IN THE SUPREME COURT OF FLORIDA

EQUAL GROUND EDUCATION FUND, INC., et al.,

Appellant(s),

v.

CORD BYRD, et al.,

Appellee(s).

Case No.: SC2026-0857

L.T. Case No.: 1D2026-1539
2026-CA-914

AMICUS CURIAE BRIEF OF CIVIL RIGHTS ORGANIZATIONS IN SUPPORT OF APPELLANTS

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STATEMENT OF INTEREST

The National Association for the Advancement of Colored People ("NAACP") was founded in 1909 by pioneers of racial justice in the United States. The NAACP is the oldest and largest civil rights organization in the United States. Its mission is to achieve equality, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. The NAACP works to mobilize voters through robust non-partisan civic engagement and election-related programming.

Established in 1935, and in keeping with the NAACP's mission, the NAACP Florida State Conference ("NAACP Florida") has a long history of fighting for and protecting the voting rights and other fundamental rights of its members and constituents—including by engaging in voter registration, outreach, education, and activism. NAACP Florida actively supported the petition initiative campaign to pass the Fair Districts Amendments and engages in advocacy, voter education, and litigation to promote fair legislative representation in Florida.

The Dream Defenders ("Dream Defenders") is a Florida-based organization established in 2012 following the killing of Black teenager Trayvon Martin. Dream Defenders is a chapter and membership-based organization led by Black and Latinx youth who focus on promoting civic engagement and organizing young people and students against structural inequality. The organization conducts civic engagement activities across the state of Florida, including voter registration and get out the vote efforts. Fair and diverse electoral representation is critical to the Dream Defenders' work and a long-term goal of many of the organization's campaigns.

The Black Collective, Inc. ("The Black Collective") is a Florida nonprofit focused on promoting political participation and economic empowerment of Black communities. The Black Collective is based in Miami and works heavily in South Florida, including in Florida's previous 20th Congressional District. The Black Collective regularly organizes canvassing programs, trainings, and events focused on increasing access to the polls and promoting fair and diverse representation. The Black Collective educates and mobilizes members and communities about the legislation and political efforts

that negatively affect Black communities in South Florida and around the state.

SUMMARY OF ARGUMENT

Defendants argued below that they need not comply with the Fair Districts Amendments ("FDA"), Florida's duly enacted constitutional prohibition on partisan gerrymandering under Article III, section 20, because (1) section 20's anti-racial discrimination provisions violate the Equal Protection Clause of the U.S. Constitution, and (2) the partisan gerrymandering prohibition is not severable, so the whole provision must fall. App. 2246-48, 2261-62. The circuit court did not address the question of "the FDA's continued constitutional viability," instead crediting the Secretary's argument that the 2022 map has "racial defects" in ruling that it could not reinstate the status quo 2022 map and therefore could not grant Plaintiffs' requested relief. App. 2786, 2788. In support of its decision, the circuit court implied that the U.S. Supreme Court's decision in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), called into question the FDA's anti-discrimination provisions, asserted that "the 2022 map was declared unconstitutional" by the Governor and the Florida Legislature, and stated that, "if the Legislature and the

Governor are correct that the 2022 map has racial classifications, Plaintiffs would have to provide this Court with sufficient evidence under strict scrutiny to justify the Court ordering its use again." App. 2787-88.

The circuit court's order misinterprets and misapplies federal and state law. This brief addresses two key shortcomings in its reasoning. First, the circuit court improperly assumed that Florida's 2022 congressional redistricting plan is an unconstitutional racial gerrymander and inappropriately required Petitioners to prove its validity. The 2022 map, which has been used for multiple elections and which Defendants successfully defended in both state and federal court, is presumed to be constitutional, and Defendants have failed to carry their burden of proving otherwise. Second, the circuit court's suggestion that the U.S. Supreme Court's decision in *Callais* called into question the constitutionality of the FDA's anti-racial discrimination provisions is wrong. Florida courts are required to construe Article III, section 20 in a manner that renders it constitutional, if possible, and section 20's anti-racial discrimination provisions are compatible with *Callais* and the Equal Protection Clause of the Fourteenth Amendment. The Court should exercise its

all writs authority to enjoin the 2026 map and order elections to proceed under the 2022 map while this case proceeds.

ARGUMENT

I. The 2022 Map Is Not an Unconstitutional Racial Gerrymander.

In concluding that it could not grant the Petitioners' requested relief, the circuit court's order inappropriately deferred to the Governor's contention that the 2022 map's Congressional District 20 ("CD-20") was an unconstitutional racial gerrymander and incorrectly placed the burden on Petitioners to prove its validity. The court erred at each step. No court—including the circuit court—has ever ruled that the 2022 map, or CD-20 specifically, is unconstitutional. Absent such a judicial determination, the 2022 map is presumed to be valid, and it is the Secretary's burden to prove otherwise.[1] The Secretary has not done so—nor could he.

A. The 2022 Map Is Presumed Valid.

The Florida Supreme Court has specifically held, with respect to Florida's 2022 congressional map, that "[t]he Enacted Plan, like

[1] Neither the House nor the Senate joined the Secretary's argument that the 2022 map is unconstitutional.

any legislation, is entitled to a presumption of validity." *Black Voters Matter Capacity Bldg. Inst., Inc. v. Secretary, Fla. Dep't of State ("BVM")*, 415 So. 3d 180, 197 (Fla. 2025). And in the context of racial gerrymandering claims, courts also must apply a "presumption of legislative good faith." *Abbott v. Perez*, 585 U.S. 579, 603 (2018). Here, these presumptions of validity and legislative good faith have been bolstered by the 2022 map's legislative history and Defendants' efforts to defend it in litigation. Throughout the contentious 2022 legislative redistricting process and subsequent challenges in state and federal court to the validity of various Florida congressional districts under the 2022 plan, no party argued, and no court found, that CD-20 was an unconstitutional racial gerrymander.

In the 2022 redistricting cycle, the Legislature sought to produce a congressional redistricting map that complied with the non-diminishment requirements of the FDA by maintaining Congressional District 5 ("CD-5"), a Black-performing district in North Florida. *See Common Cause Fla. v. Byrd*, 726 F. Supp. 3d 1332, 1334 (N.D. Fla. 2024). Governor DeSantis, however, opposed including any such district based on his belief that CD-5 was an "unconstitutional racial gerrymander." *Id.* at 1335-37. After taking

the unprecedented step of submitting his own maps for consideration during the legislative process, the Governor ultimately vetoed the Legislature's agreed-upon map because it maintained CD-5 as a district in which Black voters had an opportunity to elect a candidate of choice. *Id.* at 1336, 1341-42.

Following his veto, Governor DeSantis called a special legislative session. *Id.* at 1343. The Legislature did not draft or produce a map for introduction during the special session. *Id.* Instead, the Governor submitted a proposed map drawn by staffers in his own office that eliminated CD-5 as a Black-performing district. *Id.* In the course of submitting the 2022 map and supporting its passage, the Governor did not raise constitutional concerns with any other districts, including CD-20. To the contrary, the Governor's office affirmatively stated that the 2022 map "resolv[ed] the federal constitutional objections raised by the governor" to the map proposed by the Legislature. App. 1049. The Legislature passed the Governor's map without changes on April 21, 2022.[2]

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[2] *See* S.B. 2-C: Establishing the Congressional Districts of the State, 2022C Spec. Sess. (Fla. 2022), https://www.flsenate.gov/Session/Bill/2022C/2C (last visited June 8, 2026).

Throughout the subsequent years of litigating three cases challenging the 2022 map in state and federal court, Defendants have consistently maintained that the 2022 map is constitutional. In defending a racial gerrymandering challenge to certain South Florida congressional districts under the 2022 map, the Secretary and the House have argued that race did not predominate, relying on the lead map drawer's trial testimony that committee staff sought to "balance" all constitutional redistricting standards and apply all of the FDA's race-neutral standards "when drawing protected districts."[3] Meanwhile, in state court litigation concerning the elimination of CD-5, the Legislature specifically argued that "[n]o other district . . . raises the same equal protection concerns" as CD-5, and that "concerns about racial predominance did not prohibit Florida from drawing congressional districts elsewhere in the State that satisfy the Florida Constitution, the VRA, and the Fourteenth Amendment." App. 2563. In parallel federal court litigation, the Governor's primary

[3] Defendant Florida House of Representatives' Proposed Findings of Fact and Conclusions of Law ("House Tr. Br.") at 43, *Cubanos Pa'lante v. Fla. House of Representatives*, No. 1:24-cv-21983 (S.D. Fla. 2024), (Dkt. No. 207), https://storage.courtlistener.com/recap/gov.uscourts.flsd.668130/gov.uscourts.flsd.668130.207.0.pdf.

map drawer testified at trial that another Black-performing district in South Florida, CD-24, was constitutional because it followed city and county lines and was not drawn for race-based reasons. *See Byrd*, 726 F. Supp. at 1346. As the House recently told a federal district court panel in its trial brief, the Legislature "faithfully honored the limits that equal protection imposes on the consideration of race."[4]

Ultimately, a federal district court three-judge panel and the Florida Supreme Court rejected challenges to the 2022 map. *See BVM*, 415 So. 3d 180 (Fla. 2025); *Byrd*, 726 F. Supp. 3d 1322 (N.D. Fla. 2024). The Secretary and the Florida House of Representatives continue to defend against claims that the 2022 map is a racial gerrymander in the remaining case.[5]

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[4] House Tr. Br. at 43; Defendant Secretary of State's Proposed Findings of Fact and Conclusions of Law ("Secretary Tr. Br.") at 27, *Cubanos Pa'lante v. Fla. House of Representatives,* No. 1:24-cv-21983 (S.D. Fla. 2024), (Dkt. No. 206), https://storage.courtlistener.com/recap/gov.uscourts.flsd.668130/gov.uscourts.flsd.668130.206.0.pdf.

[5] *See generally Cubanos Pa'lante v. Florida House of Representatives*, Case No. 1:24-cv-21983-JB (S.D. Fla. 2024).

B. The Florida Legislature Has Never Declared That Any Aspect of the 2022 Map—Including CD-20—Is Unconstitutional.

The circuit court failed to apply the required presumption that the 2022 map is constitutionally valid. Instead, it deferred to what it characterized as "the political branches' finding that CD-20 in the 2022 map was drawn with impermissible racial intent." App. 2777. The court thus compounded its legal error with a factual error: it is incorrect to say that the "political branches," plural, made such a finding. Only the Governor has made such an assertion—less than a year after he publicly celebrated the State's successful defense of the 2022 map at the Florida Supreme Court, stating that it "was always the constitutionally correct map."[6]

Despite having forced through his own map during the 2022 redistricting process specifically to eliminate another district he believed to be racially gerrymandered, Governor DeSantis made no claim that the 2022 map was constitutionally invalid until he unveiled his mid-decade congressional redistricting map on April 27,

[6] Ron DeSantis (@GovRonDeSantis), X (July 17, 2025, at 1:52 PM), https://x.com/GovRonDeSantis/status/1945904446283632827.

2026.[7] Only then—in the context of an ongoing broader nationwide campaign to engage in congressional redistricting for partisan advantage in the leadup to the 2026 midterm elections—did the Governor argue that CD-20 had been illegally drawn as a racial gerrymander, pointing to its "odd shape . . . that track[s] the black population" as "arguably a telltale sign of racial predominance."[8] This supposition was unsupported by evidence, precedent, or even legal argument.

The Florida Legislature, however, did not adopt the Governor's newfound theory that the 2022 map was unconstitutional. The legislation enacting the new 2026 map included no legislative finding with respect to the validity of the 2022 map.[9] The Senate sponsor of the Governor's proposed 2026 map himself declined to declare the

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[7] *See* Lawrence Mower, *A look at Ron DeSantis' many changing arguments for redistricting in Florida*, The Miami Herald, May 1, 2026, https://www.miamiherald.com/news/politics-government/state-politics/article315593967.html.

[8] STATE OF FLORIDA, EXECUTIVE OFFICE OF THE GOVERNOR, Transmittal Letter to the Legislature, April 27, 2026, https://www.flsenate.gov/PublishedContent/Session/Congressional/EOG_Transmittal_Letter.pdf.

[9] *See* H.B. 1-D, 2026D Spec. Sess. (Fla. 2026), https://www.flsenate.gov/Session/Bill/2026D/1D/BillText/er/PDF.

2022 map unconstitutional: when asked during the floor debate whether the 2022 map was constitutional, Senator Gaetz responded that "the [2022] map we have today is the law until it's changed. And I would suspect . . . it's constitutional until some court says it's not." App. 825. And as already noted, the House and Senate in this case have conspicuously declined to argue that any aspect of the 2022 map, including CD-20, is unlawful.

The Governor's position regarding the purported invalidity of the 2022 map—asserted for the first time in April 2026—is a post hoc legal argument entitled to no deference. "[A]s is universally recognized, it is the exclusive province of the judiciary to interpret terms in a constitution and to define those terms." *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 631 (Fla. 2012). And because it is the Legislature's responsibility to draw congressional redistricting maps, *see* Fla. Const. Art. III, §§ 16, 20, it is the Legislature's intent that is the starting place in determining whether race was a motivating factor in passing the 2022 map. *See Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 7 (2024). To the extent the circuit court relied on Governor DeSantis's argument

that CD-20 is an unconstitutional racial gerrymander, it committed clear error.

C. The Secretary Failed to Establish that Race Predominated in Drawing the 2022 Map.

As discussed above, the 2022 map is entitled to a presumption of validity and no court has found any aspect of it to be invalid. *See Alexander*, 601 U.S. at 20 (generally discussing the application of the presumption of validity to redistricting plans). Even though it is the Secretary who is asserting the 2022 map suffers constitutional defects, the circuit court held that "Plaintiffs' evidence . . . does not sufficiently challenge the political branches' finding that CD-20 . . . was drawn with impermissible racial intent. App. 2777. This approach turns the presumption of good faith on its head. The burden of proving a racial gerrymander is on the party asserting it. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995) (holding that it was "[t]he plaintiff's burden" to prove his racial gerrymandering claim). Racial gerrymandering claims are typically brought by plaintiffs. Here, however, it is the Secretary who alleges that race predominated in the drawing of CD-20 in the 2022 map. App. 2236-37. It is thus

the Secretary who must overcome the "presumption of legislative good faith" that applies here. *See Alexander*, 602 U.S. at 10.

The circuit court also misstated the legal standard for proving a racial gerrymandering claim, incorrectly asserting that any use of "racial classifications" would require the map to satisfy strict scrutiny. App. 2777. To the contrary, the Secretary was required to show "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller*, 515 U.S. at 916; *Alexander*, 602 U.S. at 10. "To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including . . . compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Miller*, 515 U.S. at 916. The evidentiary burden in making this showing is "especially stringent." *Alexander*, 602 U.S. at 11. And the U.S. Supreme Court has directed that the presumption of legislative good faith "requires courts to exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Miller*, 515 U.S. at 916.

The Secretary submitted only scant evidence in support of his racial gerrymandering argument and therefore has failed to meet his burden. The only record support for the Secretary's position is a legal memorandum from the Governor's office. App. 2236-37. The memorandum claims only that the "odd shape" of CD-20 is "arguably a telltale sign of racial predominance" and asserts, without citation or support, that "the legislative record shows" that other South Florida districts "were drawn with the Hispanic voting age population in mind to comply with the race-based requirements of the FDA."[10] This unsupported argument in a legal memorandum falls far short of the "especially stringent" evidentiary burden a party must show to establish that the legislature subordinated race-neutral districting principles to racial considerations. And the actual evidence in the record refutes these claims. *See* Equal Ground Initial Br. at 60-61.

Second, the Secretary's argument in this case is inconsistent with the Secretary's position in ongoing litigation. Here, the Secretary argued to the circuit court that the 2022 map "suffers from racial

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[10] STATE OF FLORIDA, EXECUTIVE OFFICE OF THE GOVERNOR, Transmittal Letter to the Legislature, April 27, 2026, https://www.flsenate.gov/PublishedContent/Session/Congressional/EOG_Transmittal_Letter.pdf.

defects" because "the legislative record shows that certain South Florida districts "were drawn with the Hispanic voting age population in mind." App. 2236-37. In *Cubanos Pa'lante v. Florida House of Representatives*, No. 1:24-cv-21983 (S.D. Fla. 2024), the Secretary is defending the same South Florida congressional districts against claims that they were racially gerrymandered. The Secretary's trial brief in that litigation argues that the primary map drawer gave credible and compelling testimony that he weighed multiple factors, including race-neutral factors, in drawing the 2022 map, and concludes that there is "[n]o legislative statement . . . [n]o testimony from the map drawer . . . [and] [n]o testimony from Plaintiffs' experts [that] is so clear as to say that race predominated."[11] The Court should not permit the Secretary to simultaneously defend these districts against racial gerrymandering claims in *Cubanos* while asserting here that the same districts were "impermissibl[y]" drawn with a "reliance on race." App. 2237.

[11] Secretary Tr. Br. at 27, https://storage.courtlistener.com/recap/gov.uscourts.flsd.668130/gov.uscourts.flsd.668130.206.0.pdf.

II. The FDA's Anti-Racial Discrimination Clauses Are Constitutional.

The circuit court's order suggested, without holding, that the FDA's anti-racial discrimination clauses may be in jeopardy in light of the Supreme Court's decision in *Louisiana v. Callais*. App. 2777 n.5. And Defendants argue that the court should overturn the will of the people and strike down the FDA on the theory that the FDA's anti-racial discrimination clauses make "express classifications based on race" and, as a result, are unconstitutional. *See* App. 2246; *see also* App. 2272-75. Both the circuit court and Defendants are wrong: the FDA's anti-racial discrimination clauses are constitutional under *Callais* and are compatible with the requirements of the Equal Protection Clause.

A. *Callais* Does Not Call Into Question the FDA's Anti-Racial Discrimination Clauses.

The FDA's anti-racial discrimination clauses, codified as Article III, section 20 of the Florida Constitution, require 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.

Fla. Const. Art. III, § 20. This language prohibits "impermissible vote dilution" that "dilute[s] the voting strength of politically cohesive minority group members" as well as "districting changes that have the *effect* of diminishing minority voters' ability to elect representatives of their choice." *BVM*, 415 So. 3d at 186 (emphasis in original).

The circuit court's order suggests the FDA's anti-racial discrimination clauses might be in jeopardy in light of *Callais*. The circuit court's order states that Florida's political branches adopted a 2026 map "in anticipation of a changing legal landscape with the [U.S.] Supreme Court's pending ruling in *Louisiana v. Callais*." App. 2777. In a corresponding footnote, the circuit court cites the dissent in *Callais* describing the majority's decision as the "now-completed demolition of the Voting Rights Act." App. 2777 (citing *Callais*, 146 S. Ct. at 1166 (Kagan, J., dissenting)). The circuit court then implies that this "demolition" possibly extends to the FDA's anti-racial discrimination clauses, which "follow almost verbatim the requirements embodied in the Federal Voting Rights Act." App. 2777.

Callais does not place the FDA's anti-racial discrimination clauses in jeopardy. *Callais* has not struck down any part of the

Voting Rights Act. The U.S. Supreme Court instead narrowed the application of Section 2 of the Voting Rights Act, the federal analogue to the FDA's Anti-Dilution Clause, to "impose[] liability only when the circumstances give rise to a strong inference that intentional discrimination occurred." *Callais*, 146 S. Ct. at 1156. That interpretation rendered Section 2 constitutional, according to the Court. *Id.* at 1155-56. *Callais* also did not address Section 5 of the Voting Rights Act, the analogue to the FDA's Non-Diminishment Clause. *See id.* at 1142-63. Therefore, *Callais* does not implicate the constitutionality of either of the FDA's anti-racial discrimination clauses.[12]

B. The FDA's Anti-Racial Discrimination Provisions Are Consistent with the Equal Protection Clause.

Defendants urged the circuit court to go beyond *Callais* and hold that the anti-racial discrimination clauses of Article III, § 20

[12] *Callais* also designated partisan redistricting as a special defense to racial redistricting claims solely because partisan redistricting claims are nonjusticiable in federal court and there are no protections against partisan redistricting in the U.S. Constitution. *Id.* at 1156-1157. This defense does not apply to the FDA's anti-racial discrimination provisions because partisan redistricting is explicitly prohibited under the Florida Constitution. Fl. Const. Art. III, § 20(a).

violate equal protection under the Fourteenth Amendment to the U.S. Constitution. *See* App. 2246-48, 2272-75. But that is not the law. As the Supreme Court reiterated in *Callais*, while "any use of race in government decisionmaking generally triggers strict scrutiny, in gerrymandering cases a challenger must show that race was the government's predominant consideration." *Callais*, 146 S. Ct. at 1147. It is this predominance standard that applies to redistricting under Article III, § 20. *See BVM*, 415 So. 3d at 195, 197 ("In the redistricting context, the Supreme Court has interpreted [the Equal Protection Clause] to mean that a State may not use race as the predominant factor in drawing district lines unless it has a compelling reason." (internal quotation marks omitted)).

"The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn . . . ." *Id.* (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017)). "[R]ace predominates in the drawing of a district when a legislature 'subordinated traditional race-neutral districting principles . . . to racial considerations.'" *Id.* (quoting *Bethune-Hill*, 580 U.S. at 187 (alterations omitted)).

The anti-racial discrimination provisions of Article III, section 20 do not require race to predominate in the drawing of congressional districts. Section 20 simply requires the Legislature to balance multiple factors in drawing district lines, most of which have nothing to do with race.

In addition, the FDA's anti-racial discrimination clauses only *prohibit* racial discrimination in redistricting. The Florida Supreme Court has consistently interpreted section 20's anti-racial discrimination provisions in harmony with equal protection requirements, making clear that section 20 does not *require* racial predominance in redistricting decisions. In *BVM*, the Court recognized that the Legislature's "obligation to comply with [the FDA's] Non-Diminishment Clause was bounded by its superior obligation to comply with the Equal Protection Clause." *BVM*, 415 So. 3d at 194. Given that "superior obligation," the Court held that the FDA's Non-Diminishment Clause did not require the Legislature to preserve a protected Black district where the only way to do so was to draw a non-compact district, which would have subordinated race-neutral districting criteria to racial considerations. *Id.* at 198-99.

CONCLUSION

For the foregoing reasons, the Court should exercise its all writs authority and grant Petitioners' motion for a temporary injunction.

CERTIFICATE OF COMPLIANCE

I certify, under Florida Rule of Appellate Procedure 9.210(a)(2)(B), that this brief complies with the applicable word-count requirements. It was prepared in Bookman Old Style 14-point font, and contains 3,877 words.

/s/ Adam Saper

Dated: June 8, 2026