IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

RENE ROMO, *et al.*,

Plaintiffs,

v.

KEN DETZNER and PAM BONDI,

Defendants.

CASE NO. 2012-CA-00412

THE LEAGUE OF WOMEN VOTERS OF FLORIDA, *et al.*

Plaintiffs,

v.

KEN DETZNER, *et al.*,

Defendants.

CASE NO. 2012-CA-00490

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MOTION OF PLAINTIFFS THE LEAGUE OF WOMEN VOTERS OF FLORIDA, ET AL., FOR SUMMARY JUDGMENT ON THE FACIAL UNCONSTITUTIONALITY OF THE LEGISLATURE'S CONGRESSIONAL REDISTRICTING PLAN OR, ALTERNATIVELY, FOR PRELIMINARY INJUNCTIVE RELIEF AND MEMORANDUM OF LAW IN SUPPORT

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INTRODUCTION

The State's proposed congressional map, H00C9047 ("C9047"), violates the clear constitutional mandates set forth in Article III, Section 20 of the Florida Constitution. To preserve the integrity of the 2012 congressional elections and protect Floridians' constitutional rights to a fair and neutral redistricting plan, the Coalition Plaintiffs, the League of Women Voters of Florida, National Council of La Raza and Common Cause Florida, move for a judgment holding that the Legislature's 2012 congressional redistricting plan is unconstitutional and enjoining any future use of that plan. Alternatively, the Coalition Plaintiffs ask that the Court preliminarily enjoin use of the plan for the 2012 elections.

In reaction to decades of blatant partisan gerrymandering and incumbent protection by Democrats *and* Republicans in the Florida Legislature, the voters of Florida in November 2010 imposed new restraints on the Legislature designed to ensure that voters will choose their representatives, rather than having the representatives choose their voters. This is the first round of redistricting since these new restraints have been imposed. Thus, it is particularly critical that Florida's courts fulfill their role to ensure that the voters' will is effectuated and that Florida's new constitutional provision is enforced. Otherwise, voters will go to the polls in November to elect their congressional representatives under an unconstitutional districting plan.

The Florida Supreme Court has already begun the process of enforcement. On March 9, 2012, the Florida Supreme Court issued a historic decision interpreting, applying, and enforcing Florida's new constitutional provisions regarding redistricting. The Court sent a strong message to the Legislature that the judiciary was not going to accept "business as usual" in the redistricting process and instead expected the Legislature to comply with the will of the voters and act in the interest of the voters, rather than in self-interest and partisan interest.

Because the Senate had not acted as the voters had mandated, the Court resoundingly rejected the Legislature's enacted Senate map finding that it was "rife with objective indicators of improper intent" to favor incumbents and the Republican party – the party that currently controls Florida's Legislature. *See In Re: Senate Joint Resolution of Legislative Apportionment 1176*, No. SC12-1, ___ So. 3d ___, 2012 WL 753122, at *53 (Fla. Mar. 9, 2012) (hereinafter "Op."). In its opinion, the Supreme Court provided the judiciary with a detailed roadmap to interpret, apply, and enforce Florida's constitutional requirements on redistricting. Using the same objective data and analysis as the Supreme Court, this Court can – and should – find that the Legislature's enacted congressional redistricting plan on its face fails to comply with Florida's constitution.

The discovery process will provide additional documentation and testimony corroborating the fact that the Legislature acted to favor the controlling Republican party and incumbents of both parties. Even without discovery, however, the undisputed, objective data demonstrate that the congressional map is unconstitutional on its face. The same objective indicators of improper intent that were present in the Senate map are likewise present in the congressional map. Indeed, in many respects, the congressional map shows even more disregard for the constitution. Thus, for the same reasons the Supreme Court invalidated the Senate map on its facial review, this Court should likewise invalidate the congressional plan and enjoin any future use of the plan.[1] Alternatively, this Court should preliminarily enjoin any use of the plan in the 2012 elections.

[1] Should the Court declare the plan unconstitutional, the Coalition Plaintiffs respectfully request that the Court convene the parties for an immediate hearing on remedy.

STATEMENT OF FACTS

A. The Fair Districts Amendments

On November 2, 2010, the voters of Florida amended the state constitution by adopting two provisions that provide standards the Legislature must abide by when drawing state legislative and congressional districts after each decennial census. The FairDistricts Amendments, now included as Article III, Sections 20 and 21 of the Florida Constitution, govern congressional and legislative redistricting. The identical provisions set forth the following standards:

(a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or 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 districts shall consist of contiguous territory.

(b) Unless compliance with the standards in this subsection conflicts with the standards in subsection 1(a) or with federal law, 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.

(c) The order in which the standards within subsections 1(a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

In supporting the Fair Districts Amendments, the voters were responding to a long history of political gerrymandering in Florida. In every major statewide election in recent memory, Florida has proven itself to be a state whose voters split almost evenly between Republican and Democratic candidates. In 2008, Florida narrowly voted for Barack Obama by 51.0%, while in 2004, 52.1% of Floridians voted for George W. Bush.[2] In fact in the last five presidential elections, out of all votes cast, there were 15,397,180 for the Democratic candidate and

[2] *See* Florida Dep't of State, Div. of Elections, Election Results, *available at* http://election.dos.state.fl.us/elections/resultsarchive.

15,340,416 for the Republican candidate, only a 56,764 vote difference—less than .2%. *See* http://election.dos.state.fl.us/elections/resultsarchive/Index.asp.

Nevertheless, because of the Legislature's heretofore unchecked power to strategically draw district lines, the composition of Florida's congressional delegation reflects a severe partisan imbalance: of Florida's 25 congressional seats, 19 are held by Republicans and only 6 are held by Democrats.

It is no secret that the 2002 redistricting cycle produced a politically gerrymandered map that led to this skewed partisan outcome. A federal court held that as to the 2002 districts: "The legislature's overriding goal with respect to congressional reapportionment was to adopt a plan that would ... maximize the number of districts likely to perform for Republicans." *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1300-01 (S.D. Fla. 2002). In fact, in 2002, the Legislature fully admitted at trial that the "intent of the Florida legislature, comprised of a majority of Republicans, was to draw the congressional districts in a way that advantages Republican incumbents and potential candidates." *Id.* at 1340.

B. The Florida Supreme Court's Review

Under the Florida Constitution, the legislative redistricting plans are subject to mandatory review in the Florida Supreme Court during an extremely expedited, 30-day process. The outcome of this process was the invalidation of the Legislature's Senate redistricting plan.

In its ruling of March 9, 2012, the Florida Supreme Court interpreted the provisions in the FairDistricts Amendments for the first time and gave legal force to the voters' intent. The Supreme Court has shown the provisions of Article III, Section 20 have real enforceability, even in the context of a facial review. It found that the mandates of Article III, Section 20 are nothing

short of "constitutional imperatives," Op. at *6, and clearly set forth the Legislature's new constitutional obligations.

As the Court explained, the constitutional standards fall into two tiers: Tier 1 and Tier 2. The first tier, contained in section 20(a), lists the following requirements: (1) no apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; (2) districts shall not be drawn with the intent or 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 (3) districts shall consist of contiguous territory. The second tier, located in section 20(b), lists three additional requirements: (1) districts shall be as nearly equal in population as is practicable; (2) districts shall be compact; and (3) where feasible, districts shall utilize existing political and geographical boundaries. *See id.* at *2. As the Court explained, compliance with the Tier 2 criteria is mandatory unless there is an imperative in either Tier 1 or federal law that supersedes it. *See id.* The Court thus held that:

- "We interpret the specific constitutional directive that tier two is subordinate to tier one in the event of conflict to mean that the Legislature's **obligation** is to draw legislative districts that comport with **all of the requirements** enumerated in Florida's constitution." *Id.* at *17 (emphasis added).

- "[T]he Legislature is permitted to violate compactness **only when necessary** to avoid conflict with tier-one standards" *Id.* at *64 (emphasis added).

- "In contrast to the federal equal protection standard applied to political gerrymandering [which has required a showing of an 'invidious' purpose], the Florida Constitution prohibits drawing a plan or district with the intent to favor or disfavor a political party or incumbent; **there is no acceptable level of improper intent**." *Id.* at *77 (emphasis added).

- "The fact that the tier-two principles expressly yield to [the minority protection] requirement in tier one demonstrates that the Florida Constitution specifically contemplates th[e] need [to depart from Tier 2 criteria to comply with Tier 1], **but only to the extent necessary**. Where it can be shown that it was possible for the Legislature

> to comply with the tier-two constitutional criteria while, at the same time, not diminishing minorities' ability to elect representatives of choice or denying minorities an equal opportunity to participate in the political process, the Legislature's plan becomes subject to a concern that improper intent was the motivating factor for the design of the district." *Id.* at *42 (emphasis added).

Moreover, the Court confirmed the importance of alternative plans to its determination of the facial validity of the State's proposed plan.[3]

- "[I]n making our own assessment, we will rely upon 'alternative or illustrative plans . . . *that make* ***the least departure*** *from [Florida's] stated redistricting criteria needed to prevent retrogression.*'" *Id.* at *27 (emphasis in original) (quoting DOJ Guidance Notice, 76 Fed. Reg. at 7472).

Relying on statistical reports, visual review of the maps, and briefing from various groups, including parties now before this court – the Coalition, the Florida House, and the Florida Senate – the Supreme Court analyzed the 120-district House maps, as well as the 40-district Senate maps proposed by the State and the Coalition. In only 30 days, the Court was able to conclude that the State's proposed Senate plan violated the express terms and spirit of the new constitutional requirements. In a 190-page opinion, the Court defined and applied each of the criteria contained in Article III, Section 21, noted that there had not been a record of any functional analysis of minorities' ability to elect representatives of their choice in the State's proposed Senate map, and looked at individual districts to determine the existence of Tier 2 violations that lacked any superseding Tier 1 rationale. Ultimately, the Court struck down the State's Senate plan on a facial review.

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[3] The Coalition submitted an alternative proposed congressional plan to the Legislature on January 6, 2012. The Legislature refused to consider or adopt the Coalition's plan. That plan – SPUBC0170 – is available in electronic format (as either a .doj file or a .kmz file) on the Senate's website at http://www.flsenate.gov/Session/Redistricting/Plans. All of the statistical reports that are provided for the Legislature's plan are likewise provided for the Coalition's alternative plan on that website. All demographic statistics cited in this brief are taken from the State's own demographic reports.

C. The Proceedings in This Case

On March 16, 2012, all parties met with this Court to discuss the schedule and standards that will govern these proceedings. At that case management conference, the parties and Court discussed at length the nature of this Court's facial review of the State's proposed congressional map. This Court repeatedly emphasized its intention to conduct a facial review just as the Florida Supreme Court did with respect to the state legislative maps. *See, e.g.*, Hr'g Tr. at 9:15-18, 24:2-6, 35:2-4 (March 16, 2012). The Court then issued on order on March 26, 2012, confirming that it would perform "a review similar to that recently conducted by the Florida Supreme Court" and ordering the Plaintiffs to file motions and supporting memoranda for purposes of that review by March 26, 2012. *See* Order (March 26, 2012). In accordance with the Court's directive, the Coalition Plaintiffs submit this memorandum of law in support of their motion for judgment on the facial unconstitutionality of the Legislature's congressional redistricting plan and to enjoin any future use of the plan, or alternatively to preliminarily enjoin any use of the plan for the 2012 elections.

ARGUMENT

Summary judgment is proper under Florida law "if the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c); *Beverly v. State Farm Fla. Ins. Co.*, 50 So. 3d 628, 629 (Fla. 2d DCA 2011). The Florida Supreme Court found, as a matter of law, that the State's Senate plan was unconstitutional on its face. Using undisputed statistical evidence and visual review, the Court looked to objective indicators of improper intent and found them present in the Senate plan. It therefore invalidated the Senate map on its face as a matter of law, without resort to any facts other than the objective facts present in the maps themselves. In so doing, it provided this Court with the roadmap by which to determine as a matter of law whether

the congressional districting plan is unconstitutional on its face. The same universe of materials relied on by the Florida Supreme Court is herein provided to this Court. Using the Florida Supreme Court's opinion as a guide, this Court should grant summary judgment as a matter of law to Plaintiffs for the same reasons the Florida Supreme Court as a matter of law declared the Senate plan unconstitutional.

If this Court does not outright grant Plaintiffs judgment on the facial unconstitutionality of the Legislature's congressional redistricting plan, it must at a minimum preliminarily enjoin any use of that plan for the 2012 elections. As is set forth below, the Coalition has a substantial likelihood of success on the merits and irreparable harm will plainly result if voters are forced to elect their congressional representatives from districts later deemed unconstitutional. The balance of the equities also favors Plaintiffs. Though the State has argued that its interest in orderly elections must trump the voters' interest in fair elections, this Court can protect both interests, and there is no need to disregard the voters' interest in fair elections.

For decades, the Florida Legislature has abused the redistricting process to guarantee skewed partisan outcomes, favor incumbents, and subvert the voters' will, just as C9047 now promises to do. In overwhelmingly voting for the Fair Districts Amendments, the public firmly established that those abuses would no longer be tolerated and that its true electoral preferences should dictate electoral outcomes for all future elections—including the 2012 congressional election. The public interest requires that the constitutional commands of Article III, Section 20 be honored.

I. THE LEGISLATURE'S PLAN DEMONSTRATES AN OVERALL INTENT TO FAVOR THE CONTROLLING PARTY AND INCUMBENTS OF BOTH PARTIES.

Following the guidance of the Florida Supreme Court, this Court must find the Legislature's enacted congressional plan unconstitutional on its face and grant judgment as a

matter of law to Plaintiffs. *Cf. Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006) (upholding trial court's grant of summary judgment on facial unconstitutionality of legislative enactment). As demonstrated below, the Legislature's plan is unconstitutional as a whole, as well as containing numerous individual districts that are unconstitutional.

In its landmark decision, the Florida Supreme Court considered overall challenges to the legislative plans, as well as district-by-district challenges. Although it did not invalidate the Senate plan based solely on any of the overall challenges, it nonetheless considered the overall challenges of partisan and incumbent favoritism when it conducted its district-by-district analysis. As the Court stated: "One piece of evidence in isolation may not indicate intent, but a review of all of the evidence together may lead this Court to the conclusion that the plan was drawn for a prohibited purpose." Op. at *19. The Coalition believes that a review of all the following objective evidence together will indeed lead this Court to the conclusion that the Legislature's enacted Congressional plan was drawn for a prohibited purpose.

A. The Plan Shows An Overall Intent To Favor A Political Party.

The Florida Supreme Court determined that "the effects of the plan" was one of the "factors that serve as objective indicators of intent" to favor a political party. *Id.* at *19. Although the Court "rejected the challenge that statewide voter registration and election results demonstrate an overall intent to favor the Republican party," *id.* at *45, it nonetheless held that it would "evaluate these statistics when examining individual districts," *id.*, and it stressed that "effect can be an objective indicator of intent," *id.* at *43.

Here, the overall effects of the Congressional plan demonstrate such a severe partisan skew that the intent to favor the Republican party is obvious. As is set forth in the attached appendix, the Legislature created 14 safe Republican seats and 5 "leans" Republican seats. App.

A at E-1.[4] It created only 7 safe Democratic seats and 1 leans Democratic seat. *Id.* The overall composition of the Legislature's Congressional map is likely to be 19 Republican seats to 8 Democratic seats, or 70% Republican.

When the Legislature last drew 19 Republican seats in the 2002 congressional redistricting plan, a federal court specifically found that "[t]he legislature's overriding goal with respect to congressional reapportionment was to adopt a plan that would . . . maximize the number of districts likely to perform for Republicans." *Martinez*, 234 F. Supp. 2d at 1300-01. In fact, in 2002, the Legislature "stipulated ... at trial" that the "intent of the Florida legislature, comprised of a majority of Republicans, was to draw the congressional districts in a way that advantages Republican incumbents and potential candidates." *Id.* at 1340. Since gerrymandering is now prohibited, it is unlikely that the Legislature will make the same stipulation again, but it is no less true that a congressional redistricting plan that includes 19 districts that favor the Republicans, even when the vote statewide is divided 50-50, demonstrates an "intent...to draw the congressional districts in a way that advantages Republican incumbents and potential candidates." *Id.*

This is borne out by expert analysis of the objective facts. As is recounted in the expert report of Dr. Daniel A. Smith, Professor of Political Science at the University of Florida, the Legislature's congressional plan is a partisan gerrymander. *See* App. B at 3–4. In 2008, Florida narrowly voted for Barack Obama by 51.0%, while in 2004, 52.1% of Floridians voted for

[4] As explained in Appendix A at E-1, this calculation is made using the average of Democratic performance from the 2006 and 2010 gubernatorial elections and the 2004 and 2008 presidential elections. This is herein referred to as the "four-race average." The average Democratic performance of the 2010 gubernatorial election and the 2008 presidential election is herein referred to as the "two-race average."

George W. Bush.[5] Yet under the State's plan, if voters statewide divide nearly evenly between Democratic and Republican candidates, Democrats are likely to win *only eight* of Florida's 27 congressional seats. App. B at 15. As Dr. Smith graphically depicts, this is because under C9047, the Legislature has succeeded in packing Democratic voters into as few districts as possible, thereby ensuring continued Republican dominance in the congressional delegation. *See id.* at 24. Dr. Smith thus found that the Legislature's congressional plan plainly shows an intent to favor the Republican party. *See id.* at 3–4, 18–19.

The Legislature's partisan intent becomes even more obvious when looking at the process that resulted in the adoption of plan C9047. The House introduced and considered 14 separate congressional redistricting plans before settling on C9047 and the Senate introduced and considered three separate congressional plans. For almost every district in the Legislature's congressional plan that falls within a Democratic performance range of 43% to 57%, the Legislature chose the version of that district that had the best Republican performance numbers rather than the district that was most compact and respectful of political and geographical boundaries.[6] A visual depiction of the choices the Legislature made graphically demonstrates that the Legislature was far more interested in achieving better Republican performing districts than in achieving constitutionally compliant districts. As is plainly demonstrated by examining the materials at Appendix A at Tab D, at every opportunity the Legislature consistently chose to sacrifice compactness in favor of partisan gain. These objectively observable and verifiable facts demonstrate that the Legislature's plan was drawn for a prohibited purpose.

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[5] *See* Florida Dep't of State, Div. of Elections, Election Results, *available at* http://election.dos.state.fl.us/elections/resultsarchive.

[6] The only district that does not follow this pattern is District 9, the Orlando Hispanic district, which the Legislature instead chose to pack with Democrats.

B. The Plan Shows An Overall Intent To Favor Incumbents.

The Supreme Court held that "[w]ith respect to intent to favor or disfavor an incumbent, the inquiry focuses on whether the plan or district was drawn with this purpose in mind." Op. at *19. The Court held that it would look to "the shape of the district in relation to the incumbent's legal residence, as well as other objective evidence of intent" such as "the maneuvering of district lines in order to avoid pitting incumbents against one another in new districts or the drawing of a new district so as to retain a large percentage of the incumbent's former district." *Id.* at *20. The Court also noted that "[w]hen analyzing whether the challengers have established an unconstitutional intent to favor an incumbent, we must ensure that this Court does not disregard obvious conclusions from the undisputed facts." *Id.*

One of the factors that led to invalidation of the Senate plan was the fact that, on average, Senate incumbents retained 64.2% of their former districts. As the Court stated, one of the objective indicators of improper intent was the fact that "at least some incumbents appear to have been given large percentages of their prior constituencies," which was of "even greater concern given that the 2002 Senate plan was drawn at a time when intent to favor a political party or an incumbent was permissible and there were no requirements of compactness or utilizing existing boundaries." *Id.* at *54.

The Congressional plan is even worse than the Senate plan in this respect. As is set forth at Appendix A, Tab G and in Dr. Smith's report, on average, the 25 congressional incumbents retain on average 73% of their former districts – districts that the Legislature has admitted were drawn in 2002 so as to favor the Republican party and incumbents. *See Martinez*, 234 F. Supp. 2d at 1300-01, 1340. In fact, 21 out of 25 incumbents were given districts with more than 55% of their prior population. App. B at 5–6. Moreover, as Dr. Smith found, three of the four

incumbents with less than 55% of their prior population were Republicans in highly overpopulated districts. In designing each of those districts, the Legislature strategically shed Democratic-leaning population so as to *improve* Republican performance for the new districts. *Id.* at 5–7. Overall, on the basis of these objective facts, the Legislature's plan plainly demonstrates an intent to favor incumbents.

The fact that some districts now include the residences of more than one incumbent, and some members of Congress no longer live in the district in which the majority of their constituents live, is of no relevance given that there is no requirement that a member of Congress live in his or her district. *See* U.S. Const. Art. I, § 2, cl. 2 ("No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."). Thus any claim that the congressional plan did not favor incumbents because it supposedly pitted incumbents against one another is misplaced.

C. The Plan Overall Uses The Constitution's Minority Protection Provisions As A Pretext For Partisan And Incumbent Favoritism.

A major reason the Supreme Court invalidated the Senate plan was because the Senate used the minority protection provisions of the Constitution as a pretext for partisan and incumbent favoritism. *See, e.g.,* Op. at *63, *66, *69 (invalidating various districts where challengers asserted that minority protection had been used as a pretext for partisan or incumbent favoritism). Packing as many minority voters who vote Democratic into a district as possible is a standard tool in Republican gerrymanders. As African-American State Senator Arthenia Joyner explained in voting against the Senate plan: "In Florida, for the last 20 years, this sort of packing of African-American voters has been used to ensure the election of a disproportionate number of Republican candidates. Each of Florida's districts that have elected African-American

representatives contains substantially more African-American population than is needed to allow African-Americans an opportunity to elect their preferred representatives." Senate Floor Debate Tr. 174-75 (Jan. 17, 2012). Senator Joyner pointed out that the Legislature had used the minority-protection provisions of the constitution to adopt "a standard of retrogression that requires the same level of packing as currently exists." *Id.* at 175.

The Court emphatically rejected this standard of retrogression, and held that the Senate, which focused solely on keeping the percentage of minority voting age population at the same levels in the 2012 districts as it had been in the 2002 districts, had acted contrary to law. Rather, the Court held that the Legislature was required to perform a "functional analysis" that would take account "not only of the minority population in the districts, or even the minority voting-age population in those districts, but of political data and how a minority population group has voted in the past." Op. *27. Because the Senate had not performed any functional analysis and had rather focused solely on keeping minority voting percentages at the same packed levels that had resulted in the partisan gerrymander of 2002, the Court required the Legislature to redraw its Senate plan using a functional analysis to ensure that any departures it made from the constitutional requirements of compactness and utilization of existing political and geographical boundaries would be only "to the extent necessary" to avoid retrogression. *Id.* at *42.

As the Court held with respect to the purpose of the functional analysis: "Where it can be shown that it was possible for the Legislature to comply with the tier-two constitutional criteria while, at the same time, not diminishing minorities' ability to elect representatives of choice or denying minorities an equal opportunity to participate in the political process, the Legislature's plan becomes subject to a concern that improper intent was the motivating factor for the design of the district." *Id.* The Court warned that: "It is critical that the requirement to protect minority

voting rights when drawing district lines should not be used as a shield against complying with Florida's other important constitutional imperatives." *Id.* The Court further held that it would "not rule out the potential that a violation of the Florida minority voting protection provision could be established by a pattern of overpacking minorities into districts where other coalition or influence districts could be created." *Id.* at *47.

As is discussed in greater detail below in the district-by-district challenges, the Legislature took the exact same improper approach to the congressional map as it did to the Senate map. The Legislature focused solely on keeping minority voting age percentages at approximately the same levels as those in the existing map. *See, e.g.,* Att'y Gen. Pet. App.[7] 5239-40 (House counsel stating that "what the House did was to focus on districts that had historically performed for African-Americans or for Hispanics, ... and tried very carefully not to diminish the population percentages"). Moreover, the Legislature appeared to believe that using the NAACP's proposal as its "mark" for the correct percentage of African-American voting age population in minority districts absolved the Legislature of its other constitutional responsibilities. *See, e.g.,* Att'y Gen. Pet. App. at 5058 (House redistricting staff describing approach to drawing District 5: "The NAACP submitted a map that drew the seat at exactly a 48 percent black voting age population, so in all three examples, it is just slightly above that, a couple hundredths of a percentage above that, that mark being that that's what the NAACP submitted."). But use of that "mark" as a justification was expressly rejected by the Florida Supreme Court. *See* Op. at *56 ("Although the Senate touts its adherence to the recommendations of the Florida NAACP and LatinoJustice PRLDEF regarding minority

[7] This designation refers to the appendix submitted by the Attorney General in the recent Florida Supreme Court proceedings regarding the state legislative maps. The Attorney General's appendix is available at http://www.floridasupremecourt.org/pub_info/redistricting2012/index.shtml.

districts, this does not absolve the Senate of its independent responsibility to draw an apportionment plan that adheres to all of the constitutional requirements.").

While the record is ambiguous as to whether the House conducted any functional analysis at all on minority districts, it is clear that it did not conduct the functional analysis mandated by the Supreme Court. Had it done the proper functional analysis, the House would have been required to justify any departure from compactness or respect for political and geographical boundaries by showing that the departure was absolutely necessary to avoid retrogression. The Senate concededly did not perform *any functional analysis at all* when it drew its redistricting plans and C9047 is nearly identical (over 90% similar) to the original congressional plan proposed by the Senate. App. B at 11–13. The Senate's failure to conduct the proper functional analysis permeates C9047 to at least the same degree as it permeated the Senate's legislative plan.

The Coalition did undertake the proper functional analysis and thus submitted a map that plainly demonstrated that "it was possible for the Legislature to comply with the tier-two constitutional criteria while, at the same time, not diminishing minorities' ability to elect representatives of choice or denying minorities an equal opportunity to participate in the political process." Op. at *42. The Coalition's map also shows that by excessively packing minorities, the Legislature failed to create additional minority influence districts. The Legislature's map is therefore subject to an imputation that "improper intent was the motivating factor" behind it. *Id.*

D. The Plan Overall Is Not Compact.

The Florida Supreme Court held that "[s]ince compactness is set forth in section 21(b), the criteria of section 21(a) must predominate to the extent that they conflict with drawing a district that is compact. However, if a district can be drawn more compactly while utilizing

political and geographical boundaries and without intentionally favoring a political party or incumbent, compactness must be a yardstick by which to evaluate those other factors." Op. at *37. The Court noted that compactness "refers to the shape of the district" and that the goal of the compactness criterion is "to ensure that districts are logically drawn and that bizarrely shaped districts are avoided." *Id.* at *38. The Court held that compactness should be "evaluated both visually and by employing standard mathematical measurements." *Id.*

The Coalition submitted a Congressional plan to the Legislature that demonstrated that it was possible to create more compact districts. The Coalition's plan as a whole scored better than the Legislature's plan on both the Reock and Area/Convex Hull measures of compactness utilized by the Florida Supreme Court in its opinion and is visually far more compact. *See* App. A at Tab A and C-2 (showing that the Coalition plan beats the Legislature's plan overall on compactness). The Legislature's violations of compactness are discussed in greater detail in the district-by-district challenges below.

E. The Plan Overall Has Unnecessary Departures From Utilization of Political and Geographical Boundaries.

The Supreme Court held that "[t]ogether with an analysis of compactness, an adherence to county and city boundaries as political boundaries, and rivers, railways, interstates and state roads as geographical boundaries will provide a basis for an objective analysis of the plans and the specific districts drawn." *Id.* at *40. It rejected the Senate's "pick-and-choose" method of approaching political and geographical boundaries and held that the Legislature must demonstrate that it followed a consistent policy in utilizing political and geographical boundaries. *Id.* at *39–40.

Overall, the Coalition submitted a plan to the Legislature that better utilized existing political and geographical boundaries. It follows a consistent policy of adherence to county and

municipal lines wherever feasible. As a result, it crosses county lines less frequently and keeps more cities whole than does the Legislature's plan. *See* App. A at F-2. The Legislature's failure to consistently utilize political and geographical boundaries is discussed in further detail in the district-by-district challenges below.

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In sum, as a review of the overall evidence demonstrates, the congressional plan in its entirety is unconstitutional on its face and Plaintiffs are entitled to judgment as a matter of law invalidating the plan.

II. NUMEROUS SPECIFIC DISTRICTS IN THE LEGISLATURE'S PLAN ARE FACIALLY UNCONSTITUTIONAL AND MUST BE INVALIDATED.

The Florida Supreme Court described its "global approach" to determining constitutional validity with respect to individual districts as follows: "Because compliance with the tier-two principles is objectively ascertainable, it provides a good starting point for analyzing challenges to the Legislature's joint resolution. Where adherence to a tier-one requirement explains the irregular shape of a given district, a claim that the district has been drawn to favor or disfavor a political party can be defeated. Where it does not, however, further inquiry into the Legislature's intent becomes necessary." Op. at *42.

The Court also held that it would "consider[] the role of the alternative plans submitted by the Coalition" and if "an alternative plan can achieve the same constitutional objectives that prevent vote dilution and retrogression of protected minority and language groups and also apportions the districts in accordance with tier-two principles so as not to disfavor a political party or an incumbent, this will provide circumstantial evidence of improper intent." *Id.* at *43. "That is to say, an alternative plan that achieves all of Florida's constitutional criteria without

subordinating one standard to another demonstrates that it was not necessary for the Legislature to subordinate a standard in its plan." *Id.*

As the district-by-district analysis below shows, the Coalition's alternative congressional plan achieves all of Florida's constitutional criteria and thus demonstrates that the Legislature's disregard of the constitution was neither necessary nor justified. The Court is therefore required to impute improper intent to the Legislature and invalidate the following districts in the Legislature's plan.

A. District 5 Is Unconstitutional.

District 5 is the paradigmatic example of exactly what the Florida Supreme Court's opinion forbids. It is an egregiously non-compact district, not only the most non-compact district in Florida, but actually less compact than District 3 in the benchmark 2002 map, which was already one of the least compact districts in the entire nation.[8] District 5 snakes through eight counties, keeping no single county whole within its borders, with fingers, hooks, and tentacles reaching out to selectively snatch African-American and Democratic voters from Gainesville, Jacksonville, Orlando, Orange Park, Apopka, and Sanford. On its way, the serpentine District 5 narrows to only the width of Highway 17, as it jumps from Orange Park and across the neck of Doctors Lake. District 5 is the epitome of a district that is visually non-compact and the District's non-compactness likewise requires the invalidation of all the districts it touches.

The Senate analog of Congressional District 5 was Senate District 6. With respect to that district, the Florida Supreme Court found that it "violates constitutional mandates by sacrificing

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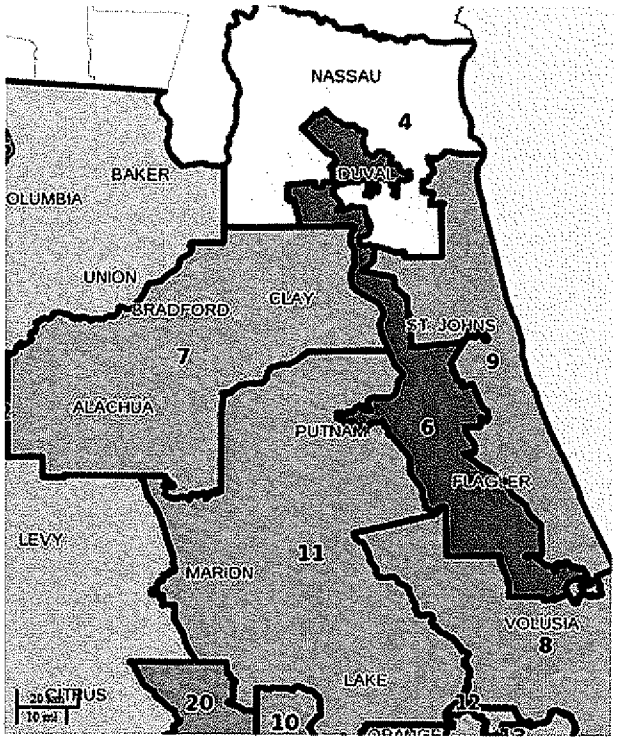
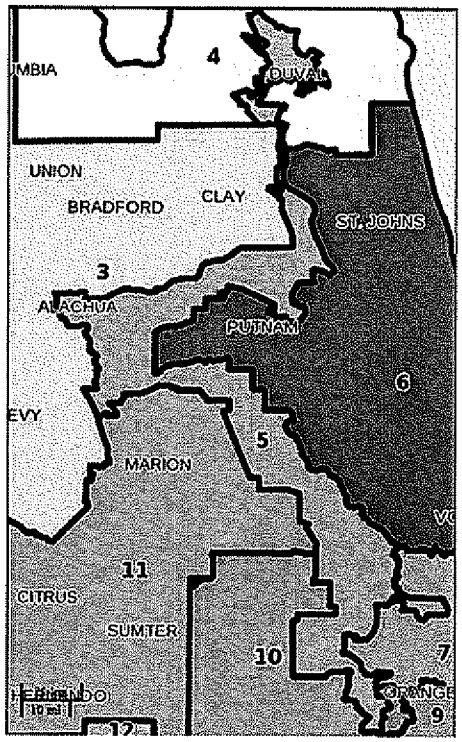
[8] *Compare* App. A at C-3 (showing Reock and Convex Hull compactness measures for District 5), *with* Redistricting the Nation, "District 3, FL, Representative. Corrine Brown," http://www.redistrictingthenation.com/search.aspx?type=NATIONAL_LOWER&id=3&state=FL (showing Reock and Convex Hull compactness measures for Benchmark District 3 and national ranks).

compactness and utilizing boundaries when not necessary to do so to avoid conflict with the minority voting protection provision." Op. at *63. Congressional District 5 must be invalidated for the exact same reasons. Just like Senate District 6, Congressional District 5 "begins at the northern edge of Duval County, meanders through Jacksonville, and then stretches southward." *Id.* However, Congressional District 5 is even worse, as a visual examination shows.

SENATE DISTRICT 6
(S000S9008)



CONGRESSIONAL DISTRICT 5
(H000C9047)



Not only is it visually less compact, Congressional District 5 is also worse than Senate District 6 on mathematical measures of compactness. While the Florida Supreme Court invalidated Senate District 6 in part based on its low Reock score of 0.12 (closer to 1 is better), and Area/Convex Hull score of 0.43 (closer to 1 is better), Congressional District 5 has even lower scores: a Reock score of 0.09 and an Area/Convex Hull score of 0.29. App. A at C-3. These are almost as low as a district can possibly score.

Congressional District 5 also protects its incumbent, Representative Corrine Brown, by keeping 81% of the district she formerly represented in her new district. App. A at G-1. As the Supreme Court held, the "drawing of a new district so as to retain a large percentage of the incumbent's former district" is an "objective indicator[] of intent" to favor an incumbent. Op. at *20. The Court invalidated the analog of Congressional District 5 -- Senate District 6 -- in part based upon the fact that "District 6 retains 70.3% of its predecessor district," id. at *64. Congressional District 5 retains an even higher percentage of its predecessor district, plainly showing an intent to favor the incumbent.

The Legislature cannot justify the incumbent protection, non-compactness, and failure to follow political and geographical boundaries in District 5 by arguing that the district configuration is required by either state or federal law. As the Supreme Court held, the Legislature is permitted to depart from the criteria of compactness and utilization of boundaries only "to the extent necessary" to avoid retrogression and the Legislature must show through a functional analysis that any deviation from these criteria was required to avoid retrogression. The Legislature apparently did not perform the requisite functional analysis and has not come close to demonstrating that minority voting strength will be diminished unless the Legislature draws this egregiously non-compact, sprawling district.

District 5 was not a majority African-American district in the benchmark 2002 plan. It was 48% African-American voting-age population ("VAP") under the 2002 plan (and was called Congressional District 3).[9] With no analysis at all of whether that artificially high number of African-Americans was necessary to elect a candidate of choice, the Legislature simply accepted

[9] All demographic statistics are taken from the State's own statistical analysis in the "District Demographic Profile" documents that accompany each of the submitted plans and the existing congressional plan on the Senate's website.

as its "mark" a 48% African-American district submitted by the NAACP. Att'y Gen. Pet. App. at 5058. In fact, the Legislature actually increased the percentage of African-Americans in the district, ostensibly with the justification that an "opportunity was identified to increase the black voting age population above 50 percent." *Id.* at 5216.

There was, however, no reason to increase the black voting age population above 50 percent.[10] Although the Chairman of the House Redistricting Committee stated that "one of th[e] improvements to the map ... is that District 5 is a minority-majority seat and becomes a protected Section 2 of the Voting Rights Act, protected seat," *id.* at 5314, the Legislature was by no means required under Section 2 of the Voting Rights Act to draw a majority-minority district. Nor would any court find that Congressional District 5 is a protected Section 2 district. In fact, a federal court has already specifically rejected the claim that District 5's predecessor – Congressional District 3 – was justified by Section 2 of the Voting Rights Act. *Johnson v. Mortham*, 926 F. Supp. 1460 (N.D. Fla. 1996).

As a matter of law, no majority-minority district is required under Section 2 unless the minority population is sufficiently large and geographically *compact* so as to constitute at least 50% of a compact district. *See* Op. at *23 (quoting *Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009) (plurality opinion) and *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)). District 5 is far from compact enough and does not have enough minority population as to warrant such a requirement. With respect to the district's previous incarnation as Congressional District 3, a

[10] Moreover, despite its purported excuse for the changes to District 5, the Legislature did not actually increase the black voting age population above 50%. The Legislature engaged in double-counting to reach the supposed 50.1% black voting age population by using the Census category 18+_AP_Blk, which means "Any Part Black." This means that if someone reports being black as a second or third race, they are being counted as "black" by the Legislature. This results in over-counting minority populations to sum to more than 100%. Using just the "Non-Hispanic Black" category to measure the African-American population (as the Coalition did), the black population in Congressional District 5 is 49%.

federal court held in 1996 that, "it is evident that the African-American population in Northeast Florida is not sufficiently large and geographically compact so as to constitute a majority in a fairly drawn congressional district." *Johnson*, 926 F. Supp. at 1471. The same is obviously true now.

Just as is true with the Legislature's District 5, in 1996 a court found that: "The largest populations of African-Americans are at the extremes of [the] Congressional District ...-- namely, ... in Duval County (Jacksonville), and ... in Orange County (Orlando), some 100 miles to the south." *Id.* As the court observed, "[t]hese African-American population concentrations are not physically adjacent to each other, and are linked together only by narrow land bridges of white rural and small town populations." *Id.* at 1472. "In order to achieve its goal of creating a minority-majority district in northeast Florida, the [map drawer] was forced to link these widely dispersed population concentrations together." *Id.* The court then specifically rejected the claim that Section 2 justified this racially gerrymandered district. *See id.* at 1481.

For the same reasons the court stated in 1996, the Legislature's Congressional District 5 cannot be justified by Section 2 of the Voting Rights Act. As the United States Supreme Court has held: "[T]here is no basis to believe a district that combines two far-flung segments of a racial group with disparate interests provides the opportunity that § 2 requires." *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 433 (2006); *see id.* at 434 ("The practical consequence of drawing a district to cover two distant, disparate communities is that one or both groups will be unable to achieve their political goals."). There is no justification under the

Voting Rights Act for combining far-flung populations of African-Americans in Jacksonville and Orlando in order to create a not-quite 50% African-American district.[11]

Just as it did with respect to the Senate plan, the "Coalition has demonstrated that District [5] can be drawn much more compactly and remain a minority-opportunity district." Op. at *65. The Coalition's District 3 includes the whole of Bradford County and the majority of Alachua County, as well as parts of Duval and Clay counties. "In addition to being much more visually compact, the compactness measurements" for the Coalition's district "are much better." *Id.* Coalition District 3 scores a 0.26 on Reock and a 0.58 on Area/Convex Hull, compared to the Legislature's District 5, which scores a 0.09 on Reock and 0.29 on Area/Convex Hull. *See* App. A at C-3. The perimeter of Coalition District 3 is 337.41 miles, less than half of the incredible 706.58 mile perimeter for the Legislature's District 5.

Applying the same test the Florida Supreme Court did, this Court must find that the Coalition's plan "demonstrates that [Congressional District 5] violates the constitutional standards of compactness and utilizing existing political and geographical boundaries. The alternative plan shows how political and geographical boundaries can be better utilized and demonstrates how District [5] can be made more compact ... without violating Florida's

[11] The bill analysis for CS/SB 1174 states that the intent of the Legislature in creating District 5 was to "preserve[] the core of the existing district in accordance with public testimony" and to "tie[] communities in Northeast Florida of similar socioeconomic characteristics." http://www.flsenate.gov/Session/Bill/2012/1174/Analyses/=PL=hSgrxJmVUcfvN/W6wSmhI3234I=%7C11/Public/Bills/1100-1199/1174/Analysis/s1174z.RDC.PDF. However, the Florida Supreme Court plainly rejected the Legislature's argument that "preserving the core of existing districts" was a legitimate goal in redistricting. In fact, the Court found that preserving the core of existing districts was an objective indicator of *improper* intent. *See* Op. at *20, *56. And the Legislature has not shown that the far-flung communities it ties together in Northeast and Central Florida are of "similar socioeconomic characteristics." Rather, it appears the Legislature simply drew the district using racial classifications despite the fact that "[r]acial classifications with respect to voting carry particular dangers." *Shaw v. Reno*, 509 U.S. 630, 657 (1993).

minority voting protection provision." Op. at *65 For those reasons, District 5 must be invalidated.

Although the Coalition's plan decreases the African-American voting age population in the district to 34.1% African-American VAP, the Florida Supreme Court has emphatically rejected the Legislature's argument that a decrease in the minority voting age population of a district is necessarily a diminishment of minority voting rights. *See* Op. at *26. Rather, the Court held that "a minority group's ability to elect a candidate of choice depends upon more than just population figures." *Id.* The Court looked to the guidance offered by the Department of Justice in cases under Section 5 of the Voting Rights Act. As the Department has held, the "ability to elect either exists or it does not in any particular circumstance." Dep't of Justice, *Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act*, 76 Fed. Reg. 7470, 7471 (Feb. 9, 2011). Thus, the Department "does not rely on any predetermined or fixed demographic percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district." *Id.*

As is set forth at Appendix C, Dr. Christian Grose, Assistant Professor of Political Science at the University of Southern California, performed the exact same functional analysis set forth by the Florida Supreme Court and found that the Coalition's District 3 does not diminish minority ability to elect. *See* App. C at 5. After analyzing the district's voting-age population, voter registration figures, participation rates by actual voters, and recent election results using data available on the Florida House of Representatives "MyDistrictBuilder" website, Dr. Grose determined that the African-American population in District 3 will continue to have the ability to elect the congressional candidates of their choice. In addition to the

analysis described by the Supreme Court, Dr. Grose also performed an ecological inference analysis, "which is a technique that has been consistently employed in voting rights cases," *Johnson*, 926 F. Supp. at 1509. To do this, he analyzed five recent elections in Florida where African-American candidates faced nonblack candidates and where the African-American candidates were preferred by a majority of African-American voters. This analysis also demonstrates that the African-American population in the Coalition's District 3 will continue to have the ability to elect the congressional candidates of choice because they will control the Democratic primary and the Democratic nominee will prevail in the general election. In accordance with the Supreme Court's opinion, the analysis that Dr. Grose has performed on the Coalition's Congressional District 3 "indicates that the [Coalition's] district will likely afford black voters the ability to elect candidates of their choice." Op. at *64.

The Coalition's alternative plan shows that there was a constitutionally compliant way to draw this district, but the Legislature chose not to do so. For the same reasons the Supreme Court invalidated Senate District 6, this Court must likewise invalidate Congressional District 5. There is simply no way that Congressional District 5 could be constitutional in light of the Supreme Court's analysis of Senate District 6.

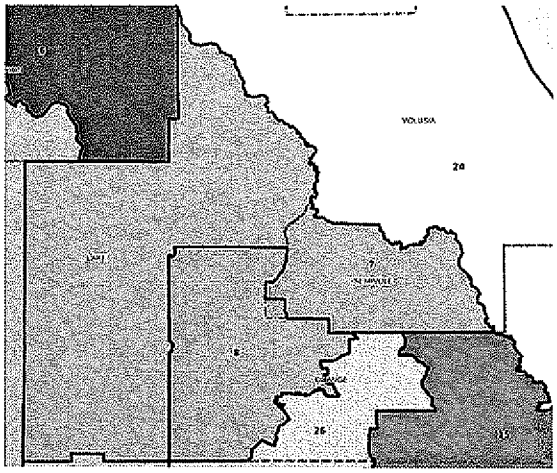
B. District 7 Is Unconstitutional.

The Legislature's Congressional District 7 will necessarily have to be redrawn if the Court finds, as it must, that Congressional District 5 is unconstitutional. As a visual examination of the map shows, District 5 extends what could alternately be described as "finger-like extensions" or a "narrow and bizarrely shaped tentacle," Op. at *40, into District 7 to grab African-American voters out of Sanford and Midway and pack them into District 5, thereby making District 7 exactly

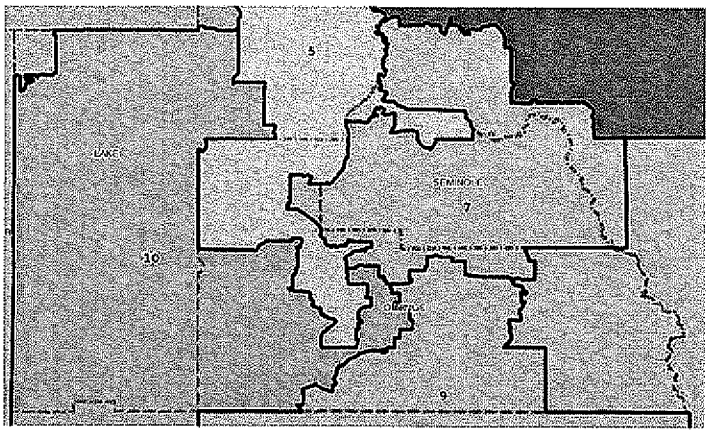
the type of bizarrely shaped district the Florida Supreme Court held was indicative of partisan and racial gerrymandering. *See id.*

However, the Legislature then compounded the problems with District 7 by needlessly crossing county boundaries in an apparent attempt to keep District 6 a safe Republican district and to favor incumbent Sandy Adams in District 7. As a visual examination of the district shows, it reaches out of Seminole County into Volusia to take the cities of Deltona and Orange City and put them into District 7. Because Deltona and Orange City are majority Democratic cities, putting them in District 7 keeps District 6 a safe Republican district at 44.3% Democratic performance (using the four-race average). District 7 is not a minority access seat so there is no excuse that the Legislature was required to draw the District in this way so as to comply with the minority protection provisions. Indeed, there is no justification for District 7's crossing county boundaries at all.

As the Coalition's map shows, there was a way to draw this district so as to comply with the constitutional imperatives of respect for county boundaries. In contrast to the Legislature's District, which sprawls across portions of three counties and does not appear to follow any coherent boundaries, the Coalition's District 7 is comprised of the entirety of Seminole and Lake Counties (with the exception of a small corner of Seminole which could not be included for reasons of population equality). A visual examination of the Legislature's district versus the Coalition's district graphically illustrates the Legislature's constitutional violations.



COALITION'S PLAN
(SPUB0170)



LEGISLATURE'S PLAN
(H000C9047)

A comparison of political performance in the Coalition's Districts 7 and 24 versus the Legislature's Districts 6 and 7 shows the Legislature's apparent motivations. By crossing the county boundary and reaching into Volusia County to put Deltona and Orange City in District 7, the Legislature divides and dilutes Democratic votes and keeps both Districts 6 and 7 as safe Republican districts. District 6 performs at 44.3% Democratic and District 7 performs at 45.4% Democratic (using the four-race average). In contrast, the Coalition's map respects county boundaries, and in so doing, creates a more competitive district in Volusia County. The Coalition's District 24 (the analog of the Legislature's District 6) is now a near toss-up seat at 48.4% Democratic performance (using the four-race average). "There is no question that the goal of minimizing opportunities for political favoritism was the driving force behind the passage of the Fair Districts Amendment." *Id.* at *41. However, District 7 was plainly drawn for political favoritism purposes. This is exactly the type of district in which "disregard for the constitutional requirements set forth in tier two is indicative of improper intent," *id.*, and District 7 is therefore invalid.

Finally, last-minute amendments to District 7 were apparently made solely to put incumbent Sandy Adams' home and constituents back into the district. On January 27, the

House introduced an amendment that moved a small segment from District 5 into District 7. *See* House Redistricting Ctte., *Amendment Status Report*, Feb. 7, 2012. That segment included Representative Adams' home and constituents she had previously represented.[12] As the Supreme Court held, "the maneuvering of district lines in order to avoid pitting incumbents against one another in new districts or the drawing of a new district so as to retain a large percentage of the incumbent's former district" are objective indicators of improper intent. Op. at *20. That is exactly what happened with District 7 and provides yet another reason it should be invalidated.

C. District 10 Is Unconstitutional.

Contiguous to District 5, Congressional District 10 is a visually non-compact district with nearly the same "odd-shaped appendage" that the Supreme Court cited in invalidating Senate District 10. Op. at *66. Moreover, District 10 demonstrates the Legislature's strategy to pack minority voters into District 5 in order to dilute minority voting strength. As the Supreme Court held: A "violation of the Florida minority voting protection provision could be established by a pattern of overpacking minorities into districts where other coalition or influence districts could be created." *Id.* at *47. Rather than creating an additional influence district for African-American voters, the Legislature instead chose to create a safe Republican district for incumbent Representative Daniel Webster. That is a violation of the constitution.

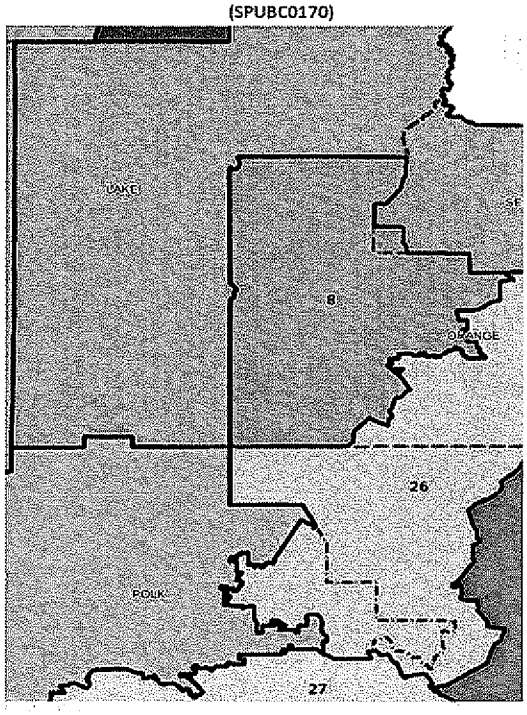
As described above, the Legislature packed Orlando's African-American population into its sprawling District 5 so that African-American influence is confined to a single district. However, it could have created an additional influence district for African-American voters. Because the Coalition did not extend a district all the way from Jacksonville to Orlando, the

[12] Representative Adams' address is not publicly available because her husband is a judge. However, the Coalition would be pleased to submit the address to the Court under seal if the Court so desires.

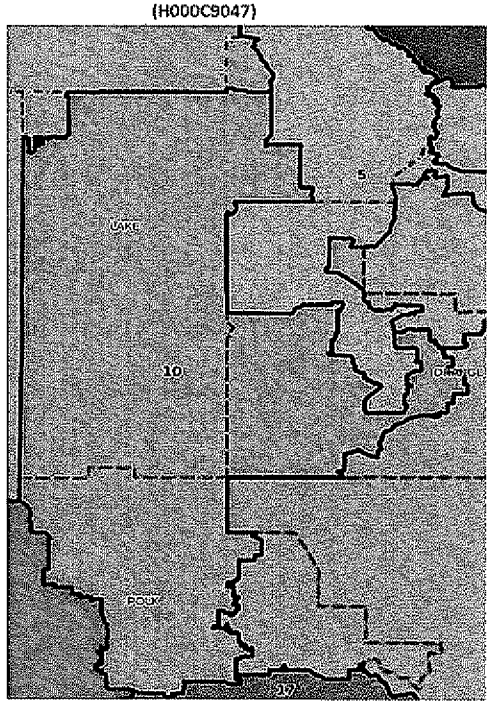
Coalition was able to create an additional African-American influence district in Orlando – Coalition Congressional District 8 – which has a 23.9% African-American voting age population and is a Democratic district (with 56.7% Democratic performance using the two-race average and 52% Democratic performance using the four-race average). African-Americans will undoubtedly influence the Democratic primary in this district. *See* Op. at *24 ("Influence districts are districts in which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected.").

In place of an additional minority influence district like the Coalition created, the Legislature instead created District 10, which is just 10.4% African-American and is solidly Republican (with 44.3% Democratic performance using the four-race average). Moreover, as noted above, it created nearly the same "bizarrely shaped appendage" in Congressional District 10 that the Supreme Court struck down in Senate District 10. Op. at *66. The Legislature has not provided any justification for the non-compactness of the district.

COALITION'S PLAN
(SPUBC0170)



LEGISLATURE'S PLAN
(H000C9047)



Finally, just as with District 7, last-minute amendments to District 10 were made to shore up the Republican incumbent in the district. In the final amendments before the plan was adopted, the Legislature selectively moved Democratic population out of Representative Webster's district. His 2002 benchmark district was trending Democratic, with a 52.0% Democratic performance, but under C9047 his new district drops a full 4.6% points to make it a more solidly Republican seat at 47.4% Democratic performance. *See* App. B at 6. This provides yet another reason the district should be invalidated.

D. Districts 3, 4, 6, 9, 11, 12, 15, And 17 Are Likewise Invalid And Must Be Redrawn.

Because Congressional District 5 is unconstitutional and must be redrawn, all of the other districts that are contiguous to District 5 – not just Districts 7 and 10 – must likewise be redrawn. *See* Op. at *65. This obviously will require significant changes to the congressional map. As we have discussed, the Supreme Court held that a "violation of the Florida minority voting protection provision could be established by a pattern of overpacking minorities into districts where other coalition or influence districts could be created." *Id.* at *47. The Coalition's plan shows exactly this – that the Legislature's overpacking of minorities into District 5 prevented the creation of additional minority coalition and influence districts. Indeed, by packing African-Americans and Democrats into District 5, the Legislature ensured that all but one of the districts on District 5's borders remains a solidly Republican non-minority district, as the table below demonstrates:

Democratic Performance of Districts Bordering Legislature's District 5		
District	**Avg 2010 Gov/2008 Pres**	**Avg Gov 2010/2006; Pres 2008/2004**
3	41.2%	40.2%
4	38.2%	35.5%
6	44.5%	44.3%
7	49.2%	45.4%
9	57.4%	52.3%

10	47.5%	44.3%
11	42.7%	42.2%
12	46.8%	45.3%
15	46.6%	43.7%

The only Democratic district bordering the Legislature's Congressional District 5 is District 9, which is the newly created Hispanic opportunity district in Central Florida. However, as the Coalition's plan demonstrates, it is possible to create a Hispanic opportunity district in Central Florida without also engaging in blatant partisan and racial gerrymandering. The Coalition's District 26, which is comprised largely of the southern end of the Legislature's Congressional District 5, is also a Hispanic opportunity district containing an almost identical percentage of Hispanic voting age population as the Legislature's District 9.

In short, as the Supreme Court's analysis of Senate District 6 demonstrates, the Legislature's Congressional District 5 clearly violates the constitutional imperatives of compactness and respect for political and geographical boundaries. These violations cannot be excused as an attempt to protect minority voting rights because the Coalition's plan demonstrates that it is possible to protect minority voting rights while also respecting compactness and boundaries. By gerrymandering African-Americans and Democrats into a single, non-compact district sprawling from Jacksonville to Orlando, the Legislature created eight solidly Republican districts on District 5's borders, many of which are also non-compact by virtue of sharing gerrymandered borders with District 5 (indeed, District 5's western border and large parts of its eastern border do not appear to follow *any* coherent boundary at all). The Legislature also denied African-Americans and Hispanics the opportunity for additional influence districts in Central Florida, as the Coalition's plan demonstrates. For these reasons, District 5, as well as all districts contiguous to District 5, must be invalidated.

E. Districts 13 And 14 Are Unconstitutional.

The Legislature's Districts 13 and 14 in the Tampa Bay region are unconstitutional because they egregiously disregard political and geographical boundaries with absolutely no legitimate justification to be found in the Tier 1 criteria, in federal law, or anywhere else. Rather, the reason for the Legislature's configuration of these districts appears to have been to pack racial minority voters into District 14, thus preserving a safe seat for Republican incumbent Bill Young in District 13. Instead of respecting geographic and county boundaries, District 14 crosses Tampa Bay in order to remove African-American and Democratic voters from Pinellas and pack them into Hillsborough-based District 14. That is precisely what the corresponding district did in the 2002 map, which the Legislature *conceded* was drawn to benefit the Republican party and Republican incumbents. *See Martinez*, 234 F. Supp. 2d at 1300-01, 1340. The Legislature's patent disregard for political and geographical boundaries is neither necessary nor justified by either federal or state law.

The Legislature cannot claim that it was required to place African-American voters from St. Petersburg into District 14 in order to avoid diminishing the ability of African-Americans to elect a candidate of choice. In the 2002 benchmark map, African-Americans comprised just 25.2% of the district (which was named District 11 in the 2002 map). The Legislature increased that to 26.6% African-American percentage in the 2012 map. But it never did any analysis to determine whether African-Americans in the district ever had an ability to elect a candidate of choice who was not supported by a majority of non-black voters in the district (which hardly seems likely with one-quarter of the voting-age population). Nor did the Legislature perform any analysis to determine whether the district performed as a "coalition district" where African-American and Hispanic voters vote cohesively and together have the ability to elect candidates of

choice. Rather, it appears that the Legislature simply focused on keeping the minority percentages the same in District 14 as in the benchmark district. *See, e.g.,* Att'y Gen. Pet. App. at 5009-10 (House staff opining with no analysis that "[t]aking the district out of Pinellas County would ... probably create issues in terms of the pre-clearance process"); *id.* at 5213-14 (House staff stating that any changes to District 14 were made to make minority percentages higher). This was not required either under the Florida Constitution or under Section 5 of the Voting Rights Act[13] and its practical impact was to preserve a district for a Republican incumbent.

As the Florida Supreme Court held, for purposes of interpreting the "shall not diminish ... ability to elect" language in the Florida Constitution, coalition or crossover districts are recognized only if they "previously provided minority groups with the ability to elect a preferred candidate under the benchmark plan." Op. at *26. The Legislature apparently did not perform any analysis at all of whether the current incumbent in District 14 – a white Democrat who first won election in 2006 by defeating in the Democratic primary an African-American candidate strongly supported by the African-American community – is actually the minority candidate of choice.[14] Nor did the Legislature do any analysis of whether the minority community in District 14 votes cohesively and has the ability to elect a candidate of choice. The Legislature failed to perform the required functional analysis to justify its departure from utilization of political and geographic boundaries. Therefore the Court should find Districts 13 and 14 unconstitutional.

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[13] Section 5 does not require that a minority group in a covered jurisdiction be given a greater ability to elect than it possessed before the proposed change. *See Texas v. United States*, No. Civ. A. 11-1303 TBG, ___ F. Supp. 2d ____, 2011 WL 6440006, at *17 (D.D.C. Dec. 22, 2011).

[14] In the 2006 Democratic primary, the white incumbent Kathy Castor defeated Les Miller, an African-American, by 54% to 34%. Miller was strongly supported by the African-American population in Pinellas County. *See* MICHAEL BARONE & CHUCK MCCUTCHEON, THE ALMANAC OF AMERICAN POLITICS 2012 375 (2011).

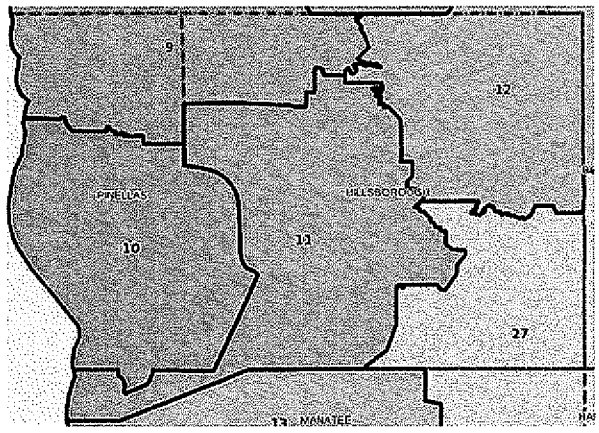
Nor was the Legislature required to draw these districts this way to comply with Section 5 of the Voting Rights Act. For the Legislature to justify its disregard of political and geographic boundaries in Districts 13 and 14 on Section 5 grounds, it must show that it performed the required functional analysis and concluded that African-American voters in Hillsborough County had an ability to elect a candidate of choice from District 11 in the benchmark 2002 map, but that with reduced numbers, African-American voters would not be able to elect a candidate of choice.

That analysis would have required the Legislature to make a determination whether there was cohesive voting among differing minority groups in the district and whether voting patterns revealed racial polarization (i.e., whether minority and white voters cast their ballots along racial or language minority lines). *See Texas v. United States*, 2011 WL 6440006, at *15. The Legislature would have then needed to analyze population statistics to determine whether, given the degree of minority voting cohesiveness and racial polarization, the percentage of minority voters in both the benchmark and new districts "essentially guaranteed" minority voters' ability to elect. *Id.* at *17. Because that was not the case with respect to benchmark District 11 and new District 14, the Legislature would then have needed to analyze "election history and voting patterns within the jurisdiction, voter registration and turnout information, and other similar information" to make an ability to elect determination. Op. at *27 (quoting 76 Fed. Reg. at 7471); *see also id.* (citing "similar" functional test in *Texas v. United States*). The Legislature did none of this.

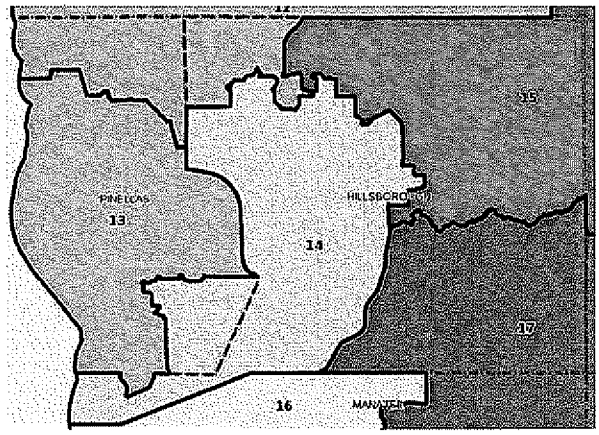
In reality, the Legislature's obvious motivation for crossing Tampa Bay to put St. Petersburg voters into District 14 was to keep District 13 safe for incumbent Republican Bill Young. Under the four-race average, District 13 remains a Republican seat in the Legislature's plan with just 49.7% Democratic performance. District 14 then becomes a packed Democratic

seat at 58.5% Democratic performance (under the four-race average). Moreover, in the Legislature's Districts 13 and 14, incumbent Bill Young in District 13 keeps 85% of his former district while incumbent Kathy Castor in District 14 keeps 86% of her former district. App. A at G-1. As the Supreme Court held, "the drawing of a new district so as to retain a large percentage of the incumbent's former district" is an objective indicator of improper intent. Op. at *20.

In contrast to the Legislature's plan ignoring county boundaries, the Coalition's plan keeps District 10 entirely in Pinellas County and District 11 entirely in Hillsborough County. Because St. Petersburg is no longer carved out in the Coalition's plan, the district also becomes far more compact. The Coalition's District 10 has a Reock score of 0.57 and an Area/Convex Hull score of 0.91, as compared to the Legislature's District 13, which has a Reock score of 0.46 and an Area/Convex Hull score of 0.82. App. A at C-3.



COALITION'S PLAN
(SPUB0170)



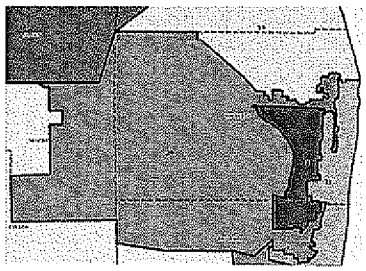
LEGISLATURE'S PLAN
(H000C9047)

In contrast to the Legislature's plan, the Coalition's plan respects city and county boundaries and the geographical boundary imposed by Tampa Bay. In respecting these boundaries, the Coalition's plan creates two districts in which the Democratic vote is more balanced: 52.4% in the Coalition's District 10 and 54.8% in the Coalition's District 11 (using the

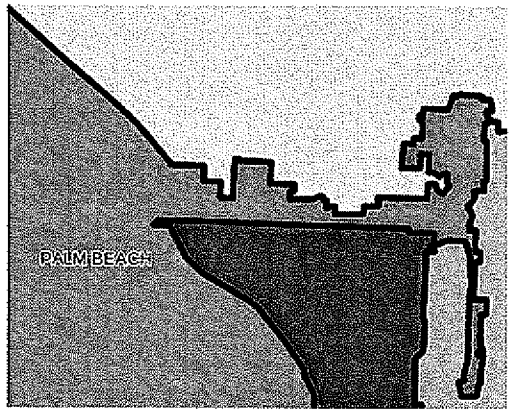
four-race average). The Coalition's plan "achieves all of Florida's constitutional criteria without subordinating one standard to another" and therefore "demonstrates that it was not necessary for the Legislature to subordinate a standard in its plan." *Id.* at *43. Not only does the Coalition's plan demonstrate that the Legislature's plan failed to follow the constitutional imperative of utilizing existing political and geographical boundaries, it also serves as objective evidence of the Legislature's improper intent to create a district that favors the Republican party and Republican incumbent in District 13. Districts 13 and 14 must be found unconstitutional.

F. Districts 20, 21, and 22 Are Unconstitutional.

Districts 20, 21, and 22 fail to comply with Article III, Section 20's requirements of compactness and respect for political boundaries and thus are unconstitutional. As drawn by the Legislature, District 20 has a long thin needle that reaches around another congressional district (District 21) and slices through a second (District 22). This meandering tentacle hangs off of District 20's northeast corner, stretching deep into the heart of District 22 in a peninsular fashion. It is in large part a vestige of District 20's 2002 counterpart.

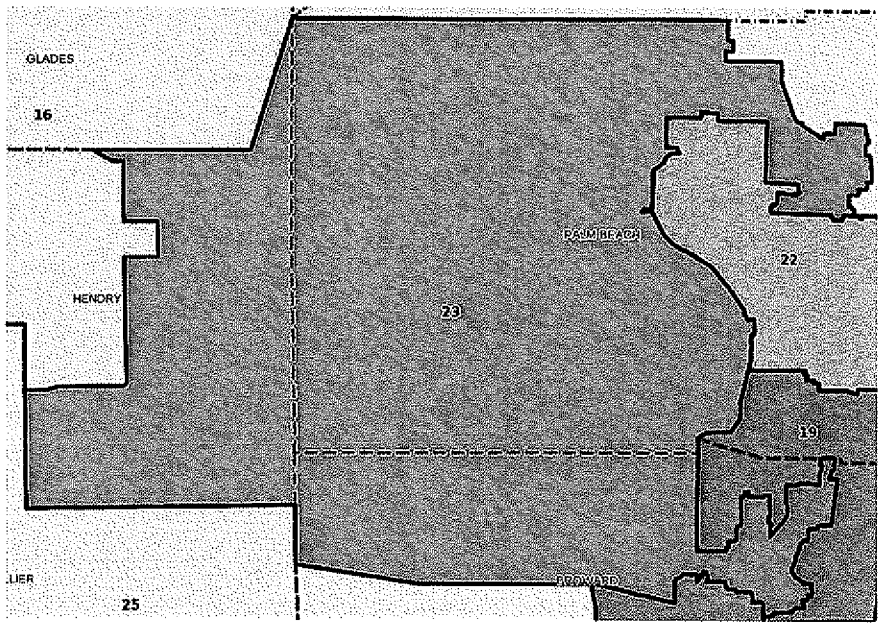


CONGRESSIONAL DISTRICT 20
(LEGISLATURE'S PLAN - H000C9047)



The fact that the Coalition was able to draw corresponding districts in this region that preserve minority ability to elect while respecting Article III, Section 20's requirement that districts be compact is proof that there is simply no Tier 1 or federal law justification for the perpetuation of this spindly tentacle. The State cannot argue that it needed to draw this appendage to keep African-American levels high enough to preserve the minority group's ability to elect in District 20. Both the Legislature's District 20 and the Coalition's District 23 keep African-American VAP at similar levels and preserve African-American voters' ability to elect: District 20 contains 48.9% BVAP and the Coalition's District 23 contains 47.3% BVAP. A visual inspection of the two districts shows how needlessly non-compact District 20 is, and how the Legislature could, and should, have drawn this district. The compactness scores bear this out. The Coalition's district surpasses the State's on both the Reock and Convex Hull metrics. The Coalition's District 23 scores 0.53 on Reock and 0.77 on Area/Convex Hull; the State's District 20 comes in at 0.48 on Reock and 0.74 on Area/Convex Hull. *See* App. A at C-3.

CONGRESSIONAL DISTRICT 23
(COALITION'S PLAN – SPUBC0170)



In part because the Coalition preserved compactness while ensuring ability to elect in its District 23, the districts that it drew to the east of that district are more compact as well. In the Coalition's map these are Districts 22 and 19, which have Reock scores of 0.48 and 0.42 respectively, and Area/Convex Hull scores of 0.73 and 0.79. *See id.* In contrast, the districts that the Legislature drew to the east of its District 20 (Districts 21 and 22) are far less compact. These districts have Reock scores of 0.28 and 0.18, respectively, and Area/Convex Hull scores of 0.60 and 0.61. *See id.* Additionally, District 22's non-compactness is visually striking because it is sliced to the core by District 20's tentacle and reaches down across the Broward County line to extend an appendage of its own into Broadview Park and Plantation.

Finally, the Coalition's districts show that it was possible to draw districts that also pay greater respect to political boundaries, as only one of the Coalition's districts to the east of District 23 crosses the Broward County line. In contrast, *both* of the State's districts cross that county line.

The Supreme Court held that "the Legislature is permitted to violate compactness [and Tier 2 standards] *only when necessary* to avoid conflict with tier-one standards." Op. at *64 (emphasis added). The Coalition has demonstrated that it was possible for the Legislature to draw districts that adhere to Tier 1 criteria and federal law. The Legislature's failure to do so with respect to Districts 20, 21, and 22 requires that these districts be struck down.

G. District 25 Is Unconstitutional.

District 25 was drawn to protect incumbent Representative Mario Diaz-Balart. As is set forth in the report of Dr. Dan Smith at Appendix B, although Representative Diaz-Balart's new district is quite different from his old district, retaining only 50.9% of his old population, his new district is the most changed in terms of partisanship. App. B at 6–7. Moreover, his new

district contains a significant percentage of the constituency he previously represented when he ran from the prior Congressional District 21.

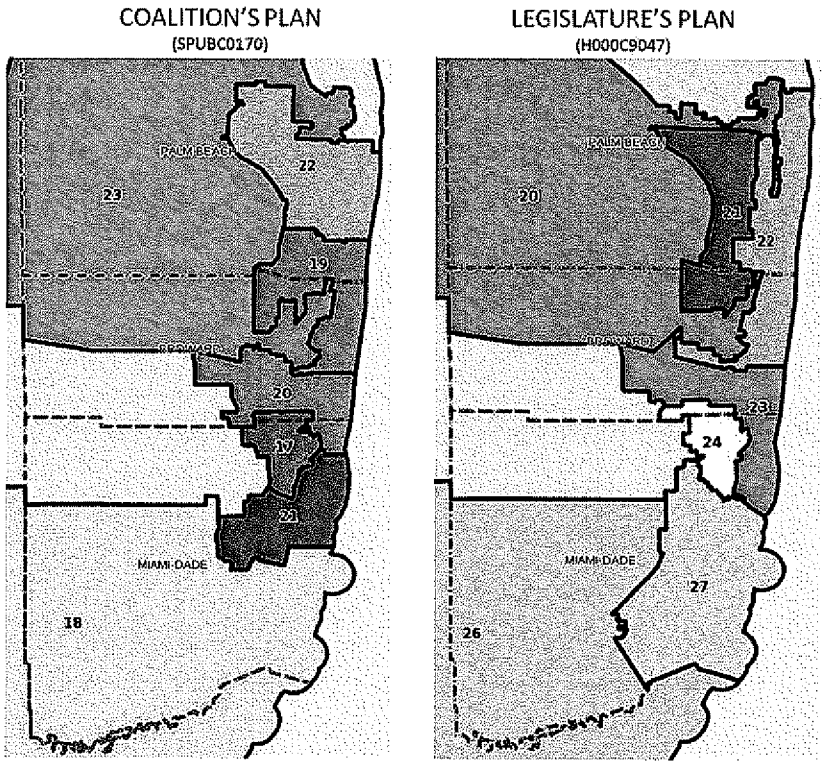
Representative Diaz-Balart was in a district that was trending Democratic, with an average of 50.9% Democratic performance in the 2008 presidential and 2010 gubernatorial elections. *Id.* at 6. However, in a last-minute amendment to the plan before it was finally adopted, the Legislature selectively shed Democratic territory, making the new district a solid Republican seat with only 45.1% Democratic performance under the same metric. *Id.*

As is demonstrated in the Coalition's Appendix A at D-8, there were only two variations of District 25 in all of the Legislature's proposed Congressional maps – one version that appeared in the Senate's map at S000C9014 (which was derived from S000C9002) and one version that appeared on all of the House maps. The Legislature's final version of District 25 is somewhat in between the two, but of course ended up with the lower Democratic performance than in either of the earlier proposed versions. *See* App. A at D-8. Both variations of District 25 that appeared in the Legislature's other proposals were also far more compact than the final version of District 25 that was adopted. *See id.* Yet the Legislature intentionally chose a more Republican district over a more compact district.

As the Supreme Court held: "Importantly, the extent to which the Legislature complies with the requirements contained in tier two serves as an objective indicator of impermissible legislative purpose proscribed under tier one (e.g., intent to favor or disfavor a political party or an incumbent)." Op. at *77. Here, the fact that the Legislature intentionally chose the least compact of its options in order to get a better Republican performing district for the incumbent who led the fight to overturn Article III, Section 20 serves as an objective indicator of impermissible legislative purpose.

H. Districts 22, 23, 24, 26, and 27 Are Invalid And Must Be Redrawn.

Throughout South Florida, the Legislature patently sacrificed compactness in order to pack Democratic seats as much as possible and therefore squeeze the most Republican performance it could out of what is an overwhelmingly Democratic region of the State. Just as it did with respect to the corresponding Senate districts, "[t]he Coalition has submitted an alternative plan that shows a different configuration for this area that is more compact overall." *Id.* at *71. As the Supreme Court found with respect to the Coalition's submitted Senate plan, "[t]he Democratic voters in this area of the state are concentrated and the area is largely Democratic; the Coalition's plan does not appear to purposefully draw Democratic districts but rather to draw logical, compact districts in a neutral manner. We conclude that the Senate's decision to draw this region in a less compact manner is indicative of intent to favor an incumbent and a political party." *Id.* at *72. This is no less true of the congressional plan that is before this Court.



As the table below demonstrates, the Coalition's plan draws logical, compact districts in a neutral manner. Nearly every one of the Coalition's Southeast Florida districts is significantly more compact than the Legislature's analogous district.

Comparison of Compactness Scores					
Legislature's Districts			Coalition's Analogous Districts		
District	Reock	Area/Convex Hull	District	Reock	Area/Convex Hull
20	0.48	0.74	23	0.53	0.77
21	0.28	0.60	19	0.48	0.73
22	0.18	0.61	22	0.42	0.79
23	0.27	0.57	20	0.35	0.69
24	0.38	0.73	17	0.52	0.81
26	0.18	0.46	18	0.18	0.48
27	0.46	0.81	21	0.42	0.83

The Legislature's long, stringy districts that do not follow any coherent boundaries and its bizarre, vertical configuration of Southeast Florida appears to be designed to ensure that Districts 26 and 27 remain more Republican-leaning districts, rather than more naturally Democratic-leaning districts as they would be if the more logical, compact configuration proposed by the Coalition was adopted.

***

In sum, pursuant to the very same analysis performed by the Florida Supreme Court, this Court must likewise find the challenged districts unconstitutional and grant judgment to the Plaintiffs as a matter of law, enjoining the use of the Legislature's enacted congressional plan, C9047, in any future election.

III. IF THE COURT DOES NOT GRANT JUDGMENT AS A MATTER OF LAW, AT A MINIMUM IT SHOULD ISSUE A PRELIMINARY INJUNCTION PROHIBITING THE USE OF THE LEGISLATURE'S CONGRESSIONAL PLAN FOR THE 2012 ELECTIONS.

If this Court does not outright issue a judgment finding the Legislature's congressional redistricting plan unconstitutional, at a minimum the Court should preliminarily enjoin any use of the plan in the 2012 elections under Florida Statute § 1.610 (2011). To obtain a preliminary injunction, the Coalition need only demonstrate (1) a substantial likelihood of success on the merits; (2) a likelihood of irreparable harm if the injunction is not issued; (3) the unavailability of an adequate remedy at law; and (4) that consideration of public interest favors the issuance of preliminary injunctive relief. *See Hadi v. Liberty Behavioral Health Corp.*, 927 So. 2d 34, 38 (Fla. 1st DCA 2006). As is set forth below, each of these requirements is present here.

First, as we have made clear, the Coalition's likelihood of success on the merits is substantial. The deficiencies of C9047 are not minor technicalities. They are fundamental violations of the clear commands of the Florida Constitution. The State's proposed congressional plan was drawn using the same flawed process and mistaken interpretation of the Florida Constitution that the Florida Supreme Court soundly rejected in its March 9, 2012 opinion. The process that the Legislature undertook to produce this congressional plan was no different than the process it employed to create its invalid Senate plan. Under the Florida Supreme Court's definitive interpretation and application of Article III, Section 20, C9047 cannot stand.

Second, Plaintiffs will suffer irreparable harm if the injunction does not issue. Plaintiffs, along with all Floridians, have a constitutional right guaranteed them by Article III, Section 20 of the Florida Constitution to elect their representatives to Congress from districts that are free of partisan or incumbent favoritism and racial discrimination, and are consistent with certain

enumerated neutral redistricting principles. As the Florida Supreme Court has stated, "the right to elect representatives—and the process by which we do so—is the very bedrock of our democracy." *Id.* at *3; *accord id.* (explaining that all Floridians now have the "right to elect representatives in a fair manner so that each person's vote counts equally and so that all citizens receive 'fair and effective representation"). If this Court declines to issue an injunction, Plaintiffs' constitutional rights with respect to Florida's 2012 congressional elections will be forever denied. The loss of guaranteed constitutional rights and the fact that such rights will be lost forever has consistently been held to constitute irreparable harm under Florida law. *See, e.g., Williams v. Spears*, 719 So. 2d 1236, 1238 (Fla. 1st DCA 1998) (exercising certiorari jurisdiction because parents would be irreparably harmed by being subjected to unconstitutional proceeding); *Joseph v. State*, 642 So. 2d 613, 613 n.1 (Fla. 4th DCA 1994) (finding nature of harm to petitioner was irreparable where petitioner's claimed rights to wear religious clothing in court – if denied – "would be lost forever").

Similarly, other courts have determined that conducting elections under unconstitutional redistricting plans causes irreparable harm. *See, e.g., Larios v. Cox*, 305 F. Supp. 2d 1335, 1343-44 (N.D. Ga. 2004), *summarily aff'd*, 542 U.S. 947 (2004) (holding that stay of court's order finding state legislative maps unconstitutional would result in "irreparable harm to the plaintiffs, and to all voters in Georgia who have had their votes unconstitutionally debased" and that the court had "a responsibility to ensure that future elections will not be conducted under unconstitutional plans"); *Johnson v. Miller*, 929 F. Supp. 1529, 1560 (S.D. Ga. 1996) (holding that "irreparable harm in its purest sense will be occasioned by ... permitting use of a plan violating Plaintiffs' equal protection rights" and that the citizens of the State "should not be denied their right to a constitutional districting plan" and thereby enjoining use of a plan where

"irreparable harm will result if the claimed constitutional violations are proven"). For the same reasons, Florida voters would suffer irreparable harm if forced to forego their constitutional rights to elect congressional representatives in accordance with the guarantees of fairness in the state constitution.

Third, no other remedy exists under Florida law that would permit the Coalition Plaintiffs to safeguard their right to elect representatives to Congress from validly drawn districts in the 2012 congressional elections. The alternative to enjoining the use of C9047 is to proceed with elections under an unconstitutional plan that promises to undermine the voters' electoral influence and generate skewed partisan outcomes. "To the extent that a citizen's right to vote is debased, he is that much less a citizen." Op. at *8 (citing *Reynolds v. Sims*, 377 U.S. 533, 561-62, 567 (1964)). The deprivation of Floridians' constitutional right to elect congressional representatives pursuant to a valid redistricting plan that does not undermine their true preferences cannot be monetized, much less adequately compensated.

Fourth, and finally, the public interest requires that this Court issue an injunction preventing the use of C9047 for the 2012 congressional elections. Again, under Article III, Section 20, all Floridians now have the "right to elect representatives in a fair manner so that each person's vote counts equally and so that all citizens receive 'fair and effective representation.'" *Id.* at *7. It is firmly in the public's interest to have those rights protected and enforced in the first congressional election to follow the enactment of the FairDistricts Amendments.

As is set forth above, the Legislature's congressional districts are plainly unconstitutional, and electing representatives from unconstitutional districts would cause irreparable harm. Defendants nonetheless have represented to this Court that there would be no

problem with holding elections under their enacted plan even if the Court finds it unconstitutional. *See, e.g.*, Senate Mem. re: Litigation Schedule at 5 (Mar. 12, 2012); House Mem. re: Litigation Schedule at 5-6 (Mar. 12, 2012). This would be a profound rewriting of the voters' intent. As the Florida Supreme Court just held with respect to Article III, Section 21, courts are "obligated to interpret and apply these standards in a manner that gives full effect to the will of the voters." Op. at *1. The Legislature asks this Court, as it has in six other cases, to nullify the voters' intent. The six earlier attempts have failed and this one should fail too.

While the Plaintiffs recognize that the Court reserved ruling on any remedial options should it deem the Legislature's plan unconstitutional, this Court should not be swayed by any argument that an injunction should not issue because a remedy would be too difficult. As was set forth in the Coalition Plaintiffs' Memorandum of Law Regarding the Court's Power and Abilities in Adjudicating a Challenge to a Congressional Redistricting Plan, the Court has available several remedial options that can ensure that both interests are met.

The Court could send the plan back to the Legislature with instructions to the Legislature to immediately remedy all of the plan's unconstitutional flaws in time to meet Florida's election deadlines, and/or to move those deadlines in order to put a constitutional plan into place.[15] Indeed, when a federal court in 1996 declared Florida's Congressional District 3 (the Legislature's current Congressional District 5) to be an unconstitutional racial gerrymander, it sent the congressional plan back to the Legislature, which redrew the district while also changing the dates of the candidate qualifying period. *See Johnson*, 926 F. Supp. at 1540 (noting that on the same day the court ordered the candidate qualifying period to be extended, the Legislature passed H.B. 2745, which, in addition to redrawing Florida's Third Congressional District, reset

[15]As is explained in the Coalition's prior memorandum, Florida's candidate qualifying date is one full month earlier this year than it has been in past years.

the qualifying period for congressional elections). There is no reason the Legislature cannot do the same here.

Alternatively, the Court could assume responsibility for remedying the map itself. As the United States Supreme Court has explained: "Although the legislative branch plays the primary role in congressional redistricting, our precedents recognize an important role for the courts when a districting plan violates the Constitution." *Perry*, 548 U.S. at 415. In particular, when the "imminence of a state election makes it impractical for" the Legislature to pass a new redistricting plan in time, "it becomes the 'unwelcome obligation' of the federal [or state] court to devise and impose a reapportionment plan pending later legislative action." *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (principal opinion) (internal citation omitted); *see also, e.g., In re Legislative Districting of State*, 805 A.2d 292, 298 (Md. 2002) (when "elections are imminent, there simply is no time to return the matter to the political branches" and court must draw plan itself); *cf. DeGrandy v. Wetherell*, 794 F. Supp. 1076, 1083 (N.D. Fla. 1992) (holding that "[w]hile it is the duty of the legislature to redistrict the state, when the legislature is unable to adopt a redistricting plan, the obligation of devising a redistricting scheme falls upon the courts").

In either event, the Court would be able to simultaneously satisfy the State's interest in orderly elections and the voters' interest in fair elections.[16] But if the Court is forced to choose

[16] If this Court does not issue the injunction and permits the 2012 elections to go forward under the Legislature's plan, and then ultimately concludes — as Plaintiffs believe that it will — that the congressional map is constitutionally invalid, the Court will be forced to choose between permitting Florida's delegation to serve out their terms in seats which have already been judged unconstitutional or to require a special election at great cost to the State. *See, e.g., League of United Latin Am. Citizens v. Perry*, 457 F. Supp. 2d 716, 721 (E.D. Tex. 2006) (ordering special election in five redrawn congressional districts after the United States Supreme Court invalidated the districts); *Wright v. City of Albany*, 306 F. Supp. 2d 1228, 1239-40 (M.D. Ga. 2003) (ordering special election because where the "voting public has been prevented from electing its

between the two, fairness must outweigh efficiency. Anything else would contravene the instructions of the Supreme Court that courts are "obligated to interpret and apply the[] standards [in Article III, Section 20] in a manner that gives full effect to the will of the voters." Op. at *1.

CONCLUSION

The Legislature's enacted congressional plan, C9047, simply fails to level the political playing field and create a fair chance for voters to choose their representatives. Instead, it maintains the unacceptable situation where it is obvious that politicians are choosing their voters. The Coalition therefore respectfully requests that this Court issue a judgment declaring that the Legislature's congressional plan is unconstitutional and enjoining any future use of the plan. Alternatively, the Court should preliminarily enjoin use of the plan in the 2012 elections. In issuing the injunction, the Court should convene the parties for an immediate remedial hearing.

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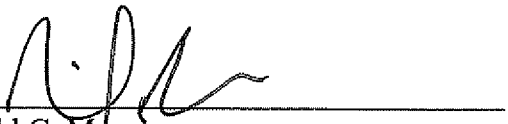
leaders pursuant to a plan which meets constitutional requirements" the "citizens should not be further unduly delayed, even if inconvenient to voting officials"); *cf. Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, 357 F.3d 260, 262 (2d Cir. 2004) ("It is within the scope of [a court's] equity powers to order a governmental body to hold special elections to redress violations of the VRA."). Either course would substantially harm the people of Florida. The only way to avoid that damage is for this Court to enjoin any use of the Legislature's congressional plan in the 2012 elections.

Respectfully submitted this 26th day of March, 2012,



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I certify that a true and correct copy of this submission was furnished by email and by overnight mail to the following parties on this 26th day of March, 2012.

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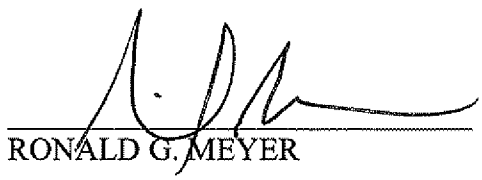

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