

**IN THE SUPREME COURT OF FLORIDA**

BLACK VOTERS MATTER CAPACITY  
BUILDING INSTITUTE, INC.,  
LEAGUE OF WOMEN VOTERS OF  
FLORIDA, EQUAL GROUND,  
FLORIDA RISING TOGETHER, et al.,

*Petitioners,*

v.

CORD BYRD, in his official capacity  
as Florida Secretary of State, et al.,

*Respondents.*

CASE NO. SC23-1671  
L.T. No.: 1D23-2252  
2022-ca-000666

**BRIEF OF *AMICI CURIAE* CURRENT AND FORMER ELECTED  
LEADERS OF NORTH FLORIDA AND ACROSS THE STATE**

Matthew A. Goldberger, Fla. No.  
119897

Matthew A. Goldberger, P.A.  
1555 Palm Beach Lakes Blvd.,  
Suite 1400  
West Palm Beach, FL 33401

Jonathan B. Miller\*  
Sophia House\*  
Public Rights Project  
490 43rd Street, Unit #115  
Oakland, CA 94609

*\*pro hac vice* to be submitted

*Counsel for Amici Curiae*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....iii

STATEMENT OF INTEREST ..... 1

SUMMARY OF ARGUMENT ..... 2

ARGUMENT ..... 4

I. THE BENCHMARK CD-5 IS A COMPACT  
COMMUNITY OF INTEREST THAT COMPLIES  
WITH THE REQUIREMENTS OF THE FDA..... 4

A. Benchmark CD-5 Has a Shared History..... 5

    1. Black Residents Settled as Freepersons  
    Across North Florida Before Slavery Took  
    Hold in the 19th Century ..... 5

    2. After the Civil War, Black Leaders in Florida  
    Ascended to All Levels of Government,  
    Including Congress ..... 7

    3. Economic Subjugation, Mass Racial  
    Violence, and Legal Segregation Oppressed  
    Black Residents of North Florida Over the  
    Next Century..... 9

    4. North Florida Saw the Development of  
    Strong Black-Run and Controlled  
    Institutions .....13

    5. North Florida Was the Locus of Sustained  
    Resistance by Black Residents .....15

    6. Violent Efforts to Subvert Black Equality  
    Persisted Well into the Mid-20th Century .....17

B. Benchmark CD-5 Has a Shared Socioeconomic  
    Status .....21

C. Benchmark CD-5 Has Shared Voting Interests .....23

II. THE TRIAL COURT DID NOT NEED TO CONSIDER EVIDENCE ABOUT THE APPROPRIATENESS OF THE BENCHMARK DISTRICT .....	25
APPENDIX A.....	29

## **TABLE OF AUTHORITIES**

### **CASES**

<i>Ala. Legis. Black Caucus v. Alabama</i> , 575 U.S. 254 (2015) .....	26
<i>In re S. J. Res. of Legis. Apportionment 100</i> , 334 So. 3d (Fla. 2022) .....	27
<i>In re S. J. Res. of Legis. Apportionment 1176</i> , 83 So. 3d 597 (Fla. 2012) .....	26, 27
<i>League of United Latin Am. Citizens v. Perry</i> , 548 U.S. 399 (2006) .....	21
<i>Theriot v. Parish of Jefferson</i> , 185 F.3d 477 (5th Cir. 1999) .....	22
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986) .....	22, 24
<i>Wright v. Sumter Cnty. Bd. of Elections</i> , 979 F.3d 1282 (11th Cir. 2020) .....	23

### **OTHER AUTHORITIES**

Abel A. Bartley, <i>The 1960 and 1964 Jacksonville Riots: How Struggle Led to Progress</i> , 78 FLA. HIST. Q. (1999) .....	16, 19
Arthur O. White, <i>State Leadership and Black Education in Florida, 1876-1976</i> , 42 PHYLON (1981) .....	18
August Meier and Elliott Rudwick, <i>Negro Boycotts of Segregated Streetcars in Florida, 1901-1905</i> , 69 S. ATL. Q. (1970) .....	15
B. L. Perry, Jr., <i>Black Colleges and Universities in Florida: Past, Present, and Future</i> , 6 J. BLACK STUD. (1975) .....	14

Brennan Center for Justice, Growing Racial Disparities in Voter Turnout, 2008-2022 (2024), <a href="https://www.brennancenter.org/media/12347/download">https://www.brennancenter.org/media/12347/download</a> .....	2
CANTER BROWN, FLORIDA’S BLACK PUBLIC OFFICIALS, 1867-1924 (1998) .....	8
Clay Ouzts, <i>Landlords and Tenants: Sharecropping and the Cotton Culture in Leon County, Florida, 1865-1885</i> , 75 FLA. HIST. Q. (1996).....	10
Edward C. Williamson, <i>Black Belt Political Crisis: The Savage-James Lynching, 1882</i> , 45 FLA. HIST. Q. (1967).....	9
Edward C. Williamson, <i>The Constitutional Convention of 1885</i> , 41 FLA. HIST. Q. (1962).....	10
Emily Bloch, <i>Civil rights protests are part of Jacksonville’s past — and future</i> , The Florida-Times Union (June 6, 2020), <a href="https://www.jacksonville.com/story/news/history/2020/06/06/civil-rights-protests-are-part-of-jacksonvilles-past---and-future/41740341/">https://www.jacksonville.com/story/news/history/2020/06/06/civil-rights-protests-are-part-of-jacksonvilles-past---and-future/41740341/</a> .....	16
Florida Department of Health, Deaths From Major Cardiovascular Diseases, <a href="https://www.flhealthcharts.gov/ChartsDasboards/rdPage.aspx?rdReport=Death.DataViewer&amp;cid=0085">https://www.flhealthcharts.gov/ChartsDasboards/rdPage.aspx?rdReport=Death.DataViewer&amp;cid=0085</a> .....	23
Florida Department of Health, Hospitalizations from Asthma, <a href="https://www.flhealthcharts.gov/ChartsDasboards/rdPage.aspx?rdReport=NonVitalInd.Dataviewer&amp;cid=9755">https://www.flhealthcharts.gov/ChartsDasboards/rdPage.aspx?rdReport=NonVitalInd.Dataviewer&amp;cid=9755</a> .....	23

Florida Department of Health, Infant Mortality, <a href="https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=InfantDeath.Dataviewer&amp;cid=0053">https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=InfantDeath.Dataviewer&amp;cid=0053</a> .....	23
Gary R. Mormino, <i>GI Joe Meets Jim Crow: Racial Violence and Reform in World War II Florida</i> , 73 FLA. HIST. Q. (1994) .....	16
Housing Needs Assessment, Leon County, <a href="https://www.policymap.com/report_widget?type=fur&amp;area=predefined&amp;sid=10192&amp;pid=718182245">https://www.policymap.com/report_widget?type=fur&amp;area=predefined&amp;sid=10192&amp;pid=718182245</a> .....	21
Jane Landers, <i>Spanish Sanctuary: Fugitives in Florida, 1687-1790</i> , 62 FLA. HIST. Q. (1983) .....	6
Jerrell H. Shofner, <i>Custom, Law, and History: The Enduring Influence of Florida's "Black Code,"</i> 55 FLA. HIST. Q. (1977) .....	10, 11, 12
Jerrell H. Shofner, <i>Militant Negro Laborers in Reconstruction Florida</i> , 39 J. SO. HIST. (1973) .....	13
Jerrell H. Shofner, <i>Political Reconstruction in Florida</i> , 45 FLA. HIST. Q. (1966) .....	7
Joe M. Richardson, <i>Florida Black Codes</i> , 47 FLA. HIST. Q. (1969).....	7, 11, 12
Joseph A. Tomberlin, <i>Florida and the School Desegregation Issue, 1954-1959: A Summary View</i> , 43 J. NEGRO ED. (1974).....	18
LARRY E. RIVERS AND CANTER BROWN, JR., LABORERS IN THE VINEYARD OF THE LORD: THE BEGINNINGS OF THE AME CHURCH IN FLORIDA, 1865-1895 (2001).....	13
LARRY E. RIVERS, SLAVERY IN FLORIDA, TERRITORIAL DAYS TO EMANCIPATION (2000) .....	7

LEEDELL W. NEYLAND, FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY: A CENTENNIAL HISTORY (1887-1987) (1987).....	14
Local Housing Solutions, Housing Needs Assessment, <a href="https://localhousingsolutions.org/housing-&lt;br/&gt;needs-assessment/">https://localhousingsolutions.org/housing- needs-assessment/</a> .....	21, 22
MARY LOUISE ELLIS AND WILLIAM WARREN ROGERS, FAVORED LAND, TALLAHASSEE: A HISTORY OF TALLAHASSEE AND LEON COUNTY (1988) .....	17
Ralph L. Peek, <i>Aftermath of Military Reconstruction, 1868-1869</i> , 43 FLA. HIST. Q. (1964) .....	8
Ralph L. Peek, <i>Election of 1870 and the End of Reconstruction in Florida</i> , 45 FLA. HIST. Q. (1967) .....	9
SAMUEL PROCTOR, NAPOLEON BONAPARTE BROWARD, FLORIDA'S FIGHTING DEMOCRAT (1950) .....	12
STEWART E. TOLNAY AND E. M. BECK, A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882-1930 (1995).....	12
The Historical Marker Database, 1963 Civil Rights Protest Jail Overflow Site, <a href="https://www.hmdb.org/m.asp?m=135553">https://www.hmdb.org/m.asp?m=135553</a> <a href="https://visittallahassee.com/civil-rights-&lt;br/&gt;timeline">https://visittallahassee.com/civil-rights- timeline</a> .....	17
U.S. Commission on Civil Rights, 1961 Civil Rights Report Book 1 (1961), <a href="https://www2.law.umaryland.edu/marshall&lt;br/&gt;/usccr/documents/cr1961bk1.pdf">https://www2.law.umaryland.edu/marshall /usccr/documents/cr1961bk1.pdf</a> .....	19

U.S. Commission on Civil Rights, Voting Rights and Voter Disenfranchisement in Florida (2020), <https://www.law.nova.edu/faculty/full-time-faculty/2020-10-06-fl-voting-rights-advisory-memo.pdf>.....19, 20

Wali R. Kharif, *Black Reaction to Segregation and Discrimination in Post-Reconstruction Florida*, 64 FLA. HIST. Q. (1985) .....15

Wali R. Kharif, *The Refinement of Racial Segregation in Florida after the Civil War* (1983) (Ph. D. dissertation, The Florida State University).....13



## **STATEMENT OF INTEREST**

*Amici* are current and former elected leaders from North Florida and beyond.<sup>1</sup> This case raises important legal issues about the ability of communities of color to have meaningful and sustained representation at all levels of government in Florida. We all have a vested interest in the outcome because representation matters deeply to us and our communities.

A long history of discrimination, voter suppression, violence, and entrenched inequality has resulted in the underrepresentation of Black voters at all levels of government. Federal and state laws have been crucial to overcoming these impediments. This case presents the opportunity to rectify another instance of diminishment of political power for Black communities. The Florida Constitution now enshrines those protections in Article III, yet the First DCA failed to ensure that the Fair Districts Amendment is given its intended purpose. This Court should reverse this clear error.

---

<sup>1</sup> No counsel for a party authored this brief in whole or part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or *amici*'s counsel made a monetary contribution to the preparation or submission of this brief. A list of all *amici* is available at Appendix A.

The ramifications of this case extend beyond one Congressional seat. It is critical for members of our community to see themselves reflected in their political leaders. It encourages participation in the political process and creates a pipeline for new leadership.<sup>2</sup> Many local leaders are the product of Congressional and other offices that were helmed by Black politicians. Accordingly, this case has significant implications for the political futures of Black communities in Florida.

### **SUMMARY OF ARGUMENT**

In 2010, the voters of Florida enshrined fundamental voting rights protections into the state’s constitution. Through the Fair Districts Amendment (FDA), the Florida Constitution prohibits the diminishment of the voting power of communities of color—the kind of diminishment that came about in 2022 through the redrawing of the Congressional map.

---

<sup>2</sup> A recent report from the Brennan Center for Justice highlights how racial disparities in representation and participation in government have grown over the past decade. Brennan Center for Justice, *Growing Racial Disparities in Voter Turnout, 2008-2022* (2024), <https://www.brennancenter.org/media/12347/download>.

The Benchmark CD-5 was compact, regularly shaped, and court-endorsed. It resulted in a Black-performing district in North Florida. In reversing the trial court's decision, the First DCA disregarded precedent and failed to apply this Court's established test for a non-diminishment violation. That test requires an analysis of the effects of a new district on a minority group's ability to elect its preferred candidate relative to its ability in an existing district.

Instead of applying this clearly established test, the First DCA attempted to interpose a non-dilution standard for a non-diminishment case. However, even in applying the wrong standard, the appeals court erred in its conclusion. The Benchmark CD-5 does, in fact, meet the requirements of a compact community of interest. Shared history and experience among voters of color, combined with their voting patterns, make clear the connections among voters from Tallahassee to Jacksonville. Accordingly, under either standard, the Enacted Plan violates the FDA and the judgment should be reversed.

## ARGUMENT

### **I. THE BENCHMARK CD-5 IS A COMPACT COMMUNITY OF INTEREST THAT COMPLIES WITH THE REQUIREMENTS OF THE FDA**

The crux of the First DCA’s decision focuses on its view that the Benchmark CD-5 is a fiction, contrived from a court decision to artificially boost voting power for the Black community. In its analysis, the First DCA explained:

The baseline or benchmark from which to measure diminishment starts with a naturally occurring, geographically compact community with inherent voting power—not a district drawn with the purpose of cramming in enough voters to meet a BVAP target. *Without common interests and a shared history and socioeconomic experience*, it is not a community that can give rise to a cognizable right protected by the FDA.

A.R. 837 (emphasis added).<sup>3</sup> Setting aside the fact that the First DCA did not need to assess the validity of the Benchmark District, this conclusion is ahistorical and contrary to the facts. Benchmark CD-5 has a shared history; Black residents of the district have similar socioeconomic experiences; and the voting patterns of the district are

---

<sup>3</sup> “R..” refers to the trial court record; “A.R.” refers to the appellate record.

divided along racial lines. As explained below, the district meets even the First DCA's inapposite test.

**A. Benchmark CD-5 Has a Shared History**

Benchmark CD-5 covers eight counties crossing Florida's northern-most points, from close to the eastern seaboard to the panhandle. These communities have been home to some of Florida's earliest Black residents, fostered the development of Black cultural and education institutions, and served as sites of civil rights resistance and movement-building. Throughout this history, Black residents have experienced extreme racism, violence, and legal segregation. The shared experiences and history of oppression and resistance among Black residents across these counties help hold these communities together and shape their identity.

**1. Black Residents Settled as Freepersons Across North Florida Before Slavery Took Hold in the 19th Century**

Florida's earliest history includes its status as a haven for people who escaped enslavement. Because of Spain's prohibition of slavery and its rivalry with the British colonies, hundreds of people who were enslaved crossed from Alabama, Georgia, South Carolina, and beyond to seek refuge in the region, even before it became a part

of the United States.<sup>4</sup> In 1733, the Spanish King Phillip V issued two decrees that prohibited paying any compensation to slave owners in the American colonies and offered freedom to all who came to the Spanish colony. Hundreds of refugees fled to St. Augustine, and in 1738, the Spanish government established the fort and community of Gracia Real de Santa Teresa de Mose about two miles north of the town. Many men joined the militia and formed a free Black company stationed at Fort Mose, a first line of defense from the increasingly frequent British raids.<sup>5</sup>

Except for a short interregnum of British rule in the 1770s, slavery was not introduced to the region until the early nineteenth century. It became more prominent in the mid-century. The deadly and highly costly Seminole Wars opened more of the peninsula to growers. By the eve of the Civil War, the number of large plantations had exploded, reflecting the growing profitability of cotton and an increased reliance on domestic slave labor. Many large plantations operated in Leon County and across North Florida. By the time of the

---

<sup>4</sup> See generally Jane Landers, *Spanish Sanctuary: Fugitives in Florida, 1687-1790*, 62 FLA. HIST. Q. 296 (1983).

<sup>5</sup> *Id.* at 300-301.

Civil War, Black enslaved people made up most of the population across North Florida.<sup>6</sup>

## **2. After the Civil War, Black Leaders in Florida Ascended to All Levels of Government, Including Congress**

In the period immediately following the Civil War, Black communities were able to exercise political power and elect candidates of their choice. This was especially true across North Florida, where Black voters held a majority. Black leaders rose to significant roles in government: Josiah T. Walls, based in nearby Alachua County, represented Florida in its sole Congressional district after the Civil War.<sup>7</sup> Liberty Billings from Fernandina Beach participated in the constitutional convention that developed the 1868 Florida Constitution. Black residents also served in the Florida legislature.<sup>8</sup> Edward I. Alexander, Sr. represented Madison County

---

<sup>6</sup> LARRY E. RIVERS, *SLAVERY IN FLORIDA, TERRITORIAL DAYS TO EMANCIPATION*, 204-212 (2000). In fact, at the end of the Civil War, many white residents remained hopeful, if not desperate, that slavery would stay intact following the surrender of the Confederacy. See Joe M. Richardson, *Florida Black Codes*, 47 FLA. HIST. Q. 365, 366 (1969).

<sup>7</sup> Jerrell H. Shofner, *Political Reconstruction in Florida*, 45 FLA. HIST. Q. 145, 147-148 (1966).

<sup>8</sup> *Id.* at 170.

for three terms in the 1870s and 1880s; William Bradwell, a leader in the African Methodist Episcopal (AME) Church, represented Duval County in the state senate from 1868-1870. Emanuel Fortune represented Jackson County at the 1868 Florida Constitutional Convention and in the Florida House of Representatives; he was later forced to flee and re-established himself in Duval County, where he held several offices. These are just a few of the dozens of influential freedmen to serve as elected officials during Reconstruction.<sup>9</sup>

But the political influence and power of Black leaders was met with vehement and aggressive racist backlash. The 1868 convention that marked an ascent to power for many Black politicians was immediately followed by the end of military reconstruction. White conservatives mobilized to resist Republican government and to intimidate Black voters in North Florida.<sup>10</sup> With the removal of permanently stationed federal troops, these mobs could rule by force.

---

<sup>9</sup> CANTER BROWN, *FLORIDA'S BLACK PUBLIC OFFICIALS, 1867-1924*, 8-10, 33-35 (1998). In addition to these elected positions, Black men earned other important roles in government; for example, Governor Ossian B. Hart (1873-1874) appointed Jonathan C. Gibbs to be the state's superintendent of instruction. *Id.* at 27.

<sup>10</sup> Ralph L. Peek, *Aftermath of Military Reconstruction, 1868-1869*, 43 *FLA. HIST. Q.* 123, 126 (1964).



Politically motivated murders in 1869 led to a cascade of violence against Black residents across the Benchmark CD-5 counties in the subsequent election year. For example, early in September 1870, Robert Jones, a Black delegate to the Columbia County Republican Convention, was shot and killed just as he arrived home after attending the convention.<sup>11</sup> On the eve of the election, a mob of white vigilantes stormed Lake City and threatened Black voters who were in town to vote the next day, dissuading many of them from participating.<sup>12</sup> By 1880, nearly all Black men in elected positions had either lost their seats or had been forced out, ending a significant but short-lived period of political power for Benchmark CD-5's counties and beyond.

### **3. Economic Subjugation, Mass Racial Violence, and Legal Segregation Oppressed Black Residents of North Florida Over the Next Century**

Most of the emancipated persons in North Florida remained in the agricultural sector, working the land as sharecroppers. They lived

---

<sup>11</sup> Ralph L. Peek, *Election of 1870 and the End of Reconstruction in Florida*, 45 FLA. HIST. Q. 352, 355 (1967).

<sup>12</sup> *Id.* at 357. Similar events led to the decimation of Black political power in the next decade. See Edward C. Williamson, *Black Belt Political Crisis: The Savage-James Lynching, 1882*, 45 FLA. HIST. Q. 402 (1967).

in significant poverty.<sup>13</sup> This economic subjugation was matched by legal and political oppression. The 1868 constitution was regarded by many white Floridians as a “carpetbag” document, imposed by outsiders and supported only by a Black electorate and military force. The demand for its replacement swelled in the early 1880s. An 1885 convention attended by a minority of Republicans, only seven of whom were Black, wrote a constitution paving the way for the disenfranchisement of Black voters and dissolution of the Republican Party.<sup>14</sup>

In many regards, this post-Reconstruction convention led directly to the imposition of laws akin to slave codes in Florida and throughout the Antebellum South.<sup>15</sup> One such law placed a “head tax” on all men between the ages of 21 and 55. For failing to pay the tax, a delinquent taxpayer could be seized and hired to anyone willing to pay the obligation. This system was used to subjugate Black

---

<sup>13</sup> See Clay Ouzts, *Landlords and Tenants: Sharecropping and the Cotton Culture in Leon County, Florida, 1865-1885*, 75 FLA. HIST. Q. 1 (1996).

<sup>14</sup> Edward C. Williamson, *The Constitutional Convention of 1885*, 41 FLA. HIST. Q. 116 (1962).

<sup>15</sup> Jerrell H. Shofner, *Custom, Law, and History: The Enduring Influence of Florida's "Black Code,"* 55 FLA. HIST. Q. 277, 287 (1977).

residents in poverty.<sup>16</sup> The legislature also moved swiftly to deprive Black residents of political power. A new law required that all officeholders post bonds before assuming office, a provision intended to prevent Black candidates from qualifying for office even if they were able to win in majority-Black northern counties. Restrictive voting laws, including an 1889 poll tax law that required that potential voters pay their tax for two years immediately prior to election, played a significant role in disenfranchising Black voters in Florida.<sup>17</sup>

An extensive legal regime further mandated and maintained separation of the races. One 1895 statute prohibited anyone from teaching Black and white students in the same building. Violators faced fines and jail sentences.<sup>18</sup> Schools for Black students were operated “at no expense to the state,” and instead were funded through a tax levied on Black men between the ages of twenty-one and fifty-five.<sup>19</sup> In 1903, cohabitation and marriage between Black and white partners was outlawed, punishable by up to ten years’

---

<sup>16</sup> Richardson, *supra* note 6, at 374.

<sup>17</sup> Shofner, *supra* note 15, at 287-288.

<sup>18</sup> *Id.* at 289.

<sup>19</sup> Richardson, *supra* note 6, at 374.

imprisonment or a \$1,000 fine.<sup>20</sup> A 1905 law mandated racial segregation on streetcars.<sup>21</sup> While both Black and white workers held low-paying jobs, they were paid unequally. Nearly all professional and white-collar jobs were filled by white workers; menial labor, meanwhile, was overwhelmingly performed by Black workers.<sup>22</sup>

Against this legal backdrop, violence against Black residents remained pervasive. Sociologists Stewart Toney and E.M. Beck analyzed 2,462 lynchings of Black residents across the South between 1880 and 1930 and concluded that, during that period, Black residents were more likely to be lynched in Florida than in any other Southern state.<sup>23</sup>

---

<sup>20</sup> *Id.* See also Shofner, *supra* note 15, at 289-90.

<sup>21</sup> Shofner, *supra* note 15, at 289-90. Progressive Florida Governor Napoleon B. Broward went so far as to propose the mass removal of Black residents from the United States in his 1907 message to the legislature. SAMUEL PROCTOR, NAPOLEON BONAPARTE BROWARD, FLORIDA'S FIGHTING DEMOCRAT 252 (1950).

<sup>22</sup> Shofner, *supra* note 15, at 293.

<sup>23</sup> STEWART E. TOLNAY AND E. M. BECK, A FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882-1930 (1995).

#### **4. North Florida Saw the Development of Strong Black-Run and Controlled Institutions**

Black communities in North Florida organized for self-help and protection. They built vibrant institutions that supported and developed Black professionals and community leaders, and they relied on these institutions to press for social change and legal reform. Churches, schools, and social halls were the centers of Black community life. Social activities, such as festivals, parades, and athletic contests, were planned and organized in these institutions. Political groups, as well as civic, business, and even secret fraternal organizations operated out of these community hubs.<sup>24</sup> Black churches, many of which were forged under conditions of racial discrimination, became particularly vibrant centers of cultural and political activity. Religious leaders fought for participation in the political process and promoted employment and education for all Black children.<sup>25</sup>

---

<sup>24</sup> Wali R. Kharif, *The Refinement of Racial Segregation in Florida after the Civil War*, 97-99 (1983) (Ph. D. dissertation, The Florida State University). See also Jerrell H. Shofner, *Militant Negro Laborers in Reconstruction Florida*, 39 J. SO. HIST. 397 (1973).

<sup>25</sup> LARRY E. RIVERS AND CANTER BROWN, JR., *LABORERS IN THE VINEYARD OF THE LORD: THE BEGINNINGS OF THE AME CHURCH IN FLORIDA, 1865-1895* (2001).

North Florida was also the home of two important historic Black colleges. Edward Waters University, a private Christian historically Black university in Jacksonville, was the first historically Black college in Florida. It was founded in 1872 by members of the AME Church to educate freedmen and their children.<sup>26</sup> The persistence of poverty and illiteracy in the region spoke to a great need for technical training for Black men. Representative Thomas Van Renssalaer Gibbs, a Black state representative from Duval County, introduced legislation to create the State Normal College for Colored Students in 1887.<sup>27</sup> As a result of these efforts, Florida A&M University was formed, with a mission of training teachers for Black students.<sup>28</sup> From its modest beginnings, a crucial institution of advancement and resistance flourished.

---

<sup>26</sup> B. L. Perry, Jr., *Black Colleges and Universities in Florida: Past, Present, and Future*, 6 J. BLACK STUD. 69, 71 (1975).

<sup>27</sup> LEEDELL W. NEYLAND, *FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY: A CENTENNIAL HISTORY (1887-1987)*, 7 (1987).

<sup>28</sup> Perry, *supra* note 25, at 74.

## **5. North Florida Was the Locus of Sustained Resistance by Black Residents**

Black residents of North Florida fought back against racial oppression. Early protests challenged the removal of thousands of Black voters declared ineligible to vote from voter registration lists. In 1878, several hundred Black residents of Jefferson County protested their disenfranchisement in front of a courthouse, fighting unsuccessfully to be restored to voter rolls. Similar protests took place across North Florida in Gadsden, Leon, and Madison counties.<sup>29</sup>

Protests also took the form of organized boycotts. In 1901 two boycotts followed Jacksonville's passage of an ordinance requiring racial segregation on trolley cars. The boycott crippled the transit system, and "was so effective that after a few months the city authorities ceased enforcing the ordinance and quietly asked the Black ministers to spread the word to their congregation."<sup>30</sup>

---

<sup>29</sup> Wali R. Kharif, *Black Reaction to Segregation and Discrimination in Post-Reconstruction Florida*, 64 FLA. HIST. Q. 161, 162 (1985).

<sup>30</sup> August Meier and Elliott Rudwick, *Negro Boycotts of Segregated Streetcars in Florida, 1901-1905*, 69 S. ATL. Q. 525, 526 (1970).

In addition to engaging in protest and boycotting segregated facilities, Black Floridians sought to vindicate their rights in court. In 1873, Black Tallahassee residents sued the operator of a local skating rink for denying them entry based on race.<sup>31</sup> In the nineteenth century, several criminal defendants sought and received protections from biased juries in the appellate courts. Decades later, the NAACP fought for equal pay for teachers in lawsuits across Florida, many of them argued by Thurgood Marshall. While these efforts were successful in achieving fairer salaries, almost all of the teachers who sued lost their jobs.<sup>32</sup>

In the 1950s and 1960s, North Florida became the center of important civil rights protests. One of the most infamous days in Jacksonville history, “Ax Handle Saturday,” took place on August 27, 1960. More than 200 white Ku Klux Klan and White Citizens Council members (armed with ax handles and other weapons) attacked Black protesters participating in lunch counter sit-in demonstrations.<sup>33</sup>

---

<sup>31</sup> Kharif, *supra* note 29, at 164-165.

<sup>32</sup> Gary R. Mormino, *GI Joe Meets Jim Crow: Racial Violence and Reform in World War II Florida*, 73 FLA. HIST. Q. 23, 39 (1994).

<sup>33</sup> Abel A. Bartley, *The 1960 and 1964 Jacksonville Riots: How Struggle Led to Progress*, 78 FLA. HIST. Q. 46, 51 (1999).



That weekend, about 1,400 people attended a rally at St. Paul's AME Church calling on President Dwight Eisenhower to pay attention to the denial of civil rights to Jacksonville's Black community.<sup>34</sup>

In Tallahassee, students from Florida A&M University played an integral role in several crucial protest efforts. These included a bus boycott in the 1950s as well as sit-ins at Woolworths and the segregated State Theater in the 1960s. So many students were arrested in September 1963 that the Leon County Fairgrounds had to be used as an overflow jail site, given the massive participation in non-violent protests.<sup>35</sup>

## **6. Violent Efforts to Subvert Black Equality Persisted Well into the Mid-20th Century**

During World War II, many Black soldiers came to North Florida to train. Yet entrenched racism often thwarted their attempts to support American troops. During this time, Tallahassee was the site

---

<sup>34</sup> Emily Bloch, *Civil rights protests are part of Jacksonville's past — and future*, The Florida-Times Union (June 6, 2020), <https://www.jacksonville.com/story/news/history/2020/06/06/civil-rights-protests-are-part-of-jacksonvilles-past---and-future/41740341/>.

<sup>35</sup> The Historical Marker Database, 1963 Civil Rights Protest Jail Overflow Site, <https://www.hmdb.org/m.asp?m=135553>; *see also* <https://visittallahassee.com/civil-rights-timeline/>.

of some of Florida's most serious racial unrest. It proved to be a city and region fiercely dedicated to preserving a segregated society and unwelcoming to Black troops.<sup>36</sup>

Post-war and throughout the 1950s, racial oppression persisted, as pro-segregation communities in North Florida resisted federal attempts to advance civil rights. For example, following the *Brown v. Board* decision, representatives from North Florida sought to use "interpositions, resolutions and school closing provisions to prevent the federal government from forcing school desegregation."<sup>37</sup> With state leadership balking at integration, none of the local school districts took immediate steps to follow the decision, making Florida a battleground on integration.<sup>38</sup>

White residents terrorized Black families for participating in desegregation efforts. On February 16, 1964, a bomb exploded under

---

<sup>36</sup> MARY LOUISE ELLIS AND WILLIAM WARREN ROGERS, *FAVORED LAND, TALLAHASSEE: A HISTORY OF TALLAHASSEE AND LEON COUNTY*, 151-152 (1988).

<sup>37</sup> Arthur O. White, *State Leadership and Black Education in Florida, 1876-1976*, 42 *PHYLON* 168, 176 (1981).

<sup>38</sup> *Id.* at 176-178. See also Joseph A. Tomberlin, *Florida and the School Desegregation Issue, 1954-1959: A Summary View*, 43 *J. NEGRO ED.* 457 (1974).

the Jacksonville house of Iona Godfrey, a Black civil rights worker. Godfrey's six-year-old son Donald had integrated the formerly all-white Lackawanna Elementary School. Donald's presence upset many white parents, who protested and threatened violence. The bombing revealed the seriousness of these threats.<sup>39</sup>

Voter suppression remained a core component of racial oppression, especially across North Florida. A 1961 report by the U.S. Commission on Civil Rights revealed widespread voter disenfranchisement in North Florida.<sup>40</sup> Exclusion was particularly extreme in Gadsden county where, at one point, only seven of the county's hundreds of eligible Black residents were registered to vote.<sup>41</sup> The same report found that Black voters "had no difficulty in southern Florida, nor in fact in most other counties throughout the state."<sup>42</sup> U.S. Department of Justice documentation shows that, in

---

<sup>39</sup> Bartley, *supra* note 33, at 57.

<sup>40</sup> U.S. Commission on Civil Rights, 1961 Civil Rights Report Book 1 (1961), <https://www2.law.umaryland.edu/marshall/usccr/documents/cr11961bk1.pdf>.

<sup>41</sup> *Id.* at 28.

<sup>42</sup> *Id.* at 28-29. See also U.S. Commission on Civil Rights, Voting Rights and Voter Disenfranchisement in Florida (2020), <https://www.law.nova.edu/faculty/full-time-faculty/2020-10-06-fl-voting-rights-advisory-memo.pdf>.

Liberty County “[s]ome Negroes registered in 1956, but thereafter they were subjected to harassment. Crosses were burned and firebombs hurled upon their property, and abusive and threatening telephone calls were made late at night.”<sup>43</sup> All but one of the registered Black voters removed their names from the voter rolls, and the harassment stopped; the one who refused was forced to leave the county.<sup>44</sup>

\* \* \*

In sum, Black residents of North Florida share three centuries of history that continue to shape their economic and political experiences. Black residents have been persecuted and subject to intense violence. The imprints of the laws that repeatedly separated Black residents into a secondary class can be seen in present-day disparities in wealth, employment, and health outcomes. Despite these barriers, Black institutions have thrived, and Black politicians have succeeded when Black voters have been given their constitutional right to elect the candidates of their choice.

---

<sup>43</sup> 1961 Civil Rights Report Book, *supra* note 40, at 28.

<sup>44</sup> *Id.* at 29.

## **B. Benchmark CD-5 Has a Shared Socioeconomic Status**

Demographic data from across Benchmark CD-5 demonstrates important similarities in “socio-economic status, education, employment, health, and other characteristics” for Black voters across the district. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 432 (2006) (affirming the use of these factors in a community of interest analysis).

As is to be expected in a district with both urban and rural segments, it is not socioeconomically uniform. That said, throughout the district, unemployment rates are substantially higher for Black residents than for their white counterparts. Additionally, Black residents have lower levels of educational attainment as compared to white residents in each county. The levels vary, with Duval and Leon counties having higher rates, given the significant university systems in the area and their urban economies.

Most residents of Benchmark CD-5, both Black and white, are homeowners. Even so, there are significant gaps between Black and white homeownership rates in every Benchmark CD-5 county.<sup>45</sup>

---

<sup>45</sup> The U.S. Census collects data on homeownership rates by race. See, e.g., Housing Needs Assessment, Leon County,

These homeownership disparities are indicative of a broader wealth gap between Black and white households across the district. See *Thornburg v. Gingles*, 478 U.S. 30, 65 (1986) (noting racial homeownership gaps in a vote dilution analysis). Census data also show that in all but two counties in Benchmark CD-5 (Baker and Hamilton, representing roughly six percent of the district’s population), Black residents live in higher-poverty neighborhoods on average than their white counterparts.<sup>46</sup> See *Theriot v. Parish of Jefferson*, 185 F.3d 477, 486 (5th Cir. 1999) (finding “common social and economic needs” among low-income district residents facing disadvantages in employment, education, and housing).

With respect to health, significant disparities persist. Black adults in the district are much more likely than their white counterparts to face barriers to seeing a doctor due to cost. Unsurprisingly, health outcomes for Black residents in Benchmark

---

[https://www.policymap.com/report\\_widget?type=fur&area=predefined&sid=10192&pid=718182245](https://www.policymap.com/report_widget?type=fur&area=predefined&sid=10192&pid=718182245). See *generally* Local Housing Solutions, Housing Needs Assessment, <https://localhousingsolutions.org/housing-needs-assessment/> (Census and other nationally-available housing data for all Florida counties).

<sup>46</sup> *Id.*

CD-5 reflect these unequal living conditions. Black residents experience higher infant mortality rates than white residents, more frequent hospitalizations due to asthma, higher rates of death from cardiovascular disease, and a range of other health outcomes that reflect the district's deep and pervasive racial disparities.<sup>47</sup> Accordingly, many consequential socioeconomic characteristics are shared by Black residents across Benchmark CD-5.

### **C. Benchmark CD-5 Has Shared Voting Interests**

The undisputed demographic and electoral data included in the parties' stipulation makes clear that Black residents in Benchmark CD-5 have shared voting interests. As the data demonstrate, Black voters are politically cohesive in the Benchmark District and voting in the Benchmark District is racially polarized, which means that Black and white voters tend to vote for opposing candidates,

---

<sup>47</sup> See Florida Department of Health, Infant Mortality, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=InfantDeath.Dataviewer&cid=0053>; Florida Department of Health, Hospitalizations from Asthma, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalInd.Dataviewer&cid=9755>; Florida Department of Health, Deaths From Major Cardiovascular Diseases, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=Death.DataViewer&cid=0085>.

particularly when those candidates are of different races themselves. R. 8035; *see also Wright v. Sumter Cnty. Bd. of Elections*, 979 F.3d 1282, 1292–93 (11th Cir. 2020) (biracial elections are “more probative” than other elections).

For example, a Black candidate (Al Lawson) won each of the U.S. House elections held in the district. Lawson was the candidate of choice for Black voters in the district, but not for white voters. Similarly, in Florida’s eight statewide elections in 2016, 2018, and 2020, the Black-preferred candidates won a majority of the vote in Benchmark CD-5. In those same years, two-thirds of white voters in the district voted for candidates opposed to those preferred by Black voters. R. 8035-8037; *see also Gingles*, 478 U.S. at 57 (pattern of racially polarized voting over time is “more probative” than results of a single election). As in *Gingles*, this political cohesion means that North Florida’s Black residents “will generally be unable to elect representatives of their choice.” *Id.* at 67-68. In 2022, after Benchmark CD-5 was eliminated and its Black residents dispersed among other districts, “North Florida did not elect a Black member of Congress for the first time since 1990.” R. 8037.

\* \* \*



In sum, the First DCA's attempt to undermine the appropriateness of Benchmark CD-5 rings hollow. Black residents of North Florida have a shared and rich history, which includes the use of political power when law and racialized violence do not oppress them. Today, Black residents of the district have common socioeconomic experiences and they vote in patterns that show clear common interests. Thus, even on its own terms, the First DCA's analysis is plainly wrong.

## **II. THE TRIAL COURT DID NOT NEED TO CONSIDER EVIDENCE ABOUT THE APPROPRIATENESS OF THE BENCHMARK DISTRICT**

The First DCA rejected the trial court's determination under the FDA, because it concluded that the trial court erred in failing to consider evidence regarding the Benchmark District. However, that decision was wrong as a matter of law. The validity of the Benchmark District did not need to be proved. It already had been determined by this Court, after careful consideration, in prior litigation.<sup>48</sup> The only question the First DCA needed to review was the trial court's

---

<sup>48</sup> *Amici* agree with Petitioners that the First DCA erred as a matter of law in its determination this Court's *Apportionment I and II* cases did not create binding precedent.

determination of diminishment. That conclusion—that there was, in fact, diminishment of the voting power of Black voters—should be affirmed by this Court without much trouble at all.

The FDA is modeled after the federal Voting Rights Act, and its two provisions borrow the VRA’s dual focus on preventing both impermissible vote dilution and the retrogression of minority voting power. *In re S. J. Res. of Legis. Apportionment 1176*, 83 So. 3d 597, 619-620 (Fla. 2012) (“*Apportionment I*”). Unlike a vote dilution analysis, a retrogression analysis requires only an examination of the departure from the existing benchmark district. Certainly, under the FDA, the Florida legislature is permitted to adjust the Black Voting Age Population (“BVAP”) and other components of the district. The FDA does not demand formulaic adherence. In 2015, the U.S. Supreme Court clarified the “misperception” that § 5 required a State to “maintai[n] the same population percentages in majority-minority districts as in the prior plan.” *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 275-76 (2015). Rather, it requires protection of “a minority’s ability to elect a preferred candidate of choice,” *id.*, and forbids the legislature from doing what occurred here: eliminating the

voting power of Black voters where those voters maintain an existing ability to elect their candidate of choice.

The sole issue that the trial court was required to consider, therefore, was whether the new district would diminish Black voters' voting power. *In re S. J. Res. of Legis. Apportionment 100*, 334 So. 3d 1282, 1289 (Fla. 2022). That does not demand an analysis of the compactness of the district or the history of the region to assess its appropriateness as a district. Instead, "a retrogression evaluation" entails examining whether "a district is likely to perform for minority candidates of choice." *Apportionment I*, 83 So. 3d at 625. It requires a review of "political data and how a minority population group has voted in the past," *id.*, which is precisely what the trial court did. The parties' stipulations leave no doubt that the Enacted Plan diminished the voting power of North Florida's Black residents. Under this Court's precedent, that diminishment is sufficient to establish a violation of the Florida Constitution.

## **CONCLUSION**

For the foregoing reasons, the decision of the First DCA should be reversed.

Respectfully submitted,

/s/ Matthew A. Goldberger

Matthew A. Goldberger, Fla. No.  
119897

Matthew A. Goldberger, P.A.  
1555 Palm Beach Lakes Blvd.,  
Suite 1400

West Palm Beach, FL 33401

Jonathan B. Miller\*

Sophia House\*

Public Rights Project

490 43rd Street, Unit #115

Oakland, CA 94609

*\*pro hac vice* to be submitted

*Counsel for Amici Curiae*

## **APPENDIX A**

### **List of Amici Curiae**

David Arreola  
*Former Commissioner, City of Gainesville*

Jennifer Andreu  
*Councilmember, City of Plantation*

Tyrone Clark-Murray  
*Councilmember, City of Jacksonville*

Carolyn Cummings  
*Commissioner, Leon County*

Dr. Alix Desulme  
*Mayor, City of North Miami*

Anna Eskamani  
*State Representative, Florida House of Representatives*

Ashley Gantt  
*State Representative, Florida House of Representatives*

Michael Gottlieb  
*State Representative, Florida House of Representatives*

Andrew Gillum  
*Former Mayor, City of Tallahassee*

VeEtta Hagan  
*School Board Member, Madison County*

Rita Harris  
*State Representative, Florida House of Representatives*

Anthony C. Hill  
*Former State Senator, Florida State Senate*

Brenda Holt  
*Commissioner, Gadsden County*

Dorothy Inman-Johnson  
*Former Commissioner and Former Mayor, City of Tallahassee*

Sabrina Javellana  
*Former Commissioner, City of Hallandale Beach*

Gail Johnson  
*Former Mayor Pro-Tem, City of Gainesville*

Darryl Jones  
*School Board Member, Leon County*

Shevrin Jones  
*State Senator, Florida Senate*

Alfred "Al" Lawson, Jr.  
*Former Member, U.S. House of Representatives*

Jeremy Matlow  
*Commissioner, City of Tallahassee*

Wayne Messam  
*Mayor, City of Miramar*

Nancy Metayer Bowen  
*Commissioner, City of Coral Springs*

Marcus Nicolas  
*School Board Member, Leon County*

Angie Nixon  
*State Representative, Florida House of Representatives*

David O'Keefe  
*Commissioner, Leon County*

Jacqueline "Jack" Porter  
*Commissioner, City of Tallahassee*

Michele Rayner  
*State Representative, Florida House of Representatives*

Gladys Roann-Watson  
*School Board Member, Jefferson County*

Ion Sancho  
*Former Supervisor of Elections, Leon County*

Kelli Ann Thomas  
*Former Vice Chair, Community Council 14, Miami-Dade County*

Victor Torres  
*State Senator, Florida Senate*

**CERTIFICATE OF COMPLIANCE**

I certify, under Florida Rule of Appellate Procedure 9.210(a)(2)(B), that this Brief of *Amici Curiae* complies with the applicable font and word-count requirements. It was prepared in Bookman Old Style 14-point font, and it contains 4,997 words.

/s/ Matthew A. Goldberger  
Matthew A. Goldberger

Dated: March 11, 2024



**CERTIFICATE OF SERVICE**

I, Matthew A. Goldberger, HEREBY CERTIFY that a true and correct copy of the foregoing was filed Electronically with the court via the Florida E-Filing Portal, which provides notice to all parties.

/s/ Matthew A. Goldberger  
Matthew A. Goldberger, Fla. No.  
119897  
Matthew A. Goldberger, P.A.  
1555 Palm Beach Lakes Blvd.,  
Suite 1400  
West Palm Beach, FL 33401

Dated: March 11, 2024