Filing # 249883522 E-Filed 06/08/2026 04:49:20 PM

IN THE SUPREME COURT OF FLORIDA

Case No. SC26-0857
L.T. Case Nos. 1D26-1539, 2026-CA-914

Equal Ground Education Fund, Inc., et al.,

Petitioners,

v.

Cord Byrd, in his official capacity as Florida Secretary of State, the Florida House of Representatives, and the Florida Senate,

Respondents.

REPLY IN SUPPORT OF EMERGENCY PETITION FOR CONSTITUTIONAL WRIT

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PRELIMINARY STATEMENT

Respondents' briefs reveal a striking mismatch between the case they want to litigate and the one Petitioners brought. Petitioners contend that the 2026 Plan was drawn with unlawful partisan intent, violates the Fair Districts Amendment's compactness and boundary requirements, and should be enjoined pending review. Respondents largely ignore those claims, focusing instead on the Amendment's racial provisions and the supposed racial infirmity of the 2022 Plan. Respondents' efforts to recast the case should not distract from the narrow issue this Petition presents: whether this Court should preserve the 2022 Plan until the lawfulness of the 2026 Plan can be decided on the merits.

To decide that issue, this Court should take the State's map-drawers at their word—both in 2022, when they asserted the 2022 Plan was race-neutral and complied with the Fair Districts Amendment, and in 2026, when they admitted the 2026 Plan used partisanship as a factor and was drawn without regard to the Florida Constitution's prohibitions on partisan gerrymandering.

Temporary relief preserving the 2022 Plan is necessary and workable. This Court should not force Florida's voters to cast ballots

under a blatantly unconstitutional map while review proceeds, especially where Respondents rely on factual findings the trial court never made, Supervisors of Elections have confirmed that reversion to the 2022 Plan remains feasible, and *Purcell* does not bind Florida courts—particularly when, as this Court recently held, any time pressure is of the State's own making.

Those in power may neither unilaterally excuse themselves from compliance with the Florida Constitution nor rob this Court of its ultimate authority to enforce the Constitution. This Court has the authority and obligation to protect Florida citizens and constitutional principles alike while this case proceeds.

ARGUMENT

I. IT IS NOT TOO LATE TO REINSTATE THE 2022 PLAN.

***Purcell* does not bar relief.** Just last year, this Court rejected the Secretary's exact same argument. In *Mayfield v. Secretary, Florida Department of State*, 402 So. 3d 1002, 1008 (Fla. 2025), this Court granted extraordinary relief on February 13, 2025, when the deadline to mail "military and overseas ballots" was "February 14," Respondents' Brief at 7, *Mayfield*, 402 So. 3d 1002 (Fla. 2025) (No. SC2025-0162). In *Mayfield*, as here, the Secretary invoked *Purcell*,

and argued "that closeness to the election . . . supports" denial of extraordinary relief "due to the hardships faced by election officials as a result of last-minute changes to the ballot." 402 So. 3d at 1008; *see also* Respondents' Brief at 27, *Mayfield*, 402 So. 3d 1002 (SC2025-0162) (citing *Purcell*). But this Court rejected that argument "as being inconsistent with the principles of equity that bear upon our discretion to issue extraordinary writs." *Mayfield*, 402 So. 3d at 1008. There is no reason for this Court to conclude differently here.[1]

The record establishes that it is not too late to reinstate the 2022 Plan. The Secretary instructed all Supervisors of Elections to preserve the 2022 Plan's infrastructure on May 4 for exactly this contingency, App.922, SC.1-2 (attached appendix), and supervisors confirm that implementation of the 2022 Plan remains feasible. Indeed, as of today, June 8, the Orange County Supervisor—whose county is one of the most drastically altered between the two Plans—confirms that her county could revert to the 2022 Plan in time for the

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[1] *State ex rel. Haft v. Adams*, 238 So. 2d 843 (Fla. 1970), similarly did not establish any bright-line rule. *Haft* involved a candidate's attempt to force others off the ballot three weeks before an election after sitting on allegedly disqualifying information for weeks, which the Court found was planned to "belatedly take advantage" of the situation. 238 So. 2d at 845.

2026 primary, either with the existing candidate qualifying period or with an extension as late as June 17. SC.2. Respondents' evidence underscores counties' ability to quickly implement the 2022 Plan. The Miami-Dade Elections Office implemented the 2026 Plan's boundaries to its election systems in just four days. *See* App.2947 (confirming office implemented 2026 Plan "[a]fter the trial court declined to enjoin implementation of Florida's new congressional districts"—on May 26—and "[t]hat process was completed on May 30, 2026").

Even if reverting to the 2022 Plan would cause some administrative inconvenience, that "cannot justify denial of Plaintiffs' fundamental rights." *Johnson v. Mortham*, 926 F.Supp. 1540, 1542 (N.D. Fla. 1996). Nor do Respondents' declarations state that reversion would be impossible. Those declarations conspicuously fail to address the Secretary's May 4 instruction to supervisors to preserve the 2022 Plan "in case the need to reimplement it arises." SC.2. And although State Elections Director Matthews identified May 25 as the date by which the Division of Elections *preferred* "a definitive answer on the maps being used," her declaration does *not* state that reverting to the 2022 Plan is impossible or infeasible after

that date. *See* State App.63. The absence of any such assertion from the Director of Elections is the most telling fact in the State's submission.[2]

The equities support re-instatement of the 2022 Plan. The public confusion Respondents predict from reinstating the 2022 Plan is overstated. Supervisors themselves have sworn that what will cause confusion is implementing *the 2026 Plan*, SC.2, which moves countless voters out of their existing districts and forces them to vote under a map that admittedly *was not drawn in compliance with the Florida Constitution.*

That several candidates have chosen to resign from their seats to run for election under the 2026 Plan is insufficient reason to deny relief. Those candidates did so knowing the 2026 Plan was under active litigation; they took a risky bet this litigation would not succeed. And all such candidates could still run for election under the 2022 Plan, if they so choose.

[2] Contrary to Respondents' contention, the trial court did not make a factual finding that it was too late to revert to the 2022 Plan. It noted that the "Secretary of State estimates" May 25 as the deadline for implementation. App.2775.

The current qualifying period is no bar to temporary relief. The record does not show that moving the qualifying period is necessary. SC.2. The qualifying period began today, currently runs through June 12, and no candidates have yet been certified. But if this Court concludes qualifying deadlines should be moved, courts routinely do so to make constitutional relief available. *See, e.g.*, *Johnson*, 926 F.Supp. at 1542 (extending qualifying period for all Florida congressional candidates in redistricting case); *Harper v. Hall*, 865 S.E.2d 301, 302 (N.C. 2021) (staying candidate filing deadline to permit review of redistricting plan); *Terrazas v. Slagle*, 789 F.Supp. 828, 839 (W.D. Tex. 1991) (extending candidate filing deadline to accommodate interim redistricting plans). Again, any burden here is the fault of the State, not Petitioners, *see* Petition Argument IV.B. As this Court recently recognized, when a Petitioner moves promptly, and the State's own conduct creates the compressed timeline that it then invokes as a reason to deny relief, the equities tip in favor of relief. *See Mayfield*, 402 So. 3d at 1008.

II. PETITIONERS' APPEAL IS LIKELY TO INVOKE THIS COURT'S JURISDICTION.

To exercise all-writs authority, the Court's jurisdiction need only be likely. Article V, Section 3(b)(7) protects the Court's "*jurisdiction that likely will be invoked in the future.*" *League of Women Voters of Fla. v. Data Targeting, Inc.*, 140 So. 3d 510, 513 (Fla. 2014) (citation omitted). *Data Targeting* is on all fours with this case: this Court exercised its all-writs authority after finding that the First DCA's forthcoming decision was "highly likely" to trigger discretionary review. *Id.* at 514. This Court even exercised its all-writs authority when faced with "[s]erious questions" about the Court's jurisdiction over the merits of an issue. *Petit v. Adams,* 211 So. 2d 565, 566 (Fla. 1968).

Petitioners' appeal necessarily raises questions meriting this Court's review. This Court has held that cases interpreting the Fair Districts Amendment are sufficiently likely to invoke its jurisdiction and warrant all-writs relief to preserve that jurisdiction. *See Data Targeting*, 140 So. 3d at 514. Respondents admitted below that their "principal defense[]" in this case is to argue for the "unenforceability of the article III, section 20 of the Florida

Constitution." App.2936-37. Indeed, their responses to *this petition* spend more time arguing that the Amendment is unenforceable than addressing Petitioners' actual claims.

Moreover, the primary "non-constitutional" grounds Respondents advance are decidedly constitutional in nature: whether the 2022 Plan is a "permissible status quo" directly implicates its constitutionality and demands interpretation of the Fair Districts Amendment, and the trial court's determination of Petitioners' likelihood of success on the merits is *the core constitutional inquiry*. Even if the First District affirms on *Purcell* grounds, that decision will still concern the enforceability of the state's congressional plan, a matter this Court has repeatedly found of exceeding public importance worthy of its jurisdiction. *See, e.g.*, *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 262 (Fla. 2015).

This Court cannot exercise "complete" jurisdiction if the 2026 Plan remains in place for the election. Respondents argue this Court would benefit from a First District opinion before acting, but the question before this Court is whether it can exercise "complete" jurisdiction without granting this petition—not whether it can review the case generally some later day. *See, e.g.*, *Fla. Senate v.*

Graham, 412 So. 2d 360, 361 (Fla. 1982) (exercising all-writs authority to review validity of special apportionment session based on Court's ultimate jurisdiction to review resulting apportionment plans). This Court's ability to prevent Floridians from voting under an unconstitutional map in 2026—the specific preliminary relief Petitioners seek—will be mooted if the petition is denied. The all-writs authority exists precisely to ensure that appellate review remains meaningful rather than nominal, and issuing a writ to preserve the 2022 Plan while the First District considers the merits does not bypass that court's review.

Respondents do not cite any authority suggesting certification is a pre-requisite to this Court's exercise of all-writs jurisdiction. To the contrary, this Court has repeatedly exercised all-writs authority without certification. *See, e.g.*, *Graham*, 412 So. 2d at 361; *Data Targeting*, 140 So. 3d at 514.

III. PETITIONERS HAVE PRESENTED OVERWHELMING EVIDENCE OF PARTISAN INTENT.

Petitioners have far overcome any presumption of validity the 2026 Plan may have. The standard presumption of validity rests on the assumption that "the [L]egislature *intended to enact a valid*

law." *Wright v. City of Miami Gardens*, 200 So. 3d 765, 775 (Fla. 2016) (quotation omitted) (emphasis added). But here, the Plan's map-drawer admitted to drawing the plan "*not* having to comply with the Fair Districts Amendment." App.693 (emphasis added). When a Senator asked, "[H]ow does this map comply with the Florida Fair District[s] Amendment?" Poreda was adamant: "[I]t does not have to." App.692. Poreda's statement—later embraced by the Legislature, App.863—eliminates any presumption of validity.

Respondents significantly overstate the trial court's factual findings on Petitioners' partisan intent claim. The trial court made only seven factual findings, *none* of which *mentions* partisan intent in the 2026 Plan—the central issue in this case. Instead, it summarily cast aside direct evidence of partisan intent—including the map-drawer's admission that he used partisan data and drew the map without regard to the Fair Districts Amendment—as "insufficient" and refused to address Plaintiffs' extensive circumstantial evidence. App.2778-79. A court cannot conclude that evidence is insufficient without actually weighing it.

That evidence does not present a close call here. Under the Fair Districts Amendment, there is "*no acceptable level of improper*

intent." *In re Senate Joint Resol. of Legis. Apportionment 1176 ("Apportionment I")*, 83 So. 3d 597, 617 (Fla. 2012) (emphasis added). Every available indicator—including the undisputed effect of the 2026 Plan, the partisan impact of specific line-drawing decisions, the 2026 Plan's disregard for Tier II principles, alternate plans that demonstrate the 2026 Plan is a partisan outlier, the sequence of events surrounding the 2026 Plan, and departures from normal procedure in its enactment—confirms what Poreda admitted openly: he used partisan data without regard to the Fair Districts Amendment. *See* Petition Argument I.A.

The map-drawer's later attempt to disclaim partisan intent is not determinative. Courts regularly discredit these kinds of self-serving denials in the face of other circumstantial evidence of unlawful intent. *See Cooper v. Harris*, 581 U.S. 285, 315 (2017); *Bush v. Vera*, 517 U.S. 952, 970 (1996). And when read in context, Poreda's statement that he lacked partisan intent appears to assume that intent must have *predominated* over other considerations to be unlawful. *See* App.724. But that is not the law: *any* partisan intent is unlawful. *Apportionment I*, 83 So. 3d at 617.

Petitioners have established improper partisan intent on behalf of the map-drawer, Governor, *and* Legislature. Intent under the Fair Districts Amendment is ascertained based on "the actions and statements of . . . those directly involved in the map drawing process." *League of Women Voters of Fla. v. Detzner* ("*Apportionment VII*"), 172 So. 3d 363, 388 (Fla. 2015) (citation omitted). Here, the map-drawer conceded to using partisan data and drawing the map in consultation with the Governor's Office. App.693, 503-04, 720-21. The Governor himself drove the redraw with an express demand for a map unconstrained by the Amendment's strictures and proudly released the map color-coded in red and blue. App.1714-17. And the Legislature knowingly adopted the 2026 Plan after being told it "does not have to" comply with the Amendment. App.692-93, 863. The bill's sponsor denied that the Legislature had ceded its redistricting authority, emphasizing the Legislature's "authority to accept [the 2026 Plan], to reject it, or to amend it. It is not the Governor's prerogative as to what the maps will be. *It is ours now*." App.863 (emphasis added). Far from being mere dupes to a covert map-maker, the legislators were knowing and active

participants in the 2026 Plan's violation of the Fair Districts Amendment.

IV. PETITIONERS HAVE ESTABLISHED VIOLATIONS OF THE 2026 PLAN'S ADHERENCE TO TIER II CRITERIA.

Petitioners' extensive district-specific and plan-wide evidence of Tier II violations provides an independent basis to enjoin the 2026 Plan. The Tier II violations here are more obvious and more measurable than those the Court resolved in *Apportionment I*, and the evidentiary record—expert reports, compactness metrics, and district-by-district boundary analysis—is more than sufficient to establish substantial likelihood of success. *See* Petition Argument I.B. Respondents creatively suggest that the trial court *implicitly* considered and rejected Petitioners' Tier II claims in considering their partisan intent claim. There is no evidence of that, but even if it were true, *Apportionment I* demonstrates Tier II claims merit independent consideration and provide an independent basis for invalidating congressional districts. *See Apportionment I*, 83 So. 3d at 655-83.

V. RESPONDENTS CANNOT ESCAPE LIABILITY UNDER THE FAIR DISTRICTS AMENDMENT.

The Court has no reason to reach the sweeping holdings Respondents seek regarding the constitutionality of the

Amendment's race provisions. Petitioners did not bring a race claim, the partisan gerrymandering and Tier II violations independently require enjoining the 2026 Plan, and those provisions are severable from the Amendment's racial protections—meaning this Court can and should enforce those provisions without reaching the constitutional question Respondents are trying to force it to decide.

Petitioners had no obligation to satisfy strict scrutiny for a race claim they did not bring. This Court could have, but did not, address the facial unconstitutionality of the race provisions in the *Black Voters Matter* litigation. If it does so in the future, it should do so on a developed record in which the parties are actually litigating a race claim, at which point this Court could decide whether there is a compelling state interest for such a claim if racial predominance has been shown.

If this Court nonetheless considers the race provisions' constitutionality, the Amendment's tiered structure does not render those provisions facially unconstitutional. This Court has never interpreted the Amendment to give the State "*carte blanche* to engage in racial gerrymandering," *Apportionment I*, 83 So. 3d at 627,

and has rejected minority districts that it deemed "not compact" enough to trigger Tier I's minority voting protections, *see Apportionment VII*, 172 So. 3d at 436. Indeed, Respondents repeatedly tried this argument in the *Black Voters Matter* litigation, but this Court did not buy it. *See Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y, Fla. Dept. of State*, 415 So. 3d 180, 198-99 (Fla. 2025) (holding map-drawers had no obligation to draw noncompact district to preserve Black opportunity district).

In arguing the race provisions cannot be saved, Respondents ignore precedent requiring a saving construction if possible. Nor would it require a drastic re-interpretation—at least not one more drastic than the U.S. Supreme Court endorsed in *Callais*. *See* Petition Argument I.C.1. The federal VRA, much like the Amendment, also prohibited plans that "*result*[] in a denial or abridgement" of the right to vote. 52 U.S.C. § 10301(a) (emphasis added). If necessary, this Court could require future plaintiffs to similarly satisfy the present-day intentional discrimination standard, as *Callais* required, to prove a violation of the Amendment's racial vote dilution and non-diminishment provisions.

Respondents have not met their burden to establish that the Fair Districts Amendment's racial protections are non-severable. *Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999), establishes a strong presumption of severability for voter-enacted constitutional amendments, and places the burden of proving non-severability squarely on the challenging party.

As Petitioners showed, and Respondents do not dispute, this Court has independently applied the partisan gerrymandering prohibition and Tier II criteria without regard to the race provisions, and many states apply such provisions without any corresponding racial protections. *See* Petition Argument I.C. Respondents fail to explain why the same could not be true here. Even the 2026 Plan's own Senate sponsor argued the Amendment's partisan gerrymandering prohibition "ought to be saved" regardless of what happens to the racial protections. App.839.

This Court's precedent holds that the burden to show voters would not have enacted the provision without the unconstitutional part rests on the party arguing for non-severability—here, the Respondents. *Ray*, 742 So. 2d at 1281. As this Court has already held, "[t]here is no question that the goal of minimizing opportunities

for political favoritism was the driving force behind the passage of the [Amendment].” *Apportionment I*, 83 So. 3d at 639. The state’s own expert in prior litigation—Professor Mary Adkins—concluded that “the primary purpose of the Fair Districts [A]mendment[]” was its prohibition on “redistricting based on political partisanship,” rather than “preservation of minority representation,” App.1729, 1784. While the NAACP’s endorsement emphasized the racial protections, the 2010 campaign’s public messaging, newspaper coverage, and television advertisements focused overwhelmingly on the prohibition on partisan gerrymandering—the provision that newspapers identified as the Amendment’s “crucial language” and the campaign’s own spokeswoman described as its animating purpose. App.1847; *see generally* App.1838-49. On this record, Respondents have not met their burden to prove that Florida voters would not have enacted the partisan gerrymandering prohibition, contiguity mandate, and compactness and boundary requirements standing alone.

Respondents’ arguments on the remaining severability factors are likewise meritless. On purpose: the question is whether the partisan gerrymandering prohibition can independently accomplish the Amendment’s purpose of “establishing [the] standards by which

legislative and congressional districts are to be drawn," *Advisory Op. to Att'y Gen. re: Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 175, 183 (Fla. 2009)—and it plainly can. That purpose is fully accomplished by the partisan gerrymandering prohibition, the compactness requirement, the boundary utilization requirement, and the contiguity requirement—none of which depend on or reference the racial protections.

On structural non-severability: Striking the racial protections from subsection (a) leaves the remaining provisions entirely intact, grammatically sound, fully operative, and independently enforceable. The House's reliance on *Emerson* is particularly misplaced: that case involved a provision literally inoperable without the severed portion—a surtax without a distribution scheme. *Emerson v. Hillsborough County*, 312 So. 3d 451, 461 (Fla. 2021). No such dependency exists here. Every remaining provision of the Fair Districts Amendment is fully operable and meaningful standing alone.

This Court's precedent forecloses Respondents' contention that the Amendment's satisfaction of the single-subject rule requires its provisions to rise or fall together in a severability analysis. *Ray* explicitly holds that compliance with the single-subject requirement

"does not mean that the provisions of the amendment are so mutually dependent on one another that the overall purpose of the amendment cannot be accomplished absent the invalid provisions." 742 So. 2d at 1282.

The absence of a severability clause in the Fair Districts Amendment is equally unavailing. *See State v. Calhoun County*, 170 So. 883, 886 (Fla. 1936) (recognizing preference for severability even if "there is no separability clause in the act"). It means only that the Court must look elsewhere for evidence of voter intent. That evidence, as set forth above, strongly supports severability.

VI. THIS COURT CAN AND SHOULD ISSUE AN INJUNCTION PRESERVING THE STATUS QUO.

Article V, Section 3(b)(7) gives this Court authority to issue a temporary injunction. In *Data Targeting*, this Court exercised its all-writs authority to ensure it could "maintain the status quo," 140 So. 3d at 511, and in *Anderson v. Tower Amusement Co.*, 159 So. 782, 784 (Fla.), *vacated on other grounds*, 160 So. 523 (Fla. 1935), this Court issued a constitutional injunctive writ granting the same temporary relief the circuit court had denied. The Court in *Anderson* called the relief it issued a "constitutional writ of injunction,"

awarding it explicitly under the all-writs provision after determining that appellants were "plainly entitled" to relief. *Anderson*, 159 So. at 783-85. This record—with its admitted use of partisan data and virtually uncontested circumstantial evidence of a historically extreme partisan gerrymander—satisfies that standard. Respondents' failure to address, let alone distinguish, *Anderson* is a glaring omission.

Respondents have not met their burden to prove that the 2022 Plan is constitutionally infirm and cannot be restored. Respondents cite no Florida Supreme Court authority supporting their argument that Petitioners bear the burden of proving the 2022 Plan's constitutionality before it can be restored. Instead, they rely entirely on *Byrd v. Black Voters Matter Capacity Building Institute, Inc.*, 339 So. 3d 1070 (Fla. 1st DCA 2022), which does not bind this Court, and held only that *a court* should "determine whether maintaining the status quo would be constitutionally permissible" before issuing a temporary injunction. *Id.* at 1081. It did not hold that a plaintiff must affirmatively prove the prior map's constitutionality.

“The [2022] Plan, like any legislation, is entitled to a presumption of validity.” *Black Voters Matter*, 415 So. 3d at 197. And the burden of proving a racial gerrymander rests with the party asserting it (here, the Secretary). *See Miller v. Johnson*, 515 U.S. 900, 916 (1995). The Secretary has not met that burden. Below, the Secretary’s “evidence” of the 2022 Plan’s alleged unlawfulness consisted of a *single paragraph* from a legal memorandum from the Governor’s counsel claiming CD-20 has an “odd shape” that is “arguably a telltale sign of racial predominance” and claiming the “legislative record shows” other districts in South Florida were drawn with the Hispanic voting age population in mind. App.2237. Although the Secretary attempts to develop that evidence now, at the final hour, those arguments are waived. *See, e.g.*, *Cowart v. City of West Palm Beach*, 255 So. 2d 673, 674-75 (Fla. 1971).

In any event, the record does not support the conclusion that race predominated in the 2022 Plan. To the contrary, the 2022 Plan’s chief map-drawer insisted the 2022 Plan *was drawn without race as a factor*. App.1134-35, 1159, 1077. That was true even of the minority-protected South Florida districts, for which the map-drawer

confirmed that "race-neutral" factors drove line-drawing decisions. App.1438-39.

CONCLUSION

Petitioners respectfully request that this Court exercise its all-writs authority to temporarily enjoin the 2026 Plan and order that congressional elections proceed under the 2022 Plan.

Dated: June 8, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8, 2026, I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY under Florida Rules of Appellate Procedure 9.045(b), 9.100(j), and 9.210(a)(2)(B) that this reply has utilized 14-point Bookman Old Style, is proportionately spaced, and has a word count of 3,953 words.

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