



Journal of the Senate

Number 1—Special Session C

Tuesday, April 19, 2022

At a Special Session of the Florida Legislature convened under Article III, Section 3 of the Constitution of the State, as revised in 1968, and subsequently amended, at the Capitol, in the City of Tallahassee, on Tuesday, April 19, 2022, in the State of Florida.

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CALL TO ORDER

The Senate was called to order by President Simpson at 12:30 p.m. A quorum present—34:

Mr. President	Burgess	Osgood
Albritton	Cruz	Passidomo
Baxley	Diaz	Pizzo
Bean	Farmer	Polsky
Berman	Gainer	Powell
Book	Garcia	Rodriguez
Boyd	Gibson	Rouson
Bracy	Harrell	Stargel
Bradley	Hooper	Stewart
Brandes	Hutson	Torres
Brodeur	Jones	
Broxson	Mayfield	

Excused: Senators Ausley, Gruters, Perry, and Wright

PRAYER

The following prayer was offered by Senator Hooper:

Glorious Heavenly Father, thank you for this beautiful day you've created. We come to you today asking for your guidance, wisdom, and support as we begin and complete our work this week. Help us engage in meaningful discussion and debate. Remind us often that even though we have differences of political nature, we are the Senate family.

Lord, we pray for peace around the world. Please protect our military, our first responders, their families, and, Lord, protect our families. Thank you, Lord, for the privilege of serving Florida. We ask all these things in your holy name. Amen.

PLEDGE

Senator Jones led the Senate in the Pledge of Allegiance to the flag of the United States of America.

ELECTION OF SENATOR ROSALIND OSGOOD

SPECIAL GUESTS

The President recognized Senator Osgood's daughter, Shennette Sparkes and son-in-law, Pastor Germaine Sparkes; son, Anthony Sheffield; grandchildren, Kyla and Gabriel Sparkes; and cousins, Trey Seay, Cheryl Lewis, and Sharon Barrian, who were present in the chamber. The President recognized Mickey Clayton, Senator Osgood's former FAMU basketball coach, and members of her sorority, Alpha Kappa Alpha, who were present in the gallery.

OATH OF OFFICE ADMINISTERED

Senator Osgood was joined by her granddaughter, Kyla Sparkes, at the bar of the Senate where she was administered the oath of office by her son-in-law, Pastor Germaine Sparkes.

CERTIFICATE RECEIVED

The Secretary announced The Honorable Laurel M. Lee, Secretary of State, had certified to the election of one Senator as follows:

STATE OF FLORIDA DEPARTMENT OF STATE

I, **Laurel M. Lee**, Secretary of State of the State of Florida, do hereby certify that the following candidates were duly elected at the Special Election held on the 8th day of March, A.D., 2022, to the office of Member, State Senate, as shown by the records of this office:

SENATE	
DISTRICT	ELECTED SENATOR

33	Rosalind Osgood
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GIVEN under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this 22nd day of March, A.D., 2022.

Laurel M. Lee
Secretary of State

By direction of the President, the Secretary read the following proclamations:

PROCLAMATION

STATE OF FLORIDA

EXECUTIVE OFFICE OF THE GOVERNOR

TALLAHASSEE

TO THE HONORABLE MEMBERS OF THE
FLORIDA SENATE AND HOUSE OF REPRESENTATIVES

WHEREAS, Article III, Section 3 of the Florida Constitution permits the Governor to convene the Legislature in Special Session during which only such legislative business may be transacted as is within the purview of this Proclamation, or of a communication from the Governor, or as is introduced by consent of two-thirds of the membership of each house of the Legislature; and

WHEREAS, Article III, Section 3 of the Florida Constitution limits the duration of a Special Session to twenty (20) consecutive days; and

WHEREAS, on March 29, 2022, the Legislature presented to me CS/SB 102, an act relating to establishing the congressional districts of the State of Florida; and

WHEREAS, on March 29, 2022, pursuant to Article III, Section 8 of the Florida Constitution, I vetoed and transmitted my objection to CS/SB 102; and

WHEREAS, redistricting is primarily the duty and responsibility of the states, *see* U.S. Const. art. I, § 4, cl. 1; and

WHEREAS, the Legislature and Governor have an obligation every ten years to redraw Florida's congressional districts consistent with the most recent decennial census, *see* 2 U.S.C. §§ 2a-2c, and the one-person, one-vote requirement of the U.S. Constitution, *see Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969); and

WHEREAS, the 2020 Census resulted in the apportionment to Florida of 28 representatives to the U.S. House of Representatives; and

WHEREAS, based on statewide population growth, the State of Florida gained an additional congressional seat when compared to the 2010 Census; and

WHEREAS, the qualifying period for election to the U.S. House of Representatives is June 13, 2022, to June 17, 2022, pursuant to Florida law; and

WHEREAS, the failure to redistrict the congressional districts of the State of Florida could result in confusion and chaos in the administration of Florida's congressional elections.

NOW, THEREFORE, I, RON DESANTIS, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1) of the Florida Constitution, do hereby proclaim as follows:

Section 1. The Legislature of the State of Florida is convened in Special Session commencing at 12:00 p.m., Tuesday, April 19, 2022, and extending no later than 11:59 p.m., Friday, April 22, 2022.

Section 2. The Legislature of the State of Florida is convened in Special Session for the sole and exclusive purpose of considering legislation relating to the establishment of congressional districts for the State of Florida and any legal challenges thereto, including the appropriation of additional funding for pending and prospective redistricting litigation.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation convening the Legislature in Special Session at the Capitol, this 29th day of March, 2022.

Ron DeSantis
GOVERNOR

ATTEST:

Laurel M. Lee
SECRETARY OF STATE

PROCLAMATION

STATE OF FLORIDA

EXECUTIVE OFFICE OF THE GOVERNOR

TALLAHASSEE

TO THE HONORABLE MEMBERS OF THE
FLORIDA SENATE AND HOUSE OF REPRESENTATIVES

WHEREAS, the Florida Constitution of 1885 did not prohibit special laws granting privileges to private corporations; and

WHEREAS, the Florida Constitution was revised by the Florida electorate on November 5, 1968; and

WHEREAS, the Florida Constitution of 1968 generally disfavors special laws as opposed to general laws, but permits the creation of independent special districts that appropriately serve the public interest; and

WHEREAS, Article III, Section 11(a)(12) of the Florida Constitution of 1968 prohibits special laws granting privileges to private corporations; and

WHEREAS, independent special districts exist that were established prior to November 5, 1968, and that have not been re-established, ratified, or otherwise reconstituted by a special act or general law after November 5, 1968; and

WHEREAS, it is necessary to review such independent special districts to ensure that they are appropriately serving the public interest; and

WHEREAS, it is also necessary to consider whether such independent special districts should be subject to the special law requirements of the Florida Constitution of 1968; and

WHEREAS, it is further necessary to periodically review exceptions to generally applicable laws that are given to select corporations; and

WHEREAS, on May 24, 2021, Florida enacted the first-of-its-kind law to protect consumers from arbitrary censorship by social media platforms; and

WHEREAS, the law, Section 501.2041, Florida Statutes, exempts any company that owns and operates a theme park or entertainment complex from the definition of a "social media platform"; and

WHEREAS, on June 30, 2021, a federal court temporarily enjoined Section 501.2041, Florida Statutes, in part because such exemption would likely not survive under the First Amendment; and

WHEREAS, the federal court questioned whether it could sever the exemption for theme parks and entertainment complexes because the court concluded that (i) the Legislature was "apparently unwilling to subject favored Florida businesses to the statutes' onerous regulatory burdens" and (ii) the court could not "impose these burdens on the statutorily excluded entities when the Legislature has not passed, and the Governor has not signed, a statute subjecting these entities to these requirements," *NetChoice, LLC v. Moody*, 546 F. Supp. 3d 1082, 1094 (N.D. Fla. 2021); and

WHEREAS, Florida appealed this ruling to the United States Court of Appeals for the Eleventh Circuit in Case No. 21-12355; and

WHEREAS, oral argument before the Eleventh Circuit is scheduled to occur on April 28, 2022, and Florida must prevail in its position that a state can regulate the arbitrary and inconsistent censorship practices of social media platforms due to the platforms' unprecedented power over the free flow of information and ideas; and

WHEREAS, the law's exemption for theme parks and entertainment complexes is severable from and unnecessary to effectuate the law regulating social media platforms; and

WHEREAS, the Legislature should make clear that Florida intends to continue to protect consumers from the arbitrary and inconsistent

censorship of social media platforms in a viewpoint-neutral manner; and

WHEREAS, I have called a Special Session commencing at 12:00 p.m., Tuesday, April 19, 2022, and extending no later than 11:59 p.m., Friday, April 22, 2022; and

WHEREAS, it is prudent to expand the call for this Special Session.

NOW, THEREFORE, I, RON DESANTIS, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1) of the Florida Constitution, do hereby proclaim as follows:

Section 1. The call to the Legislature of the State of Florida for this Special Session is expanded for the sole purpose of considering (a) legislation relating to independent special districts, and (b) legislation to amend Section 501.2041, Florida Statutes.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation expanding the call to the Legislature in Special Session at the Capitol, this 19th day of April, 2022.

Ron DeSantis
GOVERNOR

ATTEST:

Laurel M. Lee
SECRETARY OF STATE

INTRODUCTION AND REFERENCE OF BILLS INSIDE THE CALL

FIRST READING

By Senator Rodrigues—

SB 2-C—A bill to be entitled An act establishing the congressional districts of the state; amending s. 8.0001, F.S.; adopting the United States Decennial Census of 2020 as the official census of the state for use in redistricting the state's congressional districts; defining terms; amending s. 8.0002, F.S.; redistricting the state's congressional districts in accordance with the United States Decennial Census of 2020 (plan P000C0109); amending s. 8.0111, F.S.; providing for the inclusion of unlisted territory in contiguous districts in accordance with figures from the United States Decennial Census of 2020; reenacting s. 8.031, F.S., relating to the election of representatives to Congress; creating s. 8.051, F.S.; specifying that certain electronic maps serve as the official maps of the congressional districts of the state; providing for construction; requiring such maps to be made available to the public by the Office of Economic and Demographic Research within a specified timeframe; reenacting s. 8.0611, F.S., relating to severability; amending s. 8.07, F.S.; providing for applicability; repealing ss. 8.08, 8.081, 8.082, 8.083, 8.084, 8.085, 8.086, 8.087, and 8.088, F.S.; deleting obsolete and superseded provisions relating to congressional districts enacted in Special Session A of the 2014 Legislature; providing effective dates.

—was referred to the Committee on Reapportionment.

By Senator Bradley—

SB 4-C—A bill to be entitled An act relating to independent special districts; amending s. 189.0311, F.S.; dissolving certain independent special districts; authorizing the reestablishment of certain independent special districts; providing an effective date.

—was referred to the Committee on Community Affairs.

By Senator Bradley—

SB 6-C—A bill to be entitled An act relating to social media platforms; amending s. 501.2041, F.S.; revising the definition of the term

“social media platform”; reenacting ss. 106.072(1)(c) and 287.137(1)(f), F.S., relating to social media deplatforming of political candidates and antitrust violations, denial or revocation of the right to transact business with public entities, and denial of economic benefits, respectively, to incorporate the amendment made to s. 501.2041, F.S., in references thereto; providing an effective date.

—was referred to the Committee on Community Affairs.

MOTIONS

On motion by Senator Passidomo, the rules were waived and the following bills were placed on the Special Order Calendar this day: **SB 2-C**, **SB 4-C**, and **SB 6-C**.

RECESS

On motion by Senator Passidomo, the Senate stood in recess at 1:07 p.m. for the purpose of holding committee meetings and conducting other Senate business to reconvene at 5:00 p.m., or upon call of the President.

EVENING SESSION

The Senate was called to order by President Simpson at 5:27 p.m. A quorum present—39:

Mr. President	Burgess	Osgood
Albritton	Cruz	Passidomo
Ausley	Diaz	Perry
Baxley	Farmer	Pizzo
Bean	Gainer	Polisky
Berman	Garcia	Powell
Book	Gibson	Rodrigues
Boyd	Gruters	Rodriguez
Bracy	Harrell	Rouson
Bradley	Hooper	Stargel
Brandes	Hutson	Stewart
Brodeur	Jones	Torres
Broxson	Mayfield	Wright

SPECIAL ORDER CALENDAR

MOTIONS

Senator Passidomo moved **SB 2-C** be read the second time by two-thirds vote as required by Article III, Section 7 of the Florida Constitution. The motion was adopted.

SB 2-C—A bill to be entitled An act establishing the congressional districts of the state; amending s. 8.0001, F.S.; adopting the United States Decennial Census of 2020 as the official census of the state for use in redistricting the state's congressional districts; defining terms; amending s. 8.0002, F.S.; redistricting the state's congressional districts in accordance with the United States Decennial Census of 2020 (plan P000C0109); amending s. 8.0111, F.S.; providing for the inclusion of unlisted territory in contiguous districts in accordance with figures from the United States Decennial Census of 2020; reenacting s. 8.031, F.S., relating to the election of representatives to Congress; creating s. 8.051, F.S.; specifying that certain electronic maps serve as the official maps of the congressional districts of the state; providing for construction; requiring such maps to be made available to the public by the Office of Economic and Demographic Research within a specified timeframe; reenacting s. 8.0611, F.S., relating to severability; amending s. 8.07, F.S.; providing for applicability; repealing ss. 8.08, 8.081, 8.082, 8.083, 8.084, 8.085, 8.086, 8.087, and 8.088, F.S.; deleting obsolete and superseded provisions relating to congressional districts enacted in Special Session A of the 2014 Legislature; providing effective dates.

—was read the second time by title.

On motion by Senator Rodrigues, further consideration of **SB 2-C** was deferred.

MOTIONS

Senator Passidomo moved **SB 4-C** be read the second time by two-thirds vote as required by Article III, Section 7 of the Florida Constitution. The motion was adopted.

SB 4-C—A bill to be entitled An act relating to independent special districts; amending s. 189.0311, F.S.; dissolving certain independent special districts; authorizing the reestablishment of certain independent special districts; providing an effective date.

—was read the second time by title.

On motion by Senator Bradley, further consideration of **SB 4-C** was deferred.

MOTIONS

Senator Passidomo moved **SB 6-C** be read the second time by two-thirds vote as required by Article III, Section 7 of the Florida Constitution. The motion was adopted.

SB 6-C—A bill to be entitled An act relating to social media platforms; amending s. 501.2041, F.S.; revising the definition of the term “social media platform”; reenacting ss. 106.072(1)(c) and 287.137(1)(f), F.S., relating to social media deplatforming of political candidates and antitrust violations, denial or revocation of the right to transact business with public entities, and denial of economic benefits, respectively, to incorporate the amendment made to s. 501.2041, F.S., in references thereto; providing an effective date.

—was read the second time by title.

On motion by Senator Bradley, further consideration of **SB 6-C** was deferred.

On motion by Senator Rodrigues, the Senate resumed consideration of—

SB 2-C—A bill to be entitled An act establishing the congressional districts of the state; amending s. 8.0001, F.S.; adopting the United States Decennial Census of 2020 as the official census of the state for use in redistricting the state’s congressional districts; defining terms; amending s. 8.0002, F.S.; redistricting the state’s congressional districts in accordance with the United States Decennial Census of 2020 (plan P000C0109); amending s. 8.0111, F.S.; providing for the inclusion of unlisted territory in contiguous districts in accordance with figures from the United States Decennial Census of 2020; reenacting s. 8.031, F.S., relating to the election of representatives to Congress; creating s. 8.051, F.S.; specifying that certain electronic maps serve as the official maps of the congressional districts of the state; providing for construction; requiring such maps to be made available to the public by the Office of Economic and Demographic Research within a specified timeframe; reenacting s. 8.0611, F.S., relating to severability; amending s. 8.07, F.S.; providing for applicability; repealing ss. 8.08, 8.081, 8.082, 8.083, 8.084, 8.085, 8.086, 8.087, and 8.088, F.S.; deleting obsolete and superseded provisions relating to congressional districts enacted in Special Session A of the 2014 Legislature; providing effective dates.

—which was previously read this day.

Senator Rodrigues moved the following amendment which was adopted:

Amendment 1 (470444) (with title amendment)—Between lines 3568 and 3569 insert:

Section 7. Effective upon becoming a law, section 8.062, Florida Statutes, is created to read:

8.062 *Limitation on choice of venue for actions challenging congressional districts.*—Notwithstanding any other provision of law, state court actions challenging the state’s congressional districts shall be brought only in Leon County.

Section 8. Effective upon becoming a law, section 8.063, Florida Statutes, is created to read:

8.063 *Limitations on actions challenging congressional districts.*—

(1) *Actions challenging the state’s congressional districts on state constitutional or state law grounds shall be brought exclusively in state court.*

(2) *A state court action challenging the state’s congressional districts may raise any state constitutional or state law claims, and any federal constitutional or federal law claims, regarding the state’s congressional districts that are within the jurisdiction of the circuit court.*

(3) *Nothing within this section shall be construed to preclude federal courts from deciding actions challenging the state’s congressional districts on federal constitutional or federal law grounds.*

And the title is amended as follows:

Delete line 21 and insert: F.S., relating to severability; creating s. 8.062, F.S.; requiring actions challenging the state’s congressional districts to be brought in a specific venue; creating s. 8.063, F.S.; specifying limitations for actions challenging the state’s congressional districts; providing for construction; amending s. 8.07,

The vote was:

Yeas—24

Mr. President	Broxson	Hutson
Albritton	Burgess	Mayfield
Baxley	Diaz	Passidomo
Bean	Gainer	Perry
Boyd	Garcia	Rodrigues
Bradley	Gruters	Rodriguez
Brandes	Harrell	Stargel
Brodeur	Hooper	Wright

Nays—13

Ausley	Farmer	Rouson
Berman	Gibson	Stewart
Book	Pizzo	Torres
Bracy	Polsky	
Cruz	Powell	

Vote after roll call:

Nay—Osgood

SENATOR BEAN PRESIDING

MOTIONS

On motion by Senator Passidomo, the rules were waived and the time of adjournment was extended until completion of today’s order of business.

Senator Stargel moved the following amendment which was adopted:

Amendment 2 (916844) (with title amendment)—Between lines 3578 and 3579 insert:

Section 9. *If any provision of this act is held invalid with respect to any person or circumstance, or if any congressional districts established in this act are held invalid, the invalidity does not affect other provisions or applications of the act or any other districts established in this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. This section shall take effect upon this act becoming a law.*

Section 10. *For the 2021-2022 fiscal year, the nonrecurring sum of \$1 million from the General Revenue Fund is appropriated to the Depart-*

ment of State for any litigation expenses relating to legal challenges pertaining to the establishment of congressional districts for the State of Florida. Any unexpended balance of these funds as of June 30, 2022, shall revert and is appropriated for the 2022-2023 fiscal year to the Department of State for the same purpose. This section shall take effect upon this act becoming a law.

And the title is amended as follows:

Between lines 26 and 27 insert: providing for severability; providing an appropriation;

THE PRESIDENT PRESIDING

SENATOR BEAN PRESIDING

Pursuant to Rule 4.19, **SB 2-C**, as amended, was ordered engrossed and then placed on the calendar of Bills on Third Reading.

On motion by Senator Bradley, the Senate resumed consideration of—

SB 4-C—A bill to be entitled An act relating to independent special districts; amending s. 189.0311, F.S.; dissolving certain independent special districts; authorizing the reestablishment of certain independent special districts; providing an effective date.

—which was previously read this day.

Pursuant to Rule 7.1, there being no objection, consideration of the following late-filed amendment was allowed:

Senator Farmer moved the following amendment which failed:

Amendment 1 (945716) (with title amendment)—Delete everything after the enacting clause and insert:

Section 1. (1) *The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall conduct a study to determine the full impact on state and local governments and the private sector if each independent special district established by a special act prior to the date of ratification of the Florida Constitution on November 5, 1968, and which was not reestablished, re-ratified, or otherwise reconstituted by a special act or general law after November 5, 1968, is dissolved by general law.*

(2) *OPPAGA shall submit a report on its findings to the President of the Senate and the Speaker of the House of Representatives by December 31, 2022.*

Section 2. This act shall take effect upon becoming a law.

And the title is amended as follows:

Delete everything before the enacting clause and insert: A bill to be entitled An act relating to independent special districts; requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study to determine certain impacts if certain independent special districts are dissolved by general law; requiring OPPAGA to submit a report to the Legislature by a certain date; providing an effective date.

The vote was:

Yeas—16

Ausley	Farmer	Powell
Berman	Gibson	Rouson
Book	Jones	Stewart
Bracy	Osgood	Torres
Brandes	Pizzo	
Cruz	Polsky	

Nays—23

Mr. President	Burgess	Mayfield
Albritton	Diaz	Passidomo
Baxley	Gainer	Perry
Bean	Garcia	Rodriguez
Boyd	Gruters	Rodriguez
Bradley	Harrell	Stargel
Brodeur	Hooper	Wright
Broxson	Hutson	

THE PRESIDENT PRESIDING

Pursuant to Rule 4.19, **SB 4-C** was placed on the calendar of Bills on Third Reading.

On motion by Senator Bradley, the Senate resumed consideration of—

SB 6-C—A bill to be entitled An act relating to social media platforms; amending s. 501.2041, F.S.; revising the definition of the term “social media platform”; reenacting ss. 106.072(1)(c) and 287.137(1)(f), F.S., relating to social media deplatforming of political candidates and antitrust violations, denial or revocation of the right to transact business with public entities, and denial of economic benefits, respectively, to incorporate the amendment made to s. 501.2041, F.S., in references thereto; providing an effective date.

—which was previously read this day.

Pursuant to Rule 7.1, there being no objection, consideration of the following late-filed amendment was allowed:

Senator Farmer moved the following amendment which failed:

Amendment 1 (778976)—Delete line 37 and insert: The term does not include a platform that allows user interaction that is solely limited to feedback related to host-provided media content. ~~any information service, system,~~

Pursuant to Rule 4.19, **SB 6-C** was placed on the calendar of Bills on Third Reading.

REPORTS OF COMMITTEES

The Committee on Community Affairs recommends the following pass: **SB 4-C**; **SB 6-C**

The Committee on Reapportionment recommends the following pass: **SB 2-C**

The bills were placed on the Calendar.

MESSAGES FROM THE GOVERNOR AND OTHER EXECUTIVE COMMUNICATIONS

VETOED BILLS 2022 REGULAR SESSION

Secretary Laurel Lee
Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

March 29, 2022

Dear Secretary Lee:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8 of the Constitution of Florida, I do hereby veto and transmit my objection to CS/SB 102, enacted during the 124th Session of the Legislature of Florida, during Regular Session 2022 and entitled:

An act relating to establishing the congressional districts of the state

As presented in both the primary and secondary maps enacted by the Legislature, Congressional District 5 violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution for the reasons set forth in the attached memorandum. Although I understand the Legislature's desire to comply with the Florida Constitution, the Legislature is not absolved of its duty to comply with the U.S. Constitution. Where the U.S. and Florida Constitutions conflict, the U.S. Constitution must prevail.

Accordingly, I withhold my approval of CS/SB 102 and do hereby veto the same.

Sincerely,

Ron DeSantis
Governor

The bill, together with the Governor's objections thereto, was referred to the Committee on Rules.

MEMORANDUM

To: Ron DeSantis, Governor of Florida
From: Ryan Newman, General Counsel, Executive Office of the Governor
Date: March 29, 2022
Re: Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State

Congressional District 5 in both the primary and secondary maps enacted by the Legislature violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it assigns voters primarily on the basis of race but is not narrowly tailored to achieve a compelling state interest.

"Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools," the U.S. Supreme Court has made clear that the State also "may not separate its citizens into different voting districts on the basis of race." *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (internal citations omitted). "When the State assigns voters on the basis of race," the Court explained, "it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, 'think alike, share the same political interests, and will prefer the same candidates at the polls.'" *Id.* at 911-12 (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)).

For these reasons, the Court has interpreted the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution to prohibit state legislatures from using race as the "predominant factor motivating [their] decision to place a significant number of voters within or without a particular district," *id.* at 916, unless they can prove that their "race-based sorting of voters serves a 'compelling interest' and is 'narrowly tailored' to that end," *Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017) (citation omitted). That race was the predominant factor motivating a legislature's line-drawing decision can be shown "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose." *Miller*, 515 U.S. at 916.

Although non-adherence to traditional districting principles, which results in an non-compact, unusually shaped district, is relevant evidence that race was the predominant motivation of a legislature, such evidence is not required to establish a constitutional violation. "Race may predominate even when a reapportionment plan respects traditional principles, if '[r]ace was the criterion that, in the State's view, could not be compromised,' and race-neutral considerations 'came into play only after the race-based decision had been made.'" *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 798 (2017) (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (alteration in original)). "The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not." *Id.* at 799. A legislature "could construct a plethora of potential maps that look consistent with traditional, race-neutral principles," but "if race for its own sake is the overriding reason for choosing one map over others, race still may predominate." *Id.* It is the "racial purpose of state action, not its stark

manifestation," that offends the Equal Protection Clause. *Miller*, 515 U.S. at 913.

In light of these well-established constitutional principles, the congressional redistricting bill enacted by the Legislature violates the U.S. Constitution. The bill contains a primary map and secondary map that include a racially gerrymandered district—Congressional District 5—that is not narrowly tailored to achieve a compelling state interest. *See generally* Fla. H.R. Comm. on Redist., recording of proceedings, at 0:00-2:55:19 (Feb. 25, 2022), <https://thefloridachannel.org/videos/2-25-22-house-redistricting-committee/> (committee presentation and discussion of the maps later passed by the Legislature).

In the secondary map, which was the original map reported out of the House Congressional Redistricting Subcommittee, District 5 is a sprawling district that stretches approximately 200 miles from East to West and cuts across eight counties to connect a minority population in Jacksonville with a separate and distinct minority population in Leon and Gadsden Counties. The district is not compact, does not conform to usual political or geographic boundaries, and is bizarrely shaped to include minority populations in western Leon County and Gadsden County while excluding non-minority populations in eastern Leon County. Because this version of District 5 plainly subordinates traditional districting criteria to avoid diminishment of minority voting age population, there is no question that race was "the predominant factor motivating the legislature's decision" to draw this district. *Miller*, 515 U.S. at 916.

District 5 in the Secondary Map

In response to federal constitutional concerns about the unusual shape of District 5 as it was originally drawn, and which is now reflected in the secondary map, the House Redistricting Committee drew a new version of District 5, which is reflected in the primary map. This configuration of the district is more compact but has caused the adjacent district—District 4—to take on a bizarre doughnut shape that almost completely surrounds District 5. The reason for this unusual configuration is the Legislature's desire to maximize the black voting age population in District 5. The Chair of the House Redistricting Committee confirmed this motivation when he explained that the new District 5 was drawn to "protect[] a black minority seat in north Florida." Fla. H.R. Comm. on Redist., recording of proceedings, at 19:15-19:26 (Feb. 25, 2022).

District 5 in the Primary Map

Despite the Legislature's attempt to address the federal constitutional concerns by drawing a more compact district, the constitutional defect nevertheless persists. Where "race was the criterion that, in the State's view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made," it

follows that race was the predominant factor, even though the district otherwise respects traditional districting principles. *Bethune-Hill*, 137 S. Ct. at 798 (cleaned up).

Such was the case here. Even for the more compact district, the Legislature believed (albeit incorrectly) that the Florida Constitution required it to ensure “a black minority seat in north Florida.” Fla. H.R. Comm. on Redist., recording of proceedings, at 19:15-19:26 (Feb. 25, 2022). Specifically, according to the House Redistricting Chair, the primary map’s version of District 5 is the House’s “attempt at continuing to protect the minority group’s ability to elect a candidate of their choice.” *Id.* at 19:45-19:54. The Legislature thus used “an express racial target” for District 5 of a black voting age population sufficiently large to elect a candidate of its choice. *Bethune-Hill*, 137 S. Ct. at 800.

Because racial considerations predominated even in drawing the new District 5, the Legislature must satisfy strict scrutiny, the U.S. Supreme Court’s “most rigorous and exacting standard of constitutional review.” *Miller*, 515 U.S. at 920. And to satisfy strict scrutiny, the Legislature “must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.” *Id.* That, the Legislature cannot do.

There is no good reason to believe that District 5 needed to be drawn as a minority-performing district to comply with Section 2 of the Voting Rights Act (VRA), because the relevant minority group is not sufficiently large to constitute a majority in a geographically compact area. In the primary map, the black voting age population of District 5 is 35.32%, and even in the secondary map, with the racially gerrymandered, non-compact version of District 5, the black voting age population increases only to 43.48%. Compare Fla. Redist. 2022, H000C8019, <https://bit.ly/3uczOXb> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022), with Fla. Redist. 2022, H000C8015, <https://bit.ly/36hFRBB> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022). “When a minority group is not sufficiently large to make up a majority in a reasonably shaped district, § 2 simply does not apply.” *Cooper*, 137 S. Ct. at 1472 (citing *Bartlett v. Strickland*, 556 U.S. 1, 18-20 (2009) (plurality opinion)); see also *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (explaining that one of the threshold conditions for proving vote dilution under Section 2 is that the minority group is “sufficiently large and geographically compact to constitute a majority”).

Nor is there good reason to believe that District 5 is required to be drawn to comply with Section 5 of the VRA. Section 5 is no longer operative now that the U.S. Supreme Court invalidated the VRA’s formula for determining which jurisdictions are subject to Section 5. See *Shelby Cnty. v. Holder*, 570 U.S. 529, 553-57 (2013); see also *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 279 (2015) (suggesting that continued compliance with Section 5 may not remain a compelling interest in light of *Shelby County*). In any event, even before the coverage formula was invalidated, the State of Florida was not a covered jurisdiction subject to Section 5. See *In re Senate Joint Resolution of Legislative Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 624 (Fla. 2012). Only five counties in Florida were covered—Collier, Hardee, Hendry, Hillsborough, and Monroe—and none of them are in northern Florida where District 5 is located. See *id.*

The only justification left for drawing a race-based district is compliance with Article III, Section 20(a) of the Florida Constitution. But District 5 does not comply with this provision. Article III, Section 20(a) provides that “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.” The Florida Supreme Court has noted that these “dual constitutional imperatives follow almost verbatim the requirements embodied in the Federal Voting Rights Act.” *Id.* at 619 (cleaned up). The first imperative, which prohibits districts that deny or abridge the equal opportunity of minority groups to participate in the political process, is modeled after Section 2 of the VRA, and the second imperative, which prohibits districts that diminish the ability of minority groups to elect representatives of their choice, is modeled after Section 5. *Id.* at 619-20.

Like the VRA, these provisions of the Florida Constitution “aim[] at safeguarding the voting strength of minority groups against both impermissible dilution and retrogression.” *Id.* at 620. Although judicial interpretation of the VRA is relevant to understanding the Florida Constitution’s non-dilution and non-diminishment provisions, the Florida Supreme Court nonetheless recognizes its “independent constitutional obligation” to interpret these provisions. *Id.* at 621.

Relevant here is the Florida Constitution’s non-diminishment requirement. Unlike Section 5 of the VRA, this requirement “applies to the entire state.” *Id.* at 620. Under this standard, the Legislature “cannot eliminate majority-minority districts or weaken other historically performing minority districts where doing so would actually diminish a minority group’s ability to elect its preferred candidates.” *Id.* at 625. The existing districts “serve[] as the ‘benchmark’ against which the ‘effect’ of voting changes is measured.” *Id.* at 624 (cleaned up). Where a voting change leaves a minority group “less able to elect a preferred candidate of choice” than the benchmark, that change violates the non-diminishment standard. *Id.* at 625 (internal quotation marks omitted); see also *id.* at 702 (Canady, C.J., concurring in part and dissenting in part) (noting that the dictionary definition of “diminish” means “to make less or cause to appear less” (citation omitted)).

The Florida Supreme Court has acknowledged that “a slight change in percentage of the minority group’s population in a given district does not necessarily have a cognizable effect on a minority group’s ability to elect its preferred candidate of choice.” *Id.* at 625. The minority population percentage in each district need not be “fixed” in perpetuity. *Id.* at 627. But where the reduction in minority population in a given district is more than “slight,” such that the ability of the minority population to elect a candidate of choice has been reduced (even if not eliminated), the Legislature has violated the Florida Constitution’s non-diminishment requirement as interpreted by the Florida Supreme Court.

Given these principles, there is no good reason to believe that District 5, as presented in the primary map, complies with the Florida Constitution’s non-diminishment requirement. The benchmark district contains a black voting age population of 46.20%, whereas the black voting age population of District 5 in the primary map is only 35.32%.¹ Compare Fla. Redist. 2022, FLCD2016, <https://bit.ly/3Iv6FeW> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022), with Fla. Redist. 2022, H000C8019, <https://bit.ly/3uczOXb> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022). This nearly eleven percentage point drop is more than slight, and while the House Redistricting Chair represented that the black population of the district could still elect a candidate of choice, see Fla. H.R. Comm. on Redist., recording of proceedings, at 59:44-1:00:17 (Feb. 25, 2022), there appears to be little dispute that the ability of the black population to elect such a candidate had nevertheless been reduced, see *id.* at 1:00:18-1:00:58 (noting that the benchmark district performed for the minority candidate of choice in 14 of 14 previous elections and that the new district would not perform for the minority candidate of choice in one-third of the same elections).

Moreover, the House Redistricting Chair claimed that the only criterion that mattered was whether the new district still performed at all. See *id.* at 1:06:09-1:06:30 (“It is not a diminishment unless the district does not perform.”); see also *id.* at 1:05:05-1:05:13 (“Is it less likely to perform? Honestly, I don’t know.”). But that view is plainly inconsistent with the Florida Supreme Court precedent described above, which prohibits any voting change that leaves a minority group “less able to elect a preferred candidate of choice.” *Apportionment I*, 83 So. 3d at 625 (internal quotation marks omitted). In sum, because the reduction of black voting age population is more than slight and because such reduction appears to have diminished the ability of black voters to elect a candidate of their choice, District 5 does not comply with the non-diminishment requirement of Article III, Section 20(a) of the Florida Constitution. Therefore, compliance with the Florida Constitution cannot supply the compelling reason to justify the Legislature’s use of race in drawing District 5 in the primary map.

In the secondary map, by contrast, District 5 complies with the Florida Constitution’s non-diminishment requirement, but in doing so, it violates the Equal Protection Clause of the Fourteenth Amendment to

the U.S. Constitution. The U.S. Supreme Court has warned that a “reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid.” *Shaw*, 509 U.S. at 647. As described earlier, District 5 in the secondary map does precisely this.

That the district is believed to be necessary to comply with the Florida Constitution’s non-diminishment requirement does not alone suffice to justify the use of race in drawing bizarre, non-compact district boundaries for the sole purpose of cobbling together disparate minority populations from across northern Florida to form a minority-performing district. Mere compliance with a state constitutional requirement to engage in race-based districting is not, without more, a compelling interest sufficient to satisfy strict scrutiny. The Fourteenth and Fifteenth Amendments to the U.S. Constitution and the VRA, which enforces the Fifteenth Amendment, exist to *prevent* states from engaging in racially discriminatory electoral practices. Indeed, one such weapon that states long used, and that the VRA was designed to combat, “was the racial gerrymander—the deliberate and arbitrary distortion of district boundaries for racial purposes.” *Id.* at 640 (cleaned up).

Here, the Florida Constitution’s non-diminishment standard would be satisfied only by a sprawling, non-compact district that spans 200 miles and repeatedly violates traditional political boundaries to join minority communities from disparate geographic areas. Such a district is not narrowly tailored to achieve the compelling interest of protecting the voting rights of a minority community in a reasonably cohesive geographic area. As applied to District 5 in the secondary map, therefore, the Florida Constitution’s non-diminishment standard cannot survive strict scrutiny and clearly violates the U.S. Constitution.

For the foregoing reasons, Congressional District 5 in both maps is unlawful.

¹ The benchmark district itself is a sprawling, non-compact racial gerrymander that connects minority communities from two distinct regions of the State; however, for purposes of this point, I assume that the district can be used as a valid benchmark against which to judge the new maps.

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Joint Legislative Budget Commission

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ADJOURNMENT

On motion by Senator Passidomo, the Senate adjourned at 9:27 p.m. for the purpose of holding committee meetings and conducting other Senate business to reconvene at 10:00 a.m., Wednesday, April 20 or upon call of the President.