Case No. SC22-131

IN THE SUPREME COURT OF FLORIDA

IN RE: JOINT RESOLUTION OF LEGISLATIVE APPORTIONMENT

BRIEF OF THE FLORIDA SENATE SUPPORTING THE VALIDITY OF THE APPORTIONMENT

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INTRODUCTION

On February 3, 2022, the Florida Senate unanimously voted to adopt CS/SJR 100, a joint resolution apportioning the state into 40 senatorial districts and 120 representative districts in accordance with the Florida Constitution. The Senate files this brief supporting the validity of the senatorial districts contained in Section 3 of CS/SJR 100 (the "Senate Plan").

The Senate Plan is valid. Both the Senate Plan as a whole, and every district within the Senate Plan, were drawn to comply with the Florida Constitution's prohibition on intentionally favoring or disfavoring a political party or an incumbent. The Senate Plan and its districts do not diminish or dilute the voting rights of racial or language minorities. The Senate districts consist of contiguous territory and appropriately balance the co-equal constitutional standards of compactness, population equality, and use of existing political and geographical boundaries.

No adversary interests have filed briefs or comments in opposition to the validity of the apportionment. This Court should issue a declaratory judgment, binding on all the citizens of the state, determining the apportionment to be valid.

STATEMENT OF THE CASE AND FACTS

I. THE CASE

On February 9, 2022, Attorney General Moody petitioned this Court for a declaratory judgment determining the validity of the legislative apportionment reflected in CS/SJR 100. Art. III, § 16(c), Fla. Const. The Attorney General's petition included an appendix containing additional information as specified in the Court's January 31 scheduling order.

Under the scheduling order, parties opposing the validity of the apportionment were required to file their briefs or comments by 11:59 p.m. on February 14, 2022. No briefs or comments opposing the validity of the apportionment were filed.

The Senate submits this brief supporting the validity of the senatorial districts.[1]

II. THE FACTS

A. The 2020 Census Data.

The Florida Constitution requires the Legislature to reapportion the state's senatorial and representative districts in the

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[1] The Florida House of Representatives will file a separate brief supporting the validity of the representative districts.

second year following each decennial census. Art. III, § 16(a), Fla. Const. For various reasons, including the COVID-19 pandemic, the Census Bureau's official release of the full redistricting data toolkit to the states was delayed from April 2021 until September 16, 2021.[2] (SA.38).[3]

The census data reflected Florida's substantial growth over the past decade. Florida's statewide population grew by more than 14% over the last decade, from 18,801,310 to 21,538,187. (SA.46). The ideal population for each of Florida's 40 senatorial districts therefore grew at the same rate, from 470,033 to 538,455. *Id.*

The population growth was not evenly distributed, however, as the population of some Senate districts grew substantially, while others decreased in population. For example, the census data showed that Senate District 15 was overpopulated by more than 32% (175,492 people) relative to the ideal population, while Senate District 3 was underpopulated by nearly 10% (52,124 people)

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[2] Florida received redistricting data as "legacy format" summary files (tabular data) on August 12, 2021.
[3] Citations to the Senate Appendix will appear as "(SA.##)." Citations to the Appendix will appear as "(A.##)."

relative to the ideal population. (SA.1136). Notably, nearly every district south of Tampa Bay was underpopulated and would need to gain population.[4] *Id.*

To comply with the one-person, one-vote principle, the existing Senate district lines required substantial revisions.

B. Senators appointed to Senate Committee on Reapportionment, Select Subcommittee on Legislative Reapportionment.

Following receipt of the census data, Senate President Wilton Simpson appointed twelve senators to the Committee on Reapportionment, chaired by Senator Rodrigues. (SA.1019-20). President Simpson also established a Select Subcommittee on Legislative Reapportionment, chaired by Senator Burgess, to work in an advisory capacity to the standing committee. *Id.*

C. Committee on Reapportionment holds meetings to receive information, provide directives to professional staff on the drawing of Senate maps.

The Committee on Reapportionment held three initial meetings during the Legislature's interim committee weeks in late summer

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[4] Notable exceptions were benchmark Senate Districts 27 and 28 in Southwest Florida, each of which was overpopulated relative to the ideal population. *Id.*

and autumn of 2021. During the first two meetings, on September 20 and October 11, the Committee received informational briefings from professional staff and counsel on the census data, the legal requirements governing the redistricting process, and an overview of the information available on the Legislature's joint redistricting website, www.floridaredistricting.gov. (SA.5-122).

The Committee also received information about the Legislature's 2022 web-based redistricting application. (SA.53). The presentation included an explanation of the application's data sources and reporting functions allowing users to analyze a plan or district's compliance with legal standards. (SA.105-22).

The Committee was specifically advised of the application's ability to run a detailed boundary analysis report—a reporting function not available in the Legislature's 2012 redistricting applications. (SA.105-07). The boundary analysis report calculates the coincidence of district boundaries with readily identifiable and easily ascertainable political or geographic boundaries. *Id.*

At its third meeting, on October 18, 2021, the Committee unanimously adopted a series of directives establishing priorities

and standards that would govern the actual drawing of Senate district maps by professional staff. (SA.126, 1024-26).

D. Select Subcommittee on Legislative Reapportionment holds meetings to workshop staff-drawn Senate maps, provide recommendations to Committee on Reapportionment.

The Select Subcommittee on Legislative Reapportionment held three meetings to workshop staff-drawn State Senate maps. The initial four draft maps were released on November 10, for discussion at the Subcommittee meeting on November 17. (SA.1032-33). A second set of four draft maps was released on November 24 for discussion at the Subcommittee meeting on November 29. (SA.1035). At each Subcommittee meeting, Senators were presented information regarding different iterations and approaches for achieving compliance with legal and constitutional standards. (SA.132-170, 218-37). At the conclusion of each Subcommittee meeting, staff were directed to continue to look for improvements and consistency in the application of the various trade-offs presented in the maps. *Id.*

A final set of four draft Senate maps was released on January 5, for discussion at the Subcommittee's meeting on January 10,

2022. (SA.276-331). The maps contained additional iterative improvements to Tier-Two metrics and further ensured consistent application of the Committee Directives. *Id.* Professional staff provided a report demonstrating the iterative improvements in Tier-Two metrics over the course of the three workshops. (SA.298-99).

Following public comment and debate, the Select Subcommittee on Legislative Reapportionment recommended that the Committee consider either plan S8046 or plan S8050 as the substance of an amendment to SJR 100. (SA.1043).

E. Committee on Reapportionment adopts Committee Substitute for SJR 100.

The Senate Committee on Reapportionment held its final meeting on January 13, 2022. The Committee considered SJR 100, a joint resolution providing for the apportionment of the House of Representatives and the Senate. (SA.464-582). Chair Rodrigues offered an amendment incorporating the geographical boundaries contained in plan S8046, which contained slightly higher compactness and boundary-usage scores than plan S8050. *Id.*

The Committee rejected a proposed amendment that would have adopted an earlier, less compact staff-drawn configuration of

the Senate districts located in Duval and Nassau Counties. (SA.583-685, 1007). The Committee adopted an amendment by Chair Rodrigues that would keep five additional cities[5] wholly within a district without reducing the plan's compactness or boundary usage metrics. (SA.686-791, 1007)

After the Committee dispensed with these two amendments, a public random drawing was held to assign an "odd" or "even" status to each Senate district. (SA.905-06). The Committee then adopted a substitute amendment (S8058) assigning new district numbers in accordance with the random drawing. (SA.907-84, 1008).

Following public comment, the Committee favorably reported CS/SJR 100 by a vote of 10-2. (SA.1008).

F. Florida Legislature adopts CS/SJR 100.

The Legislature acted promptly to complete the apportionment process. The full Senate passed CS/SJR 100 on January 20, 2022. Fla. S. Jour. 215 (Reg. Sess. 2022). The House adopted an

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[5] The five cities were Laurel Hill, Holly Hill, Titusville, Winter Haven, and Pembroke Pines, each of which contained a population split involving less than 1000 people in draft S8046. *Compare* SA.311 *with* A.434.

amendment to add the representative districts to the joint resolution, passed CS/SJR 100 (as amended), and immediately certified the resolution to the Senate. Fla. H.R. Jour. 480-530, 543-544 (Reg. Sess. 2022).

The Senate took up CS/SJR 100 for final passage on February 3, 2022 and, without objection, concurred in the House amendment adding the representative districts. Fla. S. Jour. 325 (Reg. Sess. 2022). The Senate then passed CS/SJR 100 by a vote of 37-0. *Id*. The joint resolution was ordered engrossed, enrolled, and was filed with the Secretary of State.

SUMMARY OF ARGUMENT

The Senate Plan is valid. This Court should apply the deferential standard of review historically applied in its review of legislative apportionment, but the Senate Plan would satisfy any standard of review. The Senate's procedures and standards governing the drawing of district lines ensured compliance with all constitutional requirements.

The Senate Plan complies with every constitutional standard governing apportionment, including the standards established in Article III, Section 21. The Senate Plan was not drawn with the

intent to favor or disfavor a political party or incumbent. It does not deny or abridge the equal opportunity of racial or language minorities to participate in the political process, and does not diminish their ability to elect representatives of their choice. The Senate Plan's districts consist of contiguous territory and satisfy the Florida Constitution's population-equality, compactness, and boundary usage standards. The individual Senate districts likewise comply with each of these requirements.

The Senate's methodology for assigning numbers to senatorial districts complies with the Florida Constitution, but this Court should nevertheless recede from precedent holding that Article III, section 21 addresses criteria other than the manner in which "legislative district boundaries" are "drawn."

Because the Senate Plan complies with all constitutional criteria, this Court should issue a declaratory judgment declaring the apportionment to be constitutionally valid. Finally, the Court should reassess its prior precedent and confirm, consistent with the unambiguous language of the Florida Constitution, that the Court's judgment of validity will be "binding upon all the citizens of the state."

ARGUMENT

I. A DEFERENTIAL STANDARD OF REVIEW APPLIES TO THIS COURT'S JUDICIAL REVIEW OF LEGISLATIVE APPORTIONMENT.

When reviewing a joint resolution of apportionment, this Court historically applied the deferential standard of review that applies to other types of legislation. Under this standard, legislative enactments are "presumed constitutional" and a challenging party has the burden to establish invalidity "beyond a reasonable doubt." *Fla. Dep't of Health v. Florigrown, LLC*, 317 So.3d 1101, 1111 (Fla. 2021).

This Court applied the presumption of constitutionality in its first decision reviewing the validity of a legislative apportionment under Article III, Section 16. *See In re Apportionment Law Sen. Jt. Res. No. 1305, 1972 Reg. Sess.* ("*In re Apportionment—1972*"), 263 So.2d 797) (Fla. 1972). There, the Court acknowledged that the redistricting process is "primarily a matter for legislative consideration and determination." *Id.* at 799-800; *see also id.* at 805-806 (stating that legislative enactment should not be declared unconstitutional "'unless it clearly appears beyond all reasonable doubt that, under any rational view that may be taken of the

statute, it is in positive conflict with some identified or designated provision of constitutional law'" (quoting *City of Jacksonville v. Bowden*, 64 So. 769, 772 (Fla. 1914))).

During the last redistricting cycle, this Court confirmed that the adoption of additional substantive requirements in Article III, section 21, did not remove "the initial presumption of validity" applied by this Court. *In re Sen. Jt. Res. of Leg. Apportionment 1176* ("*Apportionment I*"), 83 So.3d 597, 606 (Fla. 2012). The majority opinion in *Apportionment I* stated that the Court would "defer to the Legislature's decision to draw a district in a certain way, so long as that decision does not violate the constitutional requirements." *Id.* at 608. Finally, the *Apportionment I* decision acknowledged that the Court's duty "'is not to select the best plan, but rather to decide whether the one adopted by the legislature is valid.'" *Id.* (quoting *In re Sen. Jt. Res. 2G, Special Apportionment Sess. 1992* ("*In re Apportionment—1992*"), 597 So.2d 276, 285 (Fla. 1992)).

Notwithstanding these statements professing deference, *Apportionment I* diverged from the Court's precedent as to the application of the "beyond a reasonable doubt standard." *See Apportionment I*, 83 So.3d at 607-10 (concluding prior standard of

review was "ill-suited" for the Court's review of apportionment following the adoption of new substantive standards in Article III, Section 21, and advances in "technology").

The dissent disagreed with the majority's treatment of the standard of review. *Id.* at 695-96 (Canady, C.J., concurring in part and dissenting in part). Concluding that the majority "effectively abrogate[d]" the Court's precedents on deference, the dissent offers a thorough defense of the court's historical justification for the rule of deference based upon justiciability and separation-of-powers concerns. *Id.* at 696-99. The Court's failure to apply the proper standard of review, in the dissenting justices' view, "creates the risk of having our decisions adjudicating the validity of redistricting plans decline into a species of 'it-is-so-because-we-say-so jurisprudence.'" *Id.* at 699 (quoting *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 552 (1989) (Blackmun, J., concurring in part and dissenting in part)).

Although the Senate Plan is valid under *any* standard of review, the Senate respectfully requests that this Court recede from *Apportionment I* and restore the traditional standard of review that this Court applied in reviewing legislative apportionment during the

prior four decades. The dissent in *Apportionment I* is more faithful to the text and precedent governing the constitutional review process and accurately determined that it was "unwarranted to conclude that section 21 implicitly altered the structure or nature of the existing constitutional review process." 83 So.3d at 696.

While this Court has "acknowledged the importance of *stare decisis*, it has [also] been willing to correct its mistakes." *State v. Poole*, 297 So.3d 487, 506 (Fla. 2020). The approach to *stare decisis* is "straightforward":

> In a case where we are bound by a higher legal authority—whether it be a constitutional provision, a statute, or a decision of the Supreme Court—our job is to apply that law correctly to the case before us. When we are convinced that a precedent clearly conflicts with the law we are sworn to uphold, precedent normally must yield.

Id.; *see also Puryear v. State*, 810 So.2d 901, 905 (Fla. 2002) ("The doctrine of stare decisis bends . . . where there has been an error in legal analysis."). After the Court has "chosen to reassess a precedent" and has concluded "that it is clearly erroneous, the proper question becomes whether there is a valid reason *why not* to recede from that precedent." *Poole*, 297 So.3d at 507.

At that point, "[t]he critical consideration ordinarily will be reliance." *Id.* Reliance interests are "at their acme in cases involving property and contract rights" and "lowest in cases . . . involving procedural and evidentiary rules." *Id.* (quoting *Payne v. Tennessee*, 501 U.S. 808, 828 (1991)) (internal quotation marks omitted); *see also Alleyne v. United States*, 570 U.S. 99, 119 (2013) (Sotomayor, J., concurring) ("[W]hen procedural rules are at issue that do not govern primary conduct and do not implicate the reliance interests of private parties, the force of *stare decisis* is reduced.").

The interpretation of a constitutional provision arguably ranks even lower than procedural and evidentiary rules. *See*, *e.g.*, *Vieth v. Jubelirer*, 541 U.S. 267, 305 (2004) (receding from precedent in redistricting case involving "an interpretation of the Constitution" because "the claims of *stare decisis* are at their weakest in that field, where our mistakes cannot be corrected by Congress.").

This case presents none of the traditional factors cited as justifications for adherence to erroneous precedent. The Court's statement of the standard of review in apportionment cases does not involve property or contract rights, does not govern "primary conduct," and does not implicate the sort of reliance interests that

stare decisis is intended to protect. *See id.* at 306 (receding from precedent and noting, with respect to reliance interests, that it "is hard to imagine how any action taken in reliance upon [case law governing standards of constitutional interpretation] could conceivably be frustrated—except the bringing of lawsuits, which is not the sort of primary conduct that is relevant."). Instead, the precedent at issue here addresses matters of procedure and constitutional interpretation—both matters where reliance interests and the claims of *stare decisis* are at their weakest.

This Court should recede from *Apportionment I* to the extent that decision itself departed from longstanding precedent on the deferential standard to be applied in the review of legislative apportionment under Article III, section 16.

II. THE SENATE'S PROCEDURES AND STANDARDS FOR DRAWING THE SENATE PLAN ENSURED COMPLIANCE WITH ALL CONSTITUTIONAL REQUIREMENTS.

Mindful of the circumstances that led to the invalidation of senatorial and congressional districts during the last redistricting cycle, the Senate adopted procedures and standards early in its process to guard against a similar result. An explanation of the Senate's procedures and standards follows to assist the Court in

evaluating the validity of the final product of the redistricting process—the joint resolution.

On October 18, 2021, the Senate Committee on Reapportionment unanimously adopted a series of directives (the "Committee Directives") establishing priorities that would govern the actual drawing of district lines by the Committee's professional staff. (SA.126). The Committee Directives were published in a memorandum from Chair Rodrigues to Staff Director Jay Ferrin. (SA.1024-26). As described below, the Committee Directives instructed the map drawers to comply with applicable provisions of state and federal law and existing judicial precedent. *Id.*

A. Procedures and Standards Ensuring Compliance with Tier-One Requirements.

The Tier-One standards, *see* Art. III, § 21(a), Fla. Const., prohibit intentional political discrimination, protect racial and language minorities from vote dilution and retrogression, and require contiguity.

1. Intent to favor or disfavor a political party or an incumbent.

The Tier-One standard prohibiting intentional political discrimination provides that "[n]o apportionment plan or district

shall be drawn with the intent to favor or disfavor a political party or an incumbent." *Id.*

To comply with this standard, the Committee Directives instructed professional staff to draw districts "without reviewing political data other than where a review of political data is required to perform an appropriate functional analysis to evaluate whether a minority group has the ability to elect representatives of choice." (SA.1024-26). The Committee Directives also instructed professional staff to "draw districts without the use of any residence information of any sitting member of the Florida Legislature or Congress and to draw districts without regard to the preservation of existing district boundaries." *Id.*

The Committee took other steps to guard against improper political influence on the apportionment process. The map drawers were instructed that if they received "any suggestion that a plan be drafted or changed with the intent to favor or disfavor any incumbent or political party," they were to "disregard the suggestion entirely, document the conversation in writing, and report the conversation directly to the Senate President." *Id.*

The Committee on Reapportionment also strengthened disclosure and transparency requirements for members of the public. Any person wishing to submit comments, suggestions, or proposed maps through the Legislature's redistricting website was required to complete a Redistricting Suggestion Form identifying every person who collaborated on the submission and any compensation received from organizations interested in redistricting. (SA.1134-35).

Finally, public submissions were not to be reviewed or considered by the Senate's map drawers unless a senator requested in writing that a submission be incorporated into a plan. (SA.1029). These procedures were intended to protect against the imputation of an external map drawer's undisclosed intent.

2. Constitutional protections for racial and language minorities.

The Tier-One standard protecting the interests of racial and language minorities states "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." Art. III, § 21(a), Fla. Const.

To comply with this standard, the Committee Directives instructed the Senate's professional staff to conduct a functional analysis where appropriate to confirm that any map submitted for consideration complies with the Florida Constitution's Tier-One standards and the federal Voting Rights Act. (SA.1024-26). Each staff-drawn map submitted for consideration included a report of the objective statistical data necessary to verify the results of a functional analysis under this Court's precedent. *See*, *e.g.*, A.435-38.

Because the non-diminishment requirement is measured against the performance of districts in the benchmark[6] plan, the map drawers ensured that the proposed maps would not eliminate "majority-minority districts"[7] or weaken other "historically

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[6] In redistricting, a "benchmark" plan is a jurisdiction's existing plan against which a newly created plan is measured to assess diminishment in the rights of racial or language minorities to elect representatives of their choice. *See*, *e.g.*, *Apportionment I*, 83 So.3d at 624 (citing *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 478 (1997)).

[7] A "majority-minority" district is one "'in which a majority of the population is a member of a specific minority group.'" *Apportionment I*, 83 So.2d at 622 (quoting *Voinovich v. Quilter*, 507 U.S. 146, 149 (1993)).

performing minority districts" where doing so would "*actually diminish* a minority group's ability to elect its preferred candidates." *Apportionment I*, 83 So.3d at 625 (emphasis added).

After ensuring non-diminishment compared to the benchmark districts, the map drawers verified compliance with the Florida's Constitution's prohibition against vote dilution. Specifically, the Senate evaluated whether "a minority group was denied a majority-minority district that, but for the purported dilution, could have potentially existed." *Apportionment I*, 83 So.3d at 622 (citing *Thornburg v. Gingles*, 478 U.S. 30 (1986)).

Finally, the Senate accounted for federal Fourteenth Amendment precedent governing the consideration of racial information in redistricting by emphasizing a high degree of compliance with the Florida Constitution's Tier-Two standards of compactness, population equality, and consistent usage of political and geographical boundaries, even as to districts entitled to Tier-One protections for racial and language minority groups. (SA.1024-26). The Senate's procedures and standards were therefore designed to ensure not only compliance with the Florida Constitution's protections for racial and language minorities, but to do so without

subordinating traditional redistricting criteria to predominant racial considerations in violation of federal precedent.

B. Procedures and Standards Ensuring Compliance with Tier-Two Requirements.

The Tier-Two standards, *see* Art. III, § 21(b), Fla. Const., require districts to be compact, use existing political and geographical boundaries where feasible, and be as nearly equal in population as practicable. No Tier-Two standard has constitutional priority over another, *id.* at § 21(c), but "[s]trict adherence to these standards must yield" if they conflict with the Tier-One standards or federal law. *Apportionment I*, 83 So.3d at 628. Balancing the competing Tier-Two standards and the relative weight assigned to each is a matter of legislative discretion.

1. *"Districts shall be as nearly equal in population as is practicable."*

The Tier-Two standard regarding population equality requires districts to be "as nearly equal in population as is practicable." Art. III, § 21(b), Fla. Const.

To comply with this standard, the Committee Directives instructed professional staff to prepare Senate plans "with district population deviations not to exceed 1% of the ideal population of

538,455 people." (SA.1024-26)). Each staff-drawn map submitted for consideration complied with this directive, as reflected in the statistical reports reflecting the population of each Senate district and its deviation from the ideal district population. The population in each district deviates from the ideal population by less than 5,385 people (1%); the overall plan deviation is less than 2%. (A.432).

2. Districts shall be compact.

Another Tier-Two standard requires districts to be "compact." Art. III, § 21(b), Fla. Const. To comply with this standard, the Committee Directives instructed professional staff to draw districts that are visually compact in relation to their shape and geography, and to use mathematical compactness scores where appropriate (SA.1024-26)); *see also* (SA.108-10) (committee presentation on mathematical compactness measures).

Each staff-drawn map submitted for consideration complied with this Committee Directive. The statistical reports provided with each staff-drawn map included three recognized mathematical measurements of compactness used by this Court: Convex Hull, Polsby-Popper, and Reock. (A.432).

3. Districts shall, where feasible, utilize existing political and geographical boundaries.

A third Tier-Two standard requires districts to "where feasible, utilize existing political and geographical boundaries." Art. III, § 21(b), Fla. Const.

The Committee Directives instructed professional staff to examine the use of county boundaries as a primary political boundary and to explore concepts that, where feasible, would result in districts consisting of whole counties (in less populated areas) and that keep districts wholly within a county (in more densely populated areas). (SA.1024-26). Although the map drawers were also asked to explore concepts that kept cities whole, municipal boundaries were relatively deemphasized as a priority in comparison to other political and geographical boundaries in recognition of the "impermanent and changing nature of municipal boundaries." *Id.*; *see also* (SA.105-07, 119-122) (committee presentations on boundary analysis, municipal boundaries).

With respect to geographical boundaries, the Committee Directives instructed professional staff to examine the use of "easily

recognizable and readily ascertainable" boundaries consistent with this Court's precedent: railways, interstates, federal and state highways, and large water bodies. (SA.1024-26). The Committee Directives noted that these geographical features provide an opportunity to create districts with "static boundaries." *Id.*

Each staff-drawn map submitted for consideration complied with this directive. The statistical reports provided with each staff-drawn map provided a "boundary analysis report" directly measuring the degree to which each district's boundaries coincide with the political and geographical boundaries recognized by this Court's precedent. (A.432). The final column in the boundary analysis report (labeled "Non-Pol/Geo") displays the percentage of the corresponding district's boundary that *does not* coincide with existing political or geographical boundaries. A Non-Pol/Geo score of 0% for a given district therefore reflects that 100% of that district's boundaries consist of qualifying political or geographical boundaries: city or county boundaries, interstates, federal or state

highways, contiguous water bodies greater than ten acres, or railways.[8]

The statistical reports provided with each staff-drawn map also included a count of the overall number of county and city splits, to the extent those statistics bear on the boundary-usage standard. (A.432).

III. THE SENATE PLAN COMPLIES WITH ALL CONSTITUTIONAL STANDARDS FOR ESTABLISHING LEGISLATIVE DISTRICT BOUNDARIES.

The Senate Plan as a whole is valid and complies with all constitutional standards. The validity of the Senate Plan is confirmed by a review of the plan itself and an analysis of the objective statistics this Court considered in *Apportionment I* and *In re Senate Joint Resolution of Legislative Apportionment 2-B* ("*Apportionment II*"), 89 So.3d 872 (Fla. 2012).

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[8] The "Non-Pol/Geo" score is most relevant when reviewing a district's compliance with the constitution's boundary-usage standard because it avoids the potential for "double-counting" of separate political and geographical boundaries that coincide with one another. For example, the same portion of the southern boundary of Senate District 1 is both the county boundary of Escambia County *and* waters contiguous with the Gulf of Mexico (a qualifying water boundary). (A.431)

A. The Senate Plan Complies with the Tier-One Standards.

The Florida Constitution provides that "[n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and 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; and districts shall consist of contiguous territory." Art. III, § 21(a), Fla. Const. The Senate Plan complies with these Tier-One standards.

1. *The Senate Plan was not drawn with the intent to favor or disfavor a political party or an incumbent.*

Consistent with Article III, Section 21(a), the Senate Plan was not drawn with the intent to favor or disfavor a political party or an incumbent. The Senate's procedures ensured that every district line in the Senate Plan was drawn by professional staff insulated from improper political considerations. The Senate Plan's exacting compliance with the Tier-Two standards further confirms the absence of any objective indicia of improper intent to favor or disfavor a political party or an incumbent.

The record before this Court reflects that every district line in CS/SJR 100 was drawn by professional staff under the standards in the Committee Directives. The staff-drawn maps were explained at length in three public meetings of the Select Subcommittee on Legislative Apportionment and at the final meeting of the Committee on Reapportionment. The draft maps reflected continual iterative improvements over the course of the legislative process, with no "back-sliding" in their objectively measurable statistics that might suggest improper intent.

The Senate Plan's strict compliance with the Tier-Two standards contradicts any suggestion of improper intent. The districts are visually and mathematically compact, with minimal population deviations, and an extraordinarily high usage of existing political and geographical boundaries. *Cf. Apportionment I*, 83 So.3d at 640 ("[A] disregard for the constitutional requirements set forth in tier two is indicative of improper intent, which Florida prohibits by absolute terms."). In short, the Senate Plan bears no "objective indicia of improper intent." *Id.* at 644.

Finally, the after-the-fact evidence is also contrary to any suggestion of improper intent to favor or disfavor an incumbent.

The Senate's map drawers did not consider any member's residence information when drawing district lines, but news outlets have subsequently reported that the Senate Plan draws multiple incumbent Senators (of both political parties) into districts with one another.[9] The Senate Plan therefore contrasts sharply with the plan invalidated by this Court in *Apportionment I*, which did not pit *any* incumbents against one another. 83 So.3d at 654.

Before the first staff-drawn maps were released, Senate leadership of both political parties released a memorandum asking all senators to set aside personal and political ambitions in the interest of "fulfilling our responsibility to pass constitutional maps." (SA.1031). The Senate Plan before this Court demonstrates compliance with that responsibility.

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[9] *See, e.g.*, Jacob Ogles, *Tour Florida and See Where the Boundary Lines Shifted on State Legislative Maps*, Florida Politics, (Feb. 8, 2022) (*available at*: https://floridapolitics.com/archives/493770-tour-florida-and-see-where-boundary-lines-shifted-on-state-legislative-maps/).

2. The Senate Plan does not violate the Florida Constitution's protections for racial and language minorities.

The Senate Plan was not 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." Art. III, § 21(a), Fla. Const. The two clauses of this provision parallel Sections 2 and 5 of the federal Voting Rights Act by proscribing, respectively: 1) impermissible vote dilution; and 2) impermissible diminishment (or "retrogression") in the ability of racial or language minorities to elect representatives of their choice. *Apportionment I*, 83 So.3d at 619-620. The Senate Plan protects against both vote dilution and retrogression consistent with the Florida Constitution.

a. The Senate Plan does not dilute the voting strength of racial or language minorities.

The requirement 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" prohibits "impermissible vote dilution." *Id.* at 619-23. A vote-dilution claim involves "'the manipulation of district lines' by either fragmenting the minority voters among several districts where a

bloc-voting majority can routinely outvote them or 'packing' them into one or a small number of districts to minimize their influence in adjacent districts." *Id.* at 622 (quoting *Voinovich* 507 U.S. at 153-54). The Senate Plan engages in neither of these practices.

In *Apportionment I*, this Court noted the three "necessary preconditions" a plaintiff must demonstrate to establish that a legislative district must be redrawn to comply with Section 2 of the Voting Rights Act. *Id.* An individual challenging a plan must show that 1) a minority population is "sufficiently large and geographically compact to constitute a majority in a single-member district"; 2) the minority population is "politically cohesive"; and 3) the majority population "votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.* (quoting *Gingles*, 478 U.S. at 50-51). "When the three *Gingles* preconditions are met, courts must then assess the totality of the circumstances to determine if the Section 2 'effects' test is met—that is, if minority voters' political power is truly diluted." *Id.* (citing *Johnson v. De*

Grandy, 512 U.S. 997, 1013 (1994)).[10]

A successful vote-dilution claim "requires a showing that a minority group was denied a majority-minority district that, but for the purported dilution, could have potentially existed." *Apportionment I*, 83 So.3d at 622. In other words, a plaintiff must show that racial or language minorities could have constituted a majority in *an additional* compact district. *De Grandy*, 512 U.S. at 1008-09.

The Senate Plan does not violate the constitutional prohibition against vote dilution. Minority populations are neither "packed" into a single district nor "cracked" across adjacent districts in a manner that would prevent the creation of an additional performing majority-minority district. The Senate Plan contains one district

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[10] In *Apportionment I*, 83 So.3d at 667, this Court appeared to make findings of voting cohesion for purposes of Article III, section 21 through its own review of voter registration and elections data. The Senate notes that *Gingles*, by its own terms, identifies factors that a *plaintiff* challenging a plan under Section 2 must establish, not obligations on a legislative body considering legislation. *Cf. Ala. Leg. Black Caucus v. Alabama*, 231 F.Supp.3d 1026, 1033 (M.D. Ala. 2017) (three-judge court) ("[T]he Supreme Court does not require that the legislature conduct studies. It instead requires only that the legislature had a strong basis in evidence for its use of race.").

with a Black Voting Age Population ("BVAP")[11] exceeding 50%[12], and no "super-majority district requiring the Legislature to 'unpack' it." *Apportionment I*, 83 So.3d at 645.[13] As discussed below with respect to non-diminishment, the Senate Plan also contains four additional districts in different regions of the state with substantial Black voting strength[14] in which a functional analysis of political and elections data confirms that Black voters have the ability to elect candidates of their choice.

The Senate Plan contains five districts with a Hispanic Voting Age Population ("HVAP") exceeding 50% (Districts 25, 36, 38, 39, and 40)—one more than the four Hispanic majority-minority districts in the benchmark plan. (A.432, 440). The relatively high percentage of Hispanic voters in three of these five districts

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[11] For redistricting purposes, Florida aggregates multi-racial population according to Section II of OMB Bulletin No. 00-002 – Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement. (A.386).
[12] District 34, at 50.07% BVAP. (A.432).
[13] The benchmark plan, like the Senate Plan, also included one Senate district with a BVAP exceeding 50% (District 33, at 50.90% BVAP). (A.440).
[14] District 5 (41.62% BVAP), District 15 (37.48% BVAP), District 16 (33.20% BVAP), and District 32 (46.15% BVAP).

(Districts 36, 39, and 40, *see* A.432) is best explained by "the fact that the Hispanic population in Miami-Dade County, where these districts are located, is densely populated," *Apportionment I*, 83 So.3d at 645, and is similar to the benchmark plan. (A.440).

b. The Senate Plan does not diminish the ability of racial or language minorities to elect representatives of their choice.

The requirement that districts not be drawn "to diminish [racial or language minorities'] ability to elect representatives of their choice" prohibits impermissible "retrogression" in the position of racial or language minorities with respect to their effective exercise of the franchise. *Apportionment I*, 83 So.3d at 623-27. The existing Senate plan serves as the "benchmark" against which the effect of voting changes is measured. *Id.* at 624.

Under Florida's non-diminishment standard, the Legislature cannot eliminate "majority-minority districts" or weaken other "historically performing minority districts" where doing so would "*actually diminish* a minority group's ability to elect its preferred candidates." *Id.* at 625. (emphasis added). "A slight change in percentage of a minority group's population in a given district does not necessarily have cognizable effect on a minority group's ability

to elect its preferred candidate of choice." *Id.* Rather, an evaluation of retrogression requires a "functional analysis"—an inquiry into whether a district is "likely to perform for minority candidates of choice" that considers not only population data, but political and voting data. *Id.*

This Court in *Apportionment I* specifically identified the statistical data it would review to evaluate the non-diminishment requirement: 1) voting-age populations; 2) voter-registration data; 3) voter registration of actual voters (*i.e.*, voter turnout information); and 4) election results history. *Id.* at 626-27 (citing DOJ Guidance Notice, 76 Fed. Reg. at 7471, for data relevant to a functional analysis of electoral behavior under Section 5 of the federal Voting Rights Act).

The Senate has conducted a functional analysis of appropriate districts and has confirmed that they do not diminish the rights of racial or language minorities to elect representatives of their choice as compared to corresponding districts in the benchmark plan. The statistical data on population demographics and election results allowing for a functional analysis in the manner conducted by this Court in *Apportionment I* and *Apportionment II* are integrated into

the Legislature's redistricting application and were formatted for presentation with each iteration of the staff-drawn Senate maps. *See* A.435-38 (Senate Plan); A.443-46 (benchmark plan). The data points available in the map-drawing application to allow users to conduct a functional analysis include voter registration, voter turnout, and election results for the 2012 through 2020 primary and general elections. (A.435-38); *see also* (SA.111-18) (committee presentation on data points available in Legislature's map-drawing application).

The benchmark plan contained five districts (Senate Districts 6, 11, 19, 33, and 35) that were either Black majority-minority districts or "historically performing minority districts" protected against diminishment in the ability of Black voters to elect representatives of their choice. *Apportionment I*, 83 So.3d at 625. The Senate's functional analysis confirms that Districts 5, 15, 16, 32, and 34 in the Senate Plan do not diminish the ability to elect of Black voters as compared to the corresponding benchmark districts.

The benchmark plan contained five districts (Senate Districts 15, 36, 37, 39, and 40) that were either Hispanic majority-minority

districts or "historically performing minority districts" protected against diminishment in the ability of Hispanic voters to elect representatives of their choice. *Apportionment I*, 83 So.3d at 625. The Senate's functional analysis confirms that Districts 25, 36, 38, 39, and 40 in the Senate Plan do not diminish the ability to elect of Hispanic voters as compared to the corresponding benchmark districts.

Finally, the Senate complied with the Florida Constitution's protections for racial and language minority voters consistent with the federal Constitution's limitations on "racial gerrymanders" in legislative districting plans. *See*, *e.g.*, *Cooper v. Harris*, 137 S.Ct 1455, 1463-64 (2017) (noting that equal protection clause prevents a state, in the absence of "sufficient justification," from "separating its citizens into different voting districts on the basis of race.") (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 137 S.Ct. 788, 797 (2017)) (internal quotation marks omitted).

To that end, the Senate Plan was drawn without "subordinat[ing]" other factors (such as compactness, use of existing political and geographical boundaries, and respect for

political subdivisions) to "racial considerations." *Cooper*, 137 S.Ct. at 1463-64.

The record demonstrates the Senate districts protected against diminishment under Tier-One were drawn in a Tier-Two compliant manner, with quantitative measures of compactness and boundary-usage comparable to other districts in the Senate Plan. (A.432). Notwithstanding its Tier-Two compliant configuration of the districts in question, the Senate has also presumed—consistent with Supreme Court precedent as to the federal Voting Rights Act—that compliance with the Florida Constitution's analogous protections for racial and language minorities represents a "compelling interest" justifying the consideration of race. *Id.* at 1464. The statistical data on population demographics and election results, along with this Court's decisions in the last redistricting cycle interpreting Article III, section 21, provide a "strong basis in evidence" for the Senate's conclusions regarding the manner in which it must comply with the Florida Constitution's protections for racial and language minorities. *Cooper*, 137 S.Ct. at 1464.

3. The Senate Plan satisfies the contiguity standard.

The Senate Plan's districts "consist of contiguous territory" as required by the Florida Constitution. Art. III, § 21(a), Fla. Const. This Court has defined "contiguous" as "being in actual contact: touching along a boundary or at a point." *Apportionment I*, 83 So.3d at 628 (internal quotations omitted). A district lacks contiguity when a part is "'isolated from the rest of the territory of another district" or when the lands "mutually touch only at a common corner or right angle." *In re Constitutionality of House Jt. Res. 1987* ("*In re Apportionment—2002*"), 817 So.2d 819, 827 (Fla. 2002).

Every district in the Senate Plan consists of contiguous territory. (A.431).

B. The Senate Plan Complies with the Tier-Two Standards.

The Florida Constitution provides that "districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries." Art. III, § 21(b), Fla. Const. Strict adherence to the Tier-Two standards "must yield if there is a conflict between compliance with them and the tier-one standards." *Apportionment I*, 83 So.3d at 628.

The Senate Plan appropriately balances the co-equal Tier-Two standards of population equality, compactness, and boundary usage.

1. The Senate Plan satisfies the population-equality standard.

The Senate Plan complies with the Florida's Constitution's requirement that districts be "as nearly equal in population as is practicable." Art. III, § 21(b), Fla. Const. The population-equality standard does not require "strict and unbending adherence" or "mathematical precision." *Apportionment I*, 83 So.3d at 629-30. This Court has recognized, consistent with Supreme Court precedent, that there are "legitimate reasons for states to deviate from creating districts with perfectly equal populations, including maintaining the integrity of political subdivisions and providing compact and contiguous districts." *Id.* at 630. The requirement that districts be as nearly equal in population "as is practicable" recognizes that the population-equality standard must yield to the Tier-One standards, and may be balanced by the Legislature with the co-equal Tier-Two standards. *Id.*

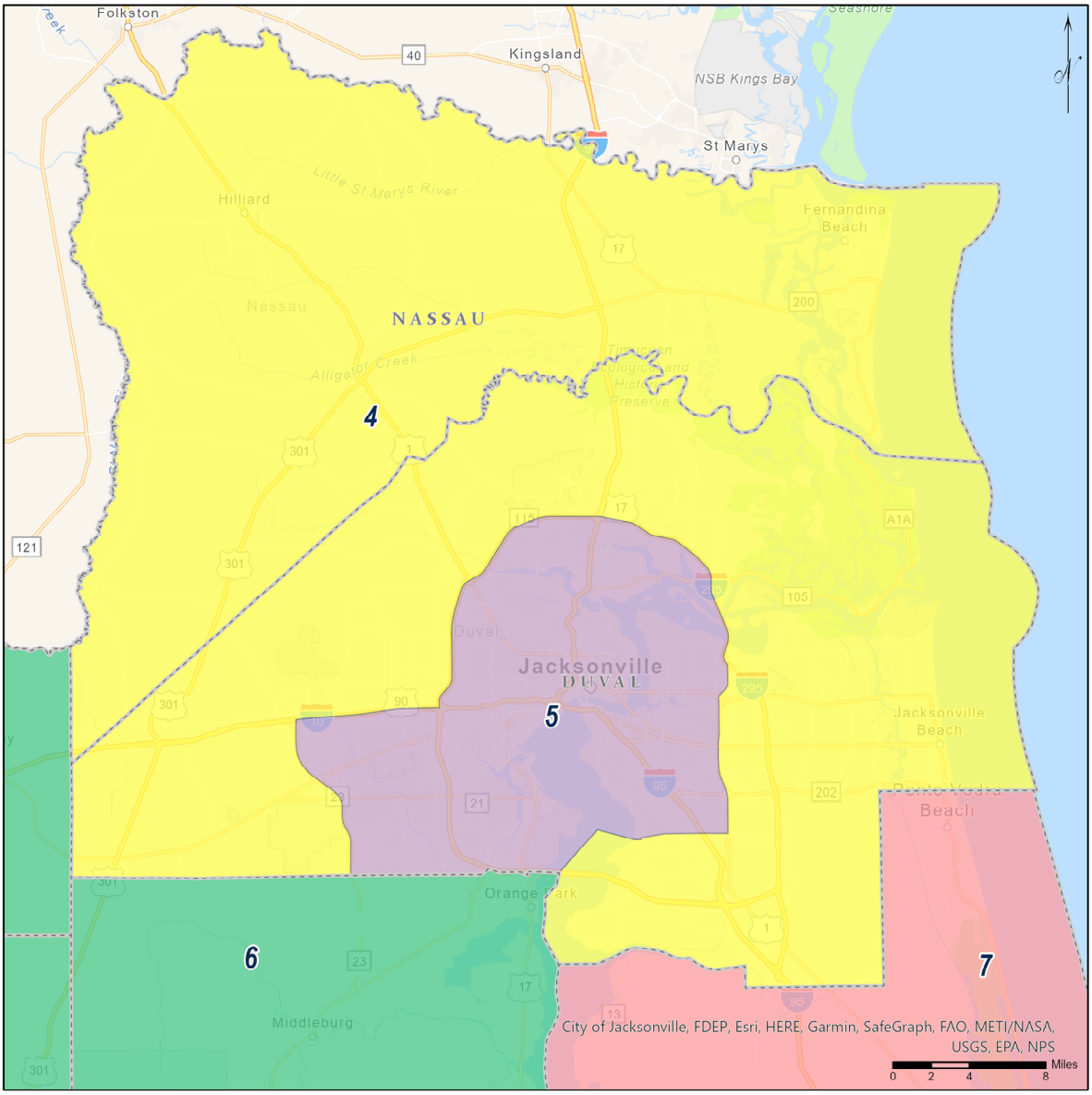
The Senate Plan satisfies the population-equality standard. The ideal population for each of Florida's 40 Senate districts is

538,455. (SA.46). No Senate district deviates by more than 1% (5,385 people) from the ideal population, with an overall deviation from the smallest to largest district of 1.92%. *Id*. The Senate Plan's overall deviation is "well under the 10% deviation that the Supreme Court and this Court have recognized as constitutionally valid." *In re Apportionment—2002*, 817 So.2d at 827. Indeed, the Senate Plan's total deviation of 1.92% is roughly half the total deviation of 3.97% in the 2012 House Plan that this Court approved in *Apportionment I*. *See* 83 So.3d at 646.

Minor deviations from the ideal district population also allowed the Senate to achieve other valid objectives identified in the Committee Directives, such as increased use of static political and geographical boundaries and respect for county boundaries. *See id.* at 630 (noting that population equality requirement should be "balanced with both compactness and the use of political and geographical boundaries").

The deviations above the ideal population in Districts 4 and 5, for example, allow those two districts alone to be contained entirely within Nassau and Duval Counties (which, combined, have a total

population roughly 9,000 people above the ideal population of two Senate districts). (A.432).



(A.431). Both Districts 4 and 5 also use existing political and graphical boundaries for 100% of their respective district boundaries. *Id.*

2. The Senate Plan satisfies the compactness standard.

The Senate Plan complies with the Florida Constitution's requirement that districts be "compact." Art. III, § 21(b), Fla. Const. This term refers to the "shape of a district" and can be evaluated "both visually and by employing standard mathematical measurements." *Apportionment I*, 83 So.3d at 636. A visual review for compactness seeks to ensure that districts do not have "an unusual shape, a bizarre design, or an unnecessary appendage unless it is necessary to comply with some other requirement." *Id.* at 634. An "oddly shaped district" may nevertheless be justified after close examination if the district's configuration is a result of Florida's "irregular geometry" or efforts to keep counties or municipalities intact. *Id.* at 635-36.

Quantitative geometric measurements of compactness may also be used to evaluate compactness. This Court has used three common compactness measurements: 1) the Reock method, which "measures the ratio between the area of the district and the area of the smallest circle that can fit around the district"; 2) the Convex Hull method, which "measures the ratio between the area of the district and the area of the minimum convex bounding polygon that

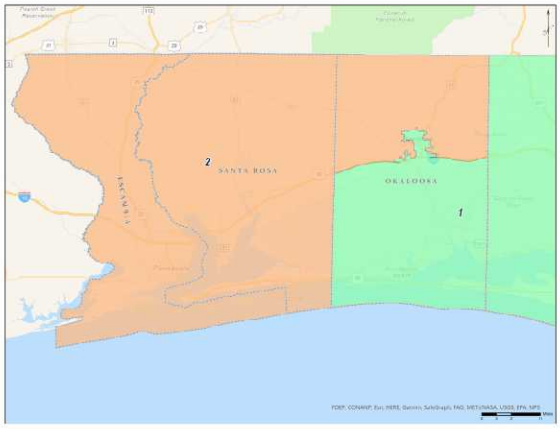
can enclose the district"; and 3) the Polsby-Popper method, which "measures the ratio between the area of the district and the area of the circle with the same perimeter as the district (the isoperimetric circle)." *League of Women Voters of Fla. v. Detzner*, 179 So.3d 258, 283 n.6-8 (Fla. 2015) ("*Apportionment VIII*"). The Committee on Reapportionment reviewed materials regarding the strengths and weaknesses of each of these quantitative compactness measures. (SA.108-110).

The Senate Plan is both visually and mathematically compact. A visual review reveals no districts with an "unusual shape, a bizarre design, or an unnecessary appendage." *Apportionment I*, 83 So.3d at 634. Consistent with the Committee Directives, the Senate Plan emphasizes the use of county boundaries and static geographical boundaries such as railways, interstates, federal and state highways, and large water bodies. (SA.1024-26). The Senate districts are visually appealing, with smooth, easily recognizable and visually compact district boundaries.

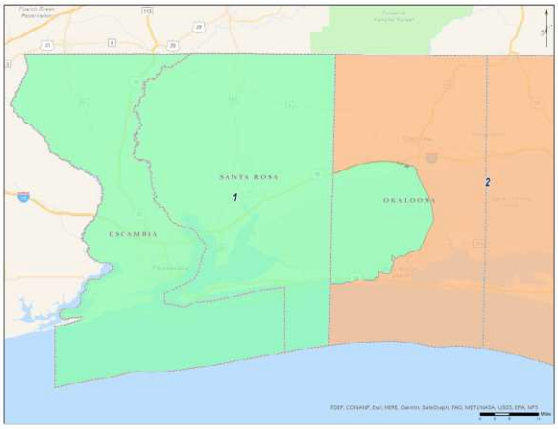
Consider the following visual comparisons of Northwest Florida, Northeast Florida, the I-4 Corridor, and Southeast Florida under the Senate plan approved in *Apportionment II* (SJR 2-B); the

court-imposed benchmark Senate plan from 2015, and the 2022 Senate Plan:

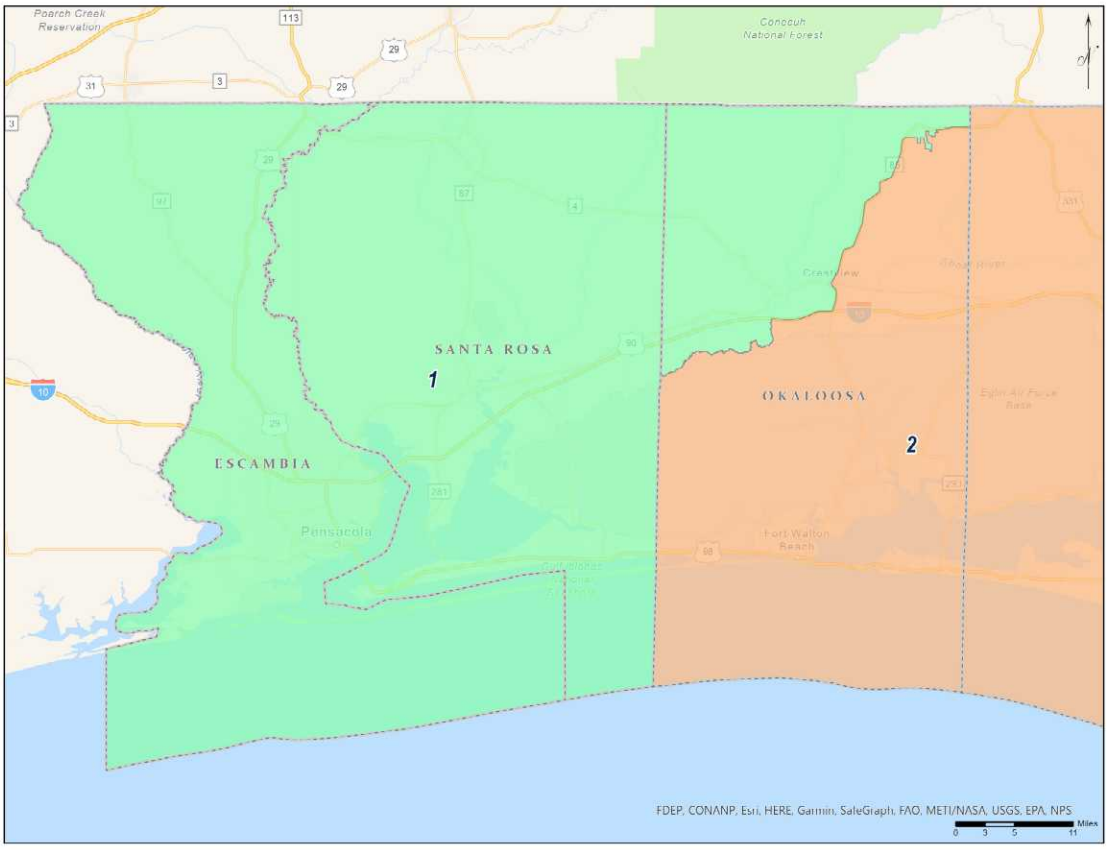
Northwest Florida



SJR 2-B
(approved in *Apportionment II*)

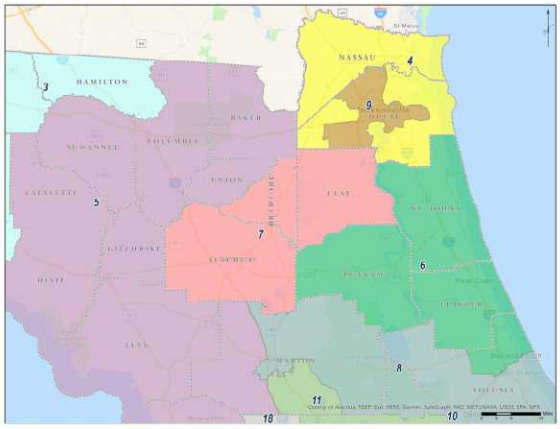


Benchmark Senate Plan (2015)

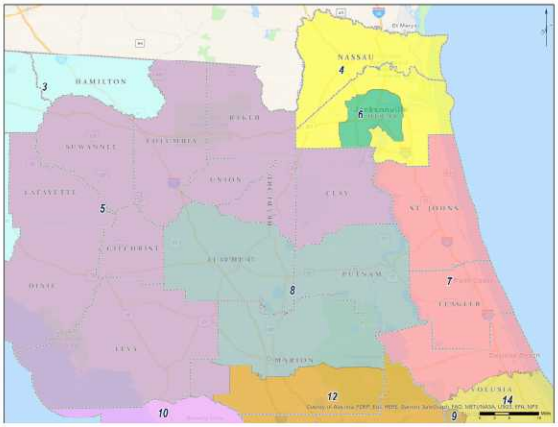


Senate Plan (2022)

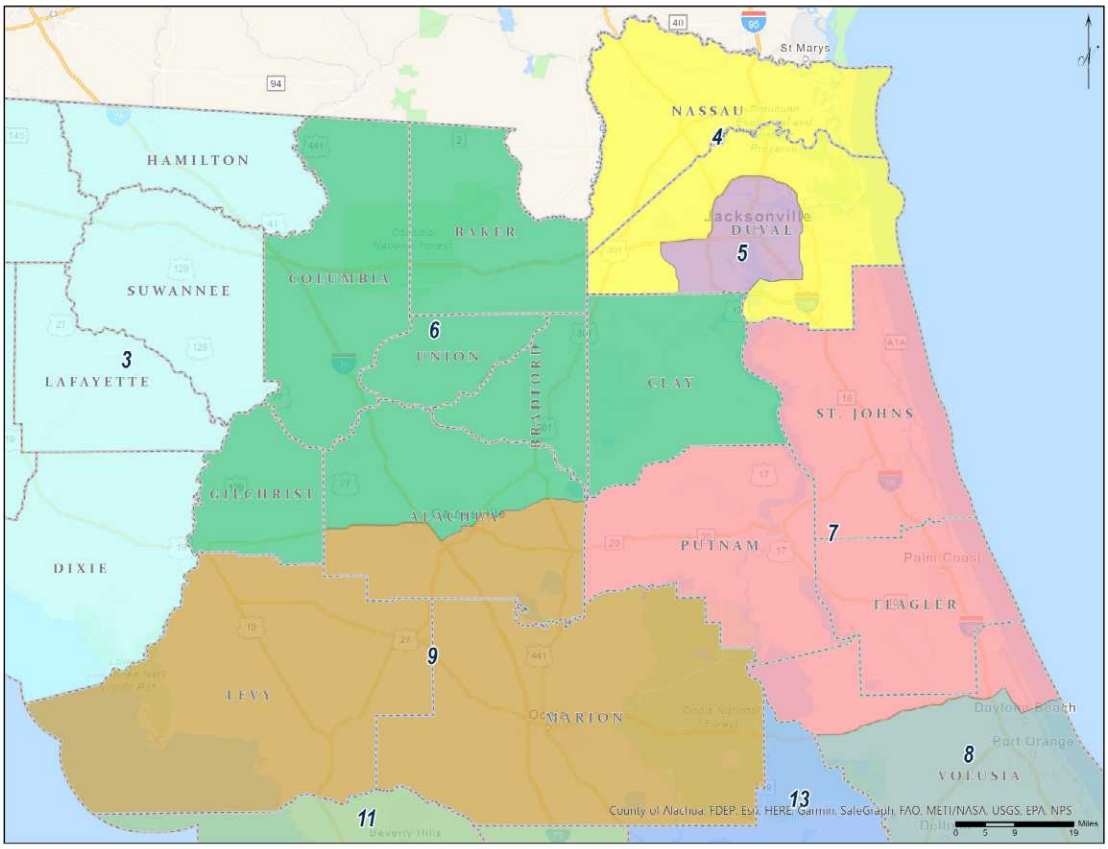
Northeast Florida



SJR 2-B
(approved in *Apportionment II*)

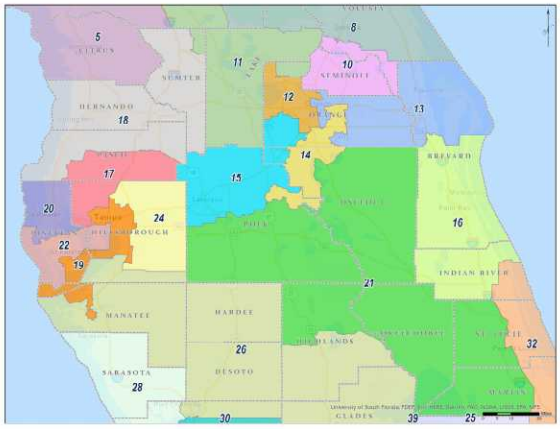


Benchmark Senate Plan (2015)

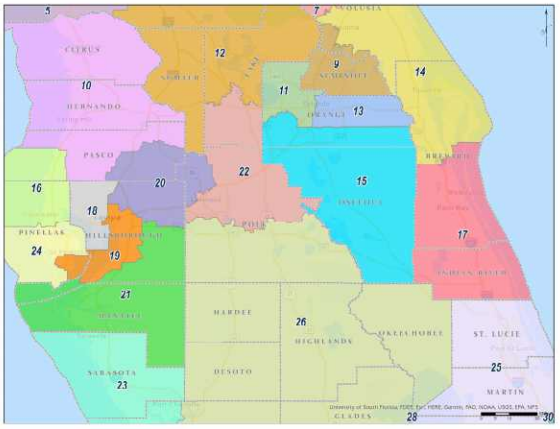


Senate Plan (2022)

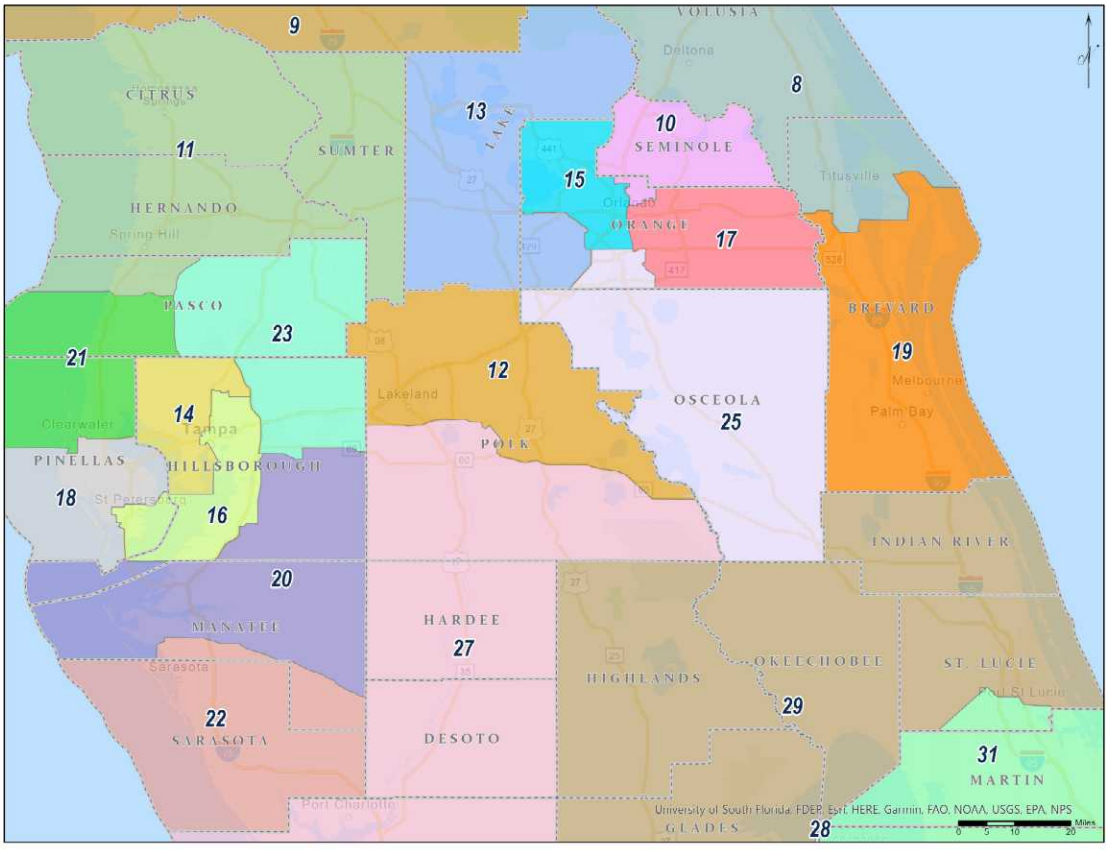
I-4 Corridor



SJR 2-B
(approved in *Apportionment II*)

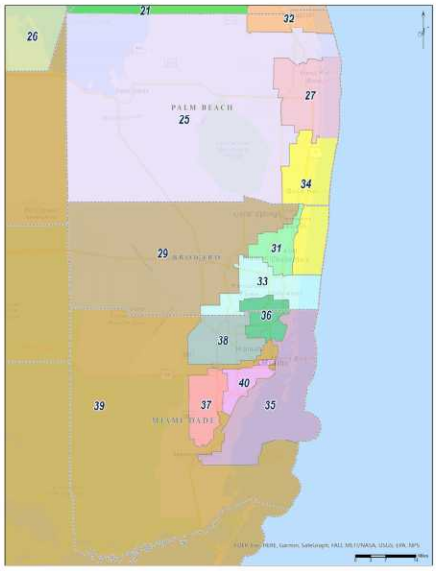


Benchmark Senate Plan (2015)

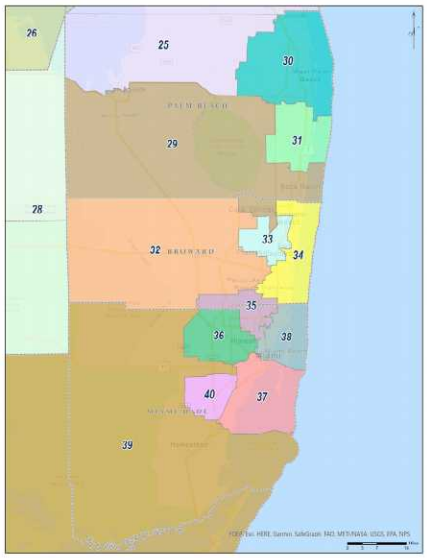


Senate Plan (2022)

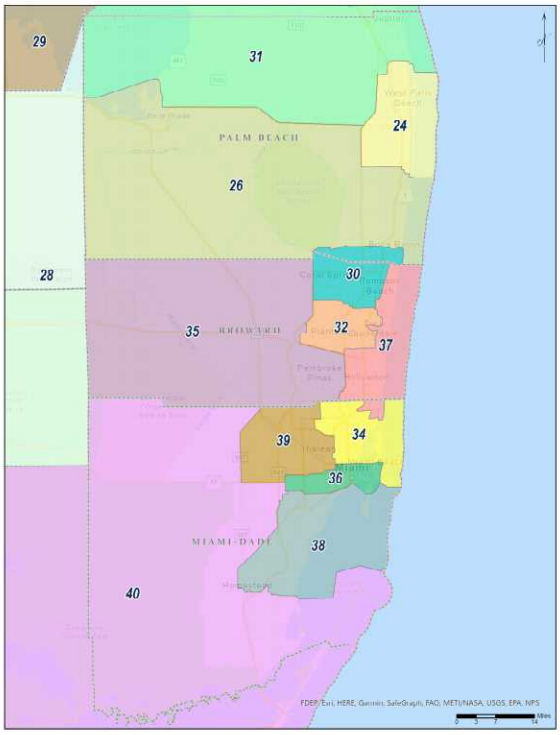
Southeast Florida



SJR 2-B
(approved in *Apportionment II*)



Benchmark Senate Plan (2015)



Senate Plan (2022)

Numerous mathematical measurements of compactness also confirm that the Senate Plan is compact. A comparison of average compactness scores demonstrates that the Senate Plan is not only superior to the court-imposed benchmark Senate plan, but also to the revised Senate plan that this Court approved in *Apportionment II* (SJR 2-B) and the benchmark House plan that this Court approved in *Apportionment I*:

Plan	**Compactness Measurement**		
	Convex Hull	Polsby-Popper	Reock
Senate Plan (2022)	0.82	0.46	0.46
Benchmark Senate Plan (2015)	0.81	0.41	0.50
SJR 2-B (approved in *Apportionment II)* (2012)	0.76	0.34	0.40
Benchmark House Plan (2012)	0.80	0.43	0.43

(A.432, 440, 475). The Senate does not suggest that an increase in quantitative compactness over the benchmark plan is necessary for a valid apportionment. The Florida Constitution does not require districts to "achieve the highest mathematical compactness scores." *Apportionment I*, 83 So.3d at 635. Instead, the favorable comparison

in quantitative compactness confirms what is apparent from a visual inspection: the districts in the Senate Plan are compact.

3. The Senate Plan satisfies the boundary-usage standard.

The Senate Plan complies with the Florida Constitution's requirement that districts "shall, where feasible, utilize existing political and geographical boundaries." Art. III, § 21(b), Fla. Const. In *Apportionment I*, this Court stated that the term "political boundaries" refers primarily to county and municipal boundaries, while "geographical boundaries" refers to boundaries that are "easily ascertainable and commonly understood" such as "rivers, railways, interstates, and state roads" rather than a "creek" or "minor residential road." 83 So.3d at 637-38, 656.

The majority opinion in *Apportionment I* also imposed a requirement for "consistent" boundary usage and disapproved district lines that used "different types of boundaries within the span of a few miles." *Id.* at 656.[15]

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[15] *But see id.* at 699 (Canady, C.J., concurring in part and dissenting in part) (noting that the majority opinion "imposes a requirement to use 'consistent' boundaries . . . that is nowhere to be found in the text of section 21 and that cannot reasonably be implied from the text").

The Senate complied with the *Apportionment I* Court's interpretation of "political and geographical boundaries" and used those features, where feasible, in drawing district boundaries.

a. The Senate Plan's boundary-analysis report confirms a very high use of existing political and geographical boundaries.

The boundary analysis report produced by the Legislature's redistricting application illustrates that the Senate Plan uses existing political and geographical boundaries for a large proportion of its district boundaries:

Political and Geographic Boundaries:					
City	County	Road	Water	Rail	Non-Pol/Geo
15%	59%	24%	38%	2%	4%

Senate Plan (2022)

(A.432). The average Non-Pol/Geo score of 4% for the Senate Plan means that, on average, *96% of a Senate district's boundaries* coincide with features identified by the U.S. Census Bureau's geographic layers as city boundaries; county boundaries; interstates, U.S. highways, or state roads; contiguous water bodies

larger than 10 acres; or railroads. *Id.* Fourteen districts have a Non-Pol/Geo score of 0%, meaning that *100% of their district boundaries* consist of qualifying political and geographical boundaries. (A.432). All but three districts use qualifying political and geographical boundaries for at least *90% of their district boundaries*. (A.432).

The boundary analysis report for the Senate Plan also shows substantial quantitative improvements in boundary usage over the benchmark Senate Plan:

Political and Geographic Boundaries:					
City	County	Road	Water	Rail	Non-Pol/Geo
22%	53%	17%	37%	1%	11%

Benchmark Senate Plan (2015)

(A.440). The benchmark plan's average Non-Pol/Geo score of 11% is almost three times higher than the Senate Plan's score, which shows that the benchmark plan's district boundaries use far fewer qualifying political and geographical boundaries. The benchmark Senate plan has only one district (District 3) that uses existing political and geographical boundaries for 100% of its district boundaries, in comparison to the *fourteen* such districts in the

Senate Plan. (A.432, 440). Only 23 districts in the benchmark Senate plan use qualifying boundaries for at least 90% of their district boundaries; the Senate Plan has 37 districts with at least this level of boundary usage. *Id.*

b. The enumeration of county and municipal "splits" does not necessarily measure compliance with the boundary-usage standard, but the Senate Plan nevertheless scores highly on this metric.

As described above, the Committee Directives that guided the Senate's map-drawing process prioritized the consistent use of static political and geographical boundaries such as county lines, major roads, water bodies, and railways. (SA.1024-26). As compared to these boundary types, the Senate placed a lower emphasis on the use of municipal boundaries, which are often irregular in shape and are subject to frequent changes. *Id.*

The City of Largo, for example, changed its city boundaries 364 times between January 1, 2010, and December 31, 2019—and another 31 times from January 1, 2020, through August 31, 2021. (SA.1131). The municipal boundary itself is composed of 75 parts and includes 59 "holes":

Largo

Id. The City of Apopka in Orange County, with a population of 54,873, has a municipal boundary so irregular that its perimeter is greater than that of 28 of the 40 districts in the Senate Plan:

Apopka

(SA.1127; A.432).[16]

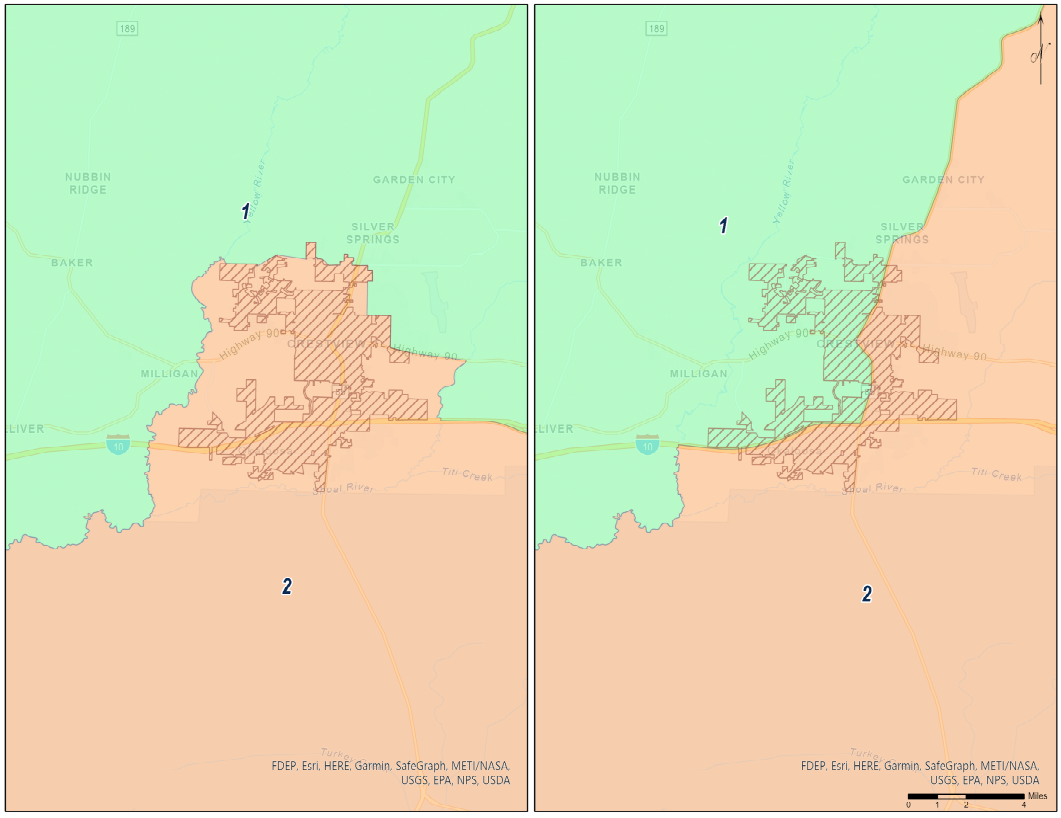
[16] The Senate Appendix includes other illustrative examples of Florida's irregular municipal boundaries. (SA.1127-33).

At times, this Court's precedents from the last decade appeared to characterize the number of counties or cities "split" in a redistricting plan as a measurement of compliance with an independent Tier-Two standard. *See*, *e.g.*, *Apportionment VIII*, 179 So.3d at 292 (describing a reduction in municipal splits as an improvement in "tier-two compliance"). The Senate views the count of counties and municipalities kept "whole" within a plan as, at best, an imperfect proxy for the constitutional requirement that districts use "existing political and geographical boundaries" where feasible. Art. III, § 21(b), Fla. Const.

While keeping counties or municipalities whole (or minimizing "splits") may be a constitutionally permitted objective, that statistic alone does not directly measure a plan's compliance with the boundary-usage standard. For example, Washington County is contained entirely within District 2 in both the Senate Plan and the benchmark Senate plan; the City of Tallahassee is contained entirely within District 3 in both the Senate Plan and the benchmark Senate plan. (A.431, 439). But the district boundaries of Districts 2 and 3 do not coincide at any point with the boundaries of Washington County or Tallahassee. The fact that Washington

County and Tallahassee are kept whole and not "split" in the Senate Plan says little about the use of existing political and geographical boundaries by these districts.

Consider also two staff-drawn alternative configurations of the boundary between Senate Districts 1 and 2 that were presented to the Select Subcommittee on Legislative Reapportionment:



(SA.281). The configuration on the left keeps the City of Crestview "whole" by following a part of its municipal boundary. The configuration on the right has a district boundary that follows Interstate 10 and State Road 85 through this part of Okaloosa

County, resulting in the "split" of Crestview. *Both* of these configurations use existing political and geographical boundaries, and a decision to prioritize static boundaries such as interstate highways and state roads over irregular and impermanent municipal boundaries[17] does not render a plan "less compliant" with the boundary-usage standard.

Notwithstanding the Senate's relative prioritization of static boundaries, statistical reports show the Senate Plan keeps a large number of counties and municipalities whole:

District lines and City and County Boundaries in Senate Plan (2022)	
Number of Counties	67
Counties with only one district	51
Districts with only one county	16
Counties split into more than one district	16
Counties with all population in a single district	51
Aggregate number of county splits	48
Aggregate number of splits with population	48
Number of Cities	412
Cities with only one district	364
Cities split into more than one district	48
Cities with all population in only one district	373
Aggregate number of city splits	103
Aggregate number of splits with population	94

[17] Crestview, with a 2020 census population of 27,134, had 36 municipal boundary changes from January 1, 2010, through August 31, 2021. (SA.1129)

(A.432). Consistent with the Committee Directives, the Senate Plan keeps 51 counties wholly within a district—one more than in the benchmark Senate plan. (A.432, 440). The Senate Plan contains 364 cities whose *municipal lines* fall wholly within a district, and 373 cities whose *population* falls wholly within a single district.[18] The benchmark Senate plan contains 357 cities whose municipal lines fall wholly within a district (seven fewer than in the Senate Plan), and 373 cities kept whole by population. (A.440).

The Senate Plan complies with the Tier-Two boundary-usage standard. To the extent *Apportionment I* imposes "consistent" boundary-usage requirements beyond the constitutional text, *see id.* at 638 (accepting county and city boundaries, rivers, railways, interstate, and state roads; rejecting creeks, minor roads, and other "well-traveled roadways"), this Court should recede from that decision for the reasons cogently expressed in the dissenting

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[18] The population-based measurement is more relevant under this Court's precedent, which has disregarded unpopulated splits. *See Apportionment VIII*, 179 So.3d at 294 n. 14 ("Since District 16 includes no population from Hillsborough County, it is not considered to include part of the county for the purpose of counting splits.").

opinion. *Id*. at 699. No reliance interests justify this extra-textual restriction on legislative discretion in the use of political and geographical boundaries when drawing districts.

C. The Senate's assignment of numbers to senatorial districts complies with the Florida Constitution.

The Florida Constitution requires Senate districts to be "consecutively numbered." Art. III, § 16(a), Fla. Const. Senators are elected for four-year terms, with those from odd-numbered districts elected in years that are multiples of four and those from even-numbered districts elected in even-numbered years that are not multiples of four. Art. III, § 15(a), Fla. Const. All Senate districts are on the ballot in the first election following a reapportionment, with senators elected from odd-numbered districts in 2022 serving a two-year term "to maintain staggered terms." *Id*. In some circumstances, this truncated two-year term following a reapportionment may allow a senator to serve for a total of ten—rather than eight—consecutive years. *Apportionment I*, 83 So.3d at 660.

In *Apportionment I*, this Court held that "the Legislature is prohibited from numbering the districts with the intent to favor or

disfavor an incumbent." *Id.* at 659. Reasoning that the numbers assigned to Senate districts are "part of the 'apportionment plan,'" *id.*, the Court found the "numbering scheme" in the 2012 Senate plan invalid because it allowed certain incumbents to serve longer than they would otherwise have been eligible to serve. *Id.* at 662. The Court ordered the Legislature to "renumber the districts in an incumbent-neutral manner." *Id.* at 686.[19]

The partial dissent in *Apportionment I* contested the majority's conclusion that the numbering of Senate districts fell within the constitution's limitations on the Legislature's power to "establish[] legislative district boundaries." 83 So.3d at 700 (Canady, C.J., concurring in part and dissenting in part). As a textual matter, the dissent noted that "[t]he prohibition on action to 'favor or disfavor . .

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[19] During the 2012 Extraordinary Apportionment Session, the Senate complied with the Court's direction by conducting "a bingo-style drawing complete with ping-pong balls and serious questions about their gravitational integrity"; "heated debate" over "Senate Lotto"; and concern from one Senator that "the drawing constituted illegal gambling." Matt Dixon, *With Help from Ping-Pong Balls, Florida Senate Map OK'd*, Fla. Times Union, Mar. 22, 2012. (*available at*: https://www.jacksonville.com/story/news/politics/2012/03/22/help-ping-pong-balls-florida-senate-map-okd/15871944007/)

. an incumbent' applies only to the manner in which district lines are 'drawn.'" *Id.* (quoting Art. III, § 21(a), Fla. Const.). The dissent concluded that the majority had "stretch[ed] the text of section 21 to reach legislative decisions that are not within the scope of section 21." *Id.*

During its 2022 reapportionment process, the Senate complied with this Court's existing precedent by assigning district numbers in an incumbent-neutral manner. During the final meeting of the Committee on Reapportionment, the results of a random drawing were used to assign "even" or "odd" numbers to each Senate district. (SA.905-06, 999, 1041, 1045). The Committee then adopted an amendment to renumber the districts in accordance with the random drawing. *Id.*

Notwithstanding its compliance with the majority opinion's holding in *Apportionment I* when adopting the Senate Plan, the Senate respectfully submits that the analysis of the dissenting opinion in that case is more faithful to the language of the Florida Constitution. The constitution's plain language prohibits the Legislature from intentionally favoring or disfavoring incumbents "[i]n establishing legislative district boundaries" and in the manner

in which an apportionment plan or district is "drawn." Art. III, § 21, Fla. Const. Even accepting the proposition that an incumbent Senator may stand to gain or lose from the assignment of an "even" or "odd" district number, the assignment of a district number plainly does not involve the "draw[ing]" of "legislative district boundaries." *Id.* The Senate therefore asks the Court to recede from *Apportionment I* to the extent it holds that the assignment of district numbers is subject to this Court's review for validity under Article III, section 21(a), of the Florida Constitution.

As noted earlier, "[t]he doctrine of stare decisis bends . . . where there has been an error in legal analysis." *Puryear*, 810 So.2d at 905. When this Court has chosen to reassess a precedent and has concluded that it is clearly erroneous, "the proper question becomes whether there is a valid reason *why not* to recede from that precedent." *Poole*, 297 So.3d at 507. "The critical consideration ordinarily will be reliance." *Id.*

As to the assignment of district numbers, the type of reliance interests ordinarily cited as a justification for retaining erroneous precedent are nearly nonexistent. The holding in *Apportionment I* involving the review of Senate district numbers does not involve

property or contract rights, does not govern primary conduct, and does not implicate the reliance interests of private parties. *Id.* The Court has good reason to address this matter now, during this proceeding, to "restore[] discretion" that *Apportionment I* "wrongly took from the political branches" on the assignment of district numbers for the redistricting cycle following the next decennial census. *Poole*, 297 So.3d at 507.

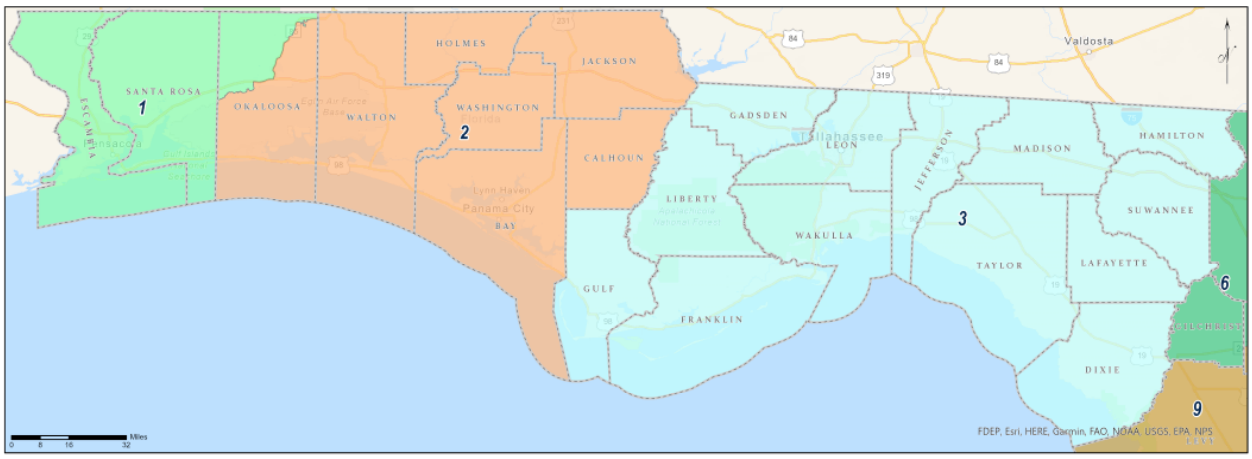
IV. THE SENATE DISTRICTS COMPLY WITH ALL CONSTITUTIONAL STANDARDS FOR ESTABLISHING LEGISLATIVE DISTRICT BOUNDARIES.

The Senate Plan also satisfies all constitutional standards for the drawing of legislative district boundaries on a district-by-district basis. The following district-specific arguments are supplemental to the plan-wide arguments discussed above, which apply equally to each individual district unless otherwise noted.

No Senate district was drawn with the intent to favor or disfavor a political party or an incumbent. Art. III(a), § 21, Fla. Const. No district was 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. *Id.* All districts consist of

contiguous territory. *Id.* Finally, all districts satisfy the Florida Constitution's population-equality, compactness, and boundary-usage standards. *Id.*

A. Florida Panhandle (Senate Districts 1-3).

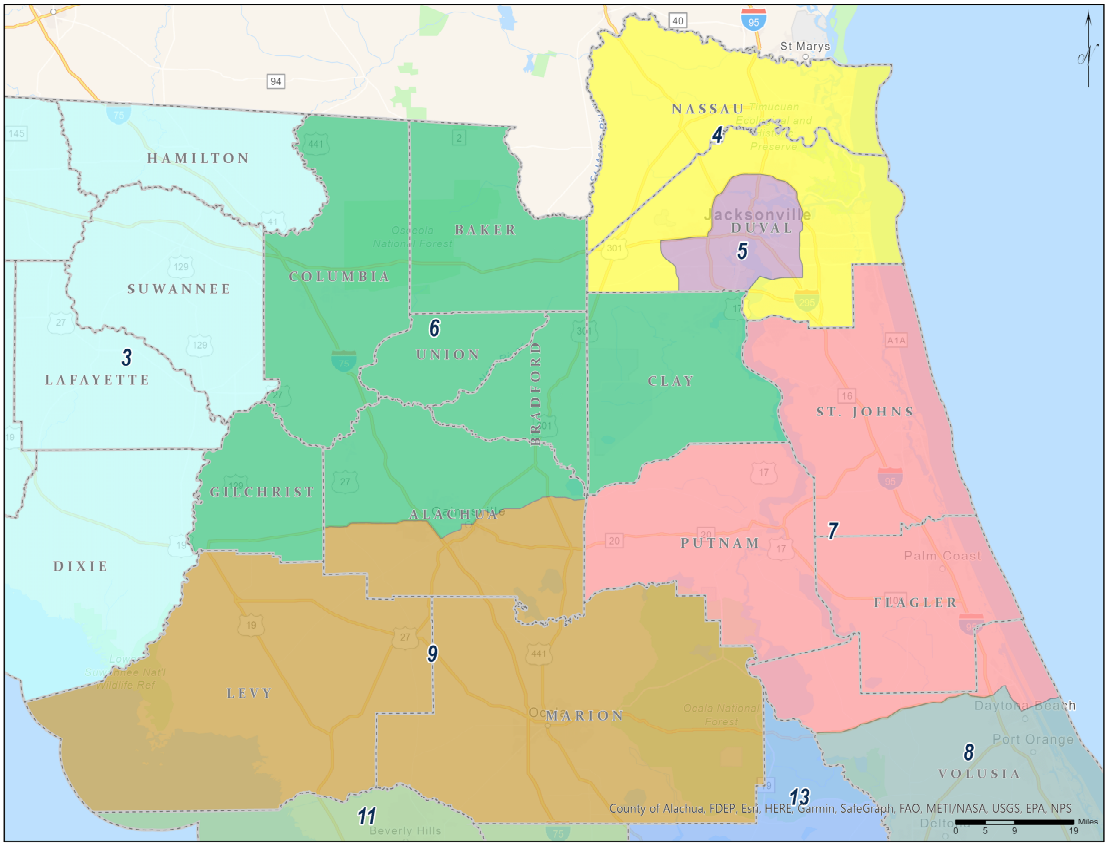


The Senate Plan's districts in the Florida Panhandle satisfy the Florida Constitution's standards for establishing legislative district boundaries.

The configuration of Districts 1 and 2 is fully contained within Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Calhoun, and Jackson Counties. District 3 consists of all of Gadsden, Liberty, Gulf, Leon, Wakulla, Franklin, Jefferson, Madison, Taylor, Hamilton, Suwannee, Lafayette, and Dixie Counties in their entirety.

Consistent with the Committee Directives, the districts in the Florida Panhandle largely consist of whole county groupings. (A.431-32). Each of these districts also achieves the highest possible boundary-analysis score for use of existing political and geographical boundaries. The "easily ascertainable and commonly understood" political and geographical boundaries coinciding with 100% of the district boundaries are described in the Senate Appendix. (SA.1046-1225).

B. Big Bend and Northeast Florida (Senate Districts 4, 5, 6, 7, and 9).



The Senate Plan's districts in the Big Bend and Northeast Florida satisfy the Florida Constitution's standards for establishing legislative district boundaries.

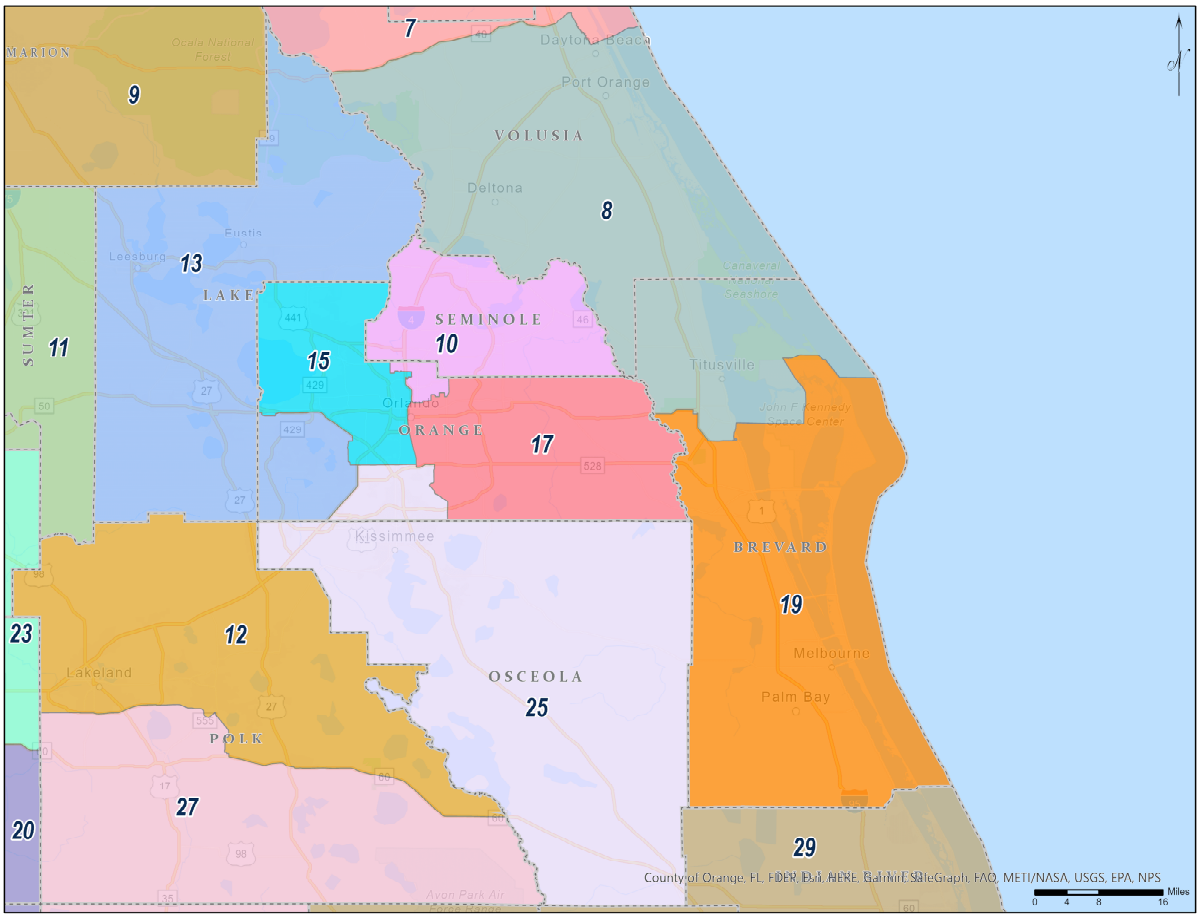
The configuration of Districts 6 and 9 is fully contained within Columbia, Baker, Union, Bradford, Clay, Gilchrist, Alachua, Levy, and Marion Counties. Districts 4 and 5 are fully contained within Nassau and Duval Counties. District 7 consists of all of St. Johns, Putnam, and Flagler Counties, and part of northern Volusia County.

Consistent with the Committee Directives, the districts in the Big Bend and Northeast Florida largely consist of whole county groupings. (A.431-32). Each of these districts also achieves the highest possible boundary-analysis score for use of existing political and geographical boundaries. The "easily ascertainable and commonly understood" political and geographical boundaries coinciding with 100% of the district boundaries are described in the Senate Appendix. (SA.1046-1225).

District 5 is a "historically performing minority district," *Apportionment I*, 83 So.3d at 625, that is protected against diminishment in the ability of Black voters to elect representatives

of their choice. A functional analysis of the statistical data that this Court analyzed in *Apportionment I* confirms that District 5 does not diminish the ability to elect as compared to its predecessor district, District 6 in the benchmark Senate plan. (A.435-38, 443-46).

C. Central Florida and Space Coast (Senate Districts 8, 10, 12, 13, 15, 17, 19, 25).



The Senate Plan's districts in Central Florida and the Space Coast satisfy the Florida Constitution's standards for establishing legislative district boundaries.

District 12 is fully contained within Polk County. Districts 15 and 17 are fully contained in Orange County. District 10 consists of all of Seminole County and part of Orange County. District 13 consists of all of Lake County and part of Orange County. District 25 consists of all of Osceola County and part of Orange County. The configuration of Districts 8 and 19 is fully contained within Volusia and Brevard Counties.

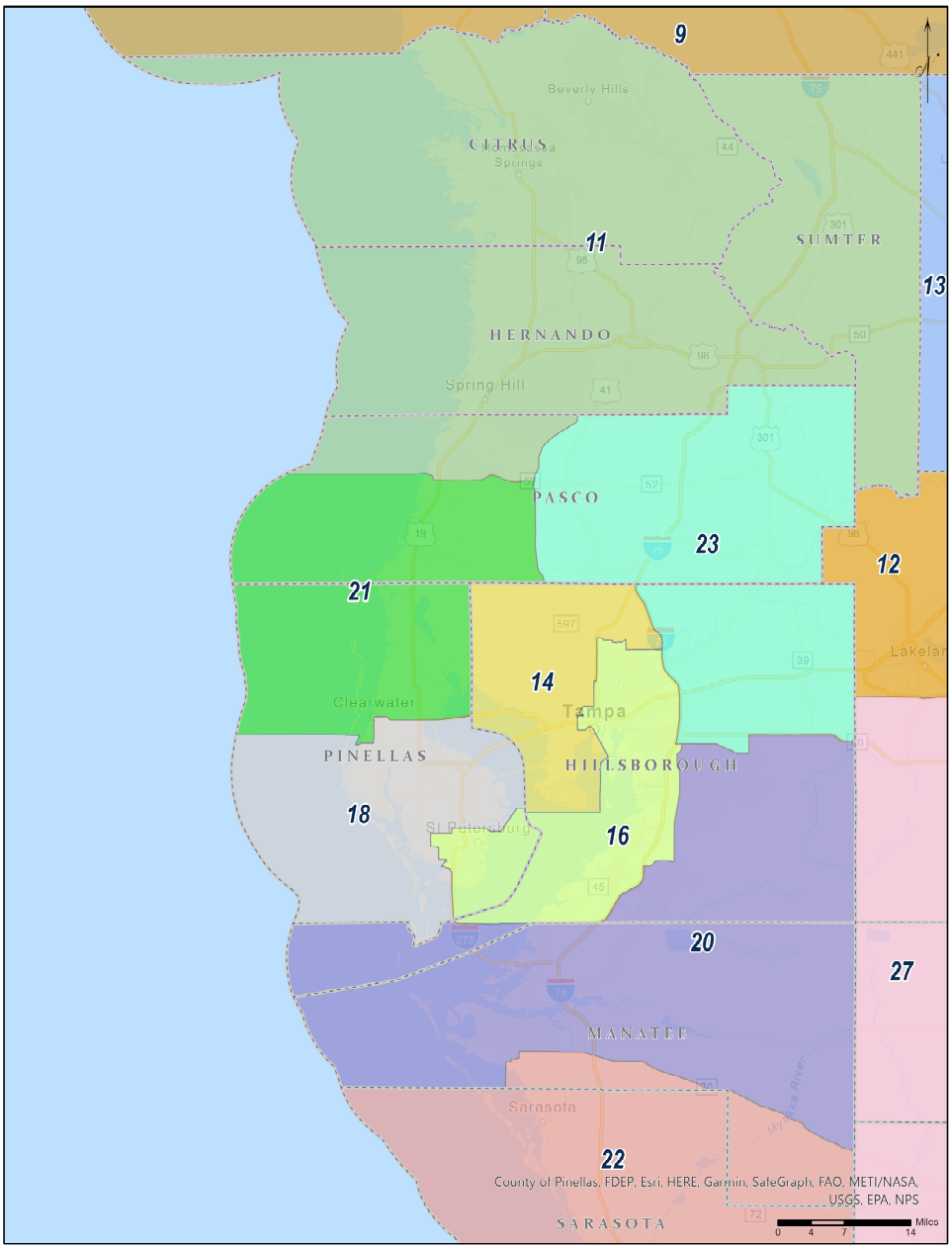
Consistent with the Committee Directives, the districts in Central Florida and the Space Coast seek to keep districts wholly within counties in more densely populated areas and consist of whole counties in less populated areas, with deviations as necessary to comply with the population-equality standard and the Tier-One protections for racial and language minorities.

Where it is feasible to do so, these districts exhibit a high use of existing political and geographical boundaries: 100% for Districts 8 and 19; 98% for Districts 10, 12, 13, and 25; 94% for District 15; and 93% for District 17. (A.432). The "easily ascertainable and commonly understood" political and geographical boundaries coinciding with these district boundaries are described in the Senate Appendix. (SA.1046-1225)

District 15 is a "historically performing minority district," *Apportionment I*, 83 So.3d at 625, that is protected against diminishment in the ability of Black voters to elect representatives of their choice. A functional analysis of the statistical data that this Court analyzed in *Apportionment I* confirms that District 15 does not diminish the ability to elect as compared to its predecessor district, District 11 in the benchmark Senate plan. (A.435-38, 443-46).

District 25 is a "historically performing minority district," *Apportionment I*, 83 So.3d at 625, that is protected against diminishment in the ability of Hispanic voters to elect representatives of their choice. Due to an increase in the Hispanic population in Central Florida, District 25 is now a majority-minority district. (A.432). A functional analysis of the statistical data that this Court analyzed in *Apportionment I* confirms that District 25 does not diminish the ability to elect as compared to its predecessor district, District 15 in the benchmark Senate plan. (A.435-38, 443-46).

D. Tampa Bay (Senate Districts 11, 14, 16, 18, 20, 21, 23).



The Senate Plan's districts in Tampa Bay satisfy the Florida Constitution's standards for establishing legislative district boundaries.

District 11 consists of all of Citrus, Sumter, and Hernando Counties and part of Pasco County. District 14 is fully contained in Hillsborough County. District 16 consists of a part of Hillsborough and a part of Pinellas County. District 18 is fully contained within Pinellas County. District 20 consists of a part of Hillsborough and a part of Manatee County. District 21 consists of a part of Pinellas and a part of Pasco County. District 23 consists of a part of Hillsborough and a part of Pasco County.

Consistent with the Committee Directives, and where feasible, the districts in Tampa Bay seek to keep districts wholly within counties in more densely populated areas, and consist of whole counties in less populated areas, with deviations as necessary to comply with the population-equality standard and the Tier-One protections for racial and language minorities.

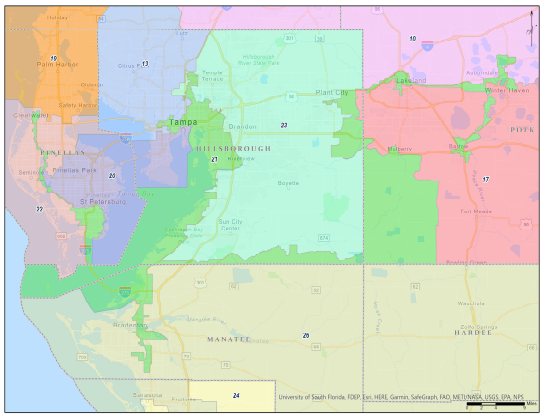
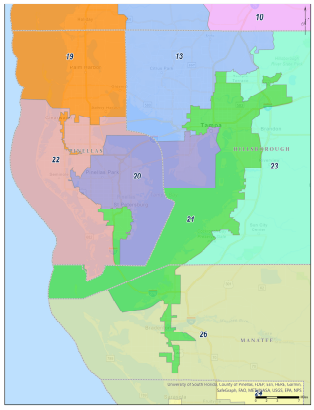
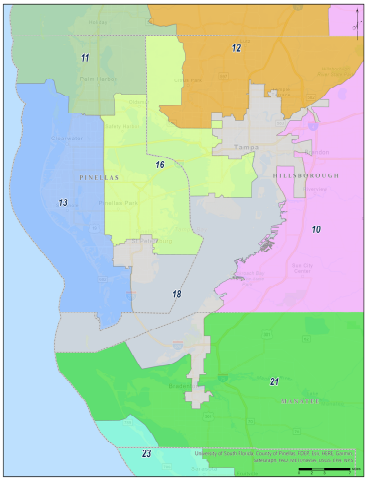
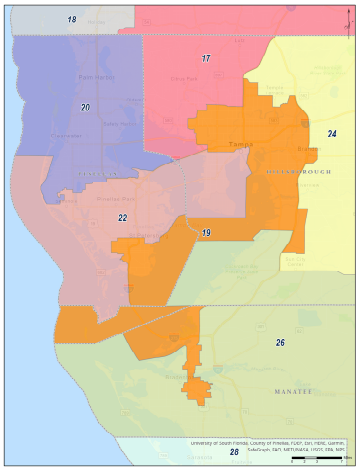
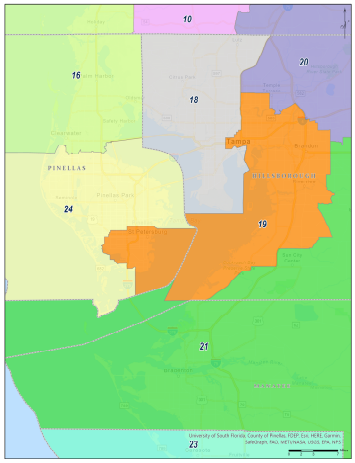
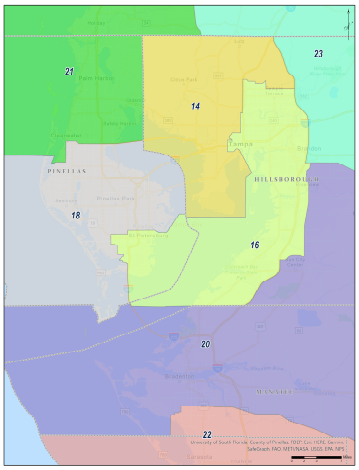
Where feasible, these districts also exhibit a high use of existing political and geographical boundaries: 100% for District 11; 93% for District 14; 82% for District 16; 92% for District 18; 91% for District 20; 99% for District 21; and 93% for District 23. (A.432). The "easily ascertainable and commonly understood" political and

geographical boundaries coinciding with these district boundaries are described in the Senate Appendix. (SA.1046-1225).

District 16 is a "historically performing minority district," *Apportionment I*, 83 So.3d at 625, that is protected against diminishment in the ability of Black voters to elect representatives of their choice. A functional analysis of the statistical data that this Court analyzed in *Apportionment I* confirms that District 16 does not diminish the ability to elect as compared to its predecessor district, District 19 in the benchmark Senate plan. (A.435-38, 443-46).

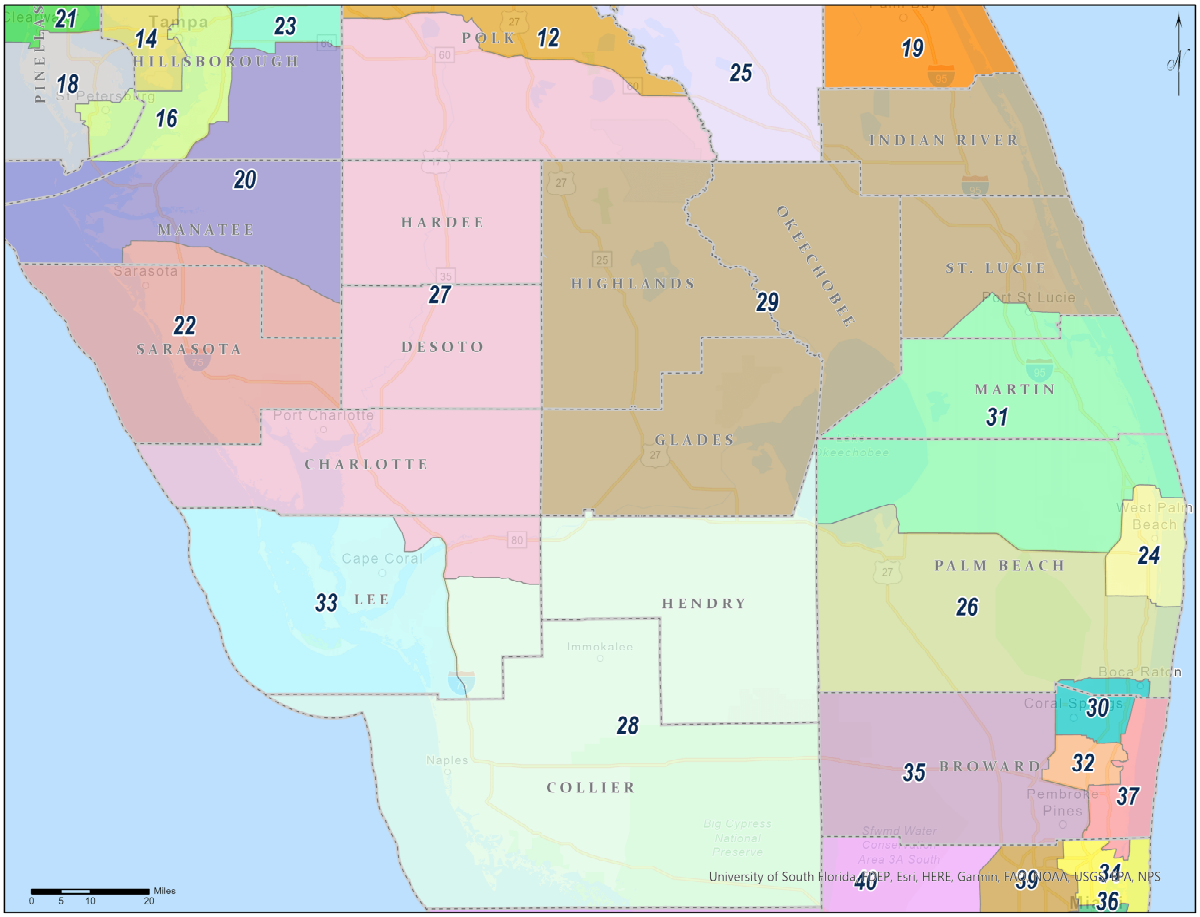
District 16 is also more compliant on Tier-Two metrics than its predecessor district in the benchmark Senate plan, with improvements on boundary usage, visual compactness, and the Convex Hull and Polsby-Popper quantitative compactness measures.

Although District 16 compares favorably with its immediate predecessor on Tier-Two metrics, its visual compactness improvements over its predecessor districts from the past three decades is even more remarkable:

	
1992 Senate Plan (Court-Ordered)	1996 Senate Plan (Court-Ordered)
	
2002 Senate Plan	2012 Senate Plan (SJR 2-B)
	
2016 Senate Plan (Court-Ordered)	2022 Senate Plan

(A.431, 439; SA.1140).

E. Heartland and Southwest Florida (Senate Districts 22, 27, 28, 29, 33).



The Senate Plan's districts in the Heartland and Southwest Florida satisfy the Florida Constitution's standards for establishing legislative district boundaries.

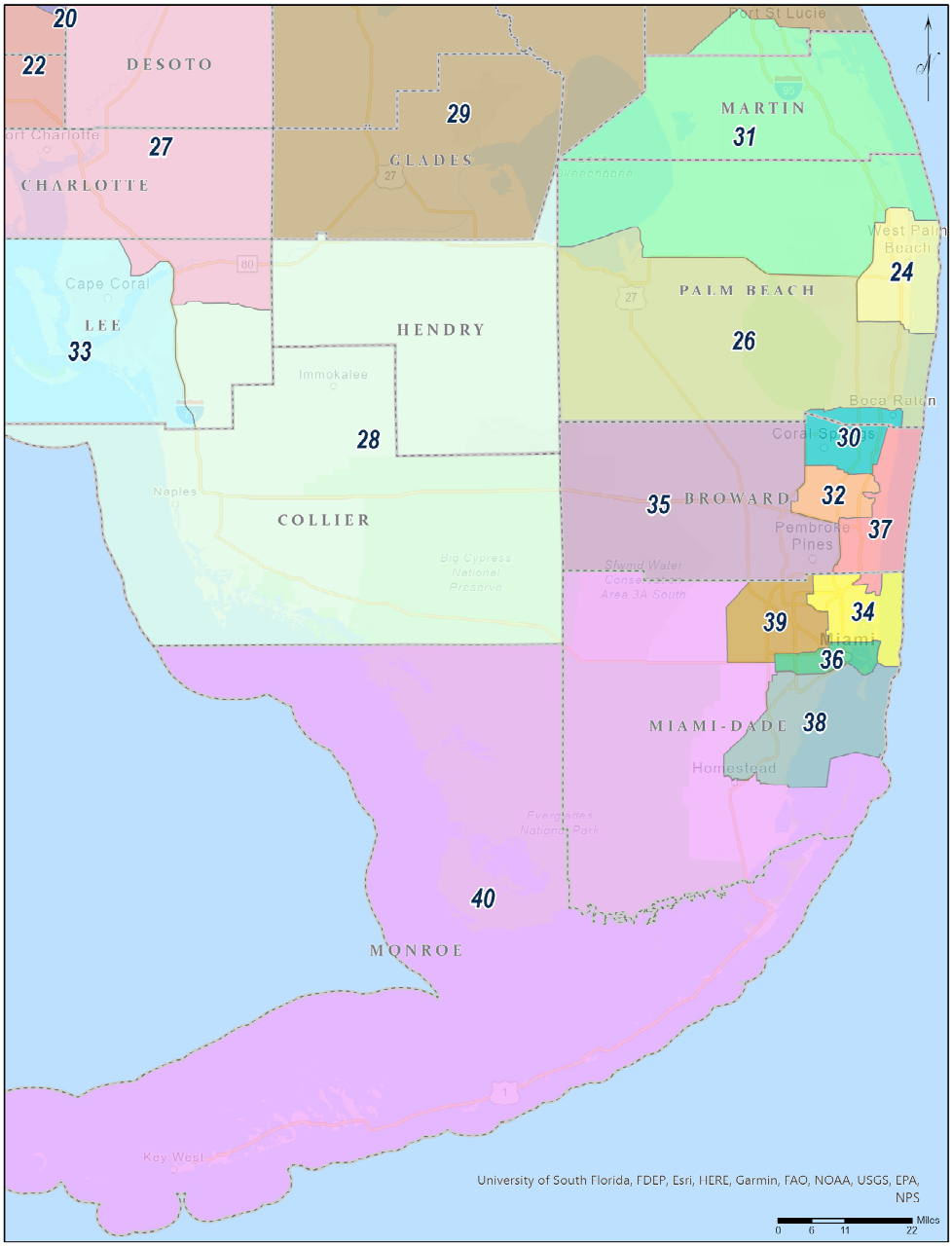
District 22 consists of all of Sarasota County and part of Manatee County. District 27 consists of all of Charlotte, DeSoto, and Hardee Counties and parts of Lee and Polk Counties. District

28 consists of all of Collier and Hendry Counties and part of Lee County. District 29 consists of all of Glades, Highlands, Okeechobee, and Indian River Counties and part of St. Lucie County. District 33 is wholly contained in Lee County.

Consistent with the Committee Directives, the districts in the Heartland and Southwest Florida seek to keep districts wholly within counties in more densely populated areas and consist of whole counties in less populated areas, with deviations as necessary to comply with the population-equality standard.

Where feasible, these districts all exhibit a high use of existing political and geographical boundaries: 98% for District 22; 96% for District 27; 97% for District 28; 99% for District 29; and 100% for District 33. The "easily ascertainable and commonly understood" political and geographical boundaries coinciding with these district boundaries are described in the Senate Appendix. (SA.1046-1225).

F. Southeast Florida (Senate Districts 24, 26, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40).



The Senate Plan's districts in Southeast Florida satisfy the Florida Constitution's standards for establishing legislative district boundaries.

Districts 24 and 26 are contained wholly within Palm Beach County. Districts 32 and 35 are contained wholly within Broward County. Districts 34, 36, 38, and 39 are contained wholly within Miami-Dade County. District 31 consists of all of Martin County and parts of St. Lucie and Palm Beach Counties. District 40 consists of all of Monroe County and part of Miami-Dade County. District 30 consists of parts of Broward and Palm Beach Counties. District 37 consists of parts of Broward and Miami-Dade Counties.

Consistent with the Committee Directives, the districts in Southeast Florida seek to keep districts wholly within counties in more densely populated areas and consist of whole counties in less populated areas, with deviations as necessary to comply with the population-equality standard and the Tier-One protections for racial and language minorities.

Where it is feasible to do so, these districts all exhibit a high use of existing political and geographical boundaries: 100% for Districts 37 and 40; 99% for District 35; 97% for District 32; 96% for District 34; 95% for Districts 31 and 39; 94% for District 38; 92% for District 26; 91% for District 36; 86% for District 24; and

84% for District 30. (A.432).[20] The "easily ascertainable and commonly understood" political and geographical boundaries coinciding with these district boundaries are described in the Senate Appendix. (SA.1046-1225).

Districts 32 and 34 are "majority-minority" or "historically performing minority district[s]," *Apportionment I*, 83 So.3d at 625, that are protected against diminishment in the ability of Black voters to elect representatives of their choice. A functional analysis of the statistical data that this Court analyzed in *Apportionment I* confirms that Districts 32 and 34 do not diminish the ability to elect as compared to their predecessor districts, District 33 and 35, respectively, in the benchmark Senate plan. (A.435-38, 443-46).

Districts 32 and 34 are also more compliant on Tier-Two metrics than their predecessor districts in the benchmark Senate plan, with both districts showing improvements on boundary usage,

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[20] The boundary-usage scores for District 24 and District 30 are adversely affected by their use of Hypoluxo Road and Glades Road, respectively, for significant portions of their respective district boundaries. Although these are significant thoroughfares in Palm Beach County, they are not coded by the U.S. Census Bureau as "primary or secondary roads within the federal or state highway systems" for the entirety of their length in Palm Beach County.

visual compactness, and all three quantitative compactness measures. (A.432, 440).

Districts 36, 38, 39, and 40 are majority-minority districts that are protected against diminishment in the ability of Hispanic voters to elect representatives of their choice. *Apportionment I*, 83 So.3d at 625. A functional analysis of the statistical data that this Court analyzed in *Apportionment I* confirms that Districts 36, 38, 39, and 40 do not diminish the ability to elect as compared to their predecessor Tier-One protected districts in Miami-Dade County, Districts 36, 37, 39, and 40, in the benchmark Senate plan.[21] (A.435-38, 443-46).

Districts 36, 38, 39, and 40 are also more compliant on Tier-Two metrics than their predecessor districts in the benchmark Senate plan, with improvements in boundary usage, visual

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[21] The substantial reconfiguration of the four Hispanic majority-minority districts in Miami-Dade County complicates the task of identifying specific corresponding "benchmark" and "successor" districts. The Senate's functional analysis therefore confirmed non-diminishment in the ability to elect as to the set of four districts collectively.

compactness, and various quantitative compactness measures. (A.432, 440).

V. THE COURT SHOULD CONFIRM THAT A JUDGMENT DETERMINING THE APPORTIONMENT TO BE VALID WILL BE BINDING UPON ALL THE CITIZENS OF THE STATE.

Under the Florida Constitution, this Court must "enter its judgment" as to the validity of the apportionment within thirty days after the filing of the Attorney General's petition. Art. III, § 16(c), Fla. Const. The "effect of [the Court's] judgment in apportionment" is also constitutionally specified: "a judgment of the supreme court of the state determining the apportionment to be valid shall be binding upon all the citizens of the state." Art. III, § 16(d), Fla. Const. The judgment in this proceeding should therefore confirm, consistent with the plain language of the Florida Constitution, that a decision determining the apportionment to be valid is "binding" and precludes collateral state-court attacks on the Court's declaratory judgment. And this Court should recede from *Florida House of Representatives v. League of Women Voters of Florida*, (*"Apportionment III"*), 118 So.3d 198 (Fla. 2013), to the extent that decision's holding contravenes the unambiguous language of Article III, Section 16(d).

In *Apportionment II*, this Court entered a "declaratory judgment declaring the revised Senate apportionment plan as contained in Senate Joint Resolution 2-B to be constitutionally valid under the Florida Constitution." 89 So.3d at 891. The Court's declaratory judgment of validity was based on the conclusion that the opponents had "failed to demonstrate that the revised Senate plan as a whole or with respect to any individual district violates Florida's constitutional requirements" set out in Article III, section 21. *Id.* at 890-91.

Notwithstanding this Court's declaration that the revised Senate plan was "constitutionally valid," a group of plaintiffs sued in circuit court alleging that the revised Senate plan violated Article III, Section 21. *Apportionment III*, 118 So.3d at 202. After the circuit court denied a motion to dismiss asserting lack of subject matter jurisdiction, the House and Senate sought extraordinary-writ relief from this Court: either a writ of prohibition (on the basis that this Court has exclusive jurisdiction to review legislative apportionment) or a constitutional writ under the "all-writs" authority (on the basis that the circuit court's exercise of jurisdiction interferes with the binding judgment of validity). *Id.* at 203.

This Court denied relief, concluding that the circuit court had subject matter jurisdiction to adjudicate "subsequent fact-based challenges to the legislative apportionment plan." *Id.* at 213. The majority opinion construed the review under Article III, section 16, as a "facial" review that did not preclude subsequent "as-applied" challenges in the trial court based upon alleged violations of the same constitutional standards addressed in the Court's declaratory judgment of validity. *Id.* at 204.

Two justices dissented, "strongly disagree[ing] with the majority's decision, which consigns section 16(d) to the status of a dead letter." *Id.* at 214 (Canady, J., dissenting). The dissent faulted the majority for failing to address the "unambiguous text," and instead relying on "dicta from prior opinions that also failed to reckon with the constitutional text." *Id.* at 214-15. The language of section 16(d), according to the dissent, "is unconditional and unequivocal." *Id.* at 215.

> It is plainly designed to conclusively determine and settle once for all the validity of a redistricting plan under state law. The plain import of the provision that a judgment of validity "shall be binding upon all the citizens of the state" is that no citizen is permitted to thereafter challenge the validity of the redistricting plan that has been held valid. If the citizens of the state are bound by a judgment of

> validity, they are necessarily precluded from challenging the validity of the redistricting plan in subsequent litigation. Those who are bound by a judgment will not be heard to challenge that judgment. Nothing in the constitutional text or structure suggests that the rule of preclusion in section 16(d) is limited to claims that are actually litigated in a section 16 validation proceeding.

Id. The Senate respectfully asks this Court to recede from *Apportionment III* in favor of the clear and unambiguous constitutional language vesting exclusive state-court jurisdiction in this Court to pass on the validity of the legislative apportionment, Art. III, § 16(d), Fla. Const.

If this Court agrees that *Apportionment III* is clearly erroneous for the reasons cogently explained in that case's dissenting opinion, no reliance interests or other factors would justify adherence to that precedent. "[C]laims of stare decisis are at their weakest" in cases involving constitutional interpretation, *Vieth*, 541 U.S. at 305, and "reliance interests are lowest in cases . . . involving procedural and evidentiary rules." *Poole*, 297 So.3d at 507 (internal quotation marks and citation omitted).

As in *Vieth*, it "is hard to imagine how any action taken in reliance upon [*Apportionment III*] could conceivably be frustrated—

except the bringing of lawsuits, which is not the sort of primary conduct that is relevant." 541 U.S. at 306.

"Because the Florida Constitution in article III, section 16(d), unambiguously precludes challenges under Florida law to a legislative redistricting plan that has been declared valid by this Court in a proceeding under article III, section 16," *Apportionment III*, 118 So.3d at 214 (Canady, J., dissenting), this Court should recede from its contrary precedent and confirm that a judgment determining the apportionment to be valid "shall be binding upon all the citizens of the state."

CONCLUSION

The Court should enter a declaratory judgment determining the apportionment to be valid, and should confirm that the Court's judgment is binding upon all citizens of the state.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Brief has been filed via the E-Filing Portal and served via electronic service on February 19, 2022, to:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the typeface requirements of Rule 9.045(b), Florida Rules of Appellate Procedure because it was prepared in a proportionally spaced typeface using 14-point font Bookman Old Style. This brief complies with the type volume limitations set in Rule 9.210(a)(2)(B), Florida Rules of Appellate Procedure. This brief contains 12,998 words, excluding the parts of the brief exempted by Rule 9.045(e).

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