



Journal of the Senate

Number 1—Special Session D

Monday, May 23, 2022

At a Special Session of the Florida Legislature convened under Article III, Section 3(c), of the Constitution of the State, as revised in 1968, and subsequently amended, at the Capitol, in the City of Tallahassee, on Monday, May 23, 2022, in the State of Florida.

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CALL TO ORDER

The Senate was called to order by President Simpson at 9:00 a.m. A quorum present—35:

Mr. President	Diaz	Pizzo
Albritton	Gainer	Polsky
Ausley	Gibson	Powell
Baxley	Gruters	Rodrigues
Bean	Harrell	Rodriguez
Berman	Hooper	Rouson
Book	Hutson	Stargel
Boyd	Jones	Stewart
Bradley	Mayfield	Taddeo
Brandes	Osgood	Torres
Brodeur	Passidomo	Wright
Broxson	Perry	

Excused: Senators Burgess, Cruz, Farmer, and Garcia

PRAYER

The following prayer was offered by Senator Gibson:

O Lord, our God, how excellent is your name in all the Earth. We thank and praise you for this day and for traveling mercy that brought us here on behalf of your people. Lord, give us the wisdom and the will to work on behalf of all your people in a manner that is pleasing to you. Remind us, O God, that from the least of these to the most of these in our state, we are but humble servants. O God, give us the perseverance of Job and the crisis intervention mindset of Esther for such a time as this. And when we have finished our work here, give us traveling mercy back to our families and loved ones awaiting our return. All these things we pray, O God, and we will be mindful to give you all the praise, honor, and glory. Amen.

PLEDGE

Senator Diaz led the Senate in the Pledge of Allegiance to the flag of the United States of America.

By direction of the President, the Secretary read the following proclamation:

PROCLAMATION

STATE OF FLORIDA

EXECUTIVE OFFICE OF THE GOVERNOR

TALLAHASSEE

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND HOUSE OF REPRESENTATIVES

WHEREAS, Florida’s general tort environment related to property insurance has led to thousands of frivolous lawsuits; and

WHEREAS, according to the Office of Insurance Regulation, Florida accounted for 79 percent of the nation’s homeowners insurance lawsuits over claims filed while making up only 9 percent of the nation’s homeowners insurance claims; and

WHEREAS, Florida citizens are seeing the effects of this higher litigation in their rising premiums; and

WHEREAS, the Florida insurance industry has seen two straight years of net underwriting losses exceeding \$1 billion each year; and

WHEREAS, in 2021, four insurance companies writing homeowners coverage have either gone insolvent or required midterm cancelations, and in the last three months, three insurance companies writing homeowners coverage in Florida have gone insolvent and are either in liquidation or rehabilitation and numerous others have non-renewed policies or ceased writing new business, leaving tens of thousands of policyholders seeking coverage with limited options in the marketplace; and

WHEREAS, Citizens Property Insurance, the State of Florida’s public insurer of last resort, has seen an increase of 399,822 policies since the beginning of 2020 and is on track to be over 1 million policies by year end; and

WHEREAS, it is necessary for the State of Florida to act to stabilize the insurance market for Florida policyholders before the 2022 Atlantic Hurricane Season, which begins on June 1st, 2022 and ends on November 30th, 2022; and

WHEREAS, it is prudent to call a Special Session.

NOW, THEREFORE, I, RON DESANTIS, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1) of the Florida Constitution, do hereby proclaim as follows:

Section 1. The Legislature of the State of Florida is convened in Special Session commencing at 9:00 a.m., Monday, May 23rd, 2022, and extending no later than 11:59 p.m., Friday, May 27th, 2022.

Section 2. The Legislature of the State of Florida is convened in Special Session for the sole and exclusive purpose of considering legislation related to (a) property insurance, (b) reinsurance, (c) changes to the Florida building code to improve the affordability of property insurance, (d) the Office of Insurance Regulation, (e) civil remedies, and (f) appropriations.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation convening the Legislature in Special Session at the Capitol, this 26th day of April, 2022.

Ron DeSantis
GOVERNOR

ATTEST:

Laurel M. Lee
SECRETARY OF STATE

INTRODUCTION AND REFERENCE OF BILLS INSIDE THE CALL

FIRST READING

By Senator Boyd—

SB 2-D—A bill to be entitled An act relating to property insurance; creating s. 215.5551, F.S.; creating the Reinsurance to Assist Policyholders program to be administered by the State Board of Administration; defining terms; requiring certain property insurers to obtain coverage under the program; requiring the board to provide reimbursement to property insurers under the program; requiring the board and property insurers to enter into contracts to provide certain insurance reimbursement; providing requirements for the contracts; providing construction; providing calculations for specified amounts of losses to determine reimbursement under the program; authorizing the board to inspect, examine, and verify insurer records; providing insurer eligibility qualifications for the program; providing for disqualification; requiring certain insurers to notify the board under a specified circumstance; prohibiting premiums from being charged for participation in the program; providing that the program does not affect the claims-paying capacity of the Florida Hurricane Catastrophe Fund; requiring the program to pay reimbursements directly to the applicable state guaranty fund in the event of insolvency; specifying requirements for the Florida Hurricane Catastrophe Fund if an insurer or the Citizens Property Insurance Corporation accept assignments of unsound insurers; providing that certain violations are violations of the insurance code; authorizing the board to enforce certain requirements; authorizing the board to adopt rules; providing legislative intent; requiring the board to submit a written notice within a certain timeframe to the Executive Office of the Governor relating to the program funds, under certain circumstances; providing a requirement for the notice and subsequent requests; requiring the Executive Office of the Governor to instruct the Chief Financial Officer to draw a warrant for a transfer to the board for the program under certain circumstances and to provide notification to specified persons within a certain timeframe; prohibiting cumulative transfers from exceeding a specified amount; providing reporting requirements; providing for expiration and transfer of unencumbered funds; requiring certain property insurers to reduce rates to reflect certain cost savings through rate filings by a specified date; prohibiting such insurers from making other rate changes; requiring the Office of Insurance Regulation to expedite the review of certain filings; amending s. 215.5586, F.S.; adding a requirement for hurricane mitigation inspection applications; revising homeowner eligibility criteria for mitigation grants; specifying matching requirements for grants; revising reporting requirements; providing an appropriation; requiring the Department of Financial Services to submit budget amendments; specifying requirements for budget amendments; providing for reversion and appropriation of any unexpended balance; providing for expiration; amending s. 489.147, F.S.; revising the defi-

inition of the term “prohibited advertisement”; creating s. 624.1551, F.S.; requiring claimants to establish that property insurers have breached the insurance contract to prevail in certain claims for damages; amending s. 624.307, F.S.; requiring the office to publish certain information on its website; amending s. 624.313, F.S.; requiring the office to print and make a specified report available by a specified date annually; revising the information the office must include in such report; amending s. 624.315, F.S.; revising the information the office must include in certain reports; amending s. 624.424, F.S.; requiring the Office of Insurance Regulation to aggregate on a statewide basis and make publicly available certain data submitted by insurers and insurer groups; specifying requirements for publishing such data; providing that such information is not a trade secret and is not subject to a certain public records exemption; amending s. 626.9373, F.S.; revising conditions for the award of reasonable attorney fees to apply to all suits brought under residential or commercial property insurance policies, rather than those not brought by assignees; limiting the transfer, assignment, or acquisition of rights to attorney fees in certain property insurance suits; amending s. 627.428, F.S.; revising conditions for the award of reasonable attorney fees to apply to all suits brought under residential or commercial property insurance policies, rather than those not brought by assignees; limiting the transfer, assignment, or acquisition of rights to attorney fees in certain property insurance suits; amending s. 627.701, F.S.; revising a prohibition against the issuance of insurance policies containing certain deductible provisions; revising the conditions a personal lines residential property insurance policy covering certain risks must meet under certain circumstances; requiring personal lines residential property insurance policies containing separate roof deductibles to include specified information; authorizing property insurers to include separate roof deductibles if certain requirements are met; providing requirements for policyholders in rejecting such deductibles under certain circumstances; requiring the office to expedite the review of filing of certain forms; authorizing the commission to adopt certain model forms or guidelines; requiring the office to review certain filings within a specified timeframe; providing that roof deductible portions of the filing are not subject to a specified extension for review; amending s. 627.7011, F.S.; authorizing property insurers to limit certain roof claim payments under certain circumstances; defining the term “authorized inspector”; prohibiting insurers from refusing to issue or renew homeowners’ policies insuring certain structures; requiring insurers to allow homeowners to have roof inspections performed before requiring roof replacement; providing applicability; amending s. 627.70131, F.S.; requiring insurers to conduct physical inspections for certain claims within a specified timeframe; requiring property insurers to notify and provide certain detailed estimates to policyholders; providing construction; requiring property insurers to provide reasonable explanations related to claims under certain circumstances; amending s. 627.70152, F.S.; making a technical change; authorizing property insurers to be awarded attorney fees in certain suit dismissals; providing that a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that such presumption may be rebutted only under certain circumstances; amending s. 627.7142, F.S.; conforming a cross-reference; amending s. 627.7152, F.S.; revising the definition of the term “assignment agreement”; deleting the definitions of the terms “disputed amount” and “judgment obtained”; revising a requirement for assignment agreements; revising the requirement for assignees to indemnify and hold harmless assignors; specifying a timeframe during which and the addresses to which a notice of intent must be served; deleting certain limitations on the recovery and award of attorney fees in suits related to assignment agreements; creating s. 627.7154, F.S.; creating an insurer stability unit within the office for a specified purpose; specifying the duties of the unit; requiring the unit to provide a specified report biannually; specifying requirements for such report; specifying events that trigger referrals to the unit; requiring the unit’s supervisors to review such referrals for a certain determination; requiring unit expenses be paid from a specified fund; requiring costs of examinations to be paid by examined persons in a specified circumstance; amending s. 631.031, F.S.; requiring notifications by the office to the department of grounds for delinquency proceedings to include an affidavit; specifying contents of such affidavit; amending s. 631.398, F.S.; specifying duties of the department for insurer insolvency proceedings; providing for construction of the act in pari materia with laws enacted during the 2022 Regular Session of the Legislature; providing effective dates.

—was referred to the Committee on Appropriations.

By Senator Boyd—

SB 4-D—A bill to be entitled An act relating to roof repair, replacement, and recovering requirements; amending s. 553.844, F.S.; providing that the entire roofing system or roof section of certain existing buildings or structures does not have to be repaired, replaced, or recovered in accordance with the Florida Building Code under certain circumstances; requiring the Florida Building Commission to adopt rules and incorporate the rules into the building code; prohibiting local governments from adopting certain administrative or technical amendments to the building code; providing an effective date.

—was referred to the Committee on Appropriations.

By Senator Book—

SB 20-D—A bill to be entitled An act relating to studies concerning coverage for personal lines residential structures; requiring the Office of Insurance Regulation to conduct studies concerning coverage for personal lines residential structures; providing reporting requirements; providing for expiration; providing an effective date.

—reference pending.

SPECIAL RECOGNITION OF SECRETARY DEBBIE BROWN

At the direction of the President, the Senate proceeded to the recognition of Senate Secretary Debbie Brown, honoring her years of service to the Senate and the State of Florida.

SPECIAL GUESTS

President Simpson introduced Secretary Debbie Brown's son and daughter-in-law, Michael and Heather Richter, and their children, Brayden and Madelynn "Maddie Grace," her daughter, Monica Guy, and her children, Sophie and Hudson; and former co-worker and friend, Susan Miller, who were present in the chamber. President Simpson also recognized former Senate President Don Gaetz who was present in the chamber.

REMARKS

On motion by Senator Passidomo, by two-thirds vote, the following remarks were ordered spread upon the Journal.

Senator Bean: It is time for a pop quiz and my question to you: What year was it? The most popular TV shows were *Roseanne*, *Home Improvement*, *Murphy Brown*, and *Murder, She Wrote*. At the box office, these were the popular movies of this year: *Sister Act*, *Aladdin* (the cartoon), *Basic Instinct*, and *Patriot Games*. Now, this next section is going to give it away for you because these were the top songs—songs that were released in this year: Sir Mix-a-Lot, "Baby Got Back;" Right Said Fred, "I'm Too Sexy;" Queen, "Bohemian Rhapsody;" and Vanessa Williams, "Save the Best for Last." Do you know what year it was? 1992. Give yourself some extra jelly beans if you got it right.

Now, 1992 just happens to be the same year a very, very young lady stepped into the Senate for the very first time. She took a job working in the Secretary's Office helping spread remarks upon the Journal. That was her role and since then she has done so many things for 30 years. Mr. President, with your permission I think there is a very short video to pay tribute to that very young lady that came 30 years ago.

SPECIAL PRESENTATION

A video tribute was played honoring Secretary Brown.

ADOPTION OF RESOLUTIONS

On motion by Senator Bean—

SR 6-D—A resolution recognizing the outstanding character, professionalism, and kindness of Senate Secretary Debbie Brown on the occasion of her retirement.

WHEREAS, at its organization session every two years, the Senate elects a Secretary of the Senate as prescribed by the State Constitution, and

WHEREAS, this nonmember constitutional officer serves as the Senate Parliamentarian, charged with maintaining all Senate records, ensuring the continuity of Senate operations between legislative terms, authenticating each act and resolution passed by the Senate, and publishing the journal and the calendar, and

WHEREAS, the Secretary of the Senate oversees the operations of bill drafting, bill and amendment filing, and the electronic voting system and information systems, and

WHEREAS, in addition, the Secretary of the Senate is the "face" of the Senate when the Legislature is not in session, speaking to visiting civic and student groups and hosting mock sessions for YMCA Youth in Government and the American Legion's Girls State and Boys State programs, among others, and

WHEREAS, since August 4, 2011, these responsibilities have rested on the shoulders of the tireless Debbie Brown, whose calm demeanor and decisive counsel have guided the last six Presidents of the Florida Senate, and

WHEREAS, in June 1993, after nearly 20 years in the private sector, this honor graduate of Liberty High School in Bristol and Tallahassee Community College, who holds an Associate of Science degree in business administration and management, dedicated her professional talents to the Florida Senate, first serving as a staff assistant, an editor, and an executive assistant, and

WHEREAS, in November 2010, Debbie Brown was named Director of Senate Administration and in the following year began her service as Secretary, and

WHEREAS, Debbie Brown is a gracious leader and mentor, and those who know her best describe her as "dedicated," "an extraordinary manager," and "passionate and compassionate," and

WHEREAS, while Debbie Brown has consistently demonstrated her commitment to the work of the Florida Senate and the people of this state, her top priority has been and will always be her family: her husband Larry Brown; her son Michael Richter and his wife Heather; her daughter Monica Guy; her four grandchildren, Madelynn, Brayden, Sophie, and Hudson; and her mother, Hazel Eddleman, and

WHEREAS, as was said on the day of her nomination as Secretary of the Senate, Debbie Brown has been dedicated not just to a job, but to a cause — making this state a better place, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Florida Senate recognizes the outstanding character, professionalism, and kindness of Senate Secretary Debbie Brown on the occasion of her retirement.

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be presented to Secretary of the Senate Debbie Brown as a tangible token of the sentiments of the Florida Senate.

—was introduced out of order and read by title. On motion by Senator Bean, **SR 6-D** was read the second time in full and adopted.

SPECIAL PRESENTATION

On behalf of the Senate, the President presented Secretary Brown with a framed watercolor portrait which included highlights of the Secretary's years of service to the Senate.

President Simpson: Thank you to the family and the friends of Secretary Brown for joining us today. On behalf of the Senate and the Senate family of Secretary Brown, I would like to invite Senators, guests, and staff to join the Senators in the lounge for refreshments. Secretary Brown, I know we talked about this a few years ago and I think it's very fitting with President Gaetz here today and myself, "the bookends." It was a real honor to serve with you over the last two years

and thank you for all of your service to the State of Florida. You've done a great job. Thank you.

Senator Ausley: I just want to take a point of personal privilege because Secretary Brown is my constituent, and I just want to say thank you on behalf of the Florida Senate and particularly on behalf of Senate District 3. You have represented Liberty County in such an amazing way and from the first day I became a Senator you have made me feel welcome, and I know you have done that for everyone. The State of Florida appreciates you. The Senate District 3 particularly appreciates your life of service to the Florida Senate and to the State of Florida. Thank you.

Senator Torres: For me, this lady, Secretary Brown, when I first got elected to the Senate, showed me integrity and dedication. She guided me, as a newbie, through the Senate and the process. I never will forget the way she treated me. I mean this from the bottom of my heart, Mrs. Brown. You will be sorely missed. You are a lovely lady, and I wish you the best in the future.

Senator Pizzo: Secretary Brown, you were the first email communication I got from the Senate and it said "Senator-elect Pizzo," it was August 29, 2018, the day after the election. That is when things got real. You said, "Welcome to the Florida Senate." I am just going back on my emails and I have to read this because it was special for my family that my father was able to attend my swearing in. I remember I said, "Mrs. Brown, the Italian families from the northeast tend to be large and proud, so I thank you and the President Designate. There will be 15 family members flying in and, if possible, I would like to have my wife, two sons, father, and mother standing with me and any accommodations for the remaining family in the gallery." And you did. I thank you. It was a very special moment for my family. From the very first introduction, you always had a smile. In looking around the room, you are the only one who was never in a bad mood for four years. If you were, you didn't show it. You are an example of grace, professionalism, civility, and a good feeling about this institution, and I thank you. Thank you for your service.

Senator Book: Now, I will have nobody to compare shoes with, which is very sad. But Secretary Brown, when I first had my kids and brought them into the Senate, I was scared to death. When I picked up the microphone for the first time, I kind of cried a little because it is such a special place. To Senator Pizzo's point, you are always in a good mood, you are always there to smile, and to be the calming and loving force here in the body. We are going to miss you terribly.

Senator Passidomo: I'd like to thank you as well for all that you've done for me over the last six years, and we will miss you. We appreciate all the training that you've given to your staff because you have left a legacy that is unparalleled.

REPORTS OF COMMITTEES

The Committee on Appropriations recommends the following pass: SB 4-D

The bill was placed on the Calendar.

The Committee on Appropriations recommends a committee substitute for the following: SB 2-D

The bill with committee substitute attached was placed on the Calendar.

COMMITTEE SUBSTITUTES

FIRST READING

By the Committee on Appropriations; and Senator Boyd—

CS for SB 2-D—A bill to be entitled An act relating to property insurance; creating s. 215.5551, F.S.; creating the Reinsurance to Assist Policyholders program to be administered by the State Board of Administration; defining terms; requiring certain property insurers to obtain coverage under the program; requiring the board to provide reimbursement to property insurers under the program; requiring the

board and property insurers to enter into contracts to provide certain insurance reimbursement; providing requirements for the contracts; providing construction; providing calculations for specified amounts of losses to determine reimbursement under the program; authorizing the board to inspect, examine, and verify insurer records; providing insurer eligibility qualifications for the program; providing for disqualification; requiring certain insurers to notify the board under a specified circumstance; providing for deferral of coverage under the program; prohibiting premiums from being charged for participation in the program; providing that the program does not affect the claims-paying capacity of the Florida Hurricane Catastrophe Fund; requiring the program to pay reimbursements directly to the applicable state guaranty fund in the event of insolvency; specifying requirements for the Florida Hurricane Catastrophe Fund if an insurer or the Citizens Property Insurance Corporation accept assignments of unsound insurers; 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requiring the Office of Insurance Regulation to expedite the review of certain filings; amending s. 215.5586, F.S.; revising homeowner eligibility criteria for mitigation grants; specifying matching requirements for grants; revising reporting requirements; providing an appropriation; requiring the Department of Financial Services to submit budget amendments; specifying requirements for budget amendments; providing for reversion and appropriation of any unexpended balance; providing for expiration; amending s. 489.147, F.S.; revising the definition of the term "prohibited advertisement"; creating s. 624.1551, F.S.; requiring claimants to establish that property insurers have breached the insurance contract to prevail in certain claims for damages; amending s. 624.307, F.S.; requiring the office to publish certain information on its website; amending s. 624.313, F.S.; revising the information the office must include in a certain annual report; amending s. 624.315, F.S.; revising the information the office must include in certain reports; 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owners to have roof inspections performed before requiring roof replacement; providing applicability; amending s. 627.70131, F.S.; requiring insurers to conduct physical inspections for certain claims within a specified timeframe; requiring property insurers to notify and provide certain detailed estimates to policyholders; providing construction; requiring property insurers to provide reasonable explanations related to claims under certain circumstances; amending s. 627.70152, F.S.; making a technical change; authorizing property insurers to be awarded attorney fees in certain suit dismissals; providing that a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that such presumption may be rebutted only under certain circumstances; amending s. 627.7142, F.S.; conforming a cross-reference; amending s. 627.7152, F.S.; revising the definition of the term "assignment agreement"; deleting the definitions of the terms "disputed amount" and "judgment obtained"; revising a requirement for assignment agreements; revising the requirement for assignees to indemnify and hold harmless assignors; specifying a timeframe during which and the addresses to which a notice of intent must be served; deleting certain limitations on the recovery and award of attorney fees in suits related to assignment agreements; creating s. 627.7154, F.S.; creating a property insurer stability unit within the office for a specified purpose; specifying the duties of the unit; requiring the unit to provide a specified report biannually; specifying requirements for such report; specifying events that trigger referrals to the unit; requiring the unit's supervisors to review such referrals for a certain determination; requiring unit expenses be paid from a specified fund; requiring costs of examinations to be paid by examined persons in a specified circumstance; amending s. 631.031, F.S.; requiring certain notifications by the office to the department of grounds for delinquency proceedings to include an affidavit; specifying contents of such affidavit; amending s. 631.398, F.S.; specifying duties of the department for insurer insolvency proceedings; providing for construction of the act in pari materia with laws enacted during the 2022 Regular Session of the Legislature; providing effective dates.

MESSAGES FROM THE GOVERNOR AND OTHER EXECUTIVE COMMUNICATIONS

VETOED BILLS 2022 REGULAR SESSION

Secretary Laurel Lee
Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

March 29, 2022

Dear Secretary Lee:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8 of the Constitution of Florida, I do hereby veto and transmit my objection to CS/SB 102, enacted during the 124th Session of the Legislature of Florida, during Regular Session 2022 and entitled:

An act relating to establishing the congressional districts of the state

As presented in both the primary and secondary maps enacted by the Legislature, Congressional District 5 violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution for the reasons set forth in the attached memorandum. Although I understand the Legislature's desire to comply with the Florida Constitution, the Legislature is not absolved of its duty to comply with the U.S. Constitution. Where the U.S. and Florida Constitutions conflict, the U.S. Constitution must prevail.

Accordingly, I withhold my approval of CS/SB 102 and do hereby veto the same.

Sincerely,

Ron DeSantis
Governor

The bill, together with the Governor's objections thereto, was referred to the Committee on Rules.

MEMORANDUM

To: Ron DeSantis, Governor of Florida
From: Ryan Newman, General Counsel, Executive Office of the Governor
Date: March 29, 2022
Re: Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State

Congressional District 5 in both the primary and secondary maps enacted by the Legislature violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it assigns voters primarily on the basis of race but is not narrowly tailored to achieve a compelling state interest.

"Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools," the U.S. Supreme Court has made clear that the State also "may not separate its citizens into different voting districts on the basis of race." *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (internal citations omitted). "When the State assigns voters on the basis of race," the Court explained, "it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, 'think alike, share the same political interests, and will prefer the same candidates at the polls.'" *Id.* at 911-12 (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)).

For these reasons, the Court has interpreted the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution to prohibit state legislatures from using race as the "predominant factor motivating [their] decision to place a significant number of voters within or without a particular district," *id.* at 916, unless they can prove that their "race-based sorting of voters serves a 'compelling interest' and is 'narrowly tailored' to that end," *Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017) (citation omitted). That race was the predominant factor motivating a legislature's line-drawing decision can be shown "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose." *Miller*, 515 U.S. at 916.

Although non-adherence to traditional districting principles, which results in an non-compact, unusually shaped district, is relevant evidence that race was the predominant motivation of a legislature, such evidence is not required to establish a constitutional violation. "Race may predominate even when a reapportionment plan respects traditional principles, if '[r]ace was the criterion that, in the State's view, could not be compromised,' and race-neutral considerations 'came into play only after the race-based decision had been made.'" *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 798 (2017) (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (alteration in original)). "The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not." *Id.* at 799. A legislature "could construct a plethora of potential maps that look consistent with traditional, race-neutral principles," but "if race for its own sake is the overriding reason for choosing one map over others, race still may predominate." *Id.* It is the "racial purpose of state action, not its stark manifestation," that offends the Equal Protection Clause. *Miller*, 515 U.S. at 913.

In light of these well-established constitutional principles, the congressional redistricting bill enacted by the Legislature violates the U.S. Constitution. The bill contains a primary map and secondary map that include a racially gerrymandered district—Congressional District 5—that is not narrowly tailored to achieve a compelling state interest. *See generally* Fla. H.R. Comm. on Redist., recording of proceedings, at 0:00:2:55:19 (Feb. 25, 2022), <https://thefloridachannel.org/videos/2-25-22-house-redistricting-committee/> (committee presentation and discussion of the maps later passed by the Legislature).

In the secondary map, which was the original map reported out of the House Congressional Redistricting Subcommittee, District 5 is a sprawling district that stretches approximately 200 miles from East to West and cuts across eight counties to connect a minority population in Jacksonville with a separate and distinct minority population in Leon and Gadsden Counties. The district is not compact, does not conform to usual political or geographic boundaries, and is bizarrely shaped to include minority populations in western Leon County and Gadsden

County while excluding non-minority populations in eastern Leon County. Because this version of District 5 plainly subordinates traditional districting criteria to avoid diminishment of minority voting age population, there is no question that race was “the predominant factor motivating the legislature’s decision” to draw this district. *Miller*, 515 U.S. at 916.

District 5 in the Secondary Map

In response to federal constitutional concerns about the unusual shape of District 5 as it was originally drawn, and which is now reflected in the secondary map, the House Redistricting Committee drew a new version of District 5, which is reflected in the primary map. This configuration of the district is more compact but has caused the adjacent district—District 4—to take on a bizarre doughnut shape that almost completely surrounds District 5. The reason for this unusual configuration is the Legislature’s desire to maximize the black voting age population in District 5. The Chair of the House Redistricting Committee confirmed this motivation when he explained that the new District 5 was drawn to “protect[] a black minority seat in north Florida.” Fla. H.R. Comm. on Redist., recording of proceedings, at 19:15-19:26 (Feb. 25, 2022).

District 5 in the Primary Map

Despite the Legislature’s attempt to address the federal constitutional concerns by drawing a more compact district, the constitutional defect nevertheless persists. Where “race was the criterion that, in the State’s view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made,” it follows that race was the predominant factor, even though the district otherwise respects traditional districting principles. *Bethune-Hill*, 137 S. Ct. at 798 (cleaned up).

Such was the case here. Even for the more compact district, the Legislature believed (albeit incorrectly) that the Florida Constitution required it to ensure “a black minority seat in north Florida.” Fla. H.R. Comm. on Redist., recording of proceedings, at 19:15-19:26 (Feb. 25, 2022). Specifically, according to the House Redistricting Chair, the primary map’s version of District 5 is the House’s “attempt at continuing to protect the minority group’s ability to elect a candidate of their choice.” *Id.* at 19:45-19:54. The Legislature thus used “an express racial target” for District 5 of a black voting age population sufficiently large to elect a candidate of its choice. *Bethune-Hill*, 137 S. Ct. at 800.

Because racial considerations predominated even in drawing the new District 5, the Legislature must satisfy strict scrutiny, the U.S. Supreme Court’s “most rigorous and exacting standard of constitutional review.” *Miller*, 515 U.S. at 920. And to satisfy strict scrutiny, the Legislature “must demonstrate that its districting legislation is nar-

rowly tailored to achieve a compelling interest.” *Id.* That, the Legislature cannot do.

There is no good reason to believe that District 5 needed to be drawn as a minority-performing district to comply with Section 2 of the Voting Rights Act (VRA), because the relevant minority group is not sufficiently large to constitute a majority in a geographically compact area. In the primary map, the black voting age population of District 5 is 35.32%, and even in the secondary map, with the racially gerrymandered, non-compact version of District 5, the black voting age population increases only to 43.48%. *Compare* Fla. Redist. 2022, H000C8019, <https://bit.ly/3uczOXb> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022), *with* Fla. Redist. 2022, H000C8015, <https://bit.ly/36hFRBB> (available at floridaredistricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022). “When a minority group is not sufficiently large to make up a majority in a reasonably shaped district, § 2 simply does not apply.” *Cooper*, 137 S. Ct. at 1472 (citing *Bartlett v. Strickland*, 556 U.S. 1, 18-20 (2009) (plurality opinion)); *see also* *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (explaining that one of the threshold conditions for proving vote dilution under Section 2 is that the minority group is “sufficiently large and geographically compact to constitute a majority”).

Nor is there good reason to believe that District 5 is required to be drawn to comply with Section 5 of the VRA. Section 5 is no longer operative now that the U.S. Supreme Court invalidated the VRA’s formula for determining which jurisdictions are subject to Section 5. *See Shelby Cnty. v. Holder*, 570 U.S. 529, 553-57 (2013); *see also Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 279 (2015) (suggesting that continued compliance with Section 5 may not remain a compelling interest in light of *Shelby County*). In any event, even before the coverage formula was invalidated, the State of Florida was not a covered jurisdiction subject to Section 5. *See In re Senate Joint Resolution of Legislative Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 624 (Fla. 2012). Only five counties in Florida were covered—Collier, Hardee, Hendry, Hillsborough, and Monroe—and none of them are in northern Florida where District 5 is located. *See id.*

The only justification left for drawing a race-based district is compliance with Article III, Section 20(a) of the Florida Constitution. But District 5 does not comply with this provision. Article III, Section 20(a) provides that “districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.” The Florida Supreme Court has noted that these “dual constitutional imperatives follow almost verbatim the requirements embodied in the Federal Voting Rights Act.” *Id.* at 619 (cleaned up). The first imperative, which prohibits districts that deny or abridge the equal opportunity of minority groups to participate in the political process, is modeled after Section 2 of the VRA, and the second imperative, which prohibits districts that diminish the ability of minority groups to elect representatives of their choice, is modeled after Section 5. *Id.* at 619-20.

Like the VRA, these provisions of the Florida Constitution “aim[] at safeguarding the voting strength of minority groups against both impermissible dilution and retrogression.” *Id.* at 620. Although judicial interpretation of the VRA is relevant to understanding the Florida Constitution’s non-dilution and non-diminishment provisions, the Florida Supreme Court nonetheless recognizes its “independent constitutional obligation” to interpret these provisions. *Id.* at 621.

Relevant here is the Florida Constitution’s non-diminishment requirement. Unlike Section 5 of the VRA, this requirement “applies to the entire state.” *Id.* at 620. Under this 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. The existing districts “serve[] as the ‘benchmark’ against which the ‘effect’ of voting changes is measured.” *Id.* at 624 (cleaned up). Where a voting change leaves a minority group “less able to elect a preferred candidate of choice” than the benchmark, that change violates the non-diminishment standard. *Id.* at 625 (internal quotation marks omitted); *see also id.* at 702 (Canady, C.J., concurring in part and dissenting in part) (noting that the dictionary definition of “diminish” means “to make less or cause to appear less” (citation omitted)).

The Florida Supreme Court has acknowledged that “a slight change in percentage of the minority group’s population in a given district does not necessarily have a cognizable effect on a minority group’s ability to elect its preferred candidate of choice.” *Id.* at 625. The minority population percentage in each district need not be “fixed” in perpetuity. *Id.* at 627. But where the reduction in minority population in a given district is more than “slight,” such that the ability of the minority population to elect a candidate of choice has been reduced (even if not eliminated), the Legislature has violated the Florida Constitution’s non-diminishment requirement as interpreted by the Florida Supreme Court.

Given these principles, there is no good reason to believe that District 5, as presented in the primary map, complies with the Florida Constitution’s non-diminishment requirement. The benchmark district contains a black voting age population of 46.20%, whereas the black voting age population of District 5 in the primary map is only 35.32%.¹ Compare Fla. Redist. 2022, FLCD2016, <https://bit.ly/3Iv6FeW> (available at floridarestricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022), with Fla. Redist. 2022, H000C8019, <https://bit.ly/3uczOXb> (available at floridarestricting.gov/pages/submitted-plans) (last visited Mar. 28, 2022). This nearly eleven percentage point drop is more than slight, and while the House Redistricting Chair represented that the black population of the district could still elect a candidate of choice, see Fla. H.R. Comm. on Redist., recording of proceedings, at 59:44-1:00:17 (Feb. 25, 2022), there appears to be little dispute that the ability of the black population to elect such a candidate had nevertheless been reduced, see *id.* at 1:00:18-1:00:58 (noting that the benchmark district performed for the minority candidate of choice in 14 of 14 previous elections and that the new district would not perform for the minority candidate of choice in one-third of the same elections).

Moreover, the House Redistricting Chair claimed that the only criterion that mattered was whether the new district still performed at all. See *id.* at 1:06:09-1:06:30 (“It is not a diminishment unless the district does not perform.”); see also *id.* at 1:05:05-1:05:13 (“Is it less likely to perform? Honestly, I don’t know.”). But that view is plainly inconsistent with the Florida Supreme Court precedent described above, which prohibits any voting change that leaves a minority group “less able to elect a preferred candidate of choice.” *Apportionment I*, 83 So. 3d at 625 (internal quotation marks omitted). In sum, because the reduction of black voting age population is more than slight and because such reduction appears to have diminished the ability of black voters to elect a candidate of their choice, District 5 does not comply with the non-diminishment requirement of Article III, Section 20(a) of the Florida Constitution. Therefore, compliance with the Florida Constitution cannot supply the compelling reason to justify the Legislature’s use of race in drawing District 5 in the primary map.

In the secondary map, by contrast, District 5 complies with the Florida Constitution’s non-diminishment requirement, but in doing so, it violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The U.S. Supreme Court has warned that a “reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid.” *Shaw*, 509 U.S. at 647. As described earlier, District 5 in the secondary map does precisely this.

That the district is believed to be necessary to comply with the Florida Constitution’s non-diminishment requirement does not alone suffice to justify the use of race in drawing bizarre, non-compact district boundaries for the sole purpose of cobbling together disparate minority populations from across northern Florida to form a minority-performing district. Mere compliance with a state constitutional requirement to engage in race-based districting is not, without more, a compelling interest sufficient to satisfy strict scrutiny. The Fourteenth and Fifteenth Amendments to the U.S. Constitution and the VRA, which enforces the Fifteenth Amendment, exist to prevent states from engaging in racially discriminatory electoral practices. Indeed, one such weapon that states long used, and that the VRA was designed to combat, “was the racial gerrymander—the deliberate and arbitrary distortion of district boundaries for racial purposes.” *Id.* at 640 (cleaned up).

Here, the Florida Constitution’s non-diminishment standard would be satisfied only by a sprawling, non-compact district that spans 200 miles and repeatedly violates traditional political boundaries to join

minority communities from disparate geographic areas. Such a district is not narrowly tailored to achieve the compelling interest of protecting the voting rights of a minority community in a reasonably cohesive geographic area. As applied to District 5 in the secondary map, therefore, the Florida Constitution’s non-diminishment standard cannot survive strict scrutiny and clearly violates the U.S. Constitution.

For the foregoing reasons, Congressional District 5 in both maps is unlawful.

¹ The benchmark district itself is a sprawling, non-compact racial gerrymander that connects minority communities from two distinct regions of the State; however, for purposes of this point, I assume that the district can be used as a valid benchmark against which to judge the new maps.

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(With Revisions)

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Senator Powell, Alternating Chair; Senators Broxson, Hooper, Pizzo, and Rodrigues

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Senator Bean, Alternating Chair; Senators Bradley, Gruters, Stewart, and Torres

Other Legislative Entity:**Joint Legislative Budget Commission**

Senator Stargel, Alternating Chair; Senators Bean, Book, Gibson, Mayfield, Passidomo, and Stewart

ADJOURNMENT

On motion by Senator Passidomo, the Senate adjourned at 9:39 a.m. for the purpose of holding committee meetings and conducting other Senate business to reconvene at 10:00 a.m., Tuesday, May 24 or upon call of the President.