UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

WALTER BRYAN HILL, ERMON OWENS, CLEVERN SHARPE, DELENA MAY, STAFFORD JONES, and CONSERVATIVE COALITION FOR FREE SPEECH AND ASSOCIATION,

Plaintiffs,

v.

KEN DETZNER, in his official capacity as Secretary of the Florida Department of State,

Defendant.
_____/

Case No.:

COMPLAINT FOR EXPEDITED DECLARATORY AND INJUNCTIVE RELIEF

Introduction

Plaintiffs, Walter Bryan Hill, Ermon Owens, Clevern Sharpe, Delena May, Stafford Jones, and the Conservative Coalition for Free Speech and Association, file this Complaint for Expedited Declaratory and Injunctive Relief against Ken Detzner, in his official capacity as Secretary of the Florida Department of State, to challenge the constitutionality of §§ 20 and 21 of Article III of the Florida Constitution ("Redistricting Amendments" or "Amendments"). Added to the Florida Constitution after the 2010 election, the Amendments apply only to the Florida Legislature – not members of the public. Yet "[s]ince 2012, th[e] [Florida Supreme] Court's decisions concerning the redistricting process have been characterized by a repeated rewriting of the rules," and the Redistricting Amendments themselves such that rights guaranteed by the U.S. Constitution have been proscribed. *League of Women Voters v. Detzner,* 2015 Fla. LEXIS 1474, *221 (Fla. July 9, 2015) (Canady, J., dissenting) ("*Apportionment VII*").

The Plaintiffs file this lawsuit because the Florida Supreme Court's opinions have turned the U.S. Constitution's Supremacy Clause on its head. The Florida Supreme Court's seven opinions interpreting Florida's Redistricting Amendments make state law superior to rights guaranteed by the U.S. Constitution.[1] These seven opinions effectively declare the exercise of fundamental rights guaranteed by the U.S. Constitution a violation of state law. But state law – not federally guaranteed rights – must give way when the two collide. Article Six, Clause 2 of the U.S. Constitution makes federal law – not state law – "the supreme law of the land."

So far the Florida Supreme Court's decisions have had the following effects on the exercise of the federally guaranteed rights to engage in political speech and association, petition government, and speak and associate anonymously:

- Florida courts have declared the exercise of these First Amendment rights to constitute a "conspiracy" to violate state law;
- Florida courts have cast aside the right to anonymity provided by the First Amendment by enforcing subpoenas that require private citizens to produce their private documents to political rivals, compel private citizens to be interrogated by their political rivals,

[1] The Florida Supreme Court has issued seven opinions interpreting the Amendments since their addition to the Florida Constitution: *In re Senate Joint Resolution of Legislative Apportionment 1176,* 83 So. 3d 597 (Fla. 2012) ("*Apportionment I*"); *In re Senate Joint Resolution of Legislative Apportionment 2-B,* 89 So. 3d 872 (Fla. 2012) ("*Apportionment II*"); *Fla. House of Rep. v. League of Women Voters,* 118 So. 3d 198 (Fla. 2013) ("*Apportionment III*"); *League of Women Voters v. Fla. House of Rep.,* 132 So. 3d 135 (Fla. 2013) ("*Apportionment IV*"); *League of Women Voters v. Data Targeting, Inc.,* 140 So. 3d 510 (Fla. 2014) ("*Apportionment V*"); *Bainter v. League of Women Voters,* 150 So. 3d 1115 (Fla. 2014) ("*Apportionment VI*"); *League of Women Voters v. Detzner,* 2015 Fla. LEXIS 1474 (Fla. July 9, 2015) ("*Apportionment VII*").

and force private citizens to testify at trial regarding their private political speech and association; and

- The Florida Legislature's steps to comply with the Florida Supreme Court's interpretation of state law further violate First Amendment rights because legislators must disclose the names of all those who might have worked together on maps provided to them – deterring people from engaging in political speech for fear that they must do so at the expense of their First Amendment right to anonymity, which "is a shield from the tyranny of the majority." *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 357 (1995).

The Florida Supreme Court's rulings have thus made federal law subordinate to state law. They have deemed the exercise of protected political speech and petitioning of government a "conspiracy." Surely there can be no such thing as a "conspiracy" to commit democracy. *Cf. Citizens United v. FEC,* 558 U.S. 310, 349 (2010) ("Political speech is indispensable to decisionmaking in a democracy"); *New York Times Co. v. Sullivan,* 376 U.S. 254, 270 (1964) (noting our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open").

But the state law itself is law that people of ordinary intelligence cannot understand. Legislators do not know how to comply with Florida's Redistricting Amendments as interpreted and applied by the Florida Supreme Court. Citizens do not know when the exercise of their First Amendment rights becomes a "conspiracy" to violate state law. While many might laud the Florida Supreme Court's attempt to use the

Redistricting Amendments to stamp out partisan gerrymandering, all must recognize that the Florida Supreme Court has failed to provide any "judicially discernible and manageable standards" to prevent partisan gerrymandering. *Vieth v. Jubelirer,* 541 U.S. 267, 281 (2004). Florida's Legislature, its lower courts, and its citizens have instead been cast "upon a sea of imponderables," asked "to make determinations that not even election experts can agree upon." *Id.* at 290.[2] As such, the Florida Supreme Court's interpretation and application of the Redistricting Amendments renders the Amendments void for vagueness under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution for "[t]he dividing line between what is lawful and unlawful cannot be left to conjecture." *Connally v. Gen. Constr. Co.,* 269 U.S. 385, 393 (1926).

Jurisdiction

1. This case concerns questions of federal law. The Court has jurisdiction to consider federal questions under 28 U.S.C. § 1331. The Court has the authority to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 – 2202.

Venue

2. The U.S. District Court for the Northern District of Florida is the appropriate venue because the Defendant resides in this District, *see* 28 U.S.C. § 1391(b)(1), and a substantial part of the events or omissions giving rise to the claim occurred within this District, *id.* § 1391(b)(2).

[2] Professors from the University of Michigan and Stanford University argue, for example, that "political geography," and not partisan intent, better explains why more Republicans are elected to Florida's Congressional delegation, and the Florida Legislature. *See* Jowei Chen and Jonathan Rodden, *Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures,* Quarterly Journal of Political Science, Vol. 8, No. 3, 239-269 (2013) *available at* http://www-personal.umich.edu/~jowei/florida.pdf.

3. Specifically, the Pensacola Division of the U.S. District Court for the Northern District of Florida is the appropriate venue because Plaintiff, Rep. Hill, lives in Pensacola, and serves the area in and around Pensacola in the Florida House of Representatives. *See* Local Rule 3.1(A).

Parties

4. Plaintiff, Walter Bryan Hill, is a member of the Florida House of Representatives. Rep. Hill's district includes the area in and around Pensacola, Florida. Rep. Hill's duties as a member of the Florida Legislature include the duty to draw electoral district maps for the Florida House of Representatives, Florida Senate, and Florida's U.S. Congressional delegation. In addition, Rep. Hill has a sworn obligation to uphold, first and foremost, the U.S. Constitution. He took this oath upon being appointed to the U.S. Air Force Academy, being commissioned as an officer in the U.S. Air Force, and being elected as a member of the Florida House of Representatives. Although a proponent of states' rights under the Tenth Amendment to the U.S. Constitution, Rep. Hill recognizes – consistent with the Ninth Amendment to the U.S. Constitution – that neither the states nor the federal government can infringe on individual liberties guaranteed by the Bill of Rights, including the First Amendment to the U.S. Constitution.

5. Plaintiff, Ermon Owens, is a citizen of Florida, specifically of Alachua County, Florida, and a registered voter. Mr. Owens is a member of the Florida Democratic Party, and President of the Alachua County Democratic Black Caucus. In his capacity as President of the Alachua County Democratic Black Caucus, Mr. Owens advocates for issues and policies of import to Alachua County's Black citizens. Florida's

5th Congressional District – as currently drawn – includes Parts of Alachua County. Based on the Florida Supreme Court's opinions interpreting the Redistricting Amendments, Florida's 5th Congressional District will no longer include parts of Alachua County. Alachua County's Black citizens will no longer have an opportunity to elect a representative of their choice; this community's link with what has historically been Florida's 5th Congressional District would also be severed. To be sure, as currently drawn, Florida's 5th Congressional District contains within it a distinct community. The district's much maligned shape traces the historic settlement of Black citizens along the St. Johns River. Roughly following the St. Johns River, the district extends from Jacksonville, Florida to just north of Orlando, Florida. Black citizens settled along the St. Johns River because redlining, and restrictive covenants prevented them from living elsewhere in northcentral Florida. Thus, despite its shape, Florida's 5th Congressional District contains within it a distinct Black population with a shared history.

6. Plaintiff, Clevern Sharpe, is a citizen of Florida, specifically of Alachua County, Florida, and a registered voter. Mr. Sharpe is a member of the Florida Democratic Party. He resides in what is currently Florida's 5th Congressional District, and identifies with the Black community that settled along the St. Johns River in what is now Florida's 5th Congressional District. If Florida's 5th Congressional District is redrawn consistent with the Florida Supreme Court's opinions, Mr. Sharpe will no longer reside in Florida's 5th Congressional District. He would be deprived of the opportunity to elect a representative of his choice for the Black community in northcentral Florida, and his link to that community would thus be severed.

7. Plaintiff, Delena May, is a citizen of Florida, specifically of Alachua County, Florida, and a registered voter. Ms. May is a member of the Alachua County Republican Executive Committee. In this capacity, Ms. May participates in political advocacy, including political speech and petitioning her government on issues such as redistricting. She also helps others engage in the political process – to participate in political speech, associate with like-minded people, petition their government, and vote. Ms. May was previously subpoenaed to produce documents, and give deposition testimony in a state court challenge to Florida's redistricting plans.

8. Plaintiff, Stafford Jones, is a citizen of Florida, specifically of Alachua County, Florida, and a registered voter. Mr. Jones is a member of the Republican Party of Florida, and serves as Chairman of the Alachua County Republican Executive Committee. In his capacity as Chairman, Mr. Jones participates in political advocacy, including political speech and petitioning his government, on issues such as redistricting. This political advocacy takes many forms. It includes organizing grass root networks; preparing and/or editing talking points on a given issue; coordinating with like-minded individuals, some who prefer to remain anonymous for fear of ridicule, censure, and/or retaliation; encouraging others to vote; and otherwise advocating (with like-minded people) for causes associated with his political party before the public at large, the Florida Legislature, the U.S. Congress, and individual legislators. Mr. Jones was previously subpoenaed to produce documents, and give deposition testimony in a state court challenge to Florida's redistricting plans.

9. Plaintiff, Conservative Coalition for Free Speech and Association ("Association"), is an unincorporated association of like-minded individuals, including Mr. Jones. The Association provides a forum for individuals who share conservative ideas and values to anonymously associate with one another in furtherance of political speech, and petitioning of government. Many of the Association's members, including Mr. Jones, organized and associated, to varying degrees, with like-minded individuals to participate in Florida's decennial redistricting efforts through the exercise of their First Amendment rights. The Florida Supreme Court's interpretation and application of the Redistricting Amendments compelled the disclosure of private materials in the possession of the Association's members, depositions of its members, and testimony from its members in a trial concerning the Amendments.

10. Defendant, Ken Detzner, is the Florida Secretary of State. Plaintiffs sue Secretary Detzner in his official capacity. Secretary Detzner serves as Florida's Chief Elections Officer, and custodian of the Florida Constitution. Specifically, once the Florida Legislature enacts a redistricting plan, the Secretary of State is the executive branch official who takes "custody" of "the original statutes . . . and . . . resolutions of the Legislature," *id.* § 15.01; oversees Florida's 67 boards of county commissioners and supervisors of elections as they create or alter precincts consistent with the Florida Legislature's redistricting plan, *id.* at § 101.001; has the power to "bring and maintain such actions at law or in equity by mandamus or injunction to enforce the performance of any duties of a county supervisor of elections or any official performing duties with respect to [Florida elections law]" and "to enforce compliance with a rule of the

Department of State adopted to interpret or implement [Florida elections law]," *id.* § 97.012(14); and ultimately serves as Florida's Chief Elections Officer, ensuring that elections are held consistent with Florida law. *Id.* §§ 15.13, 97.012. Simply put, the Secretary of State is the executive branch official charged with implementing what results from Florida's Redistricting Amendments: redistricting plans created in a manner that violates rights under the First and Fourteenth Amendments to the U.S. Constitution.

First Amendment to the U.S. Constitution: Political Speech, Association, Anonymity in Furtherance of Speech and Association, Petitioning Government, Prior Restraints on Speech, and Overbreadth

11. The First Amendment to the U.S. Constitution protects the right to free speech and association, including political speech and association; the right to anonymity in furtherance of speech and association; and the right to petition one's government.

12. State law (or an interpretation of state law) that has the intent or effect of chilling political speech and association, the anonymity necessary to exercise such speech and association rights, or the right to petition one's government is subject to the strictest scrutiny for "[t]here is no right more basic in our democracy." *McCutcheon v. Fed. Election Comm'n,* 134 S. Ct. 1434, 1441 (2014).

13. Prior restraints and viewpoint discrimination concerning speech and association violate the First Amendment to the U.S. Constitution – especially where political speech and association are concerned.

14. State law (or an interpretation of state law) that has the intent or effect of prohibiting or unduly burdening the right to petition government is similarly prohibited.

15. State law (or an interpretation of state law) violates the overbreadth doctrine when it is so sweeping that its proscriptions chill constitutionally protected conduct and expression. Rooted in the First Amendment to the U.S. Constitution, the overbreadth doctrine recognizes that state law written (or interpreted) in an overbroad manner confers unchecked discretion on state officials such that the state officials might selectively enforce state law against those who espouse objectionable positions.

16. State courts (and their interpretations of state law) must adhere to the First Amendment for state law is subordinate to the First Amendment.

Due Process Clause of the Fourteenth Amendment to the U.S. Constitution: Void for Vagueness

17. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution requires that states enact laws (and interpret those laws) such that a person of ordinary intelligence can understand what the law requires or prohibits.

18. Laws (and judicial interpretations thereof) that people of ordinary intelligence cannot understand, set forth incomprehensible standards, convey no definitive meaning to those who must execute them, or encourage arbitrary implementation are void for vagueness under the Due Process Clause.

19. While the degree of vagueness the Due Process Clause tolerates depends on the enactment, a law that interferes with the exercise of constitutionally protected rights (here the rights of political speech, association, petitioning of government, and anonymity) demands greater clarity.

Florida's Redistricting Amendments

20. Adopted in 2010 through a citizen initiative, Florida's Redistricting Amendments purport to provide standards for establishing congressional and state legislative districts respectively. The almost identical Amendments provide:

> *In establishing legislative [congressional] district boundaries:*
>
> (a) No apportionment plan or [individual][3] 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.
>
> (b) Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law, 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.
>
> (c) The order in which the standards within subsections (a) and (b) of this section are set forth *shall not be read to establish any priority of one standard over the other* within that subsection.

Art. III, §§ 20 and 21, Fla. Const. (emphasis added).

21. Only the Florida Legislature – or the Florida courts when they confer apportionment authority on themselves – must comply with the Redistricting Amendments as set forth in the Florida Constitution, and interpreted by the Florida Supreme Court.

22. When proponents of Florida's Redistricting Amendments testified before the Florida Legislature regarding the Amendments, they stated as much.

[3] Section 20 includes the word "individual"; section 21 does not.

23. The title of the ballot initiative and summary that accompanied the Redistricting Amendments similarly explained that the Amendments would provide "Standards for *Legislature to Follow* in Legislative Redistricting" and "Standards for *Legislature to Follow* in Congressional Redistricting" respectively. *Advisory Op. to AG re: Standards for Establishing Legislative Boundaries,* 2 So. 3d 175, 180 (Fla. 2009) (quoting ballot titles for proposed citizen initiative) (emphasis added).

24. As such, the 3.1 million voters that cast ballots in favor of the Redistricting Amendments (approximately 63% of the votes cast) were never informed that the Amendments – through the Florida Supreme Court's judicial interpretations – would apply to the actions of private citizens, proscribing and sometimes eliminating the ability of private citizens to exercise their rights under the U.S. Constitution.[4]

25. In particular, the Florida Supreme Court's changing definition of the word "intent," has caused significant confusion. According to the Florida Supreme Court:

a. "The text [of the Redistricting Amendments] clearly highlights that for a redistricting plan to run afoul of the [Amendments], the conduct by the Legislature must be *intentional.*" *Advisory Op. to AG,* 2 So. 3d at 186 (emphasis in original). "[S]uch an intent requirement has been historically applied with regard to allegations of gerrymandering in reapportionment," and the Court "has held that a discriminatory *effect* is not sufficient to prove racial discrimination in redistricting; rather, a discriminatory *intent* must

[4] The 2010 election results are available through the Florida Department of State at http://results.elections.myflorida.com/?ElectionDate=11/2/2010

be demonstrated." *Id.* (emphasis in original). "A plaintiff must prove that the disputed plan was conceived or operated as a purposeful device to further [an improper purpose]." *Id.* (citations omitted). "Disproportionate effects alone will not establish a claim." *Id.* (citations omitted).

b. The Florida Supreme Court later stated that the Redistricting Amendment's "intent" standard "prohibits intent, not effect" because any redistricting plan will "inherently have political consequences, regardless of the intent used in drawing the lines." *Apportionment I,* 83 So. 3d at 617. And "[w]ith respect to intent to favor or disfavor an incumbent, the inquiry focuses on whether the plan or district was drawn with this purpose in mind." *Id.* at 618.

c. Yet, despite its prior pronouncements, the Florida Supreme Court stated that "*the effects of the plan*, the shape of district lines, and the demographics of an area are all factors that serve as objective indicators of intent." *Id.* at 617 (emphasis added).

d. "One piece of [such objective indicators of intent] may not indicate [improper partisan] intent, but a review of all of the evidence together may lead this Court to the conclusion that the plan was drawn for a prohibited purpose." *Id.* at 618; *see also Apportionment II,* 89 So. 3d at 890 (discussing shapes of districts to discern "intent").

e. Also, despite earlier opinions, "Florida's [intent] provision should not be read to require a showing of malevolent or evil purpose." *Apportionment I,* 83 So. 3d at 617.

f. "[T]here is certainly a point at which severe partisan imbalance [alone] will reflect impermissible intent," but "[d]efining that threshold for future cases . . . is a difficult undertaking." *Apportionment II,* 89 So. 3d at 897 (Pariente, J., concurring).

g. The Redistricting Amendments make "intent" an "inquiry that can often involve disputed issues of fact" such that discovery and additional litigation to discern legislative intent is appropriate. *Apportionment III,* 118 So. 3d at 206.

h. To discern the Legislature's "intent," discovery can intrude into "communications of individual legislators or legislative staff" for this might establish "whether the [redistricting] plan as a whole or any specific districts were drawn with unconstitutional intent" regardless of the fact that a collegial body – the Florida Legislature – is the actor and that individual legislators are traditionally entitled to protection from such inquiries under the legislative privilege. *Apportionment IV,* 132 So. 3d at 150.

i. To discern the Legislature's "intent," discovery can also intrude into "documents in the possession of [private] non-parties," even where the documents do not include any communications with the

Legislature, or individual legislators and their staff. *Apportionment V,* 140 So. 3d at 512.

j. All of this is permissible because "the focus of the [intent] analysis must be on both direct and circumstantial evidence of intent" – on "whether the plan or district was drawn with [an improper] purpose in mind." *Apportionment VII,* 2015 Fla. LEXIS 1474, *21. For this "inquiry," courts must look "into the process, *the end result* [*i.e.*, effect], and the motive" behind the Florida Legislature's redistricting decisions. *Id.* at *88 (emphasis added). Relying on the private papers of private citizens as circumstantial evidence of the Legislature's motive – and as a subjective indicator of intent – is proper. *E.g., id.* at *22-29, 40-47.

k. If the circumstantial evidence obtained through papers that belong to a private citizen establishes an improper intent as to one legislator, that intent can be imputed to the Legislature as a whole. *Id.* at *50-51.

l. "[T]here is no acceptable level of improper intent." *Id.* at *74.

m. The intent inquiry "can ultimately be determinative" of whether the Legislature's redistricting plan complies with the Redistricting Amendments. *Id.* at *94.

26. Contrary to the Florida Supreme Court's assessment when approving ballot language for Florida's Redistricting Amendments, the Amendments have proven to

be anything but "relatively short and straightforward." *Advisory Op. to AG,* 2 So. 3d at 186. The Florida Supreme Court's shifting standards are not surprising. The U.S. Supreme Court has noted that there are no "judicially discernible and manageable standards for adjudicating political gerrymandering claims." *Vieth,* 541 U.S. at 281. This is because "a person's politics is rarely discernable – and *never* as permanently discernable – as a person's race," making "it impossible to assess the effects of partisan gerrymandering, to fashion a standard for evaluating a violation, and finally to craft a remedy." *Id.* at 287. The Florida Supreme Court's seven opinions interpreting the Redistricting Amendments (and three opinions before the Amendments were actually added to the Florida Constitution) make one thing clear: the U.S. Supreme Court was correct in *Vieth.* There are no "judicially discernible and manageable standards" to discern "a person's politics." *Id.*

27. Furthermore, the intent of the Redistricting Amendments could not have been to create a 50-50 split between the Republican and Democratic Parties in Florida's congressional delegation, state house, or state senate. As professors from the University of Michigan and Stanford University have noted, political geography – not partisan intent – better explains the make-up of Florida's Congressional delegation, its Legislature. *See, e.g.,* Jowei Chen and Jonathan Rodden, *Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures,* Quarterly Journal of Political Science, Vol. 8, No. 3, 239-269 (2013) (running computer simulations to create "hypothetical districting plans that are not intentionally gerrymandered" and concluding that as legislative bodies "grow[] in size, the partisan division of [Florida's] legislative seats

quickly begins to favor the Republicans" because of "political geography" – the tendency of Democrats to live next to other Democrats in "homogenous" districts).

Count I: Redistricting Amendments violate the First Amendment to the U.S. Constitution

28. Plaintiffs re-allege all preceding paragraphs.

29. On July 10, 2014, the Leon County Circuit Court issued a Final Judgment regarding whether the congressional districts drawn by the Florida Legislature in 2012 violate the Redistricting Amendments. In that Judgment, the Leon County Circuit Court concluded that the Legislature drew districts with improper partisan intent – intent that favored the Republican Party of Florida. *See* **Exhibit 1**.

30. The Leon County Circuit Court's Judgment relied on the Florida Supreme Court's prior opinions regarding Florida's Redistricting Amendments when discerning the Amendments' "intent" standard. Based on the Florida Supreme Court's prior opinions, the Circuit Court concluded that (1) the intent of private citizens who participated in the redistricting process was relevant to the issue of the Florida Legislature's intent; (2) the intent of private citizens who engaged in political speech and petitioned their government – as reflected in their private papers, private correspondence, and talking points prepared for like-minded people – could be imputed to individual members of the Florida Legislature; and (3) the intent of individual members of the Florida Legislature could be imputed to the Legislature as a whole.

31. Specifically, the Leon County Circuit Court noted that "anybody who would go to all the trouble of drawing a map and presenting it to the [L]egislature for consideration is probably more likely to be motivated by personal or party politics than

by an altruistic desire to draw [a map] free of any partisan intent." **Exhibit 1** at 27. Thus, "relying upon publicly submitted maps may not be the best way to protect against partisan influence." *Id.* The Circuit Court further stated that if the Legislature chooses to accept publicly submitted maps, there must be "a way to address the possible, nay probable, partisan intent of the drafters of at least *some* of those maps." *Id.* (emphasis added). It is not enough for those in the Legislature "to say that as long as the improper intent behind the submitted map did not originate with me, and I am not expressly told about it, I don't have to worry about it." *Id.* Instead, those at the Legislature reviewing submissions must "take into account the source in evaluating whether it was neutral or whether it might tend to favor or disfavor a political party or an incumbent." *Id.* at 25.

32. Because of fear that the intent of private citizens could be imputed to them, legislators like Rep. Hill were explicitly told *not* to communicate with their constituents regarding the redistricting process unless they knew all relevant information regarding the like-minded people with whom their constituents associate. During the August 2014 Special Session, called after the Leon County Circuit Court's decision, Rep. Hill objected to such restrictions in a letter to the Speaker of the Florida House of Representatives.

33. Also, because of the Leon County Circuit Court's July 10, 2014 decision, which interpreted the Florida Supreme Court's prior opinions, Plaintiffs, Ms. May, Mr. Jones, and members of the Conservative Coalition for Free Speech and Association could not exercise their First Amendment rights to organize, associate, and petition their Legislature when the Legislature reconvened in August 2014 to redraw Florida's 5th and

10th Congressional Districts. Because of prior decisions by the Florida courts, these Plaintiffs feared that their participation would again subject them to the burdens of state court litigation (*i.e.*, document subpoenas, deposition subpoenas, and testimony in open court), cast aside their anonymity were they to submit maps, and otherwise taint any resulting maps with partisan intent.

34. On July 9, 2015, the Florida Supreme Court affirmed the Leon County Circuit Court's finding of partisan intent. The Florida Supreme Court reiterated that when considering the Redistricting Amendment's intent standard, "the focus of the analysis must be on both *direct and circumstantial evidence* of intent." *Apportionment VII,* 2015 Fla. LEXIS 1474 at *21 (emphasis added). For this "inquiry," courts must look "into the process, the *end result*, and the *motive*" behind the Legislature's redistricting decisions. *Id.* at *88 (emphasis added). And courts may rely on the *private* papers of *private* citizens as circumstantial evidence of the *Legislature*'s motive. *E.g., id.* at *22-29, 40. Put another way, the Florida Supreme Court affirmed the Circuit Court's decision to ascribe the *private* motives of *private* citizens to the 160 members of the Florida Legislature as a whole. *Id.* at *62. The Florida Supreme Court even noted that the intent inquiry "can ultimately be determinative" of whether the Legislature's redistricting plan complies with the new Redistricting Amendments. *Id.* at *94. But the Florida Supreme Court failed to utilize or provide any "judicially discernible and manageable standards," *Vieth,* 541 U.S. at 281, as to the proscriptions on the conduct of *private* citizens. *See, e.g., Apportionment VII,* 2015 Fla. LEXIS 1474 at *12 n. 4 (discussing only "the specific context of the facts and circumstances of this case").

35. In light of the Florida Supreme Court's July 9, 2015 decision, the Florida Legislature again called a Special Session for August 2015 to redraw Congressional Districts 5, 13, 14, 21, 22, 25, 26, and 27 and "to make conforming changes to districts that are a direct result of the changes to the referenced Congressional Districts," **Exhibit 2,** and a Special Session for October 2015 to redraw the Florida Senate's districts. **Exhibit 3.** As with the August 2014 Special Session, the Senate President and House Speakers instructed legislators as follows for the 2015 Special Sessions:

> Given the Court's concerns about external partisan influence, and its conclusion that the legislative privilege yields to the constitutional prohibition against partisan intent and that the Legislature bears the burden to justify its decision to draw the districts in a certain way, any member wishing to offer a bill or amendment should be prepared to explain in committee or on the floor of their respective chamber the *identity of every person involved in drawing, reviewing, directing, or approving the proposal*; the *criteria used by the map drawers*; and the *sources of any data used* in the creation of the map other than the data contained in MyDistrictBuilder or District Builder. The member should also be able to provide a non-partisan and incumbent-neutral justification for the proposed configuration of each district, to explain in detail the results of any functional analysis performed to ensure that the ability of minorities to elect the candidate of their choice is not diminished, and to explain how the proposal satisfies all of the constitutional and statutory criteria applicable to a Congressional redistricting plan.

Exhibit 4 (emphasis added).

36. As such, for the August 2015 and October 2015 Special Sessions, Plaintiffs, and other private citizens have been deterred from exercising their rights to political speech, association, and petitioning of government for fear that their political speech and petitioning of their government would come at the cost of their anonymity, and subject them to continued harassment in the litigation over the remedial maps and

further infect the remedial maps with partisan intent such that they would be found unconstitutional.

37. More generally, Florida's Redistricting Amendments, as interpreted by the Florida Supreme Court, have had the effect of chilling the exercise of fundamental First Amendment rights. Because of the Florida Supreme Court's interpretation and application of the Redistricting Amendments:

a. Private citizens cannot rely on some members of a political association to shield the anonymity of others when participating in the redistricting process – when exercising their rights to political speech, association, and petitioning of government – because doing so would result in what the Florida courts have labeled a "conspiracy" under undefined circumstances.

b. Any semblance of organized political advocacy protected by the First Amendment, such as the use of talking points or scripts in legislative hearings, might likewise constitute a "conspiracy" to violate Florida's Redistricting Amendments, and results in the redistricting plans being tainted with improper partisan intent.

c. Like Ms. May, Mr. Jones, and other members of the Conservative Coalition for Free Speech and Association, those who participate in the redistricting process must be prepared to reveal the names of other *private* citizens with whom they associated to exercise the rights of political speech, association, and petitioning of

government; be prepared to produce documents and correspondence related to such *private* collaborations through subpoenas and court orders; be prepared for depositions regarding their *private* activities and communications with other like-minded, *private* individuals; and be prepared to testify about their *private* activities and communications in furtherance of their right to political speech and petitioning of government.

d. The political speech and association of people who are members of the Republican Party of Florida or otherwise share its values must be subjected to heightened scrutiny because the Republican Party of Florida is the majority party in the Florida Legislature, and the Florida courts have deemed communications between elected and unelected members of the Republican Party of Florida, or even between two unelected members of the Republican Party of Florida, to constitute a "conspiracy" to violate Florida's Redistricting Amendments. *Id.* at 3 ("[W]e encourage members to be circumspect and to *avoid all communications* that reflect or might be construed to reflect an intent to favor or disfavor a political party or an incumbent." (emphasis added)).

e. The concerns of a Democratic Congresswoman should be discounted or ignored because she "previously joined with leading Republicans in actively opposing the [Redistricting Amendments]

and redistricting reform," and her Congressional District should be substantially redrawn as a result. *Apportionment VII,* 2015 Fla. LEXIS 1474 at *102.

38. The Florida Supreme Court has thus created and relied on a legal impossibility, to wit: citizens can "conspire" to violate state law when they exercise their superior First Amendment rights – often anonymously – to engage in political speech and petitioning of government.

39. For its part, to comply with the Florida Supreme Court's interpretation and application of the Redistricting Amendments, the Florida Legislature must investigate the intent behind "some" of those who submitted maps. In other words, the Florida Legislature must engage in viewpoint discrimination to comply with the Redistricting Amendments. Based on the history and tenor of litigation concerning the Amendments, the Florida Legislature must discriminate against those who happen to advocate for conservative ideas traditionally associated with the Republican Party of Florida, or simply happen to agree with the Republican Party of Florida on redistricting issues.

40. The cumulative effect of the Florida Supreme Court's interpretation and application of Florida's Redistricting Amendments ensures that the Amendments violate the First Amendment to the U.S. Constitution. This interpretation forces private citizens to run the gauntlet of vexatious litigation, and public censure and ridicule when choosing to engage in political speech or petitioning of their government. It serves as a prior restraint on speech for many. The Florida Legislature must, in turn, cast aside the

federally protected shield of anonymity to which its citizens are entitled before it can listen to its constituents' concerns regarding redistricting.

41. As interpreted and applied by the Florida Supreme Court, Florida's Redistricting Amendments violate the First Amendment's right to engage in political speech, the right to petition government, and the right to speak and associate anonymously; serve as a prior restraint on political speech and association; sanction viewpoint discrimination against those who associate with the Republican Party of Florida and advocate for conservative positions and values; and violate the overbreadth doctrine for their proscriptions are so sweeping that they have had a chilling effect on constitutionally protected conduct – political speech, association, petitioning of government, and the right to anonymously exercise First Amendment rights.

Count II: Redistricting Amendments are Void for Vagueness because the Florida Supreme Court fails to provide judicially discernable and manageable standards to prohibit partisan gerrymandering

42. Plaintiffs re-allege all preceding paragraphs.

43. The first clause of the Redistricting Amendments provides: "No apportionment plan or [individual][5] district shall be drawn with the intent to favor or disfavor a political party or an incumbent." Art. III, §§ 20 and 21, Fla. Const. As interpreted by the Florida Supreme Court, this clause sets forth incomprehensible standards, conveys indefinite meanings, and encourages arbitrary implementation.

44. According to the Florida Supreme Court, the first clause of the Redistricting Amendments prohibits political gerrymandering, and empowers the Florida

[5] Section 20 includes the word "individual"; section 21 does not.

courts to enforce its proscription. *See, e.g., Apportionment VII,* 2015 Fla. LEXIS 1474 at*57-58 (noting that there is "no acceptable level of [partisan] intent").

45. In *Davis v. Bandemer,* 478 U.S. 109, 123 (1986), the U.S. Supreme Court warned that there might be no "judicially discernible and manageable standards by which political gerrymander cases are to be decided."

46. In reviewing lower court cases since *Bandemer,* the U.S. Supreme Court noted that "[t]o think that this lower-court jurisprudence has brought forth 'judicially discernable and manageable standards' would be fantasy." *Vieth,* 541 U.S. at 281.

47. There are no "judicially manageable standards for adjudicating political gerrymandering claims," *id.*, because "a person's politics is rarely as readily discernible." *Id.* at 287. "Political affiliation is not an immutable characteristic, but may shift from one election to the next; and even within a given election, not all voters follow the party line." *Id.* And "the political party which puts forward an utterly incompetent candidate will lose even in its registration stronghold." *Id.* "These facts make it impossible to assess the effects of partisan gerrymandering, to fashion a standard for evaluating a violation, and finally to craft a remedy." *Id.*

48. The Florida Supreme Court's interpretation of the first clause of the Redistricting Amendments to prohibit political gerrymandering has failed to create "judicially discernible and manageable standards." *Vieth,* 541 U.S. at 281.

49. For example, while the Florida Supreme Court has said that there "is no acceptable level of improper intent" and inferred improper intent from meeting between *private* citizens and their legislators, *Apportionment VII,* 2015 Fla. LEXIS 1474 at *20,

the Court has also said that "not every meeting held or every communication made was improper, illegal, or even violative of the letter of the [Redistricting Amendments]." This fails to provide "judicially discernible and manageable standards" for when a meeting or communication provides object, subjective, or even circumstantial evidence of improper intent. *Vieth,* 541 U.S. at 281.

50. While the Florida Supreme Court agreed with the trial court's characterization of efforts to submit material anonymously to the Florida Legislature as a "conspiracy," *id.* at *24-27, 40-43, the Court also said that it was still acceptable to exercise one's right under the First Amendment to the U.S. Constitution to submit material anonymously – it was just wrong for certain citizens to do so "in the specific context of the facts and circumstances of this case." *Id.* at *12 n. 4. This fails to provide "judicially discernible and manageable standards" for when (or by whom) the exercise of rights under the First Amendment to the U.S. Constitution becomes a conspiracy prohibited by Florida's Redistricting Amendments. *Vieth,* 541 U.S. at 281.

51. Moreover, the Florida Supreme Court has created significant confusion with its interpretation of the word "intent" to mean "the effects of the [redistricting] plan, the shape of district lines, and the demographics of an area," and other ***undefined*** objective and subjective indicators of intent. *Apportionment I,* 83 So. at 617.[6]

[6] In *Apportionment VII,* for example, the Florida Supreme Court chose certain effects of the redistricting plan to discern intent. Florida's 5th Congressional District did not pass muster because the Legislature's plan "had the *effect* of benefitting the long-time incumbent of the district," *Apportionment VII,* 2015 Fla. LEXIS 1474 at *102 (emphasis added), and the district's shape was too close to a partisan, 2002 benchmark map. *Id.* To discern intent, the Florida Supreme Court similarly used the compactness of Florida's 13th and 14th Congressional Districts, and lines that crossed Tampa Bay, *id.* at *112-16;

52. Based on what the Florida Supreme Court has termed "objective indicators" of intent, *any* decision to change a single line or boundary of a given district will have the *effect* (and by extension intent) of favoring or disfavoring a political party or incumbent because it would inevitably add or subtract constituents who belong to a political party. Even preserving the status quo – allowing the districts to remain exactly the same – would favor incumbents while simultaneously disfavoring all political parties to which the incumbent does not belong. If intent is interpreted as effect, then any change (or no change at all) to Florida's redistricting maps by the Florida Legislature could result in a violation the Redistricting Amendments.

53. Florida's 5th Congressional District provides an example of the Florida Supreme Court's "effect" equals "intent" standard. The Florida Supreme Court recently held that drawing the 5th District in a north-south fashion has "the effect of benefitting the long-time incumbent of the district, Congresswoman Corrine Brown who previously joined with leading Republicans in actively opposing the Fair Districts Amendment and redistricting reform." *Apportionment VII,* 2015 Fla. LEXIS 1474 at*102.[7]

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the placement of district lines for Florida's 26th and 27th Congressional Districts as it relates to the City of Homestead, *id.* at *117-19; the placement of district lines for Florida's 25th Congressional District as it relates to Hendry County, *id.* at *119-22; and the compactness – as shown by "vertical" versus "horizontal" configurations – of Florida's 21st and 22nd Congressional Districts.

[7] Congresswoman Brown's prior opposition to the Redistricting Amendments should have no relevance to whether the Florida Legislature complied with the Amendments. The Florida Supreme Court, however, appears to attach legal significance to the fact that she exercised her legal rights to "actively oppose" the Redistricting Amendments together with "leading Republicans." *Id.* This creates yet another "judicially [in]discernible and [un]manageable standard." *Vieth,* 541 U.S. at 281. Under this vague standard, it is unclear whether Congresswoman Brown's silence, collaboration with

54. The Florida Supreme Court then ordered the Legislature to draw District 5 in an east-west direction, *id.* at *109, while completely ignoring that such an exercise would necessarily disfavor Rep. Brown, the incumbent, in direct violation of the "intent to . . . disfavor" provision in the Redistricting Amendments.

55. Drawing Florida's 5th Congressional District in an east-west fashion would also favor the Democratic Party by creating a district where "Democrats constitute 61.1% of registered voters." *Id.* at *106. The Republican Party would thus be disfavored because of the Florida Supreme Court's decision, again in contravention of the prohibition on drawing districts with the "intent to . . . disfavor." There are similar problems in Florida's 13th, 14th, 21st, 22nd, 25th, 26th, and 27th Congressional Districts, which the Florida Supreme Court has also ordered redrawn consistent with its directions.

56. The Florida Supreme Court's "effect" equals "intent" standard makes it possible for opponents of *any* redistricting plan to argue that *any* line drawn on a redistricting plan violates Florida's Redistricting Amendments.

57. Because "[t]he dividing line between what is lawful and unlawful cannot be left to conjecture," the first clause of the Redistricting Amendments is void for vagueness. *Connally,* 269 U.S. at 393. There exist no create "judicially discernible and manageable standards" to prohibit partisan gerrymandering. *Vieth,* 541 U.S. at 281. To the extent the Florida Supreme Court's "intent" equals "effect" standard is intended to provide a standard, it fails to provide Rep. Hill, other members of the Florida Legislature,

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Democrats, ordinary Republicans, or passive opposition to the Amendments would still have been legally significant or served as evidence of improper, partisan intent.

or people of ordinary intelligence adequate notice, clarity, or understanding of the actions prohibited by Florida's Redistricting Amendments.

Count III: Redistricting Amendments are Void for Vagueness as-applied to minority access districts like Florida's 5th Congressional District

58. Plaintiffs re-allege all preceding paragraphs.

59. The Redistricting Amendments require the Florida Legislature to draw electoral districts without "the intent to favor or disfavor a political party or incumbent" (hereinafter "intent to favor/disfavor provision") while also drawing the maps such that the "intent" (or "result" and "effect" as interpreted by the Florida Supreme Court) does not "deny[] or abridg[e] the equal opportunity of racial and language minorities to participate in the political process or to diminish their ability to elect representatives of their choice" (hereinafter "minority equal opportunity provision"). Art. III, §§ 20(a) and 21(a), Fla. Const.

60. The Redistricting Amendments state that neither the intent to favor/disfavor provisions nor the minority equal opportunity provision has priority over the other. Art. III, §§ 20(c) and 21(c), Fla. Const.

61. Florida's 5th Congressional District is a minority access district. It is a district where Black citizens from northcentral Florida – historically discriminated against – have a chance to elect a representative of their choice. A significant majority of the Black population in this district affiliates with the Democratic Party and votes for Democrat candidates.

62. In Florida's 5th Congressional District, and similar minority access districts throughout Florida, the Florida Legislature *must* draw the districts in a manner

that protects the ability of minorities to elect representatives of their choice. To comply, the Florida Legislature must simultaneously violate the intent to favor/disfavor provision.

63. The Florida Legislature is thus faced with a Hobson's choice: (1) violate the intent to favor/disfavor provision or (2) violate the minority equal opportunity provision. For Florida's 5th Congressional District and similar minority access districts, the Redistricting Amendments impose inherently contradictory requirements. Compliance with one necessarily requires the violation of another.

64. After years of litigation, and seven opinions by the Florida Supreme Court, the Florida courts have yet to provide the Legislature with guidance – much less "judicially discernible and manageable standards" on how to resolve this Hobson's choice. *Vieth,* 541 U.S. at 281. Prescriptive guidance has been replaced with an *ad hoc* standard that amounts to this: "we know [a violation] when we see it." *Apportionment VII,* 2015 Fla. LEXIS 1474 at *211 (Canady, J., dissenting).

65. As such, the Redistricting Amendments are void for vagueness as-applied to minority access districts; they fail to provide Rep. Hill, other members of the Florida Legislature, or people of ordinary intelligence, adequate notice, clarity, or understanding of the actions prohibited.

Count IV: Redistricting Amendments are Void for Vagueness as-applied to citizens who wish to exercise rights under the First Amendment to the U.S. Constitution

66. Plaintiffs re-allege the preceding paragraphs.

67. As noted above, the Florida Supreme Court has interpreted the word "intent" in the Redistricting Amendment to mean "the effects of the [redistricting] plan, the shape of district lines, and the demographics of an area" to be considered with other

undefined objective and subjective indicators of intent. *Apportionment I,* 83 So. at 617. Subjective indicators of intent can include the motive of an individual legislator, which can then be ascribed to the Legislature as a whole. *See supra* at ¶¶ 31-34. The motive of an individual legislator can, in turn, be imputed to the legislator based on circumstantial evidence gleaned from the private papers of private citizens. *Id.*

68. The Florida Supreme Court's interpretation of the word "intent" thus proscribes the conduct of private citizens who choose to exercise their First Amendment rights to participate in the redistricting process through political speech and petitioning of government. Specifically, based on the Florida Supreme Court's interpretation and application of word "intent," the "intent" of "some" private citizens may be imputed to the Florida Legislature. Yet the Florida Supreme Court's interpretation of the word "intent," as used in the Redistricting Amendments, does not (1) provide private citizens, or members of the Florida Legislature like Rep. Hill, fair warning of what is prohibited; (2) lacks a precise or articulated standard that ensures the protection of fundamental rights under the U.S. Constitution; and (3) has caused private citizens, including members of the Conservative Coalition for Free Speech and Association, to forsake activities protected by the First Amendment to the U.S. Constitution for fear that they may be prohibited, force them to disclose private papers and discussions with like-minded people, and otherwise subject them to the burdens of litigation. *See supra* ¶¶ 30-41.

69. As such, the Redistricting Amendments are void for vagueness, as-interpreted by the Florida Supreme Court, and as-applied to private citizens who wish to exercise their rights under the First Amendment to the U.S. Constitution.

Relief Requested

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that the Redistricting Amendments, as interpreted by the Florida Supreme Court, violate the First and Fourteenth Amendments to the U.S. Constitution;

B. Enjoin the Secretary of State and all state officials from implementing any redistricting plans that result from a process tainted by violations of the First Amendment to the U.S. Constitution;

C. Enjoin the Secretary of State and all state officials from implementing any redistricting plans drawn pursuant to Florida Redistricting Amendments, which are void for vagueness under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution; and

D. Grant such other relief as the Court may deem proper.

Respectfully submitted,

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