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, Cassandra Brown, Peter Butzin, Charlie Clark, Dorothy Inman-Johnson, Veatrice Holifield Farrell, Brenda Holt, Rosemary McCoy, Leo R. Stoney, Myrna Young, and Nancy Ratzan,

Plaintiffs,

v.

Cord Byrd, in his official capacity as Florida Secretary of State,

Defendant.

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

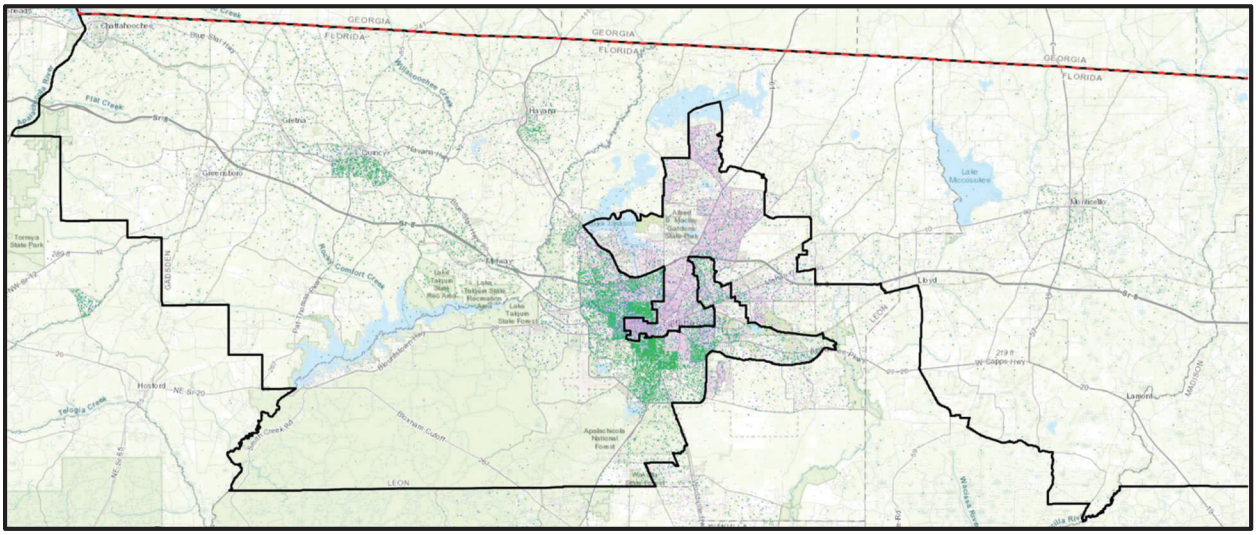
Requesting a three-judge panel pursuant to 28 U.S.C. § 2284

SECOND 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 Cassandra Brown, Peter Butzin, Charlie Clark, Dorothy Inman-Johnson, Veatrice Holifield Farrell, Brenda Holt, Rosemary McCoy, Leo R. Stoney, Myrna Young, and Nancy Ratzan (the "Individual Plaintiffs"), by and through their undersigned counsel, file this Second Amended Complaint for Declaratory and Injunctive Relief against Defendant Cord

Filed 2/7/2023
atm

boundaries, as the Florida Constitution requires, Governor DeSantis broke the city of Jacksonville in two (although its population could support one Congressional seat) and targeted the political power of Jacksonville's Black population with surgical precision. Were the Governor's stated objections to the Benchmark Plan's CD-5 genuine, Jacksonville would contain an entire Congressional District that does not separate the city's Black population.



Tallahassee Black Population No Longer in CD-5; Now in CD-2[15]

91. As a result of these carefully drawn boundaries, Black voters in Tallahassee who were formerly located within CD-5 are now carved away into CD-2, where they comprise just 23.1% of the CVAP. Black voters in Jacksonville are split across CD-4 and CD-5, where they comprise just 31.7% and 12.8% of

[15] Graphic produced using USA Census 2020 Redistricting Block Groups data / ArcGIS by ESRI. Green = Black VAP Overlay

CVAP, respectively. Now splintered from the single District where Black voters had an opportunity to elect their candidate of choice in the Benchmark Plan (attributable to, among other factors, Black CVAP of 45.88%), under the Enacted Plan, Black voters are spread across North Florida in such as a way as to wholly eliminate their ability to influence who represents them in Congress.

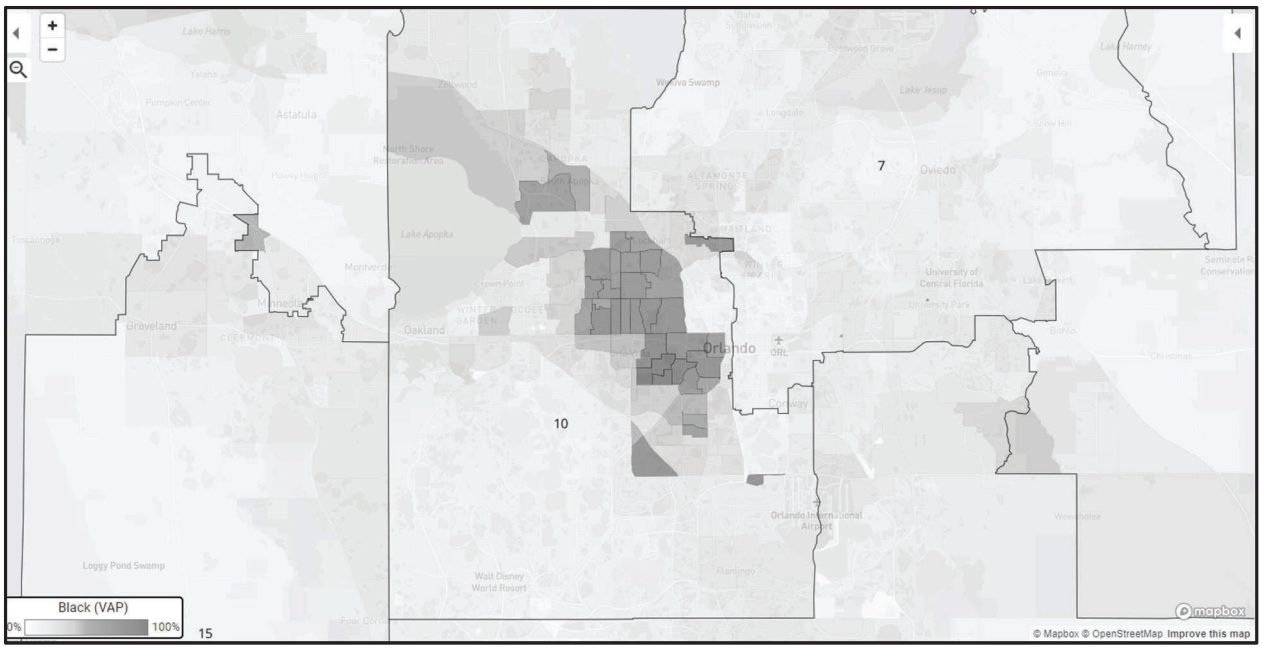
2. Congressional District 10

92. The Benchmark Plan's CD-10 includes the city of Orlando and was represented in the U.S. House of Representatives by Val Demings, a Black Democrat, from 2017 to 2023.

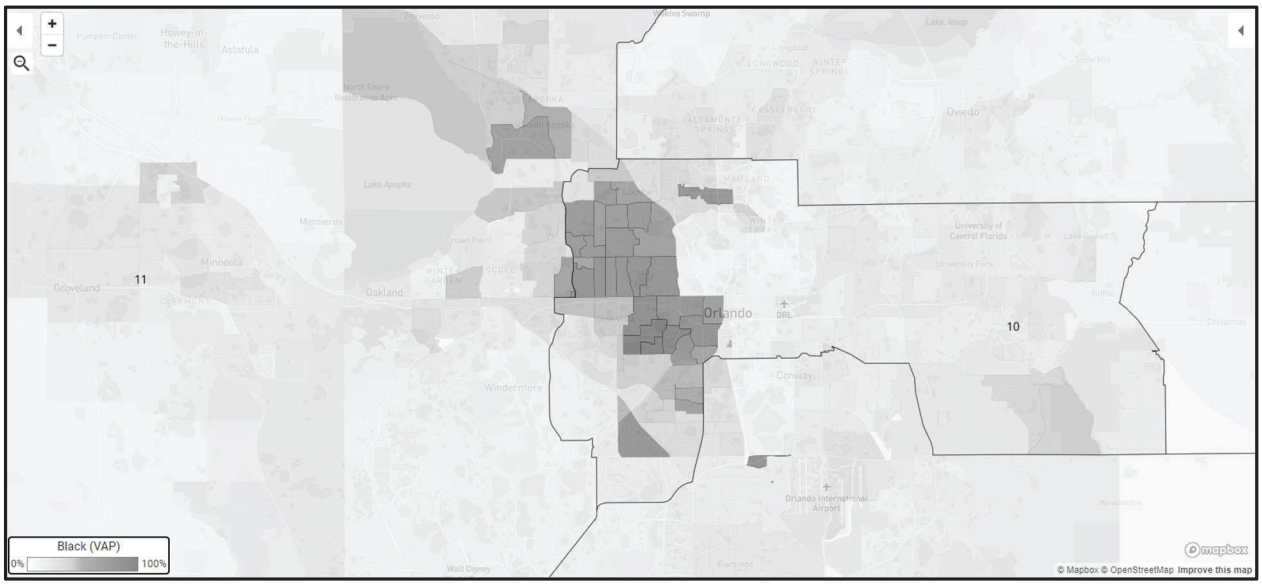
93. In the Benchmark Plan's CD-10, Black CVAP comprised 26.7% of total CVAP, but Black voters constituted an average of 49.3% of the vote in Democratic primaries in this safe Democratic district. As the Florida Senate recognized, CD-10 had performed as a Black opportunity district since 2016. Indeed, Rep. Val Demings, the Black candidate of choice, was elected in the past three elections.

94. The Enacted Plan altered 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 have a diminished 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.



Benchmark CD-10 with Black VAP Overlay[16]



Enacted Plan CD-10 with Black VAP Overlay[17]

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

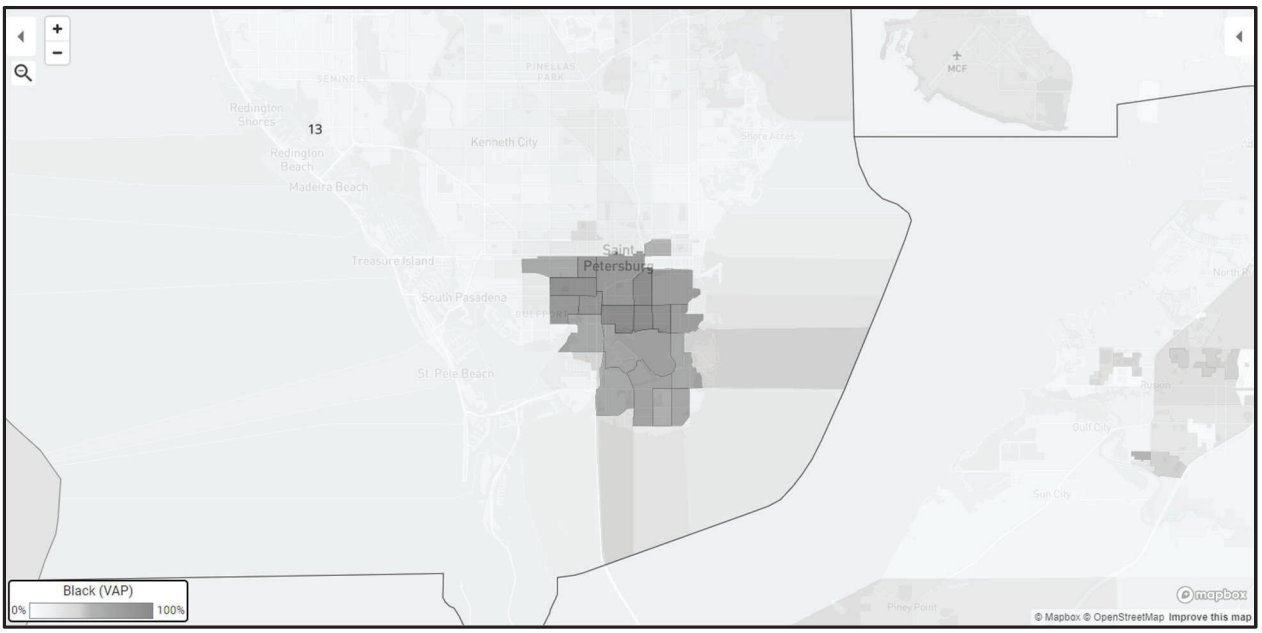
[17] Image from Dave's Redistricting, available at https://tinyurl.com/bddwyb6v.

95. 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 [B]enchmark [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."[18]

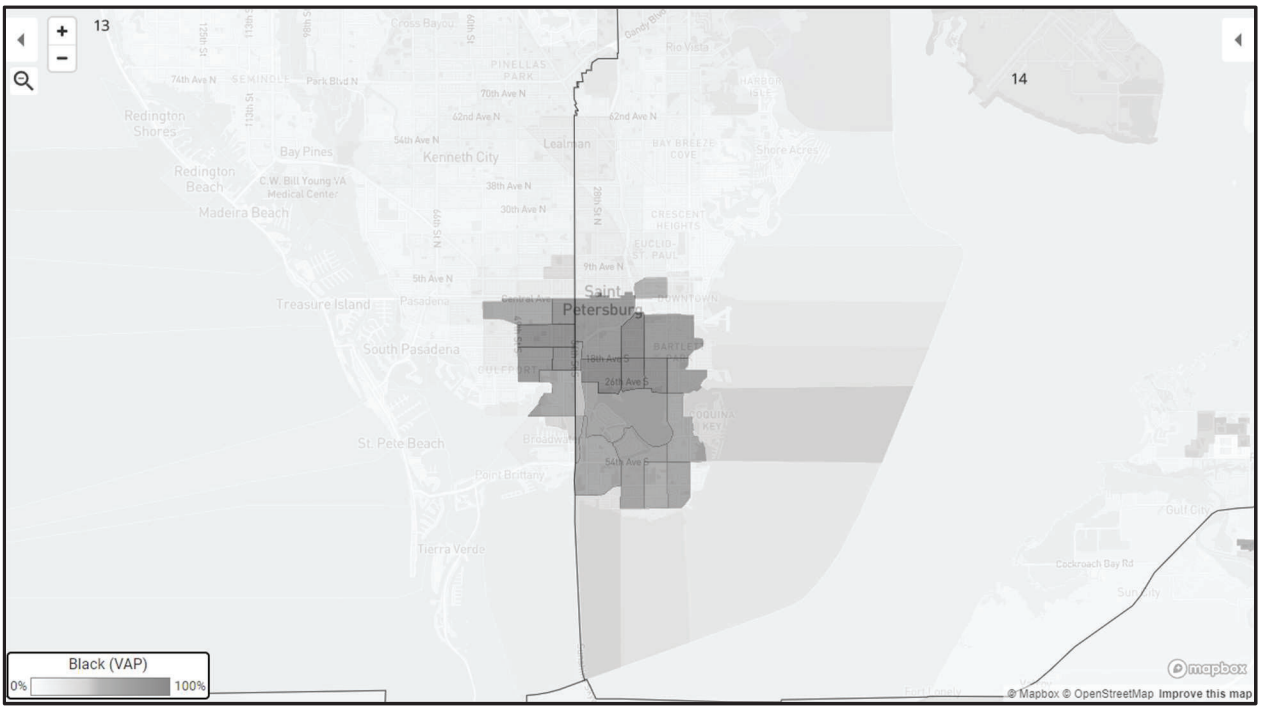
B. The Enacted Plan Conspicuously and Perniciously Splits Black Populations in Some Districts and Packs Them in Others

96. The Enacted Plan both intentionally "cracks" and "packs" 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.

[18] 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.



Benchmark CD-13 and CD-14 with Black VAP Overlay[19]



Enacted Plan CD-13 and CD-14 with Black VAP Overlay[20]

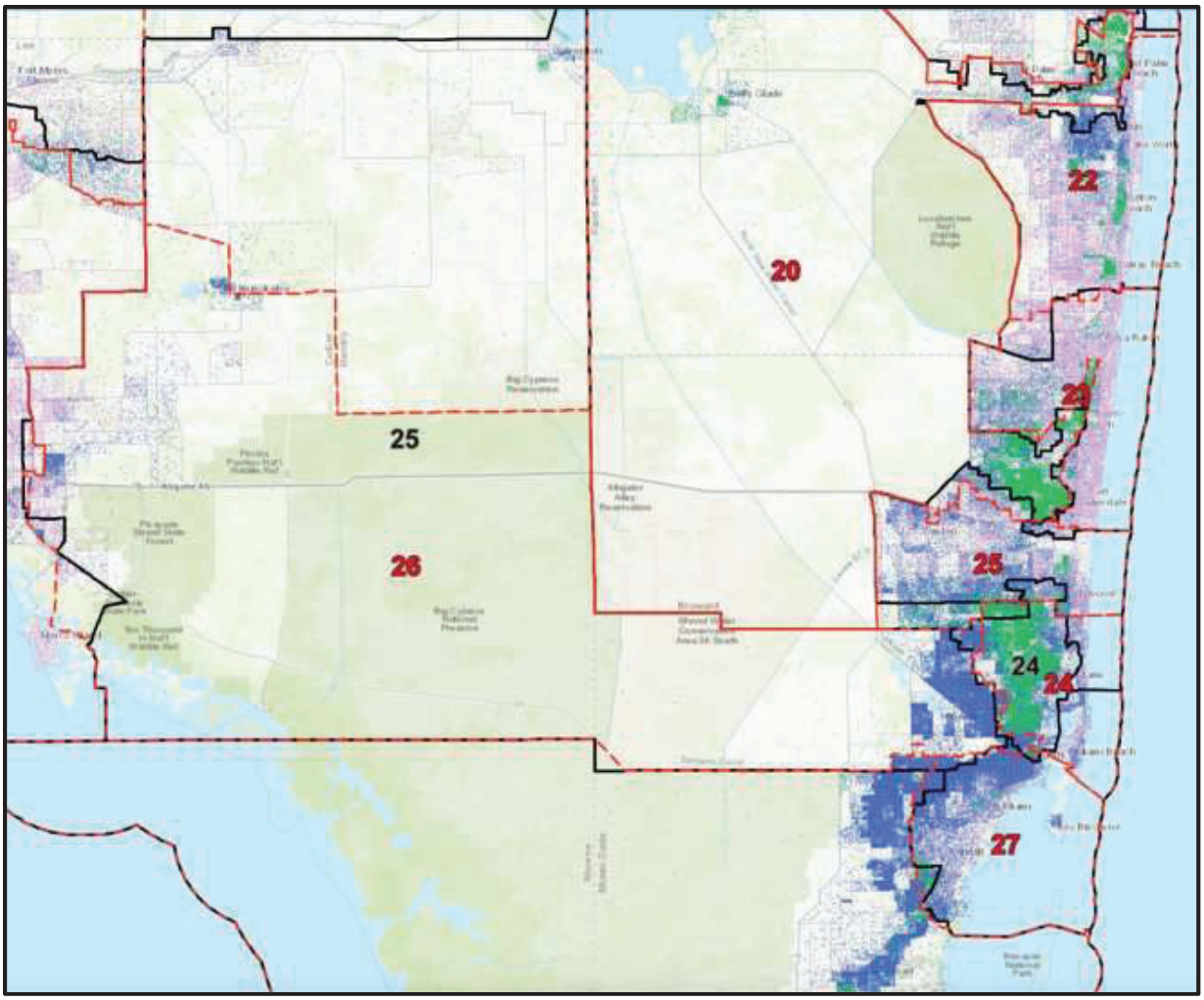
[19] Image from Dave's Redistricting, available at https://tinyurl.com/6u59v7y9.

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

97. Under the Benchmark Plan, the entirety of St. Petersburg sat 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.[21]

98. In South Florida, the Enacted Plan changes the boundaries around CDs-24, -26, and -27 in a manner that was intended to, and that operates to, confine the influence of Black voters to a single district—CD-24. In the 2022 midterm election, Democratic Representative Frederica Wilson, a Black woman, was elected in this District with more than 70% of the vote.

[21] 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.").



South Florida Congressional Districts Under the Enacted Plan[22]

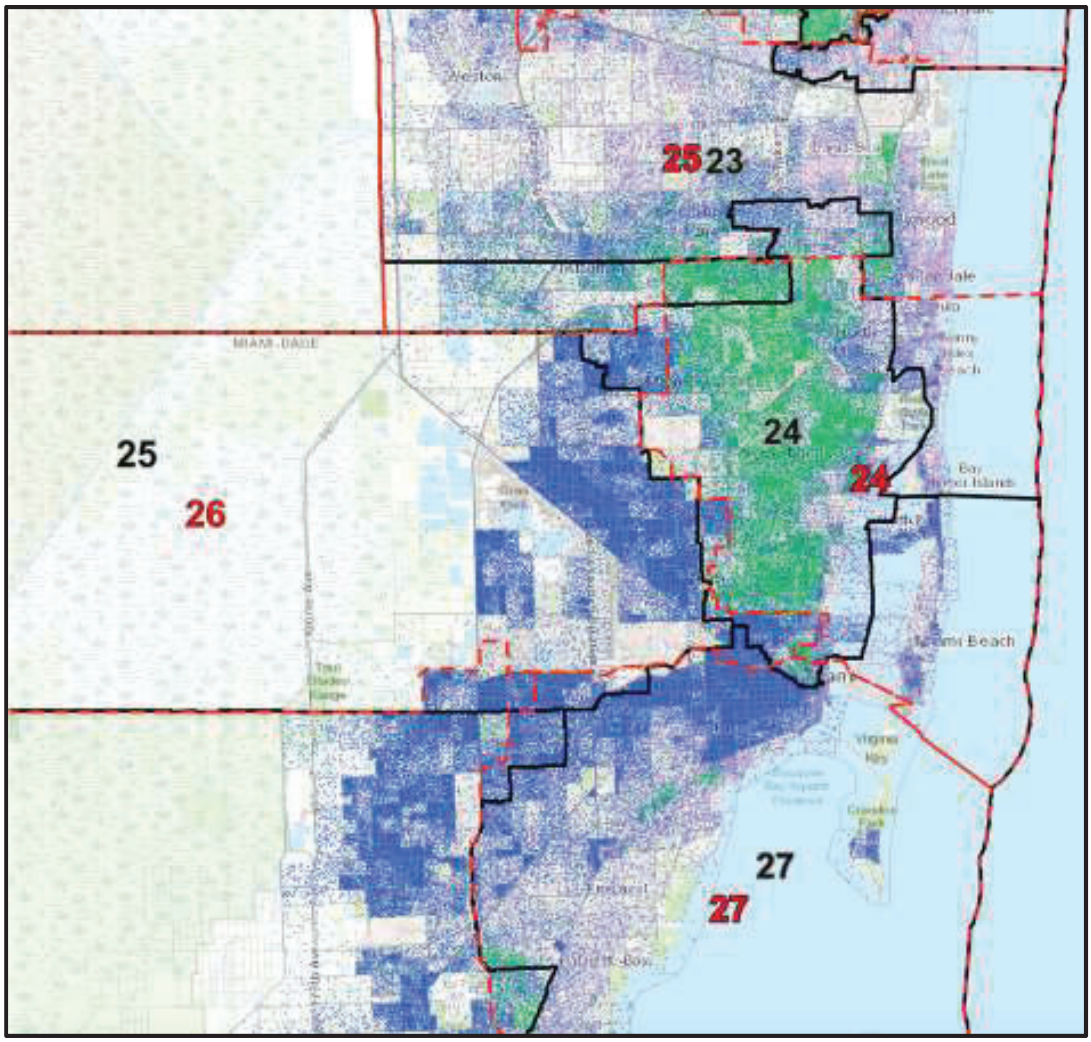
99. On the western border of CD-24, the Enacted Plan clearly traces the Black population and divides it from the population of Hispanic voters in CD-26. As shown in the comparison between the Benchmark Plan and Enacted Plan, the CD-26 district boundaries move westwards in the North and eastwards in the South

[22] Graphic produced using USA Census 2020 Redistricting Block Groups data / ArcGIS by ESRI. Black Line = Benchmark Plan; Red Line = Enacted Plan; Green = Black VAP Overlay; Blue = Hispanic VAP Overlay

to carefully separate Black voters into CD-24 and Hispanic voters into CD-26.

100. The Enacted Plan also limits the influence of Black voters by extending the northern boundary of CD-24. As shown in the comparison between the Benchmark Plan and the Enacted Plan, the district boundary moves exactly as far north and to the west as is necessary to draw these Black areas into CD-24, and thus limit the influence of the Black population to one district as much as possible.

101. Finally, the Enacted Plan also changes CD-24's southern boundary to separate Black and Hispanic voters, sorting Black voters into CD-24 and Hispanic voters into CD-26. As shown in the comparison between the Benchmark Plan and the Enacted Plan, the Enacted Plan's southwest boundary more precisely divides the Black and Hispanic populations.



Closer View of CD-24, CD-25, CD-26, and CD-27 Under the Enacted Plan[23]

C. Any Proffered Race-Neutral Justification for the Enacted Plan Is False and Pretextual

102. As discussed above, various actors responsible for the Enacted Plan—including, most prominently, Governor DeSantis—have insisted that the Enacted Plan's destruction of CD-5 was not motivated by invidious intent to discriminate

[23] Graphic produced using USA Census 2020 Redistricting Block Groups data / ArcGIS by ESRI. Black Line = Benchmark Plan; Red Line = Enacted Plan; Green = Black VAP Overlay; Blue = Hispanic VAP Overlay

against Black voters, but rather, by a desire to comply with a novel (and newly claimed) purported understanding of the United States Constitution. In particular, Governor DeSantis and his allies have professed to believe that the United States Constitution requires "race blindness" in districting at all times and above all else, while elevating the secondary consideration of compactness over the rights to Black Floridians. According to this theory, the former CD-5 therefore violatedthe United States Constitution by preserving the opportunity of Black voters in north Florida to elect the candidate of their choice—even though the Florida Constitution requiredjust that. As a result, Governor DeSantis and his allies claim, fidelity to the United States Constitution required the Governor to push through an Enacted Plan that destroyed CD-5 in the interest of "race blindness."

103. As an initial matter, this purported view of the United States Constitution is substantively incorrect. Of course, the United States Constitution prohibits the drawing of congressional districts when motivated by an invidious intent to harm a particular racial group—as Plaintiffs allege occurred here. But it is well-settled that the Constitution permits the consideration of race in the redistricting process for non-invidious purposes under certain circumstances.

104. More relevant here, however, the "race blind" explanation that the Governor and his allies have proffered for the Enacted Plan is false and pretextual as a factual matter. In destroying CD-5, Governor DeSantis and his allies were not

actually motivated by a genuinely held view that the United States Constitution requires "race blind" districting. Instead, the Enacted Plan was motivated, at least in part, by invidious desire to discriminate against and disempower the Black voters of CD-5 because of their race.

105. If the destruction of CD-5 were truly motivated by a belief that the United States Constitution requires complete "race blindness" in districting, then surely, the Enacted Plan would not contain any other districts whose boundaries reflect consideration of race (except where compelled by law, such as by the Voting Rights Act).

106. As the above examples illustrate, however, many district boundaries in the Enacted Plan were clearly drawn using racial considerations—contrary to the Governor's own stated interpretation of the United States Constitution. This is evident throughout both the Enacted Plan and the redistricting process, where Black voters are "cracked" and "packed" throughout, frequently ignoring political boundaries to achieve this effect. It is most starkly apparent in the Enacted Plan's deviations from the Benchmark Plan in South Florida, which adhere precisely to racial divides within the relevant populations.

107. These examples of race-conscious line-drawing in South Florida, as well as other evidence set forth below, belie the explanation that fealty to a purported constitutional requirement of "race blindness" is what motivated the

destruction of CD-5 in North Florida. In reality, Governor DeSantis and his allies were perfectly willing to consider race in drawing district lines, so long as the result diminished Black voting strength.

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

108. 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. 252, 265 (1977).

109. 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 . . . , 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.

110. 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).

111. 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 ultimately embraced the Plan fully understanding and intending that it have the discriminatory purpose and intent that the Governor desired.

112. 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, while "cracking" and "packing" Black voters throughout the state.

113. 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.

114. 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.

115. 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 own pretextual 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.

116. 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.

117. Moreover, despite the Governor's professed concern with race-based line drawing in the existing CD-5, it was not true that his new map was drawn without consideration of race. Governor DeSantis plainly knew that existing CD-5 and CD-10 were Black opportunity districts, and he intentionally destroyed or limited them specifically 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. Indeed, as set forth above, the Enacted Plan's clear consideration of race throughout the Enacted Plan, including in the drawing of South Florida districts, belies any claim that the Enacted Plan was drawn in a "race blind" manner, and that CD-5 was destroyed in order to adhere to the Governor's professed belief that the U.S. Constitution requires complete "race blindness" in districting.

118. 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.

119. 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

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

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

122. The facts alleged herein reveal that the Governor, his staff, and the Legislature, 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 and packing communities of color.

123. 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

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

125. 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).

126. 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.

127. The facts alleged herein reveal that the Governor, his staff, and the Legislature 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 and packing communities of color.

128. 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, Plaintiffs respectfully request 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 Defendant 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: February 6, 2023

PATTERSON BELKNAP WEBB & TYLER LLP

By: /s/ Gregory L. Diskant

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