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IN THE SUPREME COURT OF FLORIDA

No. SC2026-0857

EQUAL GROUND EDUCATION FUND, INC., *ET AL.*,

Petitioners,

v.

SECRETARY, FLORIDA DEPARTMENT OF STATE, *ET AL.*,

Respondents.

L.T. Case Nos. 1D2026-1539 &
2026-CA-000914 (Fla. 2d Cir. Ct.)

THE FLORIDA HOUSE OF REPRESENTATIVES' RESPONSE IN OPPOSITION TO EMERGENCY PETITION FOR CONSTITUTIONAL WRIT

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INTRODUCTION

The relief that Petitioners seeks is unwarranted because Petitioners have failed to demonstrate a substantial likelihood of success on the merits. Petitioners seek relief under article III, section 20 of the Florida Constitution—also called the Fair District Amendment, or FDA—which governs congressional redistricting. However, the provisions of article III, section 20 that Petitioners seek to enforce are inoperative and unenforceable because they are interconnected with—and not severable from—related provisions that are unconstitutional.

Specifically, article III, section 20 contains express racial classifications—permanent provisions that treat people of different races differently and confer constitutional rights on some people solely because of their race. These racial preferences purport to require the Legislature, whenever it redistricts, to design districts that voters of minority races will "control," *Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y, Fla. Dep't of State*, 415 So. 3d 180, 187 (Fla. 2025)—districts crafted to elect candidates preferred by the protected race and to defeat candidates preferred by unprotected races.

Express racial classifications in a state constitution are wrong—and contrary to the United States Constitution's promise of race neutrality in official action. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 518 (1989) (Kennedy, J., concurring) ("The moral imperative of racial neutrality is the driving force of the Equal Protection Clause."). All express racial classifications are inherently suspect, presumptively invalid, and subject to strict scrutiny, and their proponents must carry the extraordinarily onerous burden of proving that the race-based provisions are narrowly tailored to serve a compelling state interest.

Petitioners do not even argue that the FDA's express racial classifications (the "Racial Provisions") satisfy this most rigorous standard. Instead, Petitioners urge the Court to place a "saving construction" on the Racial Provisions, but no such construction is available—nor would any narrower construction overcome the fact that the Racial Provisions *still* treat people of different races differently without a compelling interest. And the invalid provisions are not severable from the remainder of the FDA. The hierarchical structure and functional interdependence of that section's provisions

demonstrate that the invalid provisions are interconnected with and not severable from the remainder of the section.

For these reasons, Petitioners have not demonstrated a substantial likelihood of success on the merits, and this Court should deny their petition.

BACKGROUND

In 2010, voters approved a citizen initiative that created article III, section 20 of the Florida Constitution. That section governs congressional redistricting. It sets forth two tiers of standards. The first tier prohibits intentional partisan and incumbent favoritism and requires districts to be contiguous. Art. III, § 20(a), Fla. Const. The second requires districts to be equally populated and compact and, where feasible, to utilize political and geographical boundaries. Art. III, § 20(b), Fla. Const.

Tier One also "includes two clauses that expressly address 'racial . . . minorities.'" *Black Voters Matter*, 415 So. 3d at 186 (quoting Art. III, § 20(a), Fla. Const.). The Non-Diminishment Clause provides that "districts shall not be drawn . . . to diminish [the] ability [of racial minorities] to elect representatives of their choice." Art. III, § 20(a), Fla. Const. Under that provision, the Legislature may

not "eliminate majority-minority districts or weaken other historically performing minority districts where doing so would actually diminish a minority group's ability to elect its preferred candidates." *In re Senate Joint Resol. of Legis. Apportionment 100*, 334 So. 3d 1282, 1289 (Fla. 2022) (quoting *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 625 (Fla. 2012)).

Thus, if a minority group is able to elect its preferred candidate in a district, then the Non-Diminishment Clause prohibits any decrease in the minority group's voting strength when the district is redrawn. The Legislature must perform a "functional analysis" of election and population data to identify each district in which a minority group was previously able to elect its preferred candidates and, when it draws the new district, to confirm that the new district does not diminish that ability. *Black Voters Matter*, 415 So. 3d at 186–87. The Legislature must configure the new district to ensure that the protected race "controls" the primary and general elections, as in the predecessor district. *Id.* at 187. It must pick winners and losers based on race.

In practical effect, the Non-Diminishment Clause requires the Legislature, if possible, to draw a minimum number of minority-

controlled districts, maintaining at least the same number as in the prior map.

The other clause that addresses racial minorities prohibits vote dilution. *Id.* at 186. It provides that "districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process." Art. III, § 20(a), Fla. Const. Under this provision, if members of different races prefer different candidates—*i.e.*, the minority group is politically cohesive while the majority votes sufficiently as a bloc usually to defeat the minority group's preferred candidate—then, in some circumstances, the Legislature must draw a district that tilts the scale in favor of the minority group's electoral preference and enables its preferred candidates to win. *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 622–23 (Fla. 2012).

To the extent the standards in the two tiers conflict, the standards in Tier One prevail. Art. III, § 20(b), Fla. Const.; *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d at 640. Thus, in case of conflict, districts drawn to perform for minority voters in compliance with Tier One are exempt from the general rule that districts must be compact and, where feasible, utilize political

and geographical boundaries. *See In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d at 640 (explaining that Tier One's "minority voting-rights protections may require the preservation or creation of non-compact districts"). Stated differently, the FDA's tiered structure ensures that the secondary goals of compactness and boundary utilization yield to the primary goal of crafting districts that voters of particular races control.

LEGAL STANDARD

On their motion for temporary injunction, Petitioners bore the burden to demonstrate a substantial likelihood of success on the merits—including a substantial likelihood that Respondents will be unable to establish their affirmative defenses at the merits stage. *Bradley v. Health Coal., Inc.*, 687 So. 2d 329, 333 (Fla. 3d DCA 1997) (explaining that, at the temporary-injunction stage, a plaintiff "must demonstrate likelihood of success on the merits as to asserted affirmative defenses as well as . . . elements of plaintiff's prima facie case" (quoting *Cordis Corp. v. Prooslin*, 482 So. 2d 486, 490 (Fla. 3d DCA 1986))). A temporary injunction is drastic and extraordinary relief, and Respondents bore no burden to disprove Petitioners' entitlement to that relief.

The trial court appropriately declined to decide the FDA's constitutionality because it denied Petitioners' motion on other grounds. Before a court may grant injunctive relief, however, it must address all defenses presented by the non-movants. *Salazar v. Hometeam Pest Def., Inc.*, 230 So. 3d 619, 622 (Fla. 2d DCA 2017).

ARGUMENT

There are many reasons why the petition should be denied. For one, a constitutional writ is appropriate only when necessary to protect this Court's jurisdiction—*i.e.*, to protect this Court's ability to review a lower court's adjudication of the merits. *See generally League of Women Voters of Fla. v. Data Targeting, Inc.*, 140 So. 3d 510 (Fla. 2014). It does not empower this Court to review every interlocutory order entered in a case this Court is likely to review—or even to prevent harm to the parties from an interlocutory order. In *Data Targeting*, which marks the outer bounds of this Court's authority to issue constitutional writs, the Court considered the complete exercise of its jurisdiction impaired by an order that prevented the disclosure of key documents and their admissibility into evidence at trial. Here, the denial of a motion for temporary

injunction in no way defeats or impedes this Court's ability in the future to review the ultimate merits adjudication in this case.

The current state of the election calendar also precludes immediate relief. Candidate qualifying begins today, June 8. A court's equitable powers should never be the instrument of chaos and disorder. The Supreme Court has often explained that it is preferable to conduct an election in districts that have been declared unconstitutional—which is not the case here—than to upset a State's election machinery, cause confusion in the administration of elections, and disrupt the plans of election administrators. *See*, *e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (explaining that, "where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid"). The trial court prudently avoided the ills of election uncertainty when it denied Petitioners' motion.

This brief, however, focuses on a different question: whether the FDA is operative and enforceable at all. Nothing is more

anathematic to the United States Constitution's principle of equality before the law than express racial classifications—laws that facially treat citizens of different races differently. "In the eyes of government, we are just one race here. It is American." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 239 (1995) (Scalia, J., concurring in part and concurring in the judgment). The FDA's express racial classifications do not survive strict scrutiny, are not salvageable by a saving construction, and cannot be severed from the single package of standards that the voters approved, and that work in concert to produce Florida's congressional districts. Because Petitioners have not shown a substantial likelihood that Respondents will be unable to establish their defenses, Petitioners are not entitled to relief.

I. THE RACIAL PROVISIONS VIOLATE THE EQUAL PROTECTION CLAUSE.

The FDA's express racial classifications violate equal protection. On their face, they distinguish between people of different races, grant constitutional rights solely on the basis of race, and compel the government to treat people of different races differently. The Equal Protection Clause forbids such expressly race-based policies.

A. The Racial Provisions' Proponents Bear an Extraordinary Burden to Satisfy Strict Scrutiny.

Under the Equal Protection Clause, a State may not "deny to any person within its jurisdiction the equal protection of the laws." Amend. XIV, U.S. Const. "The central purpose of the Equal Protection Clause . . . is the prevention of official conduct discriminating on the basis of race." *Washington v. Davis*, 426 U.S. 229, 239 (1976). Simply put, equal protection "requires equality of treatment before the law for all persons without regard to race." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 205 (2023) (quoting *Browder v. Gayle*, 142 F. Supp. 707, 715 (M.D. Ala. 1956)).

The "central mandate" of equal protection is "racial neutrality in governmental decision making." *Miller v. Johnson*, 515 U.S. 900, 904 (1995). "When racial classifications are explicit, no inquiry into legislative purpose is necessary" because the purpose to differentiate on the basis of race is plain on the face of the law. *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999). "A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification." *Pers. Adm'r of Mass. v.*

Feeney, 442 U.S. 256, 272 (1979); *accord Shaw v. Reno*, 509 U.S. 630, 642 (1993) ("Express racial classifications are immediately suspect . . . .").

When the "government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007). To comply with the constitutional guarantee of equal protection, express racial classifications must be "narrowly tailored to further compelling governmental interests." *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003). The parties that defend the classification—here, Petitioners—bear the burden of proof. *Johnson v. California*, 543 U.S. 499, 505 (2005); *Johnson v. Bd. of Regents of Univ. of Ga.*, 263 F.3d 1234, 1244 (11th Cir. 2001).

Strict scrutiny applies to express racial classifications "in every context" and even to "so-called 'benign' racial classifications." *Johnson*, 543 U.S. at 505; *accord Adarand Constructors*, 515 U.S. at 227 (holding, in a challenge to financial incentives to hire minority subcontractors, "that all racial classifications . . . must be analyzed . . . under strict scrutiny"). Even in the pursuit of "remedial

objectives," racial classifications may "stimulate our society's latent race consciousness" and suggest the "propriety of basing decisions on a factor that ideally bears no relationship to an individual's worth or needs." *Shaw*, 509 U.S. at 643 (quoting *United Jewish Orgs. v. Carey*, 430 U.S. 144, 173 (1977) (Brennan, J., concurring)).

B. Petitioners Do Not Argue That the Racial Provisions Serve a Compelling Interest.

No compelling interest justifies the FDA's express racial classifications—and Petitioners' silence confirms it.

The Supreme Court has recognized only three compelling interests that justify racially discriminatory state action: (1) the avoidance of imminent and serious risks to human safety in prisons, such as race riots; (2) the remediation of specific, identified instances of past unlawful discrimination; and (3) compliance with a proper construction of section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301. *Louisiana v. Callais*, 146 S. Ct. 1131, 1143, 1152–53 (2026).

The first and third of these interests are not implicated here. The Racial Provisions have nothing to do with prisons and were not enacted to comply with the federal Voting Rights Act.

Nor are the Racial Provisions a remedy for specific, identified instances of past unlawful discrimination. "To rise to the level of a compelling state interest, an effort to remediate past discrimination must satisfy two conditions." *Id.* (internal marks omitted). *First*, the government must "identify the specific instances of past discrimination that it aims to remediate and, in light of that specification, must determine the precise scope of the injury." *Id.* (internal marks omitted). Generally remediating "past discrimination in a particular industry or region" or "the effects of societal discrimination" is insufficient. *Id.* (quoting *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) ("*Shaw II*")). *Second*, the government must have a "strong basis in evidence to conclude that its remedial action is necessary." *Id.* (quoting *Shaw II*, 517 U.S. at 910).

Enacted by citizen initiative, the Racial Provisions fail both conditions. The Racial Provisions came with "no pre-enactment record identifying the discrimination—past or present, public or private—that [they were] meant to remedy." *Black Voters Matter*, 415 So. 3d at 196. "Nor is there pre-enactment documentation of the evidence necessary to establish a proper connection between [their] means and ends." *Id.*

The fact that equal protection has traditionally allowed States some leeway to consider race when drawing districts, provided that racial considerations do not predominate, *see Miller*, 515 U.S. at 916, does not rescue the Racial Provisions from invalidity. The Racial Provisions go much farther than to recognize legislative discretion to draw race-conscious districts: they enshrine permanent racial preferences in the Florida Constitution. They impose on the Legislature a *constitutional duty* not only to consider race, but also to design a minimum number of districts that the protected race will control. And they confer on some voters a *constitutional right* to a favorable district based solely on their membership in a racial group. It is this constitutional guarantee—not the drawing of specific districts—that Petitioners cannot justify.

A stricter equal-protection standard applies in challenges to express racial classifications than in challenges to individual districts on a map. A district map "typically does not classify persons at all; it classifies tracts of land." *Shaw*, 509 U.S. at 646. Thus, a plaintiff who challenges a district must first prove that the district "was drawn with an impermissible racial motive." *Hunt*, 526 U.S. at 547. In contrast, the Supreme Court has struck down nearly all

express racial classifications it has considered; to the extent it has upheld them, it has since reversed course. *United States v. Skrmetti*, 605 U.S. 495, 571 (2025) (Alito, J., concurring in part).

Petitioners do not identify a compelling state interest—or even attempt to. *See* Pet. at 52–56. By their silence, Plaintiffs concede that no compelling interest supports the Racial Provisions. Because the Racial Provisions do not serve a compelling interest, they violate the Equal Protection Clause's guarantee of race neutrality.

C. Petitioners Do Not Argue That the Racial Provisions Are Narrowly Tailored.

Even if they could establish that the Racial Provisions serve a compelling interest, Petitioners would be unable to demonstrate that the Racial Provisions are "narrowly tailored—meaning 'necessary'—to achieve that interest." *Students for Fair Admissions, Inc.*, 600 U.S. at 207.

To be narrowly tailored, express racial classifications employed for remedial ends must be time-limited. *Grutter*, 539 U.S. at 341–42. This "requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands." *Id.* It also

assures all citizens "that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter, a measure taken in the service of the goal of equality itself." *Id.* at 342 (quoting *Croson*, 488 U.S. at 510 (plurality opinion)).

The Racial Provisions have no temporal limitation. On the contrary, they reflect a permanent enshrinement of racial classifications in the Florida Constitution. Their indefinite duration establishes, without more, that the Racial Provisions are not narrowly tailored.

Finally, narrow tailoring requires "serious, good faith consideration of workable race-neutral alternatives." *Parents Involved in Cmty. Schs.*, 551 U.S. at 734 (quoting *Grutter*, 539 U.S. at 339). The absence of evidence of any consideration of "methods other than explicit racial classifications" establishes that the FDA's racial classifications are not narrowly tailored. *Id.*

D. No Saving Construction Is Available—and Certainly None That Satisfies Strict Scrutiny.

Rather than attempt to satisfy strict scrutiny, Petitioners urge the Court to adopt a saving construction and rewrite the Racial Provisions. Pet. at 53–54. But no saving construction is available

here, and even if it were, it would still treat people of different races differently without a compelling interest—only in a narrower way.

Plaintiffs do not explain what their proposed saving construction is or where in the text of the Racial Provisions that construction can be found. *See Wyche v. State*, 619 So. 2d 231, 236 (Fla. 1993) ("We find that it is impossible to preserve the constitutionality of the Tampa ordinance without effectively rewriting it, and we decline to 'legislate' in that fashion. Courts may not go so far in their narrowing constructions so as to effectively rewrite legislative enactments."); *Brown v. State*, 358 So. 2d 16, 20 (Fla.1978) ("When the [challenged law] in no way suggests a saving construction, we will not abandon judicial restraint and effectively rewrite the enactment."). A court's "discretion to adopt a narrowing construction should be exercised with restraint," *Halifax Hosp. Med. Ctr. v. News-J. Corp.*, 724 So. 2d 567, 570 (Fla. 1999), lest the court *rewrite* rather than *reconstrue* the challenged law.

Even if the Racial Provisions were susceptible of a saving construction, Plaintiffs do not explain how that construction (which they do not identify) complies with the Equal Protection Clause, or what compelling interest supports it. Simply narrowing an express

racial classification does not relieve Plaintiffs of their burden to identify a compelling interest that supports the classification. A *narrower* express racial classification is *still* an express racial classification—and must therefore be strictly scrutinized.

A saving construction was possible in *Callais* only because the statute at issue there—section 2 of the federal Voting Rights Act—was enacted pursuant to Congress's express authority to enforce the Fifteenth Amendment's prohibition against intentional discrimination in voting. The Court recalibrated section 2 to target intentional discrimination—the very practice the Fifteenth Amendment prohibits. But the Racial Provisions were not enacted pursuant to the Fifteenth Amendment. The Fifteenth Amendment confers legislative authority only on Congress—not the States. So *Callais* does not suggest how the Racial Provisions in Florida's Constitution could be saved.

Callais, moreover, addressed only section 2 of the VRA. One of Florida's two Racial Provisions—the Non-Diminishment Clause—was patterned after section 5 of the VRA, 52 U.S.C. § 10304, not section 2. *See Black Voters Matter*, 415 So. 3d at 187 (explaining that the Florida Supreme Court has "looked to Section 2 on the issue of vote

dilution and to Section 5 on diminishment"); *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d at 625 (noting that "Section 2 jurisprudence guides . . . state vote dilution claims" while "jurisprudence interpreting Section 5" guides claims of diminishment). These are wholly different provisions: section 2 and section 5 of the VRA "differ in structure, purpose, and application," *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 477 (1997) (quoting *Holder*,
512 U.S. at 883 (plurality opinion)), and "combat different evils and . . . impose very different duties upon the States," *id.* Plaintiffs do not explain how the Non-Diminishment Clause could be narrowed in a constitutional way.

II. THE RACIAL PROVISIONS ARE NOT SEVERABLE FROM THE REMAINDER OF THE FDA.

The FDA's valid and invalid provisions are not severable from each other. The standards to draw congressional districts are arranged in a hierarchical structure that reveals close attention to the interdependent relationships between the standards. Indeed, the Florida NAACP endorsed the citizen initiative that created the FDA in reliance on the textual guarantee that, in case of conflict, minority-

controlled districts would be exempt from Tier Two's compactness and boundary-utilization requirements. Because the valid and invalid provisions are not severable, the provisions that Petitioners invoke are unenforceable.

A. The FDA's Text and Structure Establish the Racial Provisions' Non-Severability.

The FDA's hierarchical structure and grammar render severability inappropriate. "Severability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999). "The severability analysis answers the question whether 'the taint of an illegal provision has infected the entire enactment, requiring the whole unit to fail.'" *Id.* (quoting *Schmitt v. State*, 590 So. 2d 404, 414 (Fla. 1991)).

In *Ray*, the Court held that initiative petitions to amend the Florida Constitution are subject to the same rules of severability that apply to ordinary legislation. 742 So. 2d at 1281. Under that analysis, an invalid provision is severable from the remainder of the amendment if:

> (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the . . . purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the [electorate] would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Id. (quoting *Smith v. Dep't of Ins.*, 507 So. 2d 1080, 1089 (Fla. 1987)). To determine whether the purpose of the valid provisions can be accomplished independently of the invalid provisions, courts ask whether "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." *Id.* at 1282 (emphasis omitted).

For example, in *Ray*, the Court considered a constitutional amendment that imposed term-limit requirements on members of Congress and state officials. The Court concluded that a State may not constitutionally limit the terms of members of Congress, but that the remainder of the amendment was "functionally independent" of the invalid provision and thus severable. *Id.* at 1283. The provision that applied to members of Congress could "be stricken without

disrupting the integrity" of the provisions that applied to state officials. *Id.*

In contrast, in *Emerson v. Hillsborough County*, 312 So. 3d 451 (Fla. 2021), the Court examined a charter amendment that imposed a sales surtax and determined how the surtax revenue would be distributed. The Court invalidated the revenue-distribution provisions and concluded that those provisions were not severable from the provisions that imposed the surtax. *Id.* at 460–61. The purpose of the amendment would have been "thwarted" if the surtax were levied without the voter-approved provisions that governed the distribution of surtax-generated revenue. *Id.* at 461. The amendment's provisions were "functionally dependent" and formed an "interlocking plan" and could not "reasonably be divorced" from one another. *Id.*

Here, as in *Emerson*, the valid and invalid provisions are functionally dependent and form an interlocking plan. The FDA's text arranges its standards into two tiers. The effect of this tiered organization is to give precedence to certain standards over others in case of conflict. To the extent that compliance with the tier-two standards "conflicts with" tier-one standards, tier-one standards

prevail and tier-two standards yield. Art. III, § 20(b), Fla. Const. Moreover, tier-one standards are explicitly combined together as a package deal, with each clause separated from the others by the conjunctive "and." *Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings*, 686 So. 2d 1349, 1354–55 (Fla. 1997) (explaining that the word "and" should be read in the conjunctive and that doing otherwise "would lead to unreasonable, absurd results and thus defeat the legislature's intent"). The FDA's text further acknowledges the interconnectedness of the standards making clear that, within a single tier, the "order in which the standards . . . are set forth" does not "establish any priority of one standard over the other." Art. III, § 20(c), Fla. Const. The three conjunctive clauses form an "interlocking mandate that determines how districts will be drawn, making them "functionally dependent" on each other. *Emerson*, 312 So. 3d at 461. "Consequently, the Legislature is tasked with balancing the tier-two standards together in order to strike a constitutional result . . . ." *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d at 639.

Clearly, the drafters paid especially close attention to the interaction and organization of the standards and even codified the

relationships between those standards. For example, the drafters elevated the Racial Provisions to tier-one status. In case of conflict, the Racial Provisions take precedence and form an exception to the background principles in Tier Two. To the extent necessary to avoid diminishment or vote dilution, the FDA purports to *compel* the Legislature to depart from the general rule that districts be compact and utilize political and geographical boundaries where feasible. If the Racial Provisions were severed, then these background principles would step into the foreground and apply universally to all districts, improperly "expand[ing] the scope of the [provision's] intended breadth" beyond the amendment's purpose. *State v. Catalano*, 105 So. 3d 1069, 1081 (Fla. 2012) (finding that a statutory provision was not severable because severance "would expand the statute's reach beyond what the Legislature contemplated"). This would defeat the intent of the drafters and voters, who approved the amendment with an understanding that compactness and boundary utilization would *not* restrict the Legislature's ability to create or maintain minority-controlled districts.

When an exception to a general rule is found unconstitutional, courts have declined to sever the exception from the general rule. In

Sloban v. Florida Board of Pharmacy, 982 So. 2d 26 (Fla. 1st DCA 2008), the court considered a statute that declared any revocation of a pharmacist's license permanent, but that created an exception that allowed pharmacists whose licenses had been revoked to reapply for licensure "in some circumstances." *Id.* at 30, 32–33. The court found the exception unconstitutional and refused to sever it from the general rule of permanent revocation. *Id.* at 32–33. It explained that the Legislature had manifested its intent to permit reapplication in some circumstances, and that this exception was not "merely surplusage." *Id.* The court was unconvinced that the Legislature would have passed the permanent-revocation provision without the exception that permitted reapplication "in some instances." *Id.*

Similarly, in *Florida Department of State, Division of Elections v. Martin*, 916 So. 2d 763, 773–74 (Fla. 2005), this Court considered a statute that authorized candidates for public office to withdraw at least 42 days before an election, but authorized election officials to make exceptions and permit candidates to withdraw fewer than 42 days before an election. This Court found the exception unconstitutional and not severable from the general rule, since the Legislature did not intend the 42-day rule to be absolute.

Sloban and *Martin* establish that, when an exception to a general rule is found unconstitutional, courts will not sever the exception and transform the general rule into an absolute rule. To do so would rewrite the law—not preserve it.

The same logic applies here. The drafters and voters established, as a general rule, that districts must be compact and, where feasible, utilize political and geographical boundaries. But that rule was never intended to be absolute; the drafters and voters also created an exception that authorized deviations from these principles in some circumstances. This exception was not merely surplusage. Under *Sloban*, it cannot be said that voters would have approved the general provision that requires compactness and boundary utilization without the exception that allowed departures in some instances.

The drafters and voters intended this combination of standards to be implemented in unison. If one standard is unconstitutional—which the Racial Provisions are—then all standards must fall in their entirety. *See Ray*, 742 So. 2d at 1280 ("The severability analysis answers the question of whether 'the taint of an illegal provision has infected the *entire enactment*, requiring the *whole unit* to fail."

(quoting *Schmitt*, 590 So. 2d at 414) (emphases added)). The Tier One requirements "cannot reasonably be divorced" from each other, *Emerson*, 312 So. 3d at 461, and reflect the FDA's multiple aims in drawing districts.

The FDA's provisions represent a set of rules or standards that operate in combination to produce a redistricting map. The removal of one standard alters the recipe the voters approved. And that is what Petitioners ask this Court to do by severing the Racial Provisions: to remove only one ingredient, change the mix of standards that produces Florida's redistricting maps, and transform the general rule of compactness and boundary utilization—which voters placed in the lower tier of standards—into unyielding, absolute rules. Severance of the Racial Provisions would therefore judicially redesign the machinery the voters approved. Here, the "taint of an illegal provision has infected the entire enactment, requiring the whole unit to fail." *See Ray*, 742 So. 2d at 1280 (quoting *Schmitt*, 590 So. 2d at 414)).

The interaction and mutual dependence of these provisions is unlike the relationship between the valid and invalid provisions in *Ray*. The relevant constitutional text in *Ray* included separate

paragraphs deliberately dividing each elective office into distinct and independent sections. *See* Art. VI, § 4(c), Fla. Const. Term limits could easily be applied to state offices but not federal offices, and the voters clearly would have intended to apply term limits to as many of the offices identified in the amendment as possible.

This case is more like *Emerson*, where voters authorized a surtax and decided how surtax revenue would be distributed. These provisions operated hand in hand, and the Court was unconvinced that voters would have submitted to the surtax without the invalid distribution scheme.

The mere fact that it would be *possible* to implement the remainder of the provisions without the invalid provisions is not sufficient to establish severability. If it were, then the outcome in *Sloban* would have been different. Clearly, it would have been possible to treat all revocations of pharmacist licenses as permanent, even after the court invalidated the exception that authorized reapplication in some circumstances. But the two provisions operated in concert, and the invalidity of the exception rendered the general rule unenforceable too. Petitioners' argument that it would be possible to implement the remainder of the FDA addresses only

the first element of the four-part severability standard articulated in *Ray*.

Like the charter provisions in *Emerson*, the FDA's provisions are structurally, functionally, and linguistically interconnected. Together, they form a reticulated scheme of intertwined standards—an integrated whole. They work together to produce a single product. Invalidation of one provision disrupts the FDA's structure and function in a manner inconsistent with voter expectations.

B. Pre-Enactment Evidence of Voter Intent Opposes Severability.

Records contemporaneous with the FDA's adoption confirm the mutual dependence of its provisions and the importance of the Racial Provisions to the amendment's success at the ballot box.

On April 13, 2010, the Florida NAACP issued a two-page endorsement of the citizen initiative that created the FDA. *See* Pet'rs' App. 2290–91. Written in question-and-answer format, one of the seven questions (Question 6) concerned the interaction of the Racial Provisions and the tier-two standards. *Id.* at 2291. It asked whether the compactness and boundary-utilization standards are "inconsistent with the need to draw black majority districts that are

elongated and irregularly shaped." *Id.* The Florida NAACP conceded that deviations from compactness are often necessary to "provide an effective opportunity" for minority voters and cited three congressional districts as examples. *Id.* But it explained that, because the Racial Provisions take precedence, the compactness and boundary-utilization standards "would not come into play" if compliance with these "problematic standards" would conflict with the protection of minority voters. *Id.* (emphasis in original). The Florida NAACP concluded that "there is nothing to lose" and "urge[d] all of its officers and members to vote for the proposed amendment." *Id.*

For its part, the initiative sponsor touted the Florida NAACP's endorsement at a joint meeting of two legislative committees. *Id.* at 2311. Accompanied by a Florida NAACP representative, the sponsor's campaign chair explained that "leaders of minority communities support" the amendment and that, "after studying [its] benefits," the Florida NAACP "unanimously approved and endorsed" it. *Id.* The sponsor echoed the Florida NAACP's observation that the Racial Provisions interact with and protect minority-controlled districts from the compactness and boundary-utilization standards:

> Another question has been raised about how some of the other standards interact with the provisions for protection of minority voters.
>
> It has been asked whether it would be impossible to draw minority districts while complying with the requirements of compactness and utilization of local boundaries.
>
> The answer is, no. This question ignores the plain wording of the amendments. Protection of minority voters is expressly given priority over these requirements. Compactness and utilization of local boundaries only come into play to the extent that they can without conflicting with the protection of minority voters.

Id. at 2313–14.

In light of this evidence, "it cannot be said that [voters] would have passed" the valid provisions without the invalid provisions. *Ray*, 742 So. 2d at 1281 (quoting *Smith*, 507 So. 2d at 1089). The sponsor touted the support of the Florida NAACP and other leaders of minority communities. The Florida NAACP considered the tier-two standards to be "problematic" but explained that the Racial Provisions will, in case of conflict, shield minority-controlled districts those standards. Pet'rs' App. 2291. With this assurance, it urged its entire membership to vote for the measure. *Id.* The amendment barely cleared the 60-percent threshold required for voter approval,

receiving 62.9 percent of the vote. *See* FLA. DEP'T OF STATE, DIV. OF ELECTIONS, https://results.elections.myflorida.com.

Of course, it is never possible to determine with certainty whether voters would have adopted a measure under hypothetical circumstances. But the Racial Provisions were integral to a critical endorsement precisely because, in their absence, other provisions would have been problematic. The Racial Provisions secured the Florida NAACP's endorsement in support of a measure that barely passed.

C. The Absence of a Severability Clause Opposes Severability.

Finally, the citizen initiative that created the FDA did not contain a severability clause. In *Ray*, the Court emphasized that the term-limits amendment "specifically contained a severability clause, which is persuasive of the fact that the framers intended severability to save the amendment in case portions of it were declared invalid." 742 So. 2d at 1283. Voters therefore had "clear notice of severability" and approved the amendment with that understanding. *Id.*

The absence of a severability clause in the citizen initiative at issue here weighs heavily against severability. With a severability

clause, the drafters could have expressed their preference for severability and alerted voters—and the Florida NAACP—to the possibility that invalidation of one provision might alter the balance and ordering of the FDA's standards. Because the drafters did not include a severability clause, voters were never invited to contemplate a partially operative structure of redistricting standards.

Because the FDA forms an integrated and interlocking plan, its Racial Provisions are not severable, and the remainder of the section is unenforceable.

CONCLUSION

The FDA's express racial classifications treat people of different races differently. They enshrine permanent racial preferences in the Florida Constitution. They compel the Legislature, at each redistricting, to design districts that members of certain races will control. They confer on some voters—based solely on their race—a constitutional entitlement to a district designed to elect candidates whom their racial group supports. And because the Racial Provisions are integral to the FDA's scheme of interrelated standards, Petitioners have not shown that the voters would have approved the FDA without the Racial Provisions. For these reasons, Petitioners

have not carried their burden to establish a substantial likelihood that Respondents will be unable to establish their defenses at the merits stage.

Respectfully submitted,

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I certify that, on June 8, 2026, this response was furnished by email to:

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I certify that this response is filed in Bookman Old Style 14-point font and contains 6,248 words, and therefore complies with the applicable font and word-count limit requirements in Florida Rules of Appellate Procedure 9.045(b) and 9.100(j).

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