

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

Byrd, in his 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”), 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

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). Both crossover districts and majority-minority districts are sometimes referred to as “ability to elect” districts. *See Harris v. Arizona Indep. Redistricting Comm’n*, 578 U.S. 253, 260 (2016) (“A plan leads to impermissible retrogression when, compared to the [benchmark] plan ..., the new plan diminishes the number of districts in which minority groups can ‘elect their preferred candidates of choice’ (often called ‘ability-to-elect’ districts).”); *see also Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 184 (2017) (same).

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 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*, 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.” 556 U.S. at 24. 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 invidious racial discrimination.

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’s core missions by diluting the votes of citizens Florida NAACP works to engage in civic participation and obstructing the ability

of its 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
Cassandra Brown	Lake	11	11
Peter Butzin	Leon	2	2
Charlie Clark	Leon	5	2
Veatrice Holifield Farrell	Pinellas	13	13
Brenda Holt	Gadsden	5	2
Rosemary McCoy	Duval	5	4
Leo R. Stoney	Orange	10	10
Myrna Young	Lee	19	19
Nancy Ratzan	Miami-Dade	27	24

7. Defendant Cord Byrd is the Florida Secretary of State and is named as a Defendant in his official capacity. He 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

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

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

10. 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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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).

19. 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).

20. 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).

21. 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).

22. 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.

23. 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.

24. 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 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

25. 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.

26. 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

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.

969538, at *5–*6.

27. 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.

28. 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.*

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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 Hastings’ 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.

35. 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.

36. 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.

37. 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.

38. 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

39. 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

40. In total, Florida's population grew by more than 2.7 million people. Of those 2.7 million new Floridians, roughly 2.5 million are non-white. Among the voting age population, Florida experienced growth of about 2.5 million, 2.1 million of whom are non-white.

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

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.

following the 2010 Census.

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

⁴ The Benchmark Plan 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 Plan complies with the requirements of Article III, Section 20. *Id.* at 297–98.

result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice” and state that “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 did not require the Governor’s approval and were implemented for the 2022 election.

47. In contrast, the Florida congressional map did 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, Map 8060, the map passed by the Senate prior to Governor DeSantis’s inappropriate insertion into the legislative process, had 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 was then represented by Black Congressman Al Lawson. There has been a Black district in North Florida since the early 1990s. The configuration of CD-5 in the Benchmark Plan ran 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, recognizing that “length is just one factor to consider in evaluating compactness[,]” which is only a secondary requirement under Florida law, and finding that an East-West configuration for CD-5 was the preferable configuration for constitutional compliance. *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. As reflected by the language of the Governor’s request (“the answer is ‘yes’”), the Governor 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. 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

⁵ Available at <https://tinyurl.com/2mnnwu4y>.

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 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, and that 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. At first, 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 discomfited 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 shrank 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.”

V. Under the Pretext of Disavowing Race-Based Line-Drawing, Governor DeSantis Perpetrates Intentional Racial Discrimination

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 “assign[ed] voters primarily on the basis of race” but 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 CD-5 and he placed a purported interest in the secondary factor of compactness over the rights of Black Floridians.

69. Moreover, Mr. Newman's veto memorandum was internally inconsistent. The Legislature's primary map significantly reduced the 200-mile length of CD-5 (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, unilaterally deciding that it violated the U.S. Constitution—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. These actions plainly reflect the Governor's commitment to vetoing any districting plan that protected Black representation, no matter its particulars.

⁶ Available at <https://tinyurl.com/2p98nhv8>.

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

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

⁸ *Id.*

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. In describing his plan, Governor DeSantis stated that “[i]t will have North Florida drawn in a race neutral manner,” and that “[w]e are not going to have a 200-mile gerrymander that divvies up people based on the color of their skin. That is wrong.”⁹

74. Comments by DeSantis’s deputy chief of staff, J. Alex Kelly, echoed DeSantis’s professed “concern” over “unconstitutional racial gerrymanders.” Kelly stated, “Race and political partisan data in no way related at all to my drawing of . . . any of the districts on the map.” The map, he said, is “race neutral.”¹⁰

75. 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

⁹ “DeSantis wants ‘race neutral’ North Florida district — a move that dilutes Black vote, helps Republicans,” Sarasota Herald-Tribune (Apr. 12, 2022), available at <https://www.heraldtribune.com/story/news/politics/state/2022/04/12/florida-redistricting-desantis-wants-race-neutral-district-also-helps-republicans/7291340001/>.

¹⁰ “Florida lawmakers take up Gov. DeSantis’ congressional map,” AP News (Apr. 19, 2022), available at <https://apnews.com/article/florida-race-and-ethnicity-racial-injustice-ron-desantis-legislature-81b14c6d95bfd3d1c1839430142e05d>.

functional analysis and confirmed it does not perform.”

76. 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.

VI. The Enacted Plan Is Intentionally Racially Discriminatory, and Governor DeSantis’s Purported “Race Blind” Explanation for His Actions Is False and Pretextual

77. Contrary to Governor DeSantis’s public statements, the Enacted Plan was adopted, at least in part, for the very purpose of disadvantaging Black voters.

78. 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.

79. 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

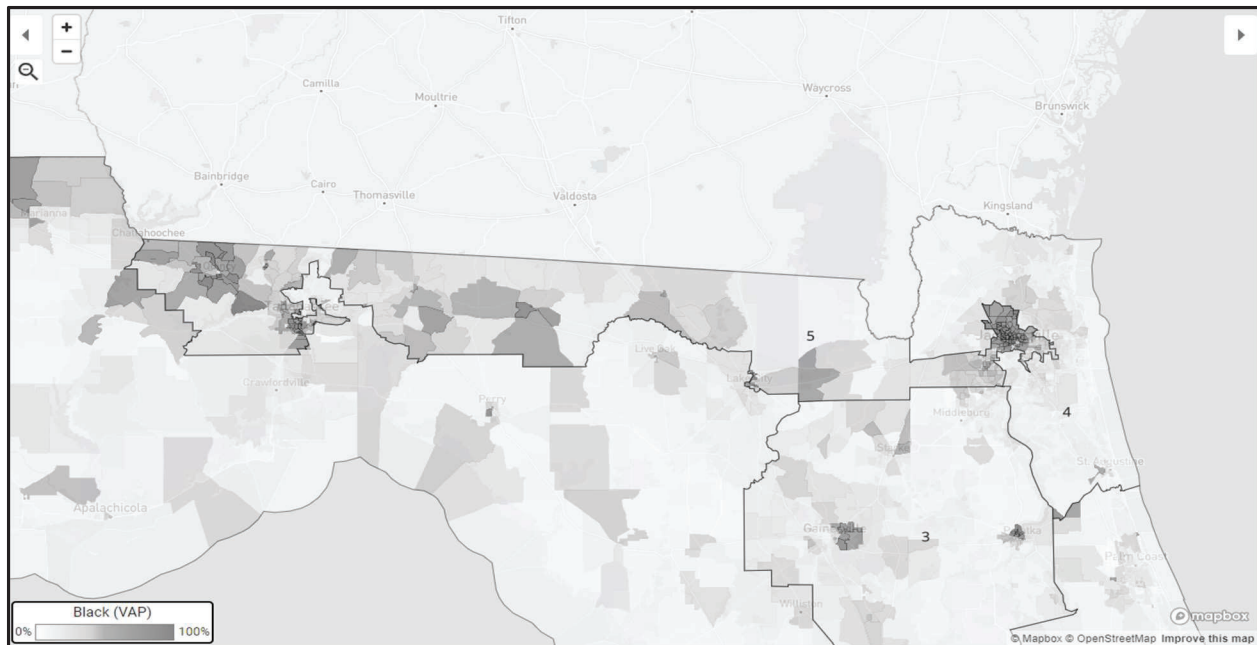
boundaries that are intended to, and will, diminish Black Floridians’ ability to influence elections across the state.

A. The Enacted Plan Eliminates Two Performing Black Districts

80. 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

81. In the Benchmark Plan, CD-5 connected the Black populations of Tallahassee and Jacksonville and from 2017 to 2023 was represented in the U.S. House of Representatives by Black Congressman Al Lawson.



Benchmark Plan's CD-5 with Black VAP Overlay¹¹

82. Based on voting citizenship data available from the 2019 American Community Survey, race/language minority voters made up an estimated 55.23% of the total citizen voting age population (“CVAP”) in the Benchmark Plan’s CD-5. The Black citizen voting age population in the district comprised an estimated 45.88% of the total CVAP, a plurality of the district.

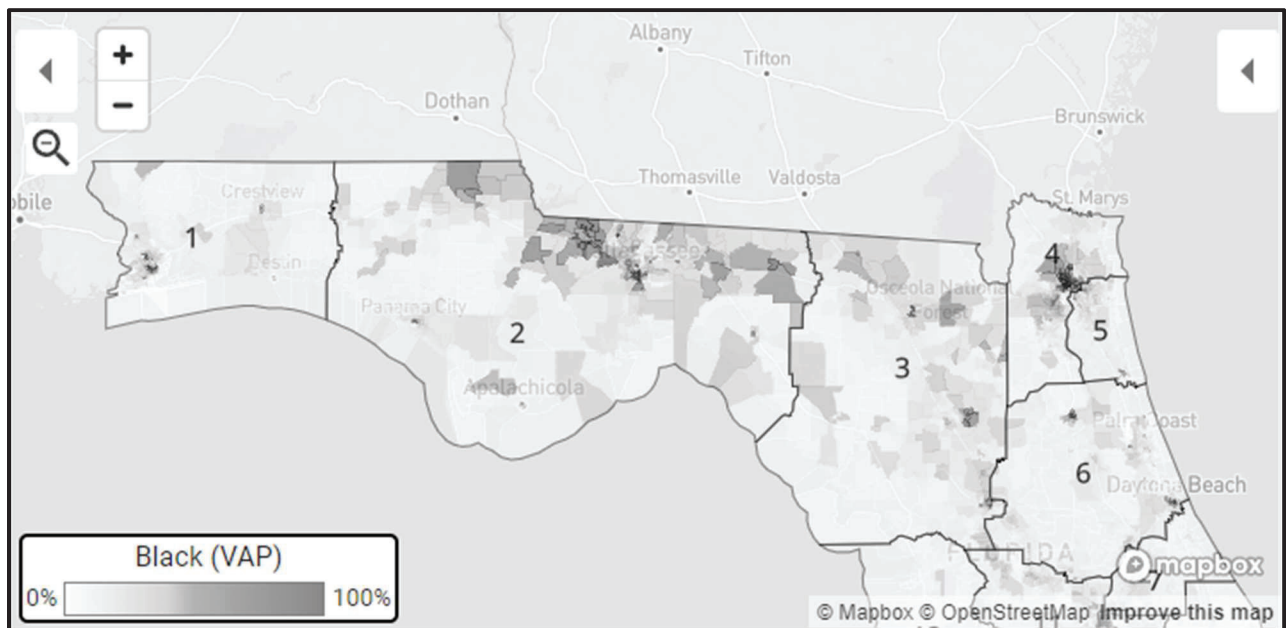
83. The Benchmark Plan’s CD-5 was considered a Black performing district (or a crossover district) because the Black population, supported by white crossover voters, was able to elect the candidate of its choice. As the Florida Supreme Court observed, CD-5’s predecessor districts “performed for the black

¹¹ Image from Dave’s Redistricting, available at <https://tinyurl.com/6u59v7y9>.

candidate of choice in every election from 1992 through 2000” and “from 2000 through the present.” *Apportionment VII*, 172 So.3d at 404.

84. The Court in *Apportionment VII* employed a functional analysis of CD-5 to explain why the district had 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.

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



North Florida Districts Under the Enacted Plan¹²

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

¹² Image from Dave’s Redistricting, available at <https://tinyurl.com/bddwyb6v>.

Black CVAP

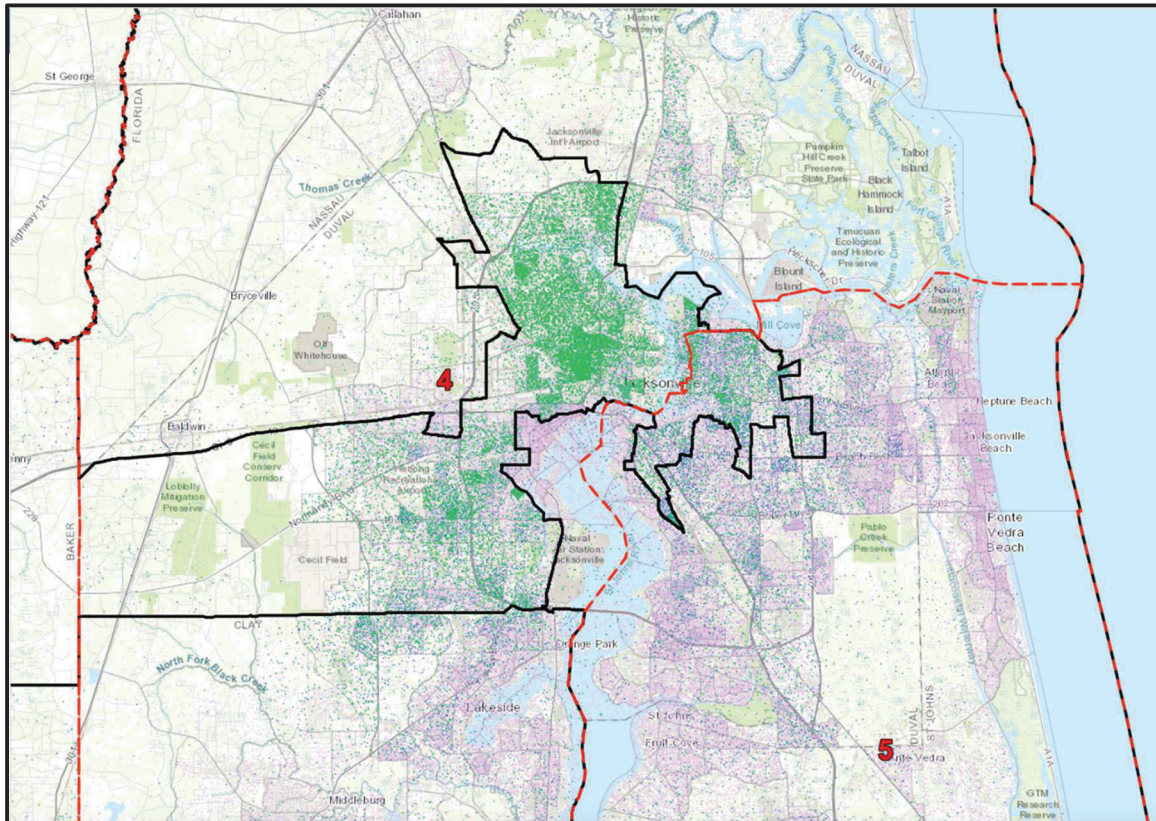
	CD-2	CD-3	CD-4	CD-5
Benchmark Plan	13.3%	16.0%	9.9%	45.9%
% Change	+10.5%	+0.7%	+20.6%	-33.5%
Enacted Plan	23.8%	16.7%	30.5%	12.4%

87. 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.

88. Governor DeSantis's plan cracks the Benchmark Plan's CD-5 in at least two ways.

89. First, the Black communities across North Florida—not just in Tallahassee or Jacksonville—are separated from one another. Contrary to the Governor's contentions, the Benchmark Plan's CD-5, which ran East–West, connected Black residents of sparsely populated North Florida counties with one another. The inclusion of these rural Black populations was not a mere incidental effect of connecting Tallahassee and Jacksonville, as Governor DeSantis has suggested. The areas in the Benchmark Plan's CD-5 encompassed the same areas where many of Florida's plantations were located before the Civil War. Many of the Black residents in this area trace their roots back to enslaved ancestors on these

plantations, and Black residents in northern Florida have much in common due to this shared history.¹³



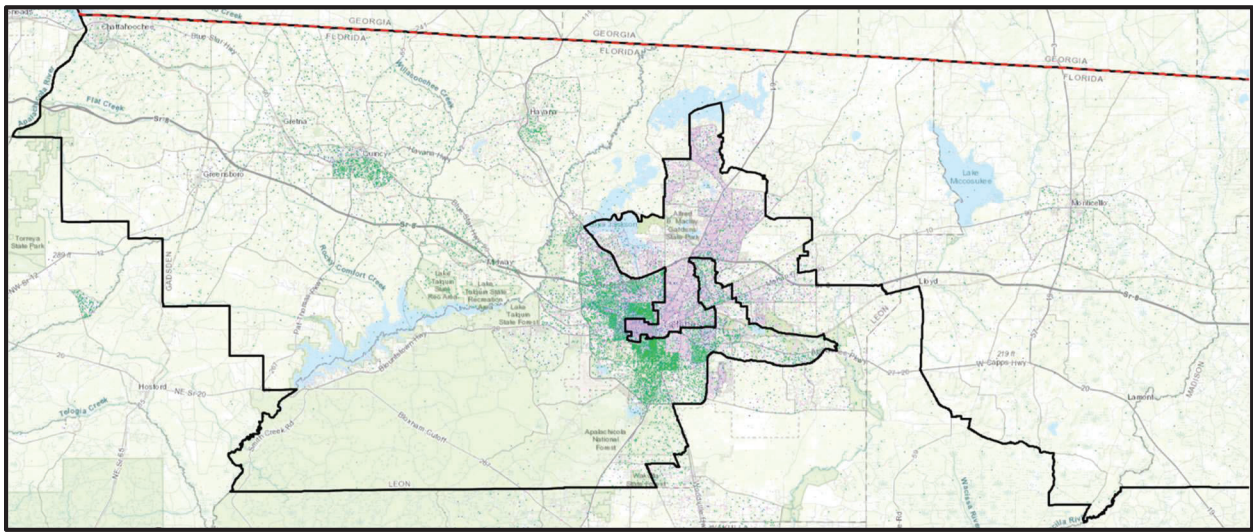
Cracking CD-5 in Jacksonville¹⁴

90. Second, the Enacted Plan also divides the city of Jacksonville and, in particular, perniciously divides Black voters who straddle the St. John's River, all of whom reside within the city of Jacksonville. Far from maintaining political

¹³ JULIA FLOYD SMITH, SLAVERY AND PLANTATION GROWTH IN ANTEBELLUM FLORIDA, 1821-1860 at 13 (2017), available at: https://ufdcimages.uflib.ufl.edu/AA/00/06/19/96/00001/9781947372627_Smith.pdf.

¹⁴ 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

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-2¹⁵

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 a way as to wholly eliminate their ability to influence who represents them in Congress.

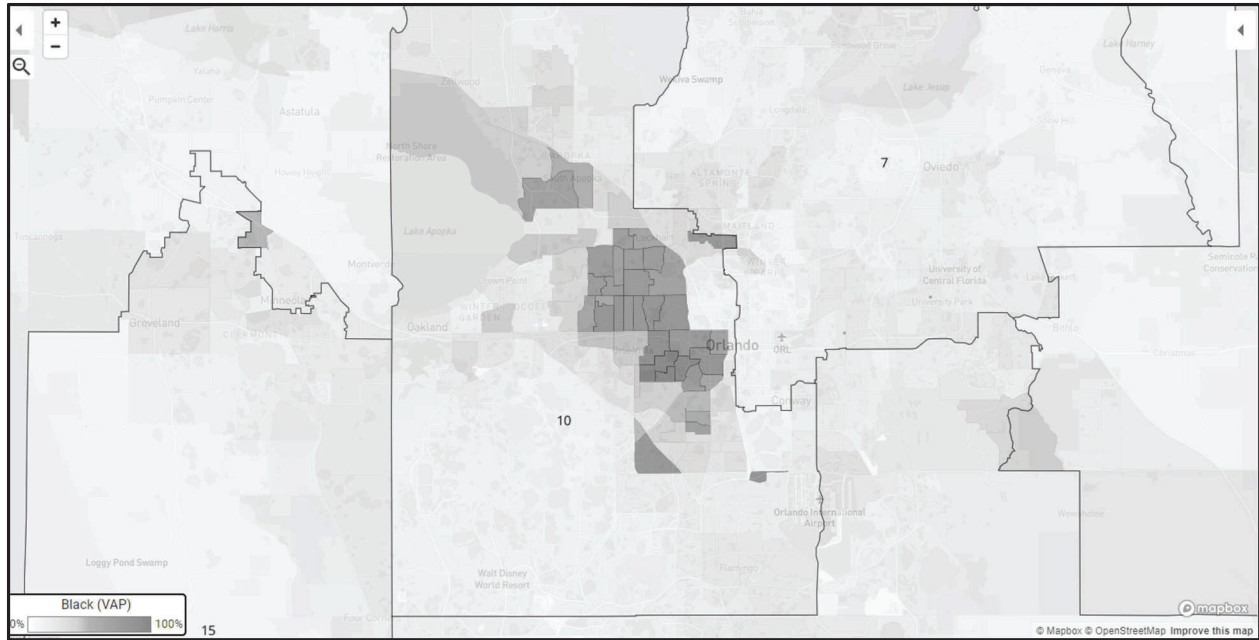
2. *Congressional District 10*

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.

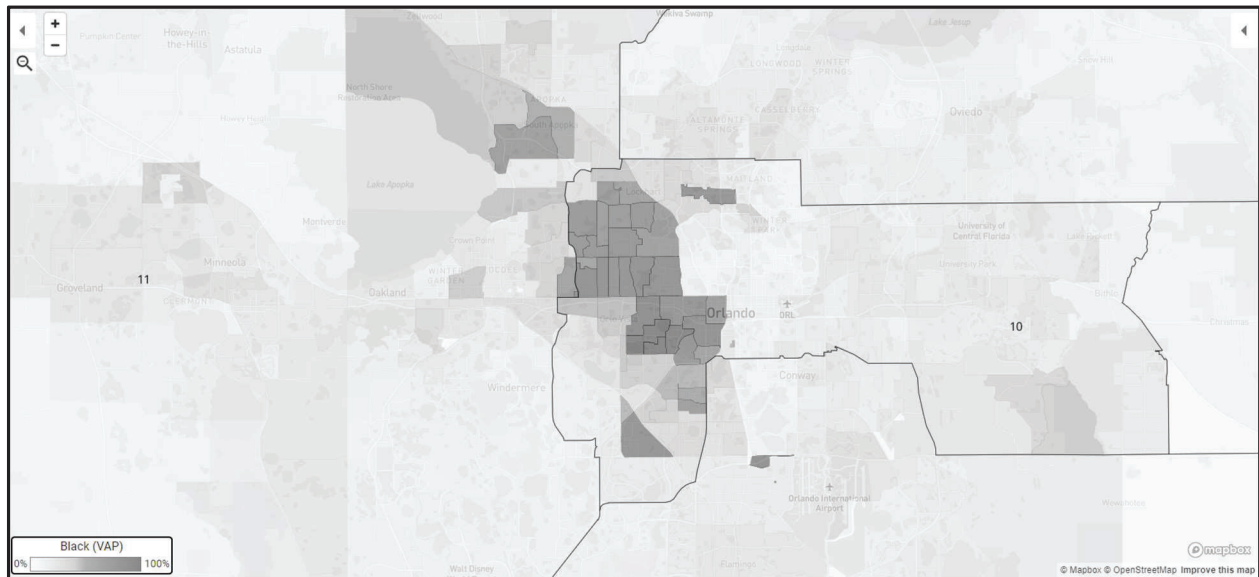
93. In the Benchmark Plan's CD-10, Black CVAP comprised 26.7% of total CVAP, but Black voters constituted an average of 49.3% of the vote in Democratic primaries in this safe Democratic district. As the Florida Senate recognized, CD-10 had performed as a Black opportunity district since 2016. Indeed, 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 Overlay¹⁶



Enacted Plan CD-10 with Black VAP Overlay¹⁷

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

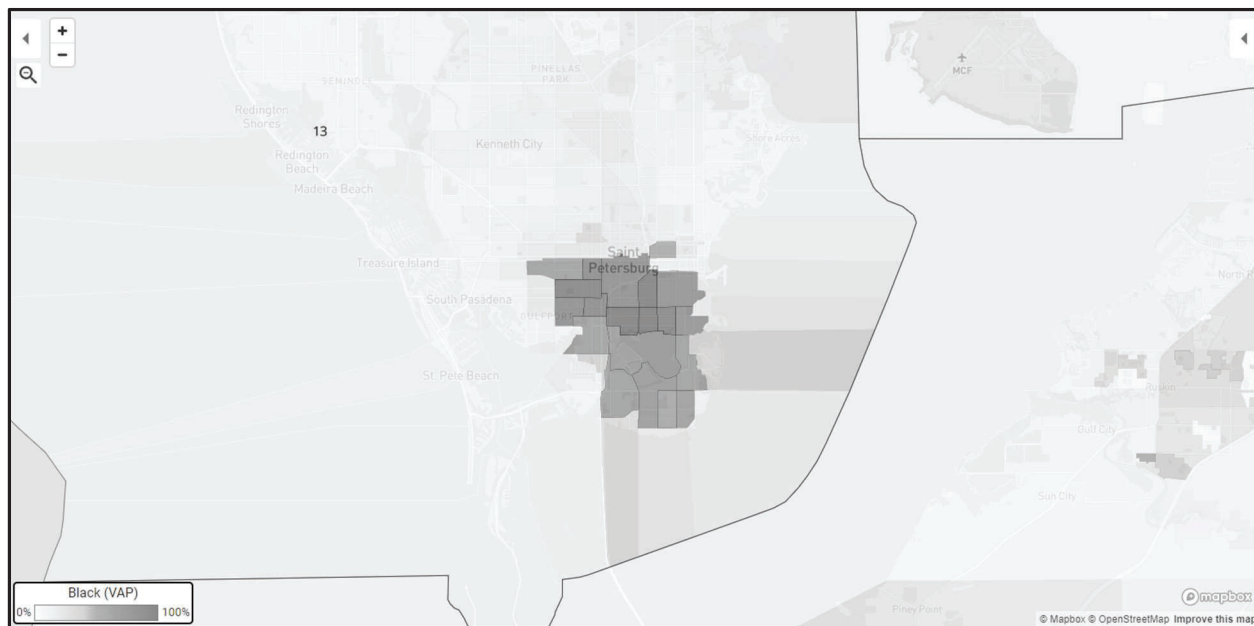
¹⁷ Image from Dave's Redistricting, available at <https://tinyurl.com/bddwyb6v>.

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

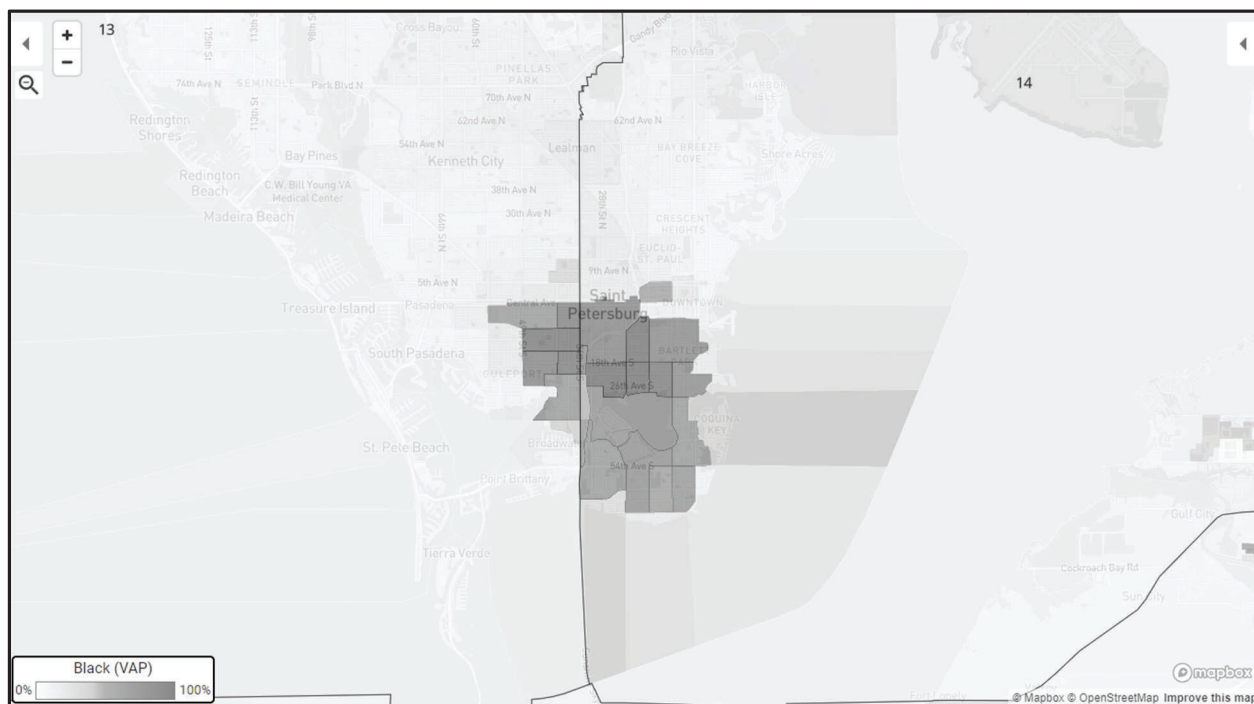
B. The Enacted Plan Conspicuously and Perniciously Splits Black Populations in Some Districts and Packs Them in Others

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 Overlay¹⁹



Enacted Plan CD-13 and CD-14 with Black VAP Overlay²⁰

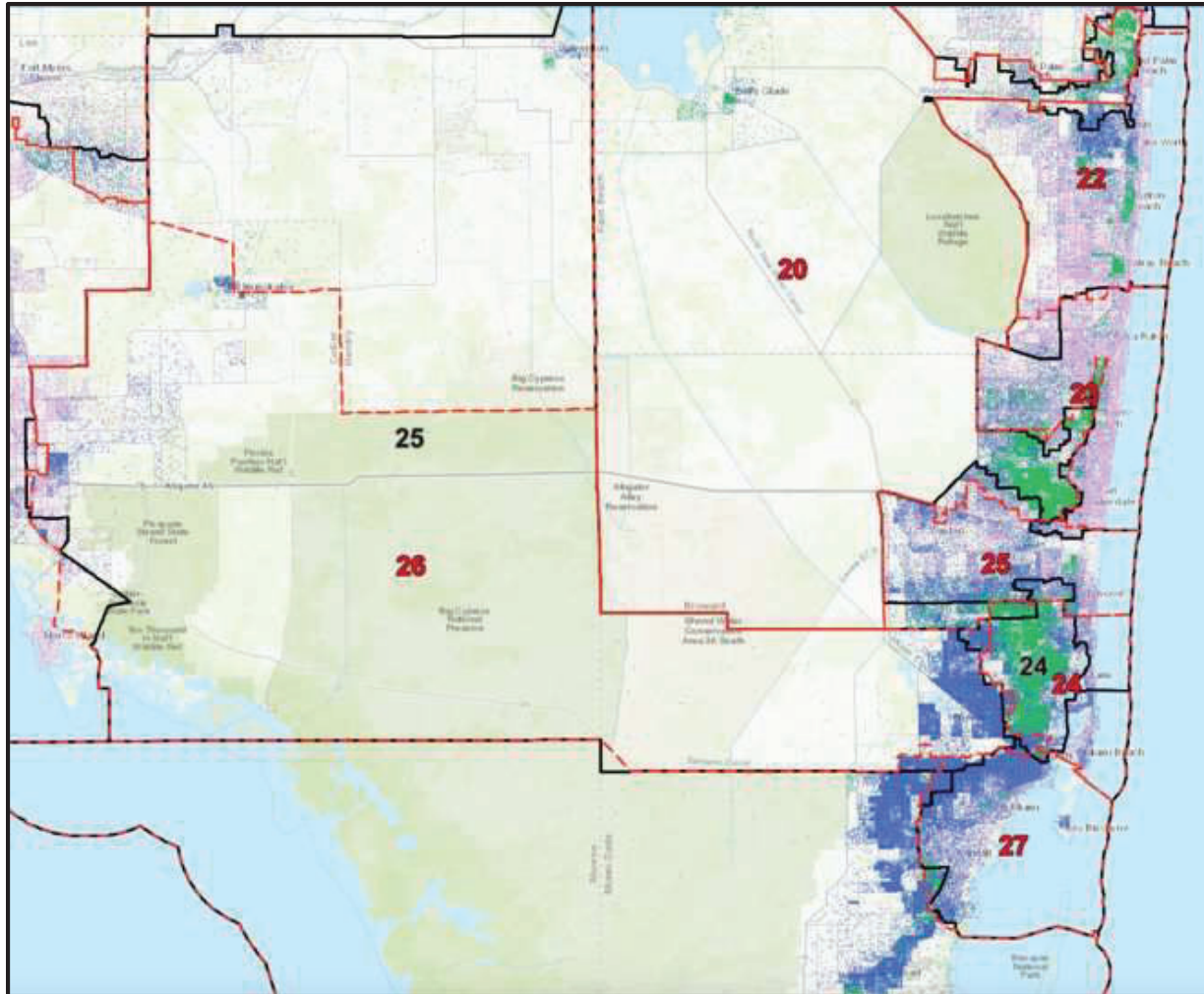
¹⁹ Image from Dave's Redistricting, available at <https://tinyurl.com/6u59v7y9>.

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 Plan²²

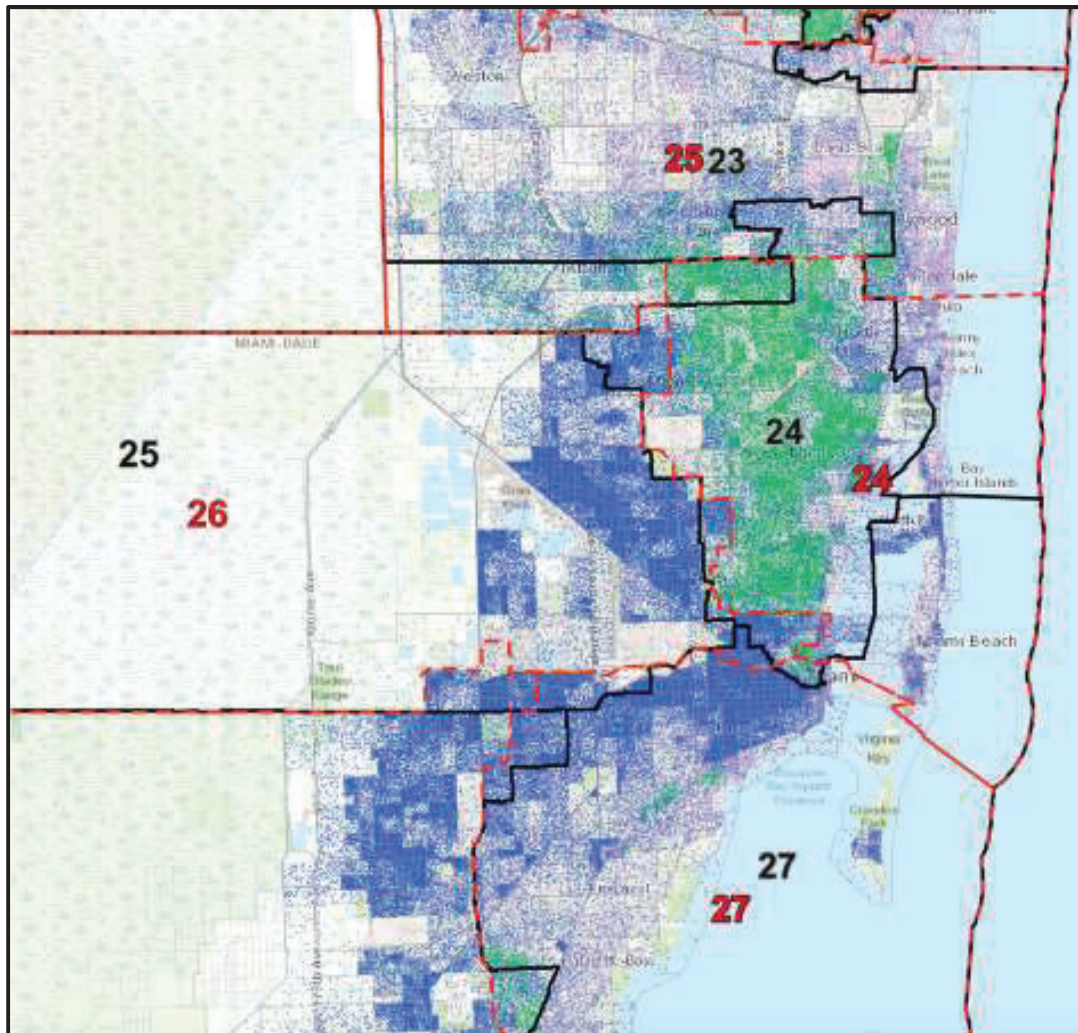
99. On the western border of CD-24, the Enacted Plan clearly traces the Black population and divides it from the population of Hispanic voters in CD-26. As shown in the comparison between the Benchmark Plan and Enacted Plan, the CD-26 district boundaries move westwards in the North and eastwards in the 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 Plan²³

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 *violated* the 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 *required* just 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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