enforcing a law that is unconstitutional. *See Papasan v. Allain,* 478 U.S. 265, 276–277 (1986) (citing *Ex Parte Young*, 209 U.S. 123 (1908)); *Luckey v. Harris*, 860 F.2d 1012, 1014 (11th Cir. 1988). The Governor is a proper defendant where, as here, the Governor has enforcement authority over challenged legislation (and also the obligation to defend it in court). *See, e.g.*, *Dream Defenders v. DeSantis*, 553 F. Supp. 3d 1052, 1079–81 (N.D. Fla. 2021) (denying in part Governor's motion to dismiss and rejecting argument that the Governor was not a proper party where the Governor had power to enforce the challenged law). Governor DeSantis has acknowledged his authority over the Secretary of State and highlighted his responsibility for the administration of Florida's election laws. For example, in his petition to the Florida Supreme Court for an advisory opinion concerning the constitutionality of a congressional redistricting bill that retained a

performing district for Black Florida voters, the Governor explained that the executive power vested in him by the Florida Constitution includes the power of "direct supervision" over the "administration" of the Department of State. For this proposition, he cited Fla. Const. Art. IV, § 6; *see also* Fla. Stat. § 20.02(3) (providing that "[t]he administration of any executive branch department … placed under the direct supervision of an officer … appointed by and serving at the pleasure of the Governor shall remain at all times under the constitutional executive authority of the Governor"); Fla. Stat. § 20.10 (creating the Department of State, which is headed by the Secretary of State, who is appointed by and serves at the pleasure of the Governor). In his request for an advisory opinion, the Governor continued:

> The Secretary of State, whom I direct and oversee, is the chief election officer of the State, § 97.012, Fla. Stat., and is responsible for, among many things, "[o]btain[ing] and maintain[ing] uniformity in the interpretation and implementation of the election laws," *id.* § 97.012, Fla. Stat …. The Department of State will also be responsible for defending any legal challenges to the new congressional redistricting map.[1]

[1] *Advisory Opinion to Governor re: Whether Article III, Section 20(a) of the Florida Constitution Requires the Retention of a District in Northern Florida*, No. SC22-139, Petition at 2 (Fla. Feb. 1, 2022), available at https://efactssc-public.flcourts.org/casedocuments/2022/139/2022-139_petition_79511_request2dadvisory20opinion2028governor29.pdf

Given the Governor's acknowledgment of his enforcement authority over the Florida congressional district plan that Plaintiffs challenge in their proposed amended complaint and supervision of the defense of that map, he is a proper defendant here.

Plaintiffs should also be permitted to amend to add one co-plaintiff, the Florida State Conference of the National Association for the Advancement of Colored People Branches (the "Florida NAACP"), a nonpartisan civil rights organization in Florida. The Florida NAACP has encouraged civic and electoral participation among its members and other voters. Unfair and discriminatory redistricting at the Congressional level frustrates the Florida NAACP's core missions by diluting the votes of citizens the Florida NAACP works to engage in civic participation and by obstructing the ability of their members to elect candidates of choice. Ex. A at ¶ 5. Defendants will not be prejudiced by the addition of the Florida NAACP as a co-plaintiff. *See, e.g., United States v. Space Coast Med. Assocs., L.L.P.*, No. 613CV1068ORL22TBS, 2014 WL 12616950, at *1 (M.D. Fla. Oct. 22, 2014) (granting leave to amend and rejecting argument that the "marginal burden of defending against one additional plaintiff in the same case" would be prejudicial).

The proposed amended complaint also seeks to add intentional discrimination claims under the Fourteenth and Fifteenth Amendments to

challenge the new congressional map, which continues a lengthy history of discrimination against Black Floridians by Florida officials, including by Governor DeSantis. As detailed in the proposed amended complaint, the Enacted Plan was adopted, at least in part, for the purpose of discriminating against Black Florida voters. Ex. A. at ¶¶ 92–103. Defendants are alleged to have acted with invidious intent to disadvantage Black voters in the Enacted Plan, which was designed to dismantle two otherwise effective crossover district and to diminish Black Floridians' ability to elect candidates of their choice. Ex. A at ¶¶ 78–91, 95. The Enacted Plan will disproportionately burden Black voters in Florida, an entirely foreseeable result that Defendants were well aware of when they passed the new map. Ex. A at ¶ 102. These allegations overlap with and supplement the core allegations in the original complaint. *Compare* Dkt. No. 1 at ¶¶ 32–47, *with* Ex. A at ¶¶ 43–91.

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution forbids states from enacting laws which produce discriminatory results and for which a racially discriminatory intent or purpose is a motivating factor. To establish a Fourteenth Amendment violation, a plaintiff need only show that discriminatory purpose was a motivating factor. *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265–66 (1977). Plaintiffs' proposed amended complaint adequately alleges claims for intentional discrimination under

Arlington Heights. Plaintiffs' proposed amended complaint also adequately alleges that the Enacted Plan violates the Fifteenth Amendment's promise that the right to vote shall not be denied or abridged on account of race.

III. Allowing Plaintiffs to Amend Will Not Cause Delay or Prejudice Defendants.

Other factors that courts consider in deciding motions for leave to amend—whether the amendment will unduly delay the proceedings or prejudice the opposing party—also weigh in favor of granting leave to amend. *See Taylor v. Florida State Fair Authority*, 875 F. Supp. 812, 815 (M.D. Fla. 1995) (considering undue delay and prejudice to the opposing party). First, Plaintiffs have not unduly delayed in filing this motion. To the contrary, Plaintiffs promptly filed this motion within the deadline set by the Court for a response to the April 25, 2022 Order to Show Cause and about a week after the Enacted Plan became law.

Second, Defendants will not be prejudiced by the amendment to the complaint. A three-judge panel will still adjudicate the claims, which continue to challenge the constitutionality of the apportionment of congressional districts. *See* 28 U.S.C. § 2284(a). The proceedings are also at an early stage. No discovery has been taken, and no dispositive motions have been filed by the remaining Defendants. *See Taylor*, 875 F. Supp. at 815 (rejecting argument that amendment that raised "a new legal theory" warranted denial of motion for leave to amend

complaint because "that basis for a finding of prejudice essentially applies where the amendment is offered shortly before or during trial").

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant them leave to file their proposed amended complaint. In the alternative, Plaintiffs intend to file their proposed amended complaint as a new lawsuit designated as similar to the instant proceeding under Local Rule 5.6(A).

LOCAL RULE 7.1(F) CERTIFICATION

Undersigned counsel certifies that this memorandum contains 2,603 words, excluding the case style and certifications.

Date: April 29, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

/s/ Gregory L. Diskant
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Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Common Cause Florida, FairDistricts Now, Florida State Conference of the National Association for the Advancement of Colored People Branches, Dorothy Inman-Johnson, Brenda Holt, Leo R. Stoney, Myrna Young, and Nancy Ratzan, *Plaintiffs,* v. Ron DeSantis, in his official capacity as Governor of Florida, and Laurel M. Lee, in her official capacity as Florida Secretary of State, *Defendants*.	Case No.: 4:22-cv-109-AW-MAF **Requesting a three-judge panel pursuant to 28 U.S.C. § 2284**

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Common Cause Florida ("Common Cause"), FairDistricts Now, Florida State Conference of the National Association for the Advancement of Colored People Branches ("Florida NAACP"), and Dorothy Inman-Johnson, Brenda Holt, Leo R. Stoney, Myrna Young, and Nancy Ratzan (the "Individual Plaintiffs"), by and through their undersigned counsel, file this First Amended Complaint for Declaratory and Injunctive Relief against Defendants Ron DeSantis, in his official capacity as Governor of Florida, and Laurel M. Lee, in her official capacity as Florida Secretary of State, and hereby state and allege as follows:

INTRODUCTION

1. In an unprecedented overreach of executive power, the Governor of Florida, Ron DeSantis, bullied the Florida Legislature into adopting congressional map, P000C0109 (the "Enacted Plan" or "C0109"), based on invidious discrimination against Black Floridians. The new map reduces the number of Black opportunity districts in Florida from four to two.[1] It does so at the explicit behest of Governor DeSantis, who made the elimination of these districts a primary goal in the redistricting process. The Enacted Plan does this by eliminating one such district altogether and reducing the Black population in another. Less visible, but just as pernicious, the Enacted Plan also splinters Black communities throughout the state. None of this was done in secret or in back rooms. Rather, the Governor repeatedly made his intentions clear and employed extreme pressure tactics to fulfill those intentions. After months of resistance throughout a legislative process unlike any ever seen before in Florida history, the Legislature

[1] A Black opportunity district is one considered to be sufficient to "afford black voters a reasonable opportunity to elect candidates of choice" and to "in fact perform for black candidates of choice." *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 404 ("*Apportionment VII*") (Fla. 2015) (quoting *Martinez v. Bush*, 234 F. Supp.2d 1275, 1307 (S.D. Fla. 2002)). These districts are sometimes referred to as "crossover" districts when "minority voters make up less than a majority of the voting-age population," but "the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

finally acquiesced and attempted to wash its hands of the Enacted Plan by placing the blame for the new map squarely at the Governor's feet. But in the end, by enacting the plan into law, the Legislature bears the same responsibility for it as the Governor.

2. In so doing, the Governor and the Legislature violated the Fourteenth and Fifteenth Amendments to the United States Constitution. The Fourteenth Amendment guarantees Black Floridians equal protection of the laws. The Fifteenth Amendment guarantees Black Floridians that their votes will not be denied or abridged on account of their race. As the Supreme Court noted in *Bartlett*, 556 U.S. at 24, serious questions under the Fourteenth and Fifteenth Amendments are raised when "a State intentionally dr[aws] district lines in order to destroy otherwise effective crossover districts." That is exactly what Governor DeSantis intended and exactly what happened here. Plaintiffs bring this action to invalidate Florida's new congressional map and to establish one that is free of racial bias.

PARTIES

3. Plaintiff Common Cause is a nonpartisan, nonprofit grassroots organization dedicated to upholding the core values of American democracy, with members throughout Florida, including in Florida's former Congressional Districts 5 and 10. Common Cause works to create open, honest, and accountable

government that serves the public interest and to empower all people in Florida to make their voices heard in the political process. Common Cause anchors Election Protection efforts to ensure Florida voters with questions about the time, place, and manner of voting can navigate through the election process to cast a ballot for the candidates of their choice, without coercion, disinformation, intimidation, confusion, intentional discrimination or other barriers. Since it was founded, Common Cause has been dedicated to fair elections, protecting the rights of voters, and making government at all levels more representative, open, and responsive to the interests of ordinary people. Common Cause's organizational activities will be impeded and it will need to spend additional resources in Florida to counter the discriminatory effects on Black voters because of the Enacted Plan. Common Cause brings this action in its representative capacity on behalf of its members and in its organizational capacity.

4. Plaintiff FairDistricts Now is a nonpartisan, nonprofit organization that works to ensure that Florida's electoral districts are drawn according to the law—to benefit the people of Florida. FairDistricts Now's mission is to educate the public about the importance of fairness and transparency in redistricting. The values for which FairDistricts Now advocates are imminently threatened by the use of the Enacted Plan for Florida's congressional elections in 2022 and beyond. FairDistrict Now's organizational activities will be impeded and it will need to

spend additional resources in Florida to counter the discriminatory effects on Black voters because of the Enacted Plan.

5. Plaintiff Florida NAACP is a nonprofit, nonpartisan civil rights organization located in Florida. Founded in 1909, Florida NAACP is the oldest civil rights organization in Florida, and serves as the umbrella organization for local branch units throughout the state. Florida NAACP's 12,000 members are predominately Black and other minority individuals, and include registered voters who reside throughout the state. Its mission is to ensure the political, social, educational, and economic equality of all persons and to eliminate race-based discrimination. For decades Florida NAACP has engaged heavily in statewide voter registration, public education, and advocacy concerning the right to vote in order to encourage civic and electoral participation among its members and other voters. Unfair and discriminatory redistricting at the Congressional level frustrates and impedes the Florida NAACP core missions by diluting the votes of citizens Florida NAACP works to engage in civic participation and obstructing the ability of their members to elect candidates of choice, and these practices more broadly obstruct its other core advocacy missions to bring about change in Florida through the democratic process. Florida NAACP brings this action in its representative capacity on behalf of its members and in its organizational capacity.

6. All Individual Plaintiffs are citizens of the United States and are

registered to vote in Florida, and some Individual Plaintiffs identify as Black and reside in crossover or opportunity districts. The Individual Plaintiffs reside in the following congressional districts:

Plaintiff's Name	County of Residence	Previous Congressional District	Congressional District in Enacted Plan
Dorothy Inman-Johnson	Leon	2	2
Brenda Holt	Gadsden	5	2
Leo R. Stoney	Orange	10	10
Myrna Young	Lee	19	19
Nancy Ratzan	Miami-Dade	27	24

7. Defendant Ron DeSantis is the Governor of Florida and is named in his official capacity. The executive power is vested in the Governor by the Florida Constitution, including the power of "direct supervision" over the "administration" of the Department of State. Fla. Const., art. IV, § 6. As such, Governor DeSantis directs and oversees the Secretary of State, the "chief election officer of the state." Fla. Stat. § 97.012(1).

8. Defendant Laurel M. Lee is the Florida Secretary of State and is named as a Defendant in her official capacity. She is the "chief election officer of the state," and as such, is responsible for the administration and implementation of election laws in Florida.

JUSRISDICTION AND VENUE

9. This court has subject matter jurisdiction pursuant to 28 U.S.C §§ 1331, 1343, 2201, 2202, and 42 U.S.C. § 1983.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b).

11. A three-judge panel of this district court has jurisdiction to adjudicate, and must adjudicate, this lawsuit because Plaintiffs are challenging the constitutionality of the apportionment of Florida's congressional districts. 28 U.S.C. § 2284(a); *Shapiro v. McManus*, 577 U.S. 39 (2015).

FACTUAL ALLEGATIONS

I. Florida's History of Racial Discrimination in Voting

12. As courts are well aware, "Florida has a horrendous history of racial discrimination in voting." *League of Women Voters of Fla., Inc. v. Lee*, 2022 WL 969538, at *26 (N.D. Fla. 2022). For over a century, both government officials and bigoted white citizens have engaged in discriminatory measures to suppress and dilute the voting power of Black Floridians. Governor DeSantis's Enacted Plan is the latest episode in Florida's tragic history of officially sanctioned invidious discrimination against its Black voters.

13. Racial discrimination in Florida's elections dates back to the post-Civil War era and continues to this day. Indeed, Florida's first post-Civil War

constitution extended the right to vote only to white males. The U.S. Congress rejected that constitution on this basis.

14. Beginning in 1867, the U.S. Congress enacted a Reconstruction program in southern states, forcing Florida to extend the franchise to Black men as a condition for readmission to the Union. Florida responded by taking numerous measures calculated to prevent newly free Black citizens from voting, including imposing literacy tests and poll taxes.

15. In the post-Reconstruction period, white Floridians used intimidation and outright violence to prevent Black Floridians from exercising their constitutional right to vote. As one example, in Ocoee, Florida in 1920, "a man was lynched and 30 to 60 people were killed and nearly all of the Black homes and churches were burned after a Black man tried to vote in an election that day." *League of Women Voters*, 2022 WL 969538, at *18.

16. In another notorious incident, Florida NAACP president Harry Moore and his wife Harriette Moore were assassinated in their bed on Christmas Eve, 1951, when dynamite placed under their house exploded. Mr. Moore had been working to register Black voters and to challenge white primaries.

17. These (and many other) shocking acts of violence had a direct and predictable effect on Black political participation in the state. "As late as 1960, only seven Black voters were registered in Gadsden County, even though Gadsden

County had a voting-age Black population of over 12,000." *Id.* Due to the combination of restrictive voting laws and racial violence aimed at suppressing Black voters, there were no Black congressional representatives from Florida between 1877 and 1992, even though Black Floridians constituted a significant percentage of the state's population. Even after the enactment of the Voting Rights Act in 1965, no Black state senator was elected in Florida until 1982—17 years later. And since 1983, there have been at least 133 legal actions concerning voting rights taken against the state, county, or municipal governments of Florida, at least 64 of which resulted in findings of racial discrimination.

18. In recent years, Florida's elected officials have enacted laws restricting the times and conditions when Floridians can cast a ballot. These laws have been intentionally designed to make voting more difficult for Black Floridians in order to suppress the Black vote.

19. In 2004, Florida expanded early in-person voting. In the 2004 general election, Black voters' use of early in-person voting "substantially exceeded White usage." *Florida v. United States*, 885 F. Supp. 2d 299, 322 (D.D.C. 2012).

20. In a direct response to Black voters' disproportionate use of this new early voting option, in 2005, the Florida Legislature quickly rolled back the expansion of early voting over the opposition of Florida's Black Caucus,

restricting early voting to government buildings, and to eight hours per day on weekdays and eight hours total on weekends. Fla. Stat. § 101.657 (2005).

21. In 2008 and 2010, Black voters continued to utilize early voting at a rate higher than white voters. The next year, in 2011, the Florida Legislature introduced HB 1355, which decreased the number of early in-person voting days. As one federal court explained, the Legislature enacted HB 1355 "without clearly identifying why the law needed to be changed, without creating much of a legislative record to document its reasons for the change, and against the advice of the Florida State Association of Supervisors of Elections." *Brown v. Detzner*, 895 F. Supp. 2d 1236, 1239 (M.D. Fla. 2012).

22. Before HB 1355, early voting in Florida began on "the 15th day before an election" and ended "on the 2nd day before the election." Fla. Stat. § 101.657(d) (2010). HB 1355 altered that scheme by mandating that the early voting period begin "on the 10th day before an election" and "end on the 3rd day before an election." Fla. Stat. § 101.657(d) (2011).

23. By changing the end of the early voting period from the second day before an election to the third day before an election, HB 1355 effectively banned early voting on the Sunday before Election Day. This restriction was no mere coincidence. Black churches had widely encouraged their congregants to vote on the Sunday before Election Day in "Souls to the Polls" events in which churches

would transport their congregants to early voting sites. *Florida*, 885 F. Supp. 2d at 335. By banning early voting on the Sunday before Election Day, HB 1355 intentionally curtailed these events.

24. Black voters had "used the repealed days of early voting at rates nearly *double* those of White voters in 2008." *Id*. at 324 (emphasis in original). With surgical precision, HB 1355 eliminated those early voting days used disproportionately by Black voters. The District Court for the District of Columbia refused to preclear Florida's early voting changes under Section 5 of the Voting Rights Act, finding that the state had not met its burden of showing that the changes would not have a retrogressive effect on minority voting rights. *Id*. at 329.

25. Florida officials have also engaged in discriminatory voter purges to limit the ability of Black Floridians to vote. In 2000, Florida conducted a large voting-roll purge that was so obviously flawed that 20 Supervisors of Elections refused to implement it. A report produced by the U.S. Commission on Civil Rights found that the purge's effects fell overwhelmingly on minority voters, and that Black voters were ten times as likely to have their ballots rejected as white voters due to voter roll purges.[2] In Miami-Dade County, for example, Black voters

[2] U.S. Commission on Civil Rights, *Report on Voting Irregularities in Florida During the 2020 Presidential Election* (June 2001), available at https://tinyurl.com/3cmk4vv6; *see also League of Women Voters*, 2022 WL 969538, at *22.

made up only 20% of the population, but 65% of those purged from the voter rolls were Black. This episode was a major catalyst for many of the list maintenance and provisional-ballot provisions of the 2002 Help America Vote Act.

II. Racial Discrimination in Voting and Elections Continues Under Governor DeSantis

26. Ron DeSantis was elected Governor of Florida in 2018 and took office in 2019. Under his leadership, the state has continued to engage in invidious discrimination against Black voters.

27. Following the 2020 Election, the Legislature enacted and Governor DeSantis signed SB 90. SB 90 was a wide-ranging piece of legislation, with many provisions—later found to be unconstitutional—that restricted the ability of Black voters to participate in the political process. Among other provisions, SB 90 enacted drop-box restrictions, restrictions on where third-party organizations may deliver registration applications ("registration delivery restrictions"), and a "solicitation" definition prohibiting anyone from "engaging in any activity with the intent to influence or effect of influencing a voter" inside of a polling place or within 150 feet of a drop-box or polling place. *League of Women Voters*, 2022 WL 969538, at *5–*6.

28. In a comprehensive opinion recounting Florida's "grotesque history of racial discrimination," the Northern District Court of Florida held that SB 90's

drop-box regulations, registration delivery restrictions, and solicitation definition intentionally discriminated against Black voters. *Id.* at 18, 53.

29. Before the 2020 Election, Florida permitted the liberal use of drop-boxes, from the time vote-by-mail ballots went out until Election Day. Fla. Stat. § 101.69(2) (2019). The drop-boxes could be utilized 24 hours a day, seven days a week. SB 90 made drop-boxes significantly less accessible. It required a Supervisor of Elections employee to continuously monitor each drop-box in person while the drop box was in use. Fla. Stat. § 101.69(2)(a) (2021). It also drastically limited the hours when drop-boxes could be used, restricting them to the "county's early voting hours of operation." *Id*.

30. As the court explained, SB 90 would burden voters who use drop-boxes, and such voters are disproportionately likely to be Black. *League of Women Voters*, 2022 WL 969538, at *39. Indeed, the court found that "Black voters are more likely to use drop-boxes in the *exact way* that SB 90 restricts." *Id.* at *46 (emphasis added). Black voters disproportionately used drop-boxes outside of early voting and outside of typical business hours—the precise windows that SB 90 banned.

31. The court explained that SB 90's prohibition on third parties "engaging in any activity with the intent to influence or effect of influencing a voter" also disproportionately affected Black voters. *Id.* at *44. It was so broad as

to prohibit "line warming" activities, including the provision of water and food to voters in line. *Id.* at *6. It intentionally targeted Black voters, who disproportionately wait in long lines to vote. *Id.* at *44.

32. Likewise, the court recognized that third-party voter-engagement organizations overwhelmingly serve minority communities. The activities of these organizations would be restricted by the registration delivery provision of SB 90. That provision requires third-party organizations to deliver voter registration applications only to the Division of Elections or the Supervisor of Elections in the county in which the applicant resides. *Id.* at *6. Previously, third-party organizations could return registration applications to any supervisor. SB 90's registration-delivery provision therefore "disproportionately harms Black and Latino voters." *Id.* at *46.

33. Besides signing legislation that curtailed the rights of Black voters, Governor DeSantis has repeatedly acted to deny Black Floridians representation in the Legislature and in Congress. In a course of action unprecedented in Florida history, Governor DeSantis has repeatedly refused to schedule special elections to fill legislative vacancies in majority-Black legislative districts. This inaction resulted in extended periods during which Floridians in these districts lacked representation in the Legislature and in Congress.

34. Florida law provides that whenever "there is a vacancy for which a special election is required . . . the Governor . . . shall fix the dates of a special primary election and a special election." Fla. Stat. § 100.111(2). Normally this occurs promptly. Between 1999 and 2020, 65 vacancies in congressional and legislative offices in Florida occurred. It took the respective governors an average of 7.6 days to call a special election. These special elections are also typically set on a compressed timeline, so as to fill the seat quickly. A special general election has taken place only 21 days after a special primary election 14 times since 1999; 3 times in that period, there was only a 14-day gap between the primary and general election.

35. Under Governor DeSantis, however, when a seat held by a Black representative becomes open, delay is the watchword. For example, after Black Representative Alcee Hastings passed away in April 2021, Governor DeSantis did not issue a proclamation for a special election for 30 days—longer than any Florida governor has taken to call a special election in the prior 22 years. Governor DeSantis only called the special election after he was sued for his inaction, and even then, set the general election for more than *nine months* after Representative Hasting's death. *See Dowling v. DeSantis*, No. 9:21-CV-80796-AMC (S.D. Fla. 2021). During that period, Florida's Twentieth Congressional District, which

includes most of the majority-Black precincts in and around Fort Lauderdale and West Palm Beach, was left without a representative in Congress.

36. Governor DeSantis was sued again in October 2021 over his failure to fix the dates of special elections to fill vacancies in three majority-Black state legislative districts. The representatives of House District 88, House District 94, and Senate District 33 had resigned to run in the special election for the Twentieth Congressional District, as they were required to do under Florida law. Governor DeSantis's inaction threatened to leave the constituents of those districts without representation during the 2022 legislative session. *Staples v. DeSantis*, No. 2021-CA-001781-ACD (2d Cir. Leon Cty. Fla. 2021). On October 27, 2021, following the lawsuit, Governor DeSantis finally called the special elections.

37. In the end, it took Governor DeSantis more than five months to schedule the special elections for these districts. This dilatory conduct ensured that two of these districts (House District 88 and Senate District 33) would be without representation during most or all of the 2022 legislative session—including, crucially, during the deliberations on redistricting during regular session. House District 94 was spared the same fate because only the primary election was contested and no general election was needed.

38. On the other hand, Governor DeSantis acted swiftly to schedule special elections in majority-white districts. In 2019, Representative Danny

Burgess, representing a majority-white Tampa Bay-area district (House District 38), resigned to become Executive Director of the Florida Department of Veteran Affairs. Governor DeSantis issued an executive order that same day calling a special election to replace Representative Burgess. In 2020, Senator Tom Lee, who represented another majority-white Tampa Bay-area district (Senate District 24), resigned. Governor DeSantis called a special election a mere two days later and scheduled the special election to take place in ten weeks' time.

39. Governor DeSantis's repeated actions to restrict the voting and representational rights of Black Floridians reflect a pattern and practice of intentional racial discrimination that continues up to the present. As the court stated in the SB 90 litigation, "when the Florida Legislature passes [and the Governor signs] law after law disproportionately burdening Black voters," the discriminatory effect cannot be accepted as incidental. *League of Women Voters*, 2022 WL 969538, at *26. Sadly, Florida's tragic history of mistreating its Black voters has continued under Governor DeSantis. "As a result, Florida has long had a government that is not responsive to the needs of racial minorities." *Id.* Simply put, Governor DeSantis is continuing a long and reprehensible tradition of government officials who do not want Black Floridians to vote or to be represented in the Legislature.

III. Population Changes Require Florida Officials to Enact a New Congressional District Plan Following the 2020 Census

40. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. The 2020 Census reported that Florida's resident population had grown to 21,538,187—a 14.6% increase from a decade ago. The Census showed that the Black population in Florida had increased by 15.7% to 3.7 million—a steeper rate of increase than in Florida's population as a whole.[3]

41. Because of Florida's population growth, Florida gained an additional congressional district. Accordingly, Florida has been apportioned 28 congressional seats for the next Congress, one more than the 27 seats it was apportioned following the 2010 Census.

42. Under Florida's previous congressional plan, which the Florida

[3] Although the purpose of the federal decennial census is to count all people, the Census Bureau itself estimates that Black residents were undercounted in the 2020 Census. U.S. Census Bureau, *Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census* (March 10, 2022), https://www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html. Reporting indicates that this undercount extended to Black residents in Florida. Urban Institute, *The 2020 Census and the Consequences of Miscounts for Fair Outcomes: Florida* (Nov. 2021), https://www.urban.org/sites/default/files/2021/10/20/2020_census_and_the_consequences_of_miscounts_for_fair_outcomes_florida.pdf.

Supreme Court approved in 2015 (the "Benchmark Plan"),[4] Black voters elected their candidates of choice in four districts across the state: Congressional Districts 5, 10, 20, and 24. Congressional District 5—which drew Governor DeSantis's particular ire—contained the historically Black population in North Florida.

IV. Governor DeSantis's Targeted Dismantling of a Historic Black Performing District in North Florida Derails the Legislative Process

43. The events leading to enactment of the Enacted Plan bring its discriminatory purpose into sharp focus. In Florida, congressional district plans are enacted via legislation, which must pass both chambers of the Legislature and be signed by the Governor (unless the Legislature overrides the Governor's veto by a two-thirds vote in both chambers).

44. The rules for congressional redistricting in Florida are set forth in Article III, Section 20 of the Florida State Constitution (the "Fair Districts Amendment") and in federal law. The "Tier One" standards, found in Section 20(a), prohibit political gerrymandering and drawing districts with "the intent or result of denying or abridging the equal opportunity of racial or language

[4] The Benchmark Map was approved by the Florida Supreme Court on December 2, 2015, after a finding that the 2012 Congressional redistricting plan had violated the constitutional standards under the Fair District Amendment, Fla. Const. art. III, § 20. *League of Women Voters of Fla. v. Detzner* ("*Apportionment VIII*"), 179 So. 3d 258 (Fla. 2015). The Florida Supreme Court affirmed the trial court's finding that the Benchmark Map complies with the requirements of Article III, Section 20. *Id.* at 297–98.

minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory."

45. The "Tier Two" standards, in Section 20(b), further provide that "districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries." Importantly, these criteria are subordinate to the Tier One standards. They are to be adhered to "unless compliance with the standards . . . conflicts with the [Tier One] standards . . . or with federal law."

46. When free from the interference of Governor DeSantis, the Legislature has shown that it could comply with state and federal law. In February 2022, the Legislature passed state legislative maps for the Florida House and Senate. For the first time in state history, neither map drew objections from third parties when they were reviewed by the Florida Supreme Court. In particular, the legislative maps preserved pre-existing Black opportunity districts, rather than destroying them. The maps for the Florida House and Senate do not require the Governor's approval and will be implemented for the 2022 election.

47. In contrast, the Florida congressional map does require the Governor's signature, and Governor DeSantis leveraged this requirement to commandeer the Legislature's redistricting process to enact a racially discriminatory plan.

48. In January 2022, the Florida Senate passed a new congressional

redistricting plan (S035C8060 or "Map 8060"). This map was substantially compliant with the law. It protected minority voting rights by identifying and preserving four Black opportunity districts—Districts 5, 10, 20, and 24. It did not appear on its face to be a partisan gerrymander.

49. In response to this action, Governor DeSantis—in a marked departure from ordinary procedures—proposed his own congressional redistricting map on January 16, 2022. On information and belief, this was the first time in Florida history that a Governor had injected himself into the redistricting process by proposing a map of his own.

50. Governor's DeSantis's map (P000C0079) was notable for its racial bias. That initial map destroyed Congressional District 5 ("CD-5"), a functioning crossover district whose population is plurality Black, and reduced the Black citizen voting age population in Congressional District 10 ("CD-10").

51. The Governor's map was drawn with the intent to dismantle districts that have historically elected Black Democrats in North Florida.

52. By contrast, the map passed by the Senate prior to Governor DeSantis's inappropriate insertion into the legislative process preserved the four Black opportunity districts.

53. As part of his unprecedented effort to subvert the Legislature's congressional redistricting process, Governor DeSantis focused in particular on

CD-5 in North Florida, which is represented by Black Congressman Al Lawson. There has been a Black district in North Florida since the early 1990s. The current configuration of CD-5 in the Benchmark Plan runs for about 200 miles along the northern border of the Florida panhandle, from Jacksonville to Tallahassee. This area was the location of many plantations prior to the Civil War, when it was infamously known as the Slave Belt. Today, it retains a large interconnected Black population.

54. In the last redistricting cycle, the Florida Supreme Court held that the East-West configuration of CD-5—and the Benchmark Plan as a whole—complied with the Fair Districts Amendment and federal law. *Apportionment VII*, 172 So.3d 363; *Apportionment VIII*, 179 So.3d at 261. In so holding, the Court expressly rejected arguments that the 200-mile length of CD-5 somehow made it illegal. *Apportionment VII*, 172 So.3d at 405–06.

55. In this redistricting cycle, Governor DeSantis made it clear that he intended to veto any bill that preserved CD-5. To that end, on February 1, 2022, he requested an unprecedented advisory opinion from the Florida Supreme Court about the constitutionality of any congressional redistricting bill that retained a Black-performing version of CD-5. In particular, he asked whether the Fair Districts Amendment required a "congressional district in northern Florida that stretches [200] miles from East to West" in order "to connect black voters in

Jacksonville with black voters in Gadsden and Leon Counties . . . so that they may elect candidates of their choice, even without a majority. This Court has previously suggested that the answer is 'yes.'" *Advisory Opinion to Governor re: Whether Article III, Section 20(a) of the Florida Constitution Requires the Retention of a District in Northern Florida*, No. SC22-139, Petition at 4 (Fla. Feb. 1, 2022) (citing *Apportionment VIII*, 179 So.3d at 271).[5]

56. Governor DeSantis plainly understood that CD-5 in its then-existing form was required by Florida law and had already been considered and approved by the Florida Supreme Court ("the answer is 'yes'"). Nevertheless, he asked the Court to reconsider the issue, suggesting that under the federal Equal Protection Clause, a Black opportunity district had no right to exist without a majority Black population. Governor DeSantis advanced this argument despite the U.S Supreme Court's observation that a state has every right, if it wishes, to create Black opportunity, or crossover, districts. "In those areas [where] majority-minority districts would not be required in the first place [by federal law], . . . in the exercise of lawful discretion States could [nonetheless] draw crossover districts as they deemed appropriate" as a matter of state law. *Bartlett*, 556 U.S. at 24.

57. On February 10, 2022, the Florida Supreme Court declined to answer

[5] Available at https://tinyurl.com/2mnnwu4y.

the Governor's question because it recognized that determining whether such a race-based district was lawful under the federal constitution would require proof of a complicated set of facts, including whether the district met a compelling state interest and was narrowly tailored. That is, Governor DeSantis had not presented enough information to permit the issue to be resolved as a matter of law. A full record would need to be developed before the question could be answered. *See Advisory Opinion to Governor re: Whether Article III, Section 20(a) of the Florida Constitution Requires the Retention of a District in Northern Florida*, 2022 WL 405381 (Fla. 2022) (per curiam).

58. In his request to the Florida Supreme Court, Governor DeSantis recognized that it was his obligation to "take care that the Constitution and laws of the State of Florida are faithfully executed." He nonetheless ignored that obligation in the weeks that followed. On February 14, 2022, Governor DeSantis submitted another proposed congressional map (P000C0094). As with his earlier map, the Governor ignored his obligation to faithfully execute the Florida Constitution and instead totally destroyed CD-5. Even as he continued to insist that there was a problem with a district that "stretches over 200 miles from East to West," *Advisory Opinion to Governor re: Whether Article III, Section 20(a) of the Florida Constitution Requires the Retention of a District in Northern Florida*, No. SC22-139, Petition at 1 (Fla. Feb. 1, 2022), his own map proposed a non-Black

district of similar length (District 2 in P000C0094). His new map also diminished Black voting power in CD-10.

59. The Florida Legislature tried to resist the Governor's interference. At a hearing of the House Redistricting Committee on February 16, 2022, it heard the testimony of a witness, Robert Popper, whom the Governor's office paid to travel to Tallahassee to testify in favor of the Governor's plan. By a bipartisan 14-7 vote, the Committee resoundingly rejected Popper's arguments, instead electing to retain a Black opportunity district in Northern Florida. Referring to Popper's testimony at the behest of the Governor, Subcommittee Chair Rep. Tyler Sirois stated: "The process requires us to follow the law. There has been noise outside of our process dealing with the congressional map. I would encourage all members to put that noise aside. Those external influences need to stay external."

60. The Florida Legislature was plainly discomforted by the Governor's pressure. Notwithstanding its initial resistance, the Legislature hedged its bets—refusing to follow the Governor's lead, but still moving in his direction. The Legislature drew a version of CD-5 that incorporated some of Governor DeSantis's critique, drawing a Jacksonville-only district with a significantly reduced Black voting-age population, but which might have allowed Black voters to continue electing candidates of their choice. The Legislature recognized, however, that this configuration of CD-5 was of dubious legality under the Florida Constitution

because of its obvious diminishment of the ability of Black voters to elect their candidate of choice, so it took the unprecedented step of also drawing a fallback map that retained the original configuration of CD-5. The Legislature stated that it wanted this map to go into effect if the principal map was found to be illegal.

61. On March 1, 2022, the House Redistricting Committee proposed congressional districting map H000C8019 as the primary map, and H000C8015 as a secondary map. C8019 shrunk CD-5, addressing the Governor's objection to its 200-mile length, but did not destroy it; C8015, the fallback map, retained CD-5 in substantially the same form as the Benchmark Plan.

62. This did not please the Governor. On the morning of March 4, 2022, as the bill was being debated on the House floor, Governor DeSantis publicly stated on Twitter that he would "veto the congressional reapportionment plan currently being debated by the House. DOA." That same day, Governor DeSantis stated that he would "veto maps that include some of these unconstitutional districts. And that is a guarantee. They can take that to the bank." (He did not explain why he thought C8019 was unconstitutional.)

63. For the moment, the Legislature continued to resist the Governor's pressure. On March 4, 2022, after Governor DeSantis publicly threatened to veto the bill, the Florida House nonetheless passed the amended bill with C8019 as the

primary map, and C8015 as a secondary map to be enacted if the primary map was found to be invalid by any court.

64. Legislators' public statements during this period reflect an awareness of the importance of preserving minority access in Northern Florida and complying with Florida law. In defending the House's primary map, House Redistricting Chair Tom Leek stated that the proposal was designed to address the "novel legal theory put forth by the Governor while still protecting a minority seat in North Florida." Leek added that the two-map proposal reflected an attempt to "continu[e] to protect the minority group's ability to elect a candidate of their choice," as the Florida Constitution required.

65. Later that same day, the Florida Senate adopted the House legislation establishing C8019 as the primary congressional map and C8015 as the fallback if the primary map were to be invalidated. On information and belief, this was the first time in history that the Legislature passed two maps, a principal map and a fallback map.

66. During a Senate session the same day, Senate Reapportionment Chairman Ray Rodrigues stated that "based upon what [the House has] done, and a functional analysis has been performed on those [minority access] seats after they have proposed them, it is clear that we are preserving the opportunity for minority voters, which makes it constitutional."

67. On March 29, 2022, Governor DeSantis vetoed the Legislature's redistricting plan, despite the Legislature's attempt to appease him. Dispensing with any pretense of compliance with Florida law, as authoritatively interpreted by the Florida Supreme Court, Governor DeSantis asserted that the Legislature's plan contained "unconstitutional racial gerrymanders." He called a special legislative session to address redistricting on April 19–22, 2022.

68. A memorandum dated March 29, 2022 from the Governor's General Counsel, Ryan Newman, made the Governor's position clear. The memo argued that CD-5 was illegal because it was "not narrowly tailored to achieve the compelling interest of protecting the voting rights of a minority community in a reasonably cohesive geographic area." *Memorandum re: Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the Senate* at 7 (Mar. 29, 2022).[6] Notably, like the Governor's request to the Florida Supreme Court, the veto memorandum plainly ignored the ample evidence of official discrimination in Florida that demonstrates a compelling state interest in preserving crossover districts.

69. Mr. Newman's veto memorandum was internally inconsistent. The Legislature's primary map significantly reduced the 200-mile length of CD-5

[6] Available at https://tinyurl.com/2p98nhv8.

(previously, the Governor's repeated objection) while attempting to preserve a more compact Black opportunity district in Jacksonville. According to Mr. Newman, Governor DeSantis vetoed the primary map—strangely—because it supposedly did *not* preserve a Black opportunity district. On the other hand, the Legislature's secondary map did preserve a Black opportunity district, as the Florida Constitution and Florida Supreme Court required. But the Governor vetoed it because he unilaterally decided—without a court ever considering the question and in contravention of the Florida Supreme Court's order implementing CD-5 less than a decade earlier—that it violated the U.S. Constitution. These actions plainly reflect the Governor's commitment to vetoing any districting plan that protected Black representation.

70. Indeed, the Governor was called out on the internal inconsistencies in his analysis during the subsequent Legislative debates. Responding to the Governor's frequent complaint that CD-5 was 200 miles long, Representative Bracy asked, "I would like for you to explain how district 2 [a new white-majority district] can [be] 200 miles but district 5 can't."

71. Nonetheless, by this time, the Legislative Leadership was ready to surrender. Prior to the special legislative session, House Speaker Sprowls and Senate President Simpson informed lawmakers that legislative staff would not draw new maps in a Memorandum issued on April 11, 2022, they announced that

"Legislative reapportionment staff is not drafting or producing a map for introduction during the special session. We are awaiting a communication from the Governor's Office with a map that he will support."[7] In other words, the Legislature would defer to whatever congressional redistricting plan was produced by Governor DeSantis. The only function of the special legislative session was "to provide the Governor's Office opportunities to present [a redistricting plan] before House and Senate redistricting committees."[8]

72. Governor DeSantis released his proposed congressional redistricting plan on April 13, 2022. This is the plan that was eventually enacted into law—the first congressional districting plan in Florida's history designed by the Governor rather than the Legislature.

73. During the special legislative session, when asked on the House Floor whether the new Congressional Districts under Governor DeSantis's plan that replaced CD-5 would perform for Black candidates of choice, Chair Leek responded that they would not. He further explained that the House staff "did a functional analysis and confirmed it does not perform."

[7] Memorandum re: Redistricting Update (Apr. 11, 2022), available at https://tinyurl.com/5b9mpukc.

[8] *Id.*

74. Without making any changes to the plan proposed by Governor DeSantis, the Legislature passed the map on April 21, 2022, over the impassioned protest of the chamber's Black representatives and members of the public. The Legislature passed the Enacted Plan knowing full well that it would destroy—indeed, was *intended* to destroy—CD-5, a historically performing Black district.

V. The Enacted Plan Is Intentionally Racially Discriminatory

75. The Enacted Plan was adopted, at least in part, for the purpose of disadvantaging Black voters.

76. It blatantly flouts the Equal Protection Clause of the Fourteenth Amendment's prohibition on laws enacted with an invidious purpose, *i.e.*, intentional discrimination on the basis of race. It likewise blatantly ignores the Fifteenth Amendment's promise that the right to vote shall not be denied or abridged on account of race.

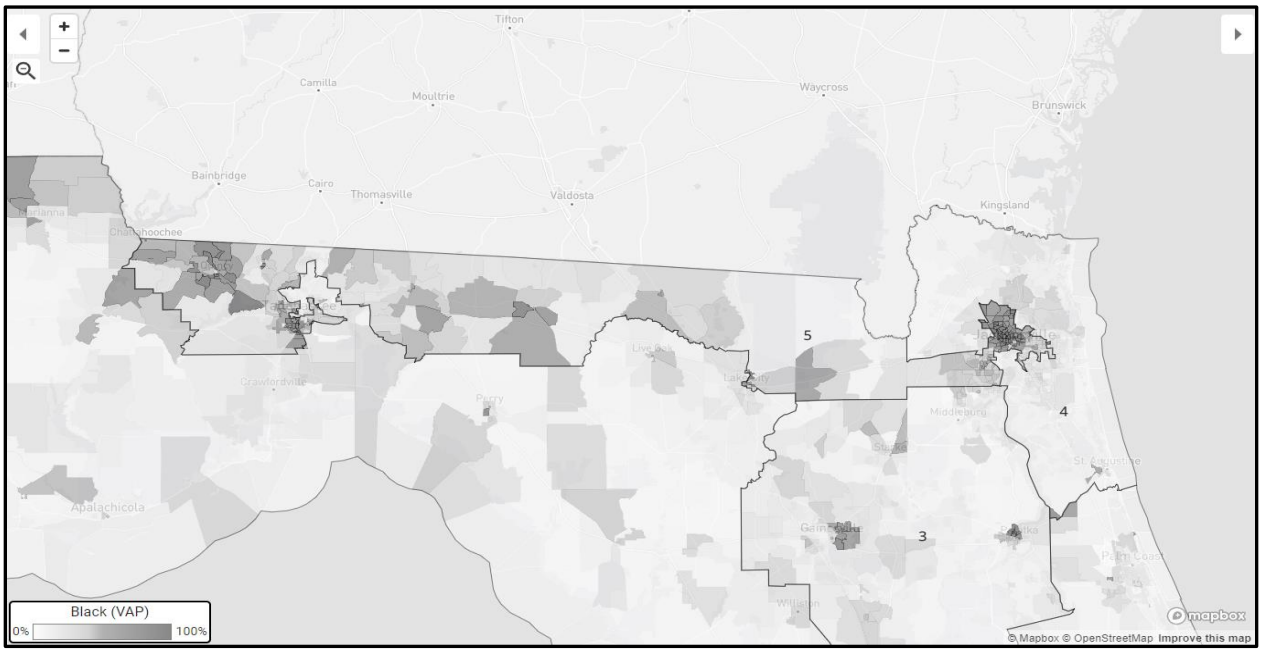
77. In proposing and signing the Enacted Plan into law, Governor DeSantis acted with invidious intent to disadvantage Black Floridians. The plan transparently and impermissibly draws district lines in order to "destroy [an] otherwise effective crossover district." *Bartlett*, 556 U.S. at 24. Moreover, the Enacted Plan includes major unnecessary and unjustified manipulations of district boundaries that are intended to, and will, diminish Black Floridians' ability to influence elections across the state.

A. The Enacted Plan Eliminates Two Performing Black Districts

78. Under the Enacted Plan, two historically Black performing districts—CD-5 and CD-10—have been modified so that they are no longer Black performing districts. As Rep. Rouson observed during the final debate on the Enacted Plan, "[t]he underlying bill screams of diminishment because it eliminates two minority districts."

1. Congressional District 5

79. The existing CD-5 connects the Black populations of Tallahassee and Jacksonville and is currently represented in the U.S. House of Representatives by Black Congressman Al Lawson.



Current CD-5 with Black VAP Overlay[9]

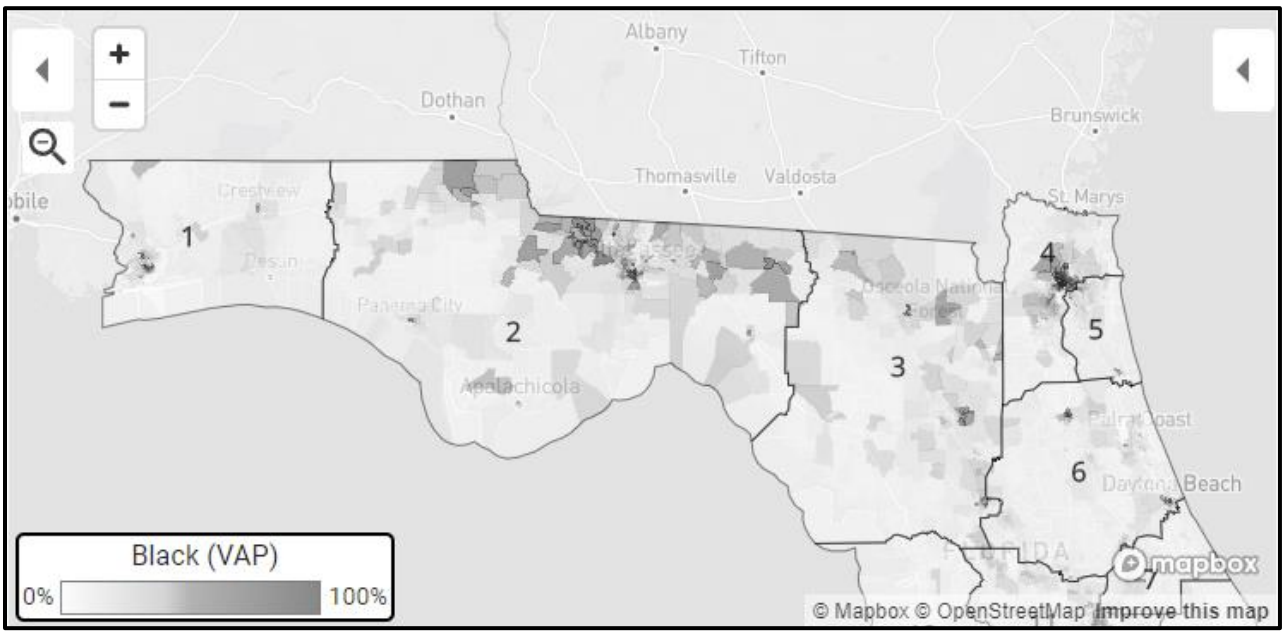
[9] Image from Dave's Redistricting, available at https://tinyurl.com/6u59v7y9.

80. Based on voting citizenship data available from the 2019 American Community Survey, race/language minority voters currently make up an estimated 55.23% of the total citizen voting age population ("CVAP") in the existing CD-5. The Black citizen voting age population in the district comprises an estimated 45.88% of the total CVAP, a plurality of the district.

81. The current CD-5 is considered a Black performing district (or a crossover district) because the Black population, supported by white crossover voters, is able to elect the candidate of its choice. As the Florida Supreme Court observed, CD-5's predecessor districts "performed for the black candidate of choice in every election from 1992 through 2000" and "from 2000 through the present." *Apportionment VII*, 172 So.3d at 404.

82. The Court in *Apportionment VII* employed a functional analysis of CD-5 to explain why the district has been Black performing: "[I]n an East–West orientation of the district, the black candidate of choice is still likely to win a contested Democratic primary, since black voters constitute [a majority of] registered Democrats [in CD-5]. And the Democratic candidate is still likely to win the general election, since Democratic voters outnumber Republicans . . . ." *Id.* at 405. Accordingly, the Court held that CD-5 must be drawn in an "East-West manner." *Id.* at 403.

83. In the years following *Apportionment VIII*, CD-5 has continued to be a Black performing district. For example, Rep. Al Lawson, the Black candidate of choice for the U.S House of Representatives, has prevailed in all of the Democratic primary elections as well as general elections that have been held in the existing CD-5 (2016, 2018, and 2020).



North Florida Districts Under the Enacted Plan[10]

84. Under the Enacted Plan, Governor DeSantis "cracked" the Black population in CD-5, taking what was a Black CVAP of 45.88% and redistricting those voters into new CDs-2, -3, and -4. As a result, in the Enacted Plan, the new CD-5 has a Black CVAP of just 12.45% (down from 45.88%). The white CVAP

[10] Image from Dave's Redistricting, available at https://tinyurl.com/bddwyb6v.

in new CD-5 increases from 44.77% under the existing plan to 73.5% under the new plan. This pattern repeats itself in new CDs-2, -3 and -4, each of which contain fragments of what was once the Black population of CD-5, submerged within a far larger white voting-age population.

Black CVAP

	CD-2	**CD-3**	**CD-4**	**CD-5**
Benchmark Plan	13.3%	16.0%	9.9%	45.9%
% Change	*+10.5%*	*+0.7%*	*+20.6%*	*-33.5%*
Enacted Plan	23.8%	16.7%	30.5%	12.4%

85. As a practical matter, the fragmentation of the Black population eliminates the ability of Black voters in North Florida to elect a candidate of their choice. As House Chair Leek conceded, a functional analysis confirms that the Enacted Plan's CD-5 is no longer a Black performing district.

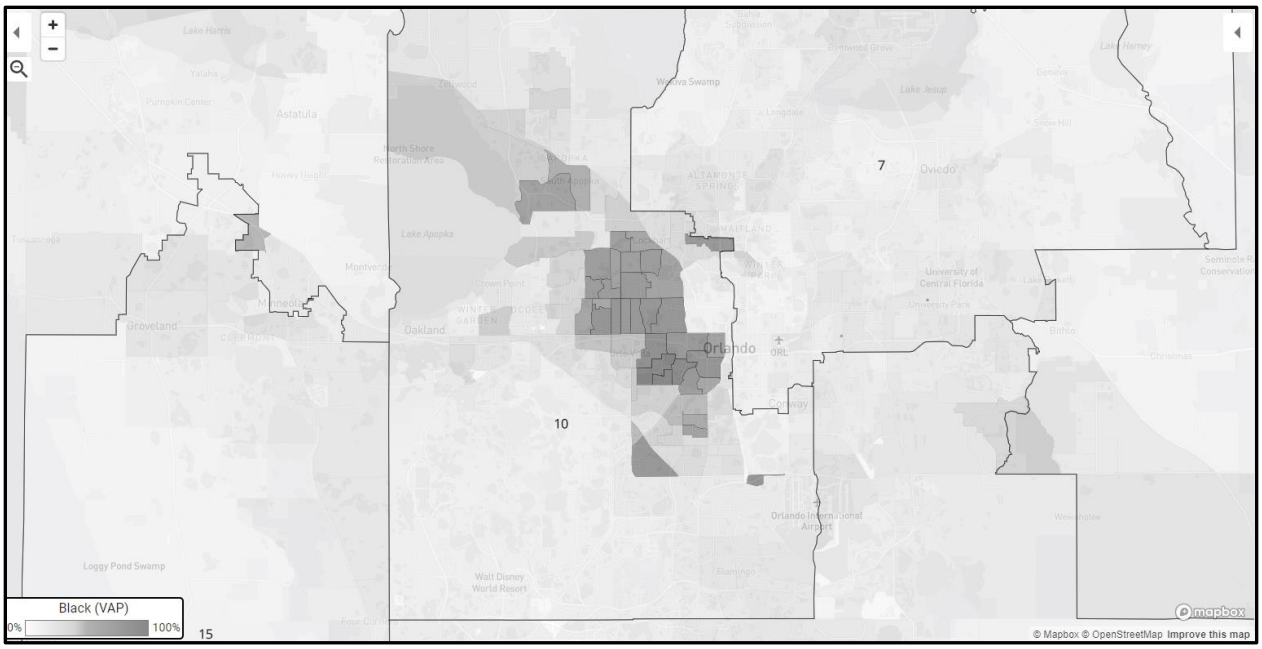
2. Congressional District 10

86. The existing CD-10 includes the city of Orlando and is currently represented in the U.S. House of Representatives by Val Demings, a Black Democrat.

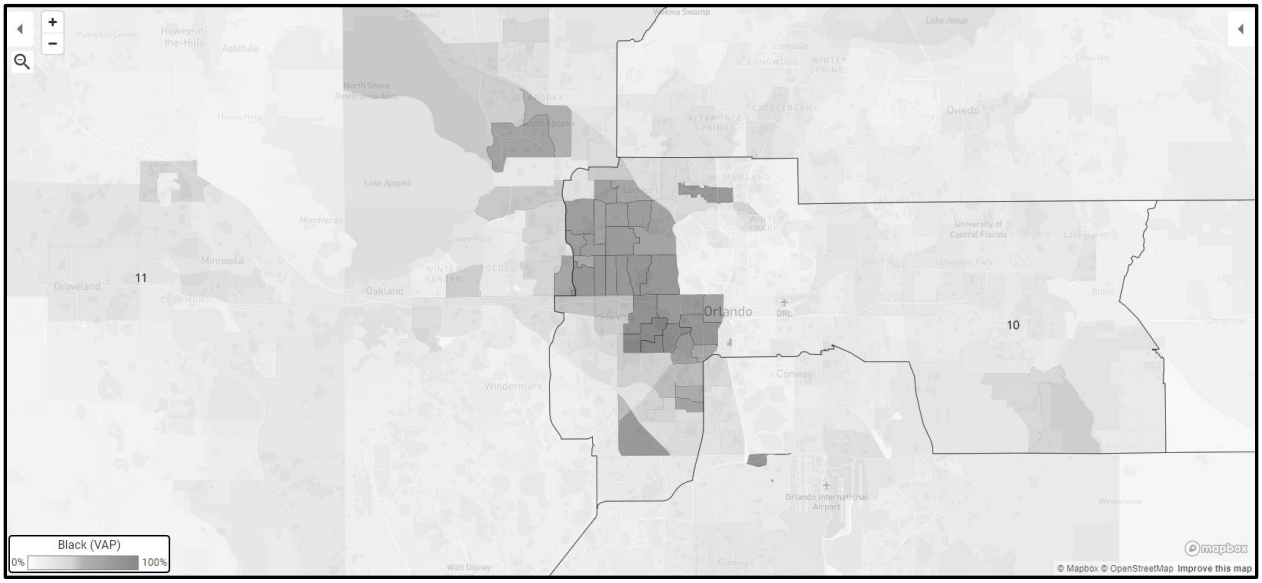
87. In the current CD-10, Black CVAP comprises 26.7% of total CVAP, but Black voters constituted an average of 49.3% of the vote in Democratic primaries in this safe Democratic district. As the Florida Senate recognized, CD-10 has performed as a Black opportunity district since 2016. Indeed, Rep. Val

Demings, the Black candidate of choice, was elected in the past three elections.

88. The Enacted Plan alters the composition of CD-10, "packing" it with additional Democrats but at the same time disadvantaging Black voters by splitting the minority population of Orlando and reducing the Black CVAP to 24.84%. As a result, in the newly configured CD-10, Black voters no longer constitute a near majority of voters in the Democratic primary, and will no longer have the ability to elect their candidate of choice in the Democratic primary. In effect, this changes CD-10 from a district in which Black voters had a reasonable opportunity to elect their candidate of choice, to one in which Black voters have a significantly reduced ability to reliably elect their preferred candidates.



Current CD-10 with Black VAP Overlay[11]



Enacted Plan CD-10 with Black VAP Overlay[12]

[11] Image from Dave's Redistricting, available at https://tinyurl.com/6u59v7y9.

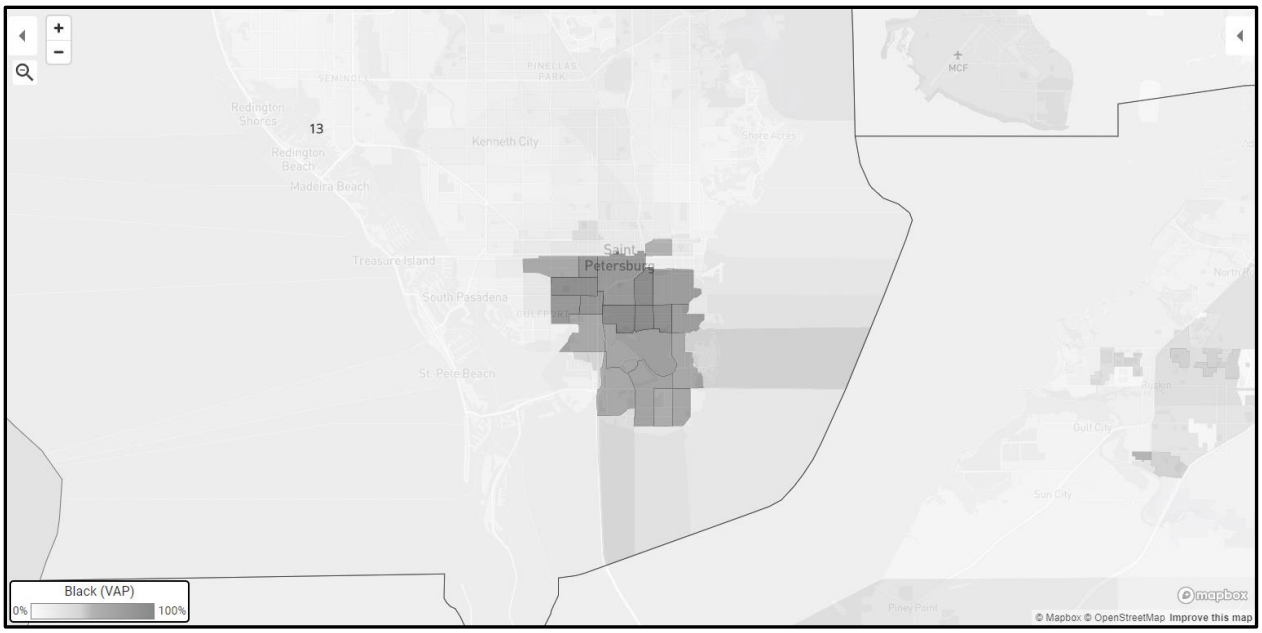
[12] Image from Dave's Redistricting, available at https://tinyurl.com/bddwyb6v.

89. The problem was obvious to Black legislators. Representative Bracy asked, "How do you justify splitting the minority population in Orlando into 2 separate districts when it had been contained in CD 10 in the benchmark [plan]?" As one commentator observed, "Ron DeSantis' latest map is drawn to make (CD 10) a Democratic vote-sink, but it doesn't even consolidate Orange County's black population, and as a result the primary is plurality white. More disrespect to the Black community of Florida."[13]

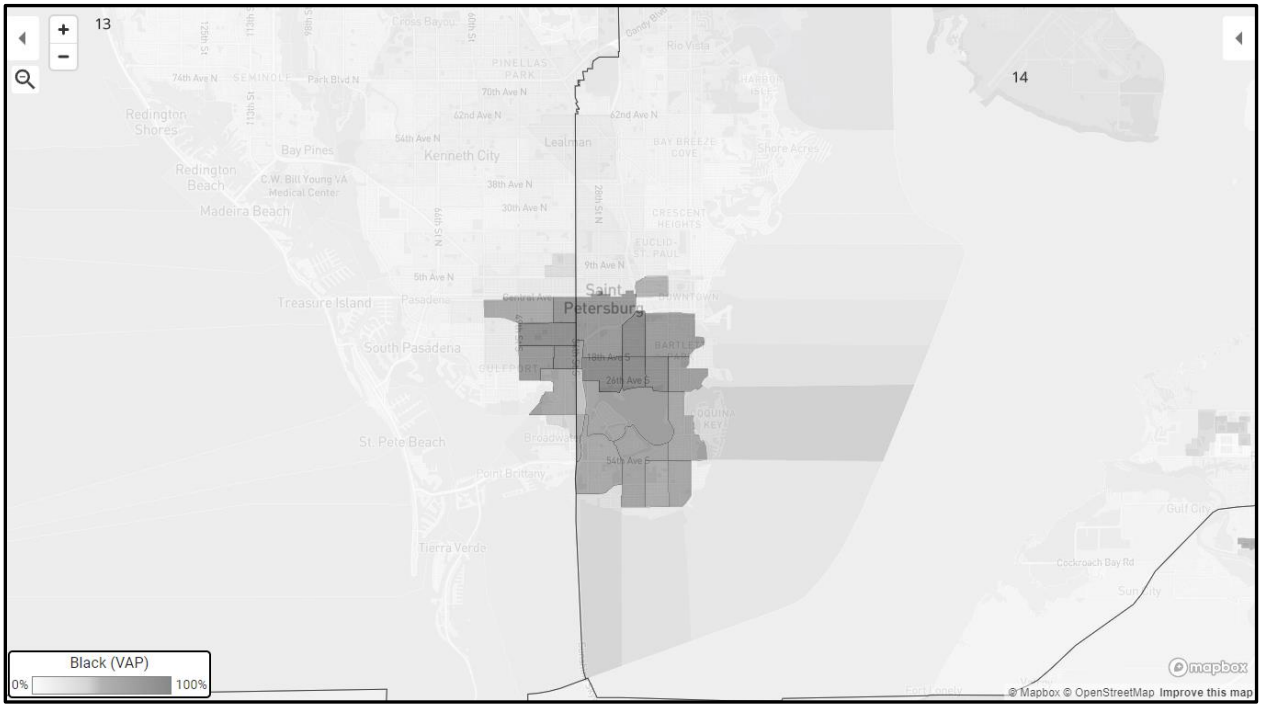
B. The Enacted Plan Conspicuously and Perniciously Splits Black Populations in Other Districts

90. The Enacted Plan "cracks" Black populations across the state. In a particularly egregious move, it virtually bisects the Black population in the city of St. Petersburg, which was previously fully contained within the existing CD-13. The western half of the Black population of St. Petersburg is kept in CD-13, while the eastern half is moved into CD-14.

[13] Florida Politics, *Gov. DeSantis submits congressional redistricting plan critics contend is 'partisan gerrymandering'* (Apr. 14, 2022), https://floridapolitics.com/archives/516702-gov-desantis-submits-congressional-favored-to-pass-in-special-session/; Matt Isbell (@MappingFL), Twitter (Apr. 13, 2022), https://twitter.com/MappingFL/status/1514362815762509824.



Current CD-13 and CD-14 with Black VAP Overlay[14]



Enacted Plan CD-13 and CD-14 with Black VAP Overlay[15]

[14] Image from Dave's Redistricting, available at https://tinyurl.com/6u59v7y9.

[15] Image from Dave's Redistricting, available at https://tinyurl.com/bddwyb6v.

91. Under the benchmark map, the entirety of St. Petersburg sits within CD-13, a Democratic-leaning district. But under the Enacted Plan, the eastern half of the Black population is carved out—rendering CD-13 a *Republican*-leaning district. Thus, the Black population in the western half of St. Petersburg now has no chance of electing their candidate of choice or even exerting meaningful influence over the electoral process.[16]

C. Evidence of Discriminatory Intent in The Enacted Plan's Adoption

92. To establish a Fourteenth Amendment violation, a plaintiff need only show that discriminatory purpose was "a" motivating factor in the legislation—not the only or even the predominant factor. "Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the 'dominant' or 'primary' one." *Vill. of Arlington Heights v. Metro Housing Dev. Corp.*, 429 U.S.

[16] Courts have recognized the inextricable relationship between race and political identity, and the impact of using race to target political influence. *League of Women Voters*, 2022 WL 969538 at *17 (explaining that ". . . if the Legislature's motive was to favor Republicans over Democrats, and the only reason the legislators thought [SB 90] would accomplish that result was that a disproportionate share of affected [voters] were African American [or Latino], prohibited racial motivation has been shown.") (internal quotations and citations omitted); *see also N.C. State Conference of the NAACP v. McCrory*, 831 F.3d 204, 222–23 (4th Cir. 2016) ("Using race as a proxy for party may be an effective way to win an election. But intentionally targeting a particular race's access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose.").

252, 265 (1977).

93. The Supreme Court has identified the following non-exclusive list of factors that may tend to prove intentional discrimination. (1) "The impact of the official action—whether it 'bears more heavily on one race than another.' . . . Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face." (2) "The historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes." (3) "The specific sequence of events leading up the challenged decision also may shed some light on the decisionmaker's purposes. Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role." (4) "Substantive departures too may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached." (5) "The legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." *Id.* at 266–68.

94. The Eleventh Circuit has added three more factors to consider: "(6) the foreseeability of the disparate impact; (7) knowledge of that impact; and (8) the availability of less discriminatory alternatives." *Greater Birmingham Ministries v. Sec. of State for State of Ala.*, 992 F.3d 1299, 1321–22 (11th Cir. 2021).

95. This is an extraordinary case in that all of the factors point in one direction—the Governor created the Enacted Plan, at least in part for the invidious purpose of discriminating against Black Floridians by constraining their ability to vote, to elect their candidates of choice, and to participate fully in the electoral process. The totality of the circumstances reveal that Governor DeSantis created and signed the Enacted Plan into law with discriminatory intent—namely, to roll back Black Floridians' representation in Congress. Meanwhile, despite its initial reluctance, the Legislature embraced the Plan fully understanding and intending that it have the discriminatory purpose and intent that the Governor desired.

96. Impact of Official Action. The Enacted Plan bears most heavily on Black Floridians. Florida previously created four Black opportunity or crossover districts. The Enacted Plan destroys or diminishes two of those districts.

97. Florida's Sordid History of Race-Based Voter Suppression. The Legislature adopted the Enacted Plan against the backdrop of a well-documented and egregious history of discrimination against Black Floridians in voting rights and election law. This is not ancient history, but a pattern that continues unbroken up to the present day. As recently as March 2022, a federal court held that various provisions of an election law, SB 90, enacted under Governor DeSantis's leadership, intentionally discriminated against Black Floridians. *League of Women Voters*, 2022 WL 969538, at *53.

98. Extraordinary Departures from Procedural Norms. In a series of unprecedented actions that mark an abrupt departure from normal redistricting procedures, Governor DeSantis effectively hijacked the congressional redistricting process, and the Legislature allowed him to do so. Governor DeSantis torpedoed ongoing negotiations between the House and Senate, submitting his own redistricting plans and threatening vetoes if they were not enacted. In response to the Governor's threats, for the first time, the Legislature approved two maps, recognizing that the map it created in an effort to placate the Governor could easily be found illegal. When that did not work, the Legislature abdicated its responsibilities altogether and did not even introduce a map in the special session. Instead, the legislature bowed to the will of the Governor and rubber-stamped his denial of thousands of Black Floridians' voting preferences, most notably in Northern Florida. For the first time in Florida history, the Governor drafted the congressional map, not the Legislature.

99. Extraordinary Departures from Substantive Norms. Governor DeSantis knew full well that Florida law required the preservation of a Black opportunity district in Northern Florida. He admitted as much to the Florida Supreme Court ("the answer is 'yes'"). Yet he decided on his own to ignore the law of his state—which he was sworn to faithfully uphold—even though he knew, as the Florida Supreme Court had advised him, that his legal theories were

unsupported. Rather than allow the Legislature to enact a districting plan compliant with Florida law and then challenging it in court—based on evidence in an adversary proceeding—Governor DeSantis took matters into his own hands and insisted that the Legislature pass a map that destroyed Black opportunity districts that Florida law had created.

100. The Legislative History. Black and Democratic Representatives repeatedly complained about pressure being applied by the Governor and warned their colleagues of the discriminatory results of intentionally eliminating a Black opportunity district in Northern Florida. For instance, on April 19, during the special legislative session, Representative Brown objected that the Governor was "bullying two entire chambers of government into doing his bidding. He's making the Florida Legislature do his dirty work and it adversely affects black constituents." Representative Gibson complained that any argument that the Governor's map was race-neutral was a transparent fiction. "What [the Governor] wants to be put forward to us as innocence is not there." The Legislative Leadership also understood what the Governor was doing and what it was enacting. Chair Leek stated explicitly that new CDs-4 and -5, replacing old CD-5 in North Florida under the Enacted Plan, would not perform for Black voters' candidates of choice.

101. Moreover, despite the Governor's alleged concern with race-based line drawing, it was not true that his map was drawn without consideration of race. First, he plainly knew that existing CD-5 and CD-10 were Black opportunity districts and he intentionally destroyed or limited them for that reason. His counsel admitted that he considered whether Section 2 of the Voting Rights Act mandated the retention of Black-performing districts CD-20 and CD-24, an analysis that was not possible without the consideration of race. In fact, racial considerations permeated the Governor's effort. Moments after Alex Kelly, the Governor's Deputy Chief of Staff, claimed in testimony before the Legislature that he did not consider race *at all* in drawing the Governor's map, he conceded that he did account for the Hispanic voting age population when reconfiguring CD-26. These inconsistencies—coupled with the inconsistencies in reasoning allegedly supporting the Governor's earlier veto—overcome any presumption of good faith in favor of the Legislature or the Governor.

102. Foreseeability and Knowledge of Impact. Both the Governor and the Legislature were well aware that the Enacted Plan would effectively roll back electoral access for Black voters in CD-5 and across the state. Legislators themselves had repeatedly and unequivocally acknowledged the need to preserve minority access within the state. Their subsequent abdication of their earlier positions is further evidence of the Governor's improper influence throughout this

redistricting process. Legislators thus willfully proceeded with the Enacted Plan, notwithstanding the utterly foreseeable and imminent harm Governor DeSantis's map would inflict on communities of Black voters.

103. The Rejection of Less Discriminatory Alternatives. A Black opportunity or crossover district in Northern Florida existed for over 30 years; CD-5 had existed in its current form for six years. The Fourteenth and Fifteenth Amendments require that such a district, once created, not be intentionally targeted for destruction for the purpose of limiting the rights of Black voters to participate in the electoral process. The Legislature had multiple alternatives that would have preserved Black access. The Senate's initial proposal, Map 8060, reflected less change from the Benchmark Plan and retained all four of the state's Black opportunity districts. Map C8015, passed by both Houses, was similar in this regard. Even the Legislature's "preferred" map, C8019, mitigated some of the intentionally racially discriminatory aspects of Governor DeSantis's earlier proposed plans. That plan created a compact, Jacksonville-only district with a substantial Black population while honoring traditional redistricting criteria. Its rejection by the Governor can reflect only a desire to attack and destroy Black voting power.

CLAIMS FOR RELIEF

COUNT I

Violation of the Fourteenth Amendment to the U.S. Constitution Intentional Discrimination

104. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint as though fully set forth therein.

105. The Enacted Plan intentionally discriminates against Black Floridians on the basis of race, in violation of the Fourteenth Amendment to the U.S. Constitution.

106. The facts alleged herein reveal that defendants acted with invidious intent to disadvantage Black Floridians in passing the Enacted Plan. Specifically, the Enacted Plan was drafted to dismantle an otherwise effective crossover district and to diminish Black Floridians' ability to elect a candidate of their choice by cracking communities of color.

107. Plaintiffs have no adequate remedy at law other than the judicial relief sought in this case. A failure to permanently enjoin elections under the Enacted Plan and to order a remedial map will irreparably harm Plaintiffs and millions of other Florida voters.

COUNT II

Violation of the Fifteenth Amendment to the U.S. Constitution Intentional Discrimination

108. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint as though fully set forth therein.

109. Under the Fifteenth Amendment, "[a]ction by a State that is racially neutral on its face violates the Fifteenth Amendment . . . if motivated by a discriminatory purpose." *City of Mobile v. Bolden*, 446 U.S. 55, 62 (1982).

110. The Enacted Plan intentionally denies or abridges Black Floridians' right to vote on the basis of race, in violation of the Fifteenth Amendment to the U.S. Constitution.

111. The facts alleged herein reveal that defendants acted with invidious intent to disadvantage the voting rights of Black Floridians in passing the Enacted Plan. Specifically, the Enacted Plan was drafted to dismantle an otherwise effective crossover district and to diminish Black Floridians' ability to elect a candidate of their choice by cracking communities of color.

112. Plaintiffs have no adequate remedy at law other than the judicial relief sought in this case. A failure to permanently enjoin elections under the Enacted Plan and to order a remedial map will irreparably harm Plaintiffs and millions of other Florida voters.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

a) Declare that the Enacted Plan is unconstitutional and violates the Equal Protection Clause of the Fourteenth Amendment because it was drawn with racially discriminatory intent;

b) Declare that the Enacted Plan is unconstitutional and violates the Fifteenth Amendment because it was drawn in order to deny or abridge the votes of Black Floridians on account of their race;

c) Permanently enjoin Defendants from calling, holding, supervising or certifying any elections under the Enacted Plan;

d) Set a reasonable deadline for state authorities to enact or adopt a redistricting plan for Congress that does not violate the Fourteenth and Fifteenth Amendments;

e) If state authorities fail to enact or adopt a valid redistricting plan by the Court's deadline, order a new redistricting plan for Congress that does not violate the Fourteenth and Fifteenth Amendments;

f) Award Plaintiffs their costs, disbursements, and reasonable attorneys' fees under 42 U.S.C. § 1988;

g) Retain jurisdiction to render any and all further orders that this Court may enter; and

h) Grant such other and further relief as this Court deems just and proper.

Date: April 29, 2022

PATTERSON BELKNAP WEBB & TYLER LLP

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