

2021 COLLIER COUNTY REDISTRICTING

**Independent Review by
Bond, Schoeneck & King, PLLC**

of the

**2021 Redistricting Process conducted by the
Collier County Growth Management Department**

Overview prepared for the
Collier County Board of County Commissioners by:

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Exhibit B Bond Total Population Deviation Calculations

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Each Exhibit is attached and incorporated by reference.

I. Background

Pursuant to Article VIII, §1(e) of the Florida Constitution, after completion of the 2020 United States Census, the Collier County Board of County Commissioners (the “BCC”), is required to divide Collier County into five districts of “contiguous territory as nearly equal in population as practicable.” Florida Statute §124.01(3) allows changes to the districts “only in odd-numbered years.” Due to population increases since 2010, the BCC must adopt new district boundaries in 2021, or wait until 2023 to do so.

To meet the 2021 adoption deadline, on June 22, 2021, the BCC resolved to adopt a new redistricting map at a public hearing to be held on December 14, 2021. Unlike the adoption process in 2011, the BCC’s redistricting map is no longer subject to administrative preclearance by the United States Department of Justice (the “DOJ”).¹

The BCC directed the Growth Management Department (“Staff”), to draw a minimum of three alternative redistricting maps using the 2020 United States Census Bureau data and established four primary redistricting criteria for Staff to follow. These criteria are intended to assure compliance with: (i) the Florida Constitution, (ii) Florida law, (iii) the U.S. Constitution, and (iv) federal law. The BCC’s four primary redistricting criteria are:

2021 BCC Primary Redistricting Criteria

1. The population of each district should be as similar as possible.
2. All districts should be as compact and regularly shaped as feasible.
3. The residence of each incumbent BCC Commissioner, and of each incumbent member of the Board (the “School Board”) of the Collier County School District (the “School District”), must remain in that incumbent’s current district.
4. Consider racial and ethnic populations in accordance with the law.

Additionally, the BCC adopted the following four supplemental criteria:

¹After the BCC 2011 redistricting, §4(b) of the Voting Rights Act of 1965, 79 Stat. 437, as amended, 52 U.S.C. §10301 *et seq.* (the “Voting Rights Act” or “VRA”), was held unconstitutional by the United States Supreme Court in *Shelby County v. Holder*, 570 U.S. 529, 133 S.Ct. 2612 (2013). The effect of the *Shelby County* decision is that Collier County no longer needs DOJ preclearance for new voting changes, like redistricting.

- (1) Any plan that has a retrogressive effect on minority voting strength will be eliminated from further consideration.
- (2) Well-defined, easily recognizable, and major boundaries, such as river, arterials, and major roads should be utilized when not in conflict with other criteria.
- (3) Former district boundaries should generally be maintained when not in conflict with other criteria.
- (4) Communities of interest, such as Golden Gate Estates, and neighborhood integrity should be preserved when not in conflict with other criteria.

On September 8, 2021, the School Board agreed to draw coterminous School District boundaries with the final BCC district boundaries and offered School Board staff support at BCC redistricting public meetings.

The BCC further directed Staff to solicit public comment on the proposed maps at a series of public district information meetings conducted in November of 2021.

II. Purpose of this Review

At the BCC's direction, Staff engaged the law firm of Bond, Schoeneck & King, PLLC ("Bond"), to conduct an independent review of the 2021 redistricting process. Staff selected Bond based on Bond's August 5, 2021 proposal, a copy of which is attached as Exhibit "A". Bond performed a similar independent review of Collier County's redistricting process in 2011.²

BCC and Staff obtained Bond's independent review as an additional measure to support redistricting process compliance with federal and state constitutional and statutory requirements. As specified in its proposal, Bond was retained to:

- Service #1 *Review applicable state and federal law regarding redistricting.*

Addressed in Article IV of this report (Compliance with the County Commissioner's Redistricting Criteria)

- Service #2 *Review US Census Bureau Data, using GIS mapping techniques, to ensure accuracy of map options and compliance with applicable law.*

Addressed in Article V of this report (Verification of Data)

² A copy of Bond's 2011 report ("*Independent Review by Bond, Schoeneck & King, PLLC of the 2011 Redistricting Process conducted by the Collier County Comprehensive Planning Department*") is available at <https://www.colliercountyfl.gov/home/showpublisheddocument?id=39659>

- Service #3 *Review and advise on methodology used to receive feedback from the public and observe at least one public information district meeting.*

Addressed in Article VI of this report (Process and Public Feedback)

- Service #4 *Advise regarding legal compliance at all stages of the redistricting process, prior to presentation to the BCC.*

Addressed in Articles IV, V and VI of this report

- Service #5 *Prepare report regarding the accuracy and methodology of the map drawing and comment solicitation process to present to the BCC with the understanding that the map options shall be presented to the BCC thereafter.*

Addressed in Article VI of this report

III. Statement Regarding Bond's Involvement

Bond's role in the 2021 redistricting process has been to serve as an independent third party.

On September 27, 2021, Bond Members Kevin V. Recchia and Adam C. Kerlek participated in a Zoom video conference meeting with David Weeks (Staff's Redistricting Project Manager) and Michael Bosi (Collier County Planning Director). During this meeting, Staff advised Bond that Staff decided to draw five alternative redistricting maps, which decision is consistent with the BCC's directive to draw at least three such maps. Staff also advised Bond of the redistricting timeline and the forthcoming publication of notice of public meetings. Bond and Staff then discussed permissible considerations under federal and state law (including the Voting Rights Act) when drawing the five alternative maps. As with the 2011 redistricting process, the persons in attendance confirmed that Bond would not participate in the drawing of the five alternative maps. Rather, Bond would conduct an independent evaluation of the alternative maps and determine whether each map fully complies with applicable law.

Bond attended the District 5 public information meeting held on November 15, 2021. Bond intentionally did not answer questions, but monitored the presentation made by David Weeks, as well as answers provided by Mr. Weeks and Tom Eastman (the School District's Director, Real Property Law & Construction Contracts) to the public's questions.

Bond communicated primarily with David Weeks. Mr. Weeks forwarded to Bond all relevant e-mails received by him, as well as any other pertinent correspondence between Staff and the public.

Bond also communicated with the Chief Deputy Supervisor of the Collier Supervisor of Elections Office (“Elections Office”), Melissa Blazier. The Elections Office had no role in drawing the maps but provided technical support.

IV. Compliance with the County Commissioner’s Primary Redistricting Criteria

The BCC and Staff instructed Bond to determine whether each alternative map complies with the BCC’s four primary redistricting criteria.

A. Primary Criterion #1 (Equal Population)

The population of each district should be as similar as possible.

The Florida Constitution and Florida statutes, require the BCC to adopt a redistricting map having contiguous districts “as nearly equal in population as practicable”, and that the boundaries thereof be adopted in odd numbered years.³

The United States Supreme Court has interpreted Article I, § 2 of the U.S. Constitution as requiring congressional districts be drawn with equal populations,⁴ and has applied the “one person, one vote rule” to legislative apportionment at the local level.⁵ While congressional districts must be drawn with near perfect equality,⁶ the United States Supreme Court has recognized that some deviation for prefect population equality is permitted when drawing state and local legislative districts. Thus, when the maximum population deviation between the largest and the smallest district is less than ten percent (10%), “a state or local legislative map presumptively complies with the one-person, one-vote rule.”⁷

The five districts must be drawn using the total population from the 2020 United States Census Bureau data, and not voting age, citizen, or registered voter count.⁸

Based on 2020 United States Census Bureau data, Collier County’s ideal or target population for each of the five districts is 75,150 persons. Premised on the permissible maximum deviation of

³ *Florida Constitution*, Article VIII, §1(e) and *Florida Statutes*, Chapter 124.

⁴ *Baker v. Carr*, 369 U.S. 186, 191-192, 82 S.Ct. 691 (1962); *Wesberry v. Sanders*, 376 U.S. 1, 7-8, 84 S.Ct. 526 (1964).

⁵ *Avery v. Midland County*, 390 U.S. 474, 485-486, 88 S.Ct. 1114 (1968).

⁶ *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-531, 89 S.Ct. 1225 (1969),

⁷ *Evenwel v. Abbott*, 578 U.S. 54, 136, S.Ct. 1120, 1124 (2016), citing *Brown v. Thomson*, 462 U.S. 835, 842-843 (1983).

⁸ *Accord, Id.* In *Opinion 2001-55*, the Florida Attorney General concluded that population figures from the last decennial census are to be used when Florida counties reconfigure county commission districts into districts with populations as nearly equal as possible. Citing *Gaffney v. Cummings*, 412 U.S. 735, 93 S.Ct. 2321 (1973), the Florida Attorney General opined that voting status figures, as compared to overall population figures, are “not a qualification under the constitution and statutes for inclusion in the population for purposes of the census or for drawing county commission districts.”

10% between district populations, (or plus/minus five percent (5%) from 75,150), each proposed district should have a total population between 71,393 and 78,908.

While each of the five districts in Collier County has experienced significant population growth since 2011, the growth has been unequal. The following data shows the current population of each district as currently configured, and the adjustments needed to achieve the ideal or target total population.

BCC District	Total Population as of April 1, 2020	Ideal Total Population	Percentage Deviation from Ideal Total Population	Adjustment Needed
1	75,451	75,150	0.4% over	-301
2	67,519	75,150	10.2% under	+7,631
3	79,882	75,150	6.3% over	-4,732
4	66,037	75,150	12.1% under	+9,113
5	86,863	75,150	15.6% over	-11,713
Total	375,752	375,750		

BCC PRIMARY CRITERION #1 CONCLUSION: Bond has reviewed the population data under each of the five alternative maps and concludes that all five maps meet BCC Primary Criterion #1. Please see the summary of Bond’s population deviation analysis attached as Exhibit “B”.

- Alternative Map 1 COMPLIES - maximum deviation is 5.2% < 10%
- Alternative Map 2 COMPLIES - maximum deviation is 9.5% < 10%
- Alternative Map 3 COMPLIES - maximum deviation is 7.3% < 10%
- Alternative Map 4 COMPLIES - maximum deviation is 3.4% < 10%
- Alternative Map 5 COMPLIES - maximum deviation is 6.6% < 10%

B. Primary Criterion #2 (Compact and Regularly Shaped)

All districts should be as compact and regularly shaped as feasible.

The Florida Constitution expressly requires the BCC to adopt districts that are geographically “contiguous.”⁹ Contiguous districts may be connected by land or water, but there may not be any pockets of one district contained within another district. While BCC Criterion #2 uses the words “compact” and “regularly shaped”, rather than “contiguous”, districts that are compact and regularly shaped are inherently contiguous.

Federal courts recognize “compactness” or “regular shape” as a traditional redistricting principle, but the courts have not established a general standard by which to measure

⁹ Florida Constitution, Article VIII, §1(e).

compactness. Instead, courts apply an intuitive “eyeball” test - does a district look reasonably compact, and is it similar in shape to other districts drawn? The United States Supreme Court has held that districts violate compactness if they are “dramatically irregular” or “bizarre” but has also held that the U.S. Constitution does not mandate regularity of shape.¹⁰

BCC PRIMARY CRITERION #2 CONCLUSION: Bond has reviewed the contiguousness, compactness, and general shape of the districts under each of the five alternative maps and concludes that all five maps meet BCC Primary Criterion #2.

C. Primary Criterion #3 (Incumbents)

The residence of each incumbent BCC Commissioner, and of each incumbent School Board member, must remain in that incumbent’s current district.

The incumbency criterion is recognized by the courts as a traditional redistricting principle under the theory that maintaining an incumbent in the incumbent’s district recognizes the will of the voters who elected the incumbent.¹¹

BCC PRIMARY CRITERION #3 CONCLUSION: Bond has reviewed the residential addresses of the Commissioners and School Board Members under each of the five alternative maps and concludes that all five maps meet BCC Primary Criterion #3.

D. Primary Criterion #4 (Racial/Ethnic Considerations)

Consider racial and ethnic populations in accordance with the law.

Under the Voting Rights Act and the U.S. Constitution, it is permissible to consider racial/ethnic population while redistricting, but only in specific circumstances as explained below. Because of Collier County’s significant Hispanic population in District 5, the BCC should be especially alert to the requirements of the Voting Rights Act and the 14th Amendment to the U.S. Constitution when considering how each alternative map affects the Hispanic population in District 5.¹²

¹⁰ *Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816 (1993).

¹¹ “The opportunity to control the drawing of electoral boundaries through the legislative process of apportionment is a critical and traditional part of politics in the United States....” *Davis v. Bandemer*, 478 U. S. 109, 145, 106 S.Ct. 2797 (1986) (plurality opinion) (opinion of O’Connor, J.). Although not applicable to the redistricting considerations here, Florida’s congressional and legislative district boundaries are not to be “drawn with the intent to favor or disfavor a political party or an incumbent.” *Florida Constitution*, Article III, §20(a) (congressional districts), and §21(a) (legislative districts).

¹² In Staff’s supporting documents, and in this report, the term “Hispanic” includes the “Latino” and “Latinx” populations.

1. Voting Rights Act of 1965

Initially, we note the change in law since the BCC's 2011 redistricting exercise. In 2011, the DOJ had preclearance review authority over the BCC's proposed district map under VRA §§ 4 and 5. Moreover, the BCC had the burden to establish to the DOJ that the voting change caused by the proposed map had neither a discriminatory effect nor purpose prior to implementation.

The United States Supreme Court's *Shelby County* decision changed the landscape. Gone is the condition of DOJ preclearance under VRA §§ 4 and 5, and the lesser-used judicial review process.¹³ Today, VRA § 2's prohibition against voting practices resulting "in a denial or abridgment of the right of any citizen ... to vote on account of race or color, or language minority status"¹⁴ is the touchstone for challenges to voting changes. A person claiming that a redistricting map violates the provisions of VRA § 2 must file a lawsuit and bears the burden of proof.

a. VRA Section 2 (Minority Dilution)

The current version of VRA § 2 provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title [language minority group], as provided in subsection (b).

"(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."¹⁵

¹³ The *Shelby County* Court held that VRA §4 was unconstitutional. The Court refused to rule on VRA § 5 itself. However, since VRA § 5 only applied to the jurisdictions listed in (the now unconstitutional) VRA § 4, the Court's decision effectively rendered VRA § 5 impotent.

¹⁴ VRA § 2 [52 U.S. Code § 10301(a)] ("race and color"); [52 U.S.C. §10303(f)] (member of a "language minority group"); see also *Fla. Const.*, Art. III, §§ 20(a) and 21(a) (congressional and legislative 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.")

¹⁵ 52 U.S.C. § 10301.

Importantly, a plaintiff under VRA § 2 is not required to prove discriminatory purpose or intent behind a proposed change in voting laws. Congress amended VRA § 2 in 1982 to repudiate the notion that facially neutral voting practices violate VRA § 2 only if motivated by a discriminatory purpose.¹⁶ Thus, borrowing nearly wholesale, language from a United States Supreme Court decision,¹⁷ Congress added subsection (b) to VRA § 2, which serves as the standard for vote-dilution claims. As Collier County has a significant Hispanic minority population, the BCC must consider whether the five alternative redistricting maps meet VRA § 2's requirements.

VRA § 2 prohibits the dilution of minority voting strength. Historically, dilution of minority voting strength generally takes on one of two forms. "Packing" describes drawing district maps so that minority voters are compressed into a small number of districts, when they could effectively control more. Alternatively, "cracking" refers to thinly spreading minority voters into many districts where they are the numerical minority.¹⁸ There is no precise number that designates the threshold of either "packing" or "cracking", and each district map must be judged on a case-by-case basis.¹⁹

In Collier County, only District 5 could be subject to a potential VRA § 2 claim since it is the only district close to having a minority (i.e., Hispanic) citizen voting age population greater than 50%.²⁰

In *Thornburg v. Gingles*,²¹ the United States Supreme Court set out three conditions a person must prove to support a minority dilution claim. Based on the *Gingles* opinion, a Collier County plaintiff alleging minority dilution would need to prove that:

- (1) the minority citizen voting age population is large enough and compact enough to draw a district (or districts) as a majority-minority district.²²
- (2) the minority population in Collier County is politically cohesive; that is, it usually votes and acts politically in concert on major issues and/or votes for the same candidates; and

¹⁶ Congress acted to nullify the holding in *Mobile v. Bolden*, 446 U.S. 55, 100 S. Ct. 1490 (1980).

¹⁷ *White v. Regester*, 412 U.S. 755, 766, 93 S.Ct. 2332 (1973).

¹⁸ An example of packing is when mapmakers draw one district that is over 90% of a single minority group, when they could draw at least two districts with nearly 50% single minority group representation. An example of cracking is when a minority population can be placed within one district comprising 70% of the total voting age population, but three districts are created each having a 40% minority voting age population.

¹⁹ *Gill v. Whitford*, 585 U.S. ___, 138 S.Ct. 1916 (2018); *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 135 S.Ct. 1257, 1265, (2015).

²⁰ *Bartlett v. Strickland*, 556 U.S. 1, 129 S.Ct. 1231, 1245 (2009). A party asserting VRA § 2 liability must show by a preponderance of the evidence that "minorities make up more than 50 percent of the voting-age population in the relevant geographic area".

²¹ *Thornburg v. Gingles*, 470 U.S. 30, (1986).

²² The term "majority-minority district" means a district where a majority of the voting age population is a racial or language minority group.

- (3) there is “polarized voting” such that the majority non-minority group in Collier County usually votes to defeat candidates preferred by minority group voters.

With respect to *Gingles* condition (1), a plaintiff would have to prove that the adopted map was drawn in a manner rendering the Hispanic population a minority in District 5, and that the map may be re-drawn to encompass a compact Hispanic population in a majority-minority district. While the BCC is permitted in limited circumstances to explicitly consider race when redrawing district lines, race cannot predominate in the redistricting process to the subordination of traditional, non-race-based factors.²³

With respect to *Gingles* condition (2), according to Elections Office records, 35.2% of Collier County’s Hispanic registered voters are affiliated with the Democratic party and 30.1% are affiliated with the Republican party. These figures indicate that the Collier County Hispanic population does not necessarily vote cohesively.

Finally, with respect to *Gingles* condition (3), the five alternative maps will result in (i) Hispanics comprising 48.0% to 49.8% of District 5’s total voting age population, and (ii) Blacks/African Americans comprising 10.4% to 11.2% of District 5’s total voting age population. Therefore, it does not appear that the White voting age population in District 5 will be sufficient to overcome a minority population’s vote.²⁴

Only after a Collier County plaintiff met the burden of proof on all three of the *Gingles* conditions, would a court then consider whether the “totality of the circumstances” in Collier County demonstrated minority dilution. Pursuant to the *Gingles* decision, the following factors would be relevant in assessing the totality of the circumstances:

- Collier County’s history of voting-related discrimination;
- the extent to which voting in Collier County elections is racially polarized;
- the extent to which Collier County has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group;
- the exclusion of minority group members from candidate slating processes;
- the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
- the use of overt or subtle racial appeals in political campaigns;
- the extent to which members of the minority group have been elected to public office in Collier County;
- whether elected officials are unresponsive to the particularized needs of the minority group members; and,

²³ *Miller v. Johnson*, 515 U.S. 900, 916, 115 S.Ct. 2475; *Shaw v. Reno*, *supra*.

²⁴ Further, in areas with substantial crossover voting, it is unlikely that a plaintiff would be able to establish the third *Gingles* precondition – bloc voting by majority voters. *Barlett v. Strickland*, 556 U.S. 1, 44 (2009).

- whether the policy underlying Collier County’s use of the contested practice or structure is tenuous.

b. VRA Section 2 (Discriminatory Purpose)

Although Bond did not attend the meeting where Staff drew the alternative maps, Staff provided Bond with notes from that meeting. Those notes indicate that Staff drew the maps using GIS layers that included 2020 Census Blocks, roads, water bodies, aerial images, PUD boundaries and the ten (10) incumbent residence locations. Staff also reviewed (among other information) data identifying total population by Census Block, a map showing boundaries of the current districts and the 2020 Census Tract map. Staff reviewed race and ethnic population data only after Staff completed the map drawing process. Accordingly, it appears that Staff drew the maps following the BCC’s criteria and based on traditional redistricting principles, such as maintaining communities of interest and neighborhoods and preserving the core of existing districts.

Further, throughout Bond’s involvement in the redistricting process, Bond observed no evidence of discriminatory intent or purpose.

2. Retrogression Analysis

As previously referenced, the BCC adopted as a supplemental criterion that if any plan would have a retrogressive effect on minority voting strength, that plan would be eliminated from further consideration. In essence, this supplemental criterion is included within BCC Primary Criterion #4 directing Staff to consider racial and ethnic populations in accordance with the law. Although the Supreme Court’s decision in *Shelby County v. Holder* rendered VRA § 5 legally irrelevant, statistical retrogression (which had been the seminal judicial focus of a VRA § 5 review), is still relevant to claims of discriminatory purpose or effect. Prior to *Shelby County*, the BCC had the burden of establishing to DOJ that a proposed redistricting plan did not have the purpose or effect of worsening the position of minority voters when compared to the BCC’s “benchmark” plan or district map.²⁵ While the BCC no longer has this burden, a plaintiff demonstrating such purpose or effect could expose the BCC to a VRA § 2 claim.

The current BCC district map (which received the DOJ’s VRA preclearance in 2011), is the last legally enforceable redistricting plan for VRA purposes, or the “benchmark”. A discriminatory effect could be established if a redistricting map, when compared to the benchmark map, evidences a “retrogression” in the number of minorities within a defined district.²⁶ Simply stated, would racial minority district members in Collier County be “worse off” - numerically - in 2021 when compared to 2011?

²⁵ *Reno v. Bossier Parish School Board*, 120 S.Ct. 866, 871–72, 120 S.Ct. 866 (2000).

²⁶ *See Beer v. United States*, 425 U.S. 130, 141 (1976).

As previously stated, District 5 is the only district with a large enough minority (Hispanic) voting age population where a retrogression analysis is relevant. Each of the five alternative maps drawn by Staff do not have a statistical retrogressive effect in District 5. In fact, each alternative map for District 5 results in a higher percentage of the Hispanic voting age population, with such increases ranging from 3.84% to 5.63%.

Prior to *Shelby County*, the DOJ (guided by relevant decisions of the United States Supreme Court and other federal courts) also considered additional demographic and election data going beyond the purely mathematical retrogression analysis. These factors included:

- whether minority voting strength is reduced by the proposed redistricting;
- whether minority concentrations are fragmented among different districts;
- whether minorities are over-concentrated in one or more districts;
- whether alternative plans satisfying the jurisdiction’s legitimate governmental interests exist, and whether they were considered;
- whether the proposed map departs from objective redistricting criteria set by the submitting jurisdiction and ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and
- whether the map is consistent with the jurisdiction’s stated redistricting standards.²⁷

Bond’s analysis of the VRA as applied to the five alternative maps leads us to conclude:

1. Minority voting strength in each district has not been materially reduced.
2. The minority population has not been over-concentrated or “packed” in one or more districts to avoid multiple majority-minority districts.
3. The minority population has not been fragmented or “cracked” between districts to avoid a majority-minority district.²⁸

Finally, as mentioned throughout this review, all five of the alternative maps are consistent with the BCC’s redistricting criteria and do not ignore traditional redistricting principles.

²⁷28 CFR §§ 51.56 – 51.59.

²⁸ District 5, as drawn in each of the five alternative maps, might be considered a “coalition district” under VRA parlance, or a district where more than one minority group can be combined into a majority coalition for VRA §2 purposes. The Eleventh Circuit Court of Appeals has held that two minority groups may be aggregated into a single VRA § 2 minority “if they can establish that they behave in a politically cohesive manner.” Based on the proposed maps, Hispanic and Black/African American voters will together make up more than 50% of the voting age population in District 5. *Concerned Citizens of Hardee County v. Hardee County Board of Commissioners*, 906 F.2d 524, 526 (11th Cir. 1990).

3. Equal Protection Clause – 14th Amendment

An additional basis for a claimant seeking to invalidate the proposed district maps is the Equal Protection Clause of the 14th Amendment to the U.S. Constitution,²⁹ as citizens cannot, absent sufficient justification, be separated “into different voting districts on the basis of race.”³⁰ Again, a person claiming that that a redistricting map violates the Equal Protection Clause must file a lawsuit and bears the burden of proof.

Some tension exists between VRA § 2, and the Equal Protection Clause since, in limited circumstances, race may explicitly be considered under the former, but must be subordinated to traditional, non-race-based factors under the latter. Bond identifies the following principles that have emerged in the post-*Shaw* environment to guide BCC’s redistricting process:

- race may be considered; but race may not be the predominant factor in the redistricting process to the subordination of traditional redistricting principles;
- if race is the predominant consideration, the map may still be constitutional if it is “narrowly tailored” to address compelling governmental interest such as compliance with the VRA; and
- if a map is narrowly tailored, it will use race no more than is necessary to address the compelling governmental interest.

Therefore, while it is legally permissible for the BCC to consider Collier County’s minority populations when drawing and adopting the BCC districts, a strong justification must exist if minority population considerations are prioritized over traditional redistricting principles. Accordingly, the BCC need not consider race or language groups as a driving factor in the redistricting process and is not required to create a majority-minority District 5 by elevating race over all other traditional redistricting principles. Moreover, because Bond opines that the three *Gingles* preconditions indicate that a VRA § 2 claim would be very unlikely to succeed, and because no map results in a statistical retrogressive effect in District 5, the BCC is not required to adopt a redistricting map with a minority majority district.

BCC PRIMARY CRITERION #4 CONCLUSION: Bond has reviewed the five alternative maps with reference to the Voting Rights Act and the Equal Protection Clause of the 14th Amendment and concludes that all five maps appear free from (i) dilution of minority voting power (VRA § 2), and (ii) separation on the basis of race without sufficient justification. If an affected citizen were to file a VRA §2 or Equal Protection Clause lawsuit, Bond believes it is very unlikely that any such lawsuit would succeed.

²⁹ The Equal Protection Clause of the Fourteenth Amendment provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” *U.S. Const.*, Amdt. 14, § 1

³⁰ *Miller v. Johnson*, 515 U.S. 900, 115 S.Ct. 2475 (1995); *Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816 (1993).

E. BCC Supplemental Criteria

The other three supplemental criteria adopted by the BCC directed Staff, when not in conflict with other criteria, to (1) establish well-defined, easily recognizable, and major boundaries, such as rivers, arterials, and major roads, (2) generally maintain former district boundaries and (3) preserve communities of interest, such as Golden Gate Estates, and neighborhood integrity. Historically, jurisdictions have recognized “traditional redistricting criteria” when drawing congressional, legislative, and local district lines. Such traditional criteria are in addition to the mandatory standards prescribed by the U.S. Constitution,³¹ the Florida Constitution,³² federal law,³³ and state law.³⁴ The foregoing three supplemental criteria are included within the traditional redistricting criteria recognized by the United States Supreme Court³⁵ and commentators.

All five of the alternative maps preserve the core of the existing districts, and do not arbitrarily divide neighborhoods. However, we note the East Naples Civic Association (“ENCA”) has criticized all five proposed maps (especially Maps 1 and 5) as not maintaining the identity of the East Naples area, a criticism that might be considered by the BCC when adopting the final map. By letter dated November 19, 2021, the ENCA recommended “an amended Map 4-with the northern border extended from Rattlesnake to include all areas south of Thomasson.” However, the map enclosed with the ENCA letter did not match the letter’s description. Subsequently, Jacob Winge (ENCA’s President) stated that Staff should disregard the rendering enclosed with the letter and further stated that ENCA is “advocating for the northern Boundary to be extended West to Thomasson and then carried south outside the City of Naples boundaries.” Based on further communication between Staff and Mr. Winge, Staff now expects Mr. Winge to prepare and present a proposed amended Map 4 at the December 14 BCC hearing.

V. Verification of Data

Staff requested Bond to verify the 2020 U.S. Census Bureau data employed by the County, as well as ensure the data accuracy of the five map options developed by Staff.

³¹ *U.S. Const.*, Art. I, § 2; *U.S. Const.*, Amdt. 14, § 1.

³² *Fla. Const.*, Art. III, §§ 20, 21.

³³ *E.g.*, the VRA.

³⁴ *Fla. Stat.*, Chap. 142.

³⁵ *See, e.g., Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. ___, 137 S.Ct. 788, 795 (2017) (compactness, contiguity of territory, and respect for communities of interest; equality of population as nearly as practicable; protections against ... unwarranted retrogression (under VRA §5)); *Bush v. Vera*, 517 U.S. 952, 959 - 960, 116 S.Ct. 1941 (1996) (natural geographical boundaries; contiguity; compactness; conformity to political subdivisions (not crossing city or town boundaries)); *Karcher v. Daggett*, 462 U.S. 725, 740, 103 S.Ct. 2653, 2663 (1983) (“making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives”); *See generally* Meghan McCann, W. U. (n.d.). Redistricting Criteria, Retrieved October 19, 2021, from <https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx>.

To verify the census data used by Staff and the accuracy of the five map options, Bond used the online tool entitled “My District Builder”. My District Builder is provided by the Florida House of Representatives (www.floridaredistricting.org).

DATA VERIFICATION CONCLUSION: My District Builder allowed Bond to re-draw the five proposed map options and verify the population and minority data used by Staff. Exhibit “C” attached hereto contains the five maps recreated by Bond, which show numbers that are virtually identical to those used by Staff.

VI. Process and Public Feedback

BCC and Staff directed Bond to review and provide feedback on the redistricting process to ensure the process meets State requirements. Additionally, BCC and Staff requested Bond to review and provide comments on the process used to obtain public feedback, and to attend one public information district meeting. Bond attended the District 5 public information meeting held on November 15, 2021.

The 2021 redistricting process was substantially similar to the 2011 redistricting process. The Florida Constitution and Chapter 124 of the Florida Statutes charge the BCC with redrawing Collier County’s district boundaries this year. The BCC determined that a December 2021 adoption date was appropriate because of the time limitations imposed by the release of the United States Census Bureau data on August 12, 2021. Accordingly, the BCC instructed Staff to prepare up to three alternative maps, each of which complied with the BCC’s redistricting criteria, and Staff elected to prepare five alternative maps.

The BCC is responsible for creating and adopting new district boundaries. No constitutional or statutory requirement directs the BCC or Staff to draw more than one map option, or to involve the public in the adoption process. Although holding public meetings is not legally required, counties throughout Florida typically hold public meetings during the redistricting process.

The five-map alternative method, as implemented, provides the BCC with flexibility in choosing an acceptable map, and it enabled the public to comment on the same five alternative maps during the month of November. As referenced above, if ENCA proposes an amended Map 4, that map may also be considered by the BCC provided it satisfies the BCC criteria.

BCC has the final authority to accept, reject, or modify the alternative maps, but must do so with the understanding that any delay may jeopardize the adoption of a map in 2021.

A. Map Drawing Process

During the initial Zoom video conference meeting, Bond confirmed that Staff understood the implications of federal law in drawing the five alternative maps, including VRA § 2’s prohibition against diluting minority voting power.

Bond understands that the maps were drawn by David Weeks and the GIS staff, together with assistance of the School District through Amy Taylor Lockhart (the School District's Long Range Planner), Chelsey Mora Nichols (the School District's GIS Planning Analyst) and Tom Eastman (the School District's Director, Real Property Law & Construction Contracts).

Throughout the public meeting process, David Weeks advised the public that the BCC's redistricting criteria were the Staff's primary considerations in making decisions during the map drawing process. Staff strived to create districts with population nearly as equal as possible; however, Staff did consider the 10% deviation permitted under federal law. This deviation allowance permitted Staff to consider natural and manmade boundaries when drawing the maps, and to minimize any division of neighborhoods and communities of interest to achieve an exact population of 75,150 in each district. Staff did not create any "dramatically irregular" or "bizarre" shaped districts. Staff maintained all incumbents in their respective districts. Staff did consider the minority population in District 5 to the extent permissible and did not reduce the Hispanic or Black/African American minority populations in District 5 in any alternative map.

Because Bond was not present during the map drawing process, we cannot represent with certainty the absence of any discriminatory purpose or intent to dilute the minority vote. Nevertheless, based on the facts and circumstances surrounding the entire process and the alternative maps, it would be hard to suggest, let alone prove, that the BCC and Staff had any such discriminatory purpose or intent by adopting any of the five alternative maps, particularly considering the public involvement discussed immediately below.

B. Public Meetings and other Outreach

Notice. To solicit the public's preference regarding the five alternative maps, Staff made an extensive effort to notify the public of the redistricting process. Five public information district meetings were held, one in each district, which permitted the public to view the alternative maps and associated data and offer any comments or criticisms (including map preferences). The schedule for the five public meetings was set on or before September 1, 2021, and was distributed by:

- issuing a press release in English, Spanish, and Creole on or about September 2, 2021;
- posting on the County's Redistricting website (in English, Spanish and Creole);
- mailing to the Chairman of the Seminole Tribe of Florida and Chairman of the Miccosukee Tribe of Indians of Florida, by letters dated October 1, 2021;
- emailing to and/or discussing via phone with several individuals;
- issuing a trilingual public notice that appeared in the Naples Daily News on October 19, 2021 and October 26, 2021;
- having the same trilingual notice appear in the on-line Immokalee Bulletin for most of the month of October into early November.

Public Awareness Meetings. At ten public awareness meetings held in October of 2021, David Weeks conducted presentations to the City of Marco Island City Council, Naples City Council, Everglades City Council, Collier County Planning Commission, NAACP Collier County, Southwest Florida Hispanic Chamber of Commerce, Immokalee Chamber of Commerce, Black Affairs Advisory Board, Greater Naples Chamber of Commerce, and the Democratic Women’s Club of Collier County.

Public Information District Meetings. Public input provided at the public information district meetings and received by Staff via mail, e-mail, website or otherwise, will be presented to the BCC for their consideration prior to the BCC map adoption meeting in December.

Staff intentionally did not coordinate the public meeting schedule with any Commissioner to remain as apolitical as possible.

Each public information district meeting had an approximately 25-minute presentation by David Weeks explaining the redistricting process and the various principles and laws that must be considered. David Weeks’ presentation was objective and specifically addressed the possibility of any VRA violations. David Weeks was available to answer any map specific or redistricting process questions, while Tom Eastman was also available to respond to questions about the School District. David Weeks encouraged citizens to voice their opinions and submit written statements via letter or e-mail. Handouts were provided with all maps and supporting data.

Website. The redistricting website (<https://www.colliercountyfl.gov/government/growth-management/divisions/planning-and-zoning-division/2021-collier-county-bcc-redistricting-information>), contains all of the handouts and information available at the five public information district meetings. The website also contains a link to videos for each of the public information district meetings, which were broadcast live and rebroadcast on Collier Television on numerous occasions. The public could also view and provide comments during each public information district meeting via Facebook Live.

Public input. Staff has shared with Bond all written public comments made at the public information district meetings. Staff has also prepared a summary of the public input for the BCC and will be providing copies of all original written public input to the BCC. Bond makes no representation as to which map is preferred by the public. Bond has limited the scope of this report to verifying that the redistricting process and the five alternative maps satisfy applicable legal requirements.

C. Recommendation for 2031

Based on our analysis of current law, we believe that the first supplemental criterion (any plan that has a retrogressive effect on minority voting strength will be eliminated from further consideration) is, in essence, part of Primary Criterion #4. Accordingly, for clarification (and unless applicable law changes), Bond suggests restating Primary Criterion #4 in 2031 to read as

follows: “Consider racial and ethnic populations in accordance with the law, including the elimination of any plan that has a retrogressive effect on minority voting strength.”

VII. Conclusion.

Bond, as an independent reviewer of the redistricting process, concludes that the criteria and procedures mandated by the BCC and Staff resulted in five alternative maps, each of which is very likely to withstand any legal challenge. The BCC should consider the public feedback gathered by Staff and may adopt any of the five alternative maps without reservations.

December 1, 2021

Respectfully submitted,

Bond, Schoeneck & King, PLLC

EXHIBIT "A"
Bond Redistricting Proposal



MEMORANDUM

TO: Michael Bosi and Anita Jenkins

FROM: Adam Kerlek and James Dati

DATE: August 5, 2021

RE: Collier County Redistricting Plan Scope Proposal of Work

BOND, SCHOENECK AND KING, PLLC ("Bond"), is delighted to serve as an independent third party reviewed of the Collier County redistricting process. It is our understanding that Bond will analyze and review every stage of the redistricting process, from map drafting to map adoption, to ensure legal compliance at all stages. In particular, those services shall include:

1. Review applicable state and federal law regarding redistricting.
2. Review US Census Bureau Data, using GIS mapping techniques, ensure accuracy of map options and compliance with applicable law.
3. Review and advise on methodology to receive feedback from public, observe at least one comment solicitation meeting.
4. Advise regarding legal compliance at all stages of the redistricting process, prior to presentation to the Board of County Commissions ("BCC")

5. Prepare report regarding the accuracy and methodology of the map drawing and comment solicitation process to present to the BCC with the understanding that the map options shall be presented to the BCC thereafter.

In particular, Bond shall perform the following services:

- I. *Map Drawing Portion:* Advise BBC regarding how to legally divide the county into five contiguous territories as nearly equal in population as practical.
 - a. Work with staff as it creates several (probably about three) alternative maps using the most recent census data.
 - b. Analyze drawing of maps is consistent with Florida Constitution, Florida statutes, the US Constitution, and federal law.
 - c. Upon successful analyses, draft attorney opinion letter confirming that map drawing process was conducted in accordance with applicable law.

[Estimated hours: 15 hours at rate of \$450/hour]

- II. *Comment solicitation:* Advise BBC regarding the comment solicitation process.
 - a. Work with client to identify groups to solicit attendance to a comment-sharing session.
 - b. Attend at least one comment solicitation meeting
 - c. Ensure all meeting are conducted in accordance with applicable Sunshine Laws.
 - d. Ensure that meeting are conducted in a fashion to solicit meaningful feedback and productive dialogue with parties likely to be most effected by the redistricting.

- e. Upon successful competition of comment solicitation period, draft attorney opinion letter confirming that comment solicitation process was conducted in accordance with applicable law.

[Estimated Hours: 10 hours at a rate of \$450 an hour]

III. Presentation and Report regarding Legal Compliance

- a. Analyze entire redistricting process
- b. Draft report regarding legal compliance of map drafting and comment solicitation process.
- c. Present findings to BCC prior to BCC's vote on the map options.

[Estimated hours: 15 hours at rate of \$450/hour]

Total estimated time: 40 hours, Total estimated cost of project: \$18,000-\$20,000.

Note: Legal fees invoiced ten (10) years ago (2011) by Bond for similar services to Collier County was \$20,000.00.

EXHIBIT "B"
Bond Total Population Deviation Calculations

2021 COLLIER COUNTY REDISTRICTING – TOTAL POPULATION DEVIATION
75,150 IDEAL DISTRICT POPULATION

Map 1

Com. District	Total Population	
BCC 1	75,402	0.3%
BCC 2	73,151	-2.7%
BCC 3	75,814	0.9%
BCC 4	77,084	2.6%
BCC 5	74,301	-1.1%
TOTAL	375,752	
	Total Deviation	5.2%

Map 2

Com. District	Total Population	
BCC 1	75,402	0.3%
BCC 2	73,151	-2.7%
BCC 3	78,622	4.6%
BCC 4	77,084	2.6%
BCC 5	71,493	-4.9%
TOTAL	375,752	
	Total Deviation	9.5%

Map 3

Com. District	Total Population	
BCC 1	76,268	1.5%
BCC 2	73,207	-2.6%
BCC 3	74,175	-1.3%
BCC 4	73,427	-2.3%
BCC 5	78,675	4.7%
TOTAL	375,752	
	Total Deviation	7.3%

Map 4

Com. District	Total Population	
BCC 1	75,451	0.4%
BCC 2	73,322	-2.4%
BCC 3	75,442	0.4%
BCC 4	75,682	0.7%
BCC 5	75,855	0.9%
TOTAL	375,752	
	Total Deviation	3.4%

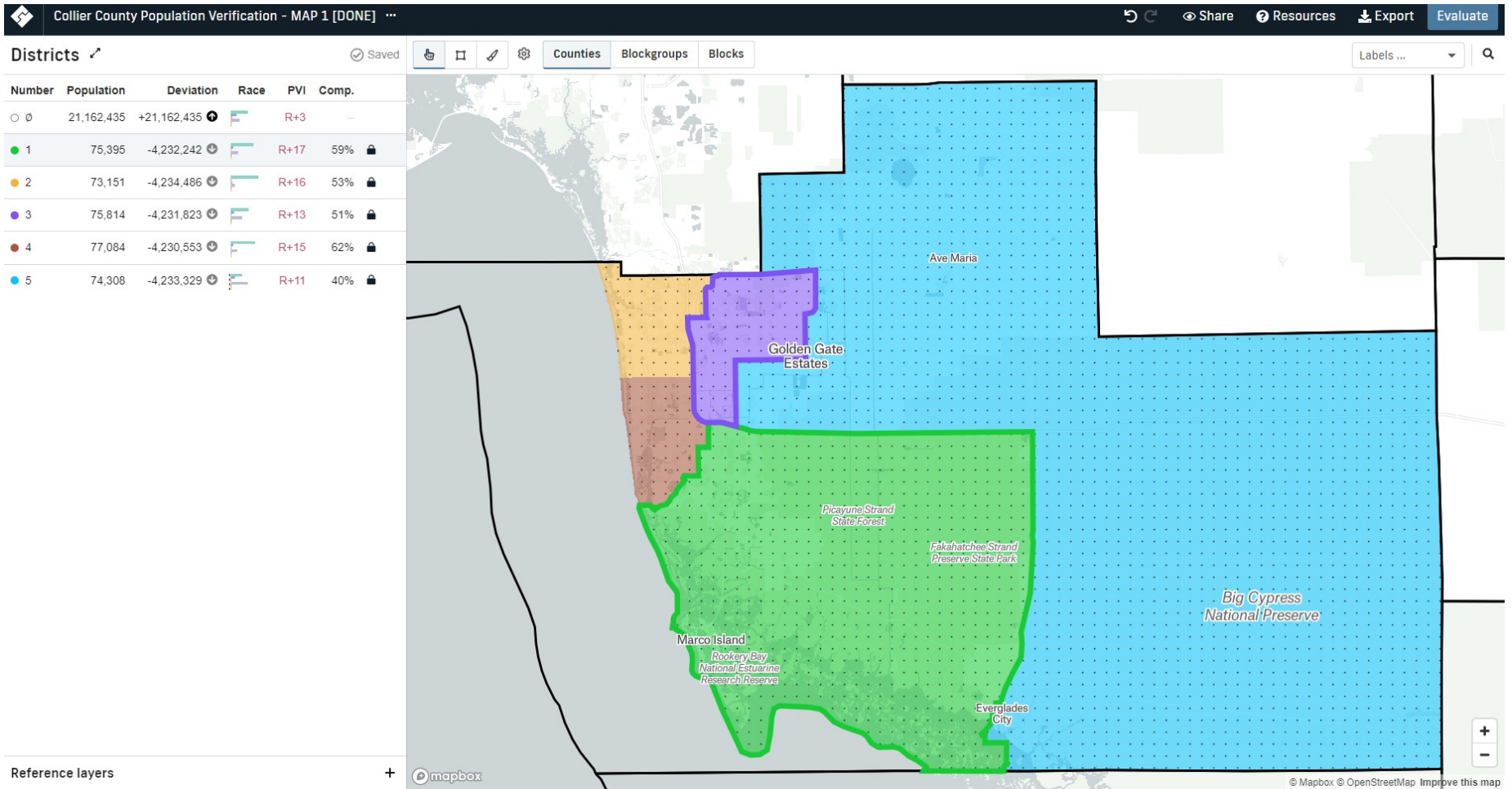
2021 Collier County Redistricting
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Map 5

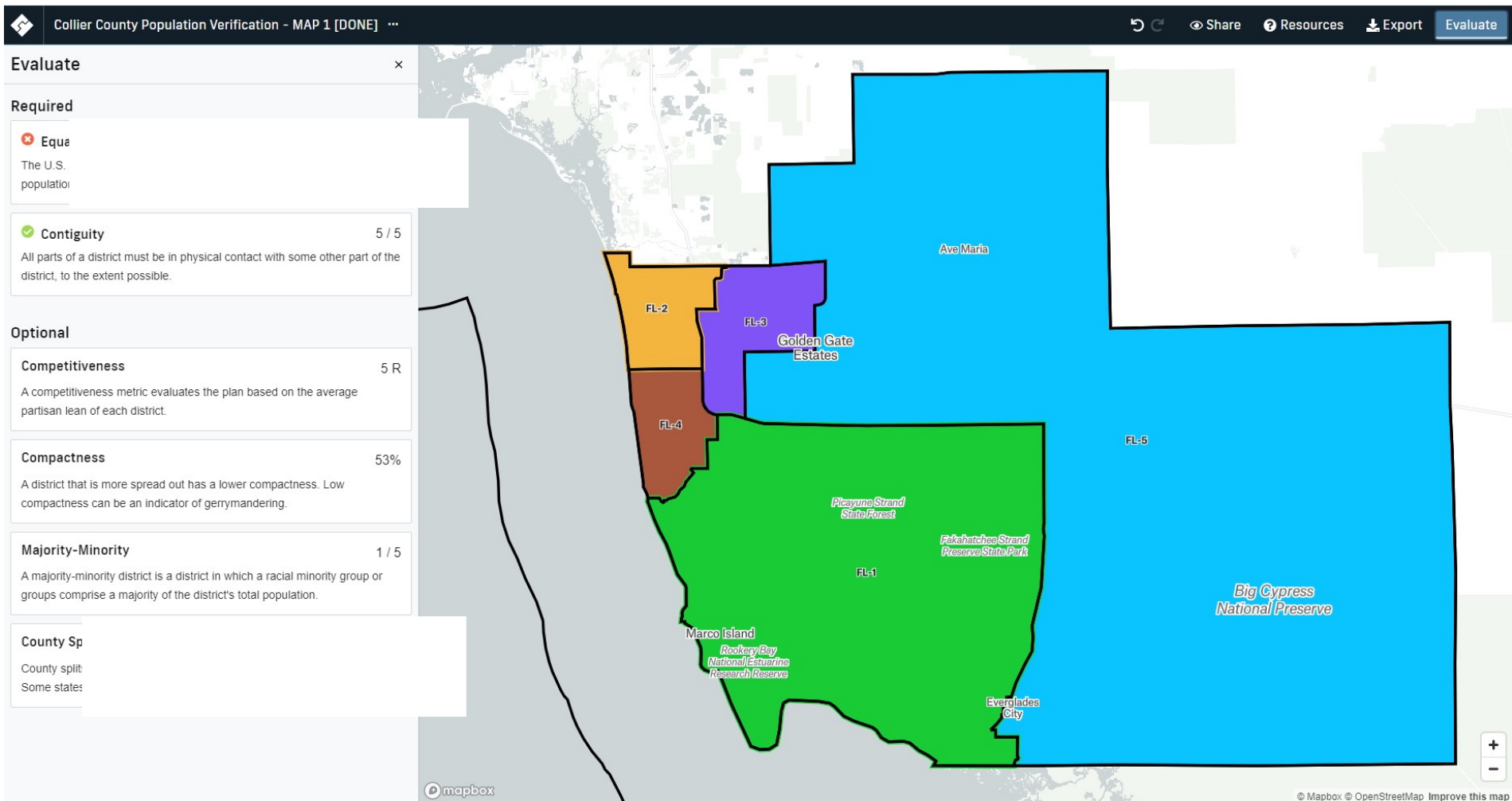
Com. District	Total Population	
BCC 1	73,600	-2.1%
BCC 2	75,409	0.3%
BCC 3	74,175	-1.3%
BCC 4	73,996	-1.5%
BCC 5	78,572	4.6%
TOTAL	375,752	
	Total Deviation	6.6%

EXHIBIT "C"

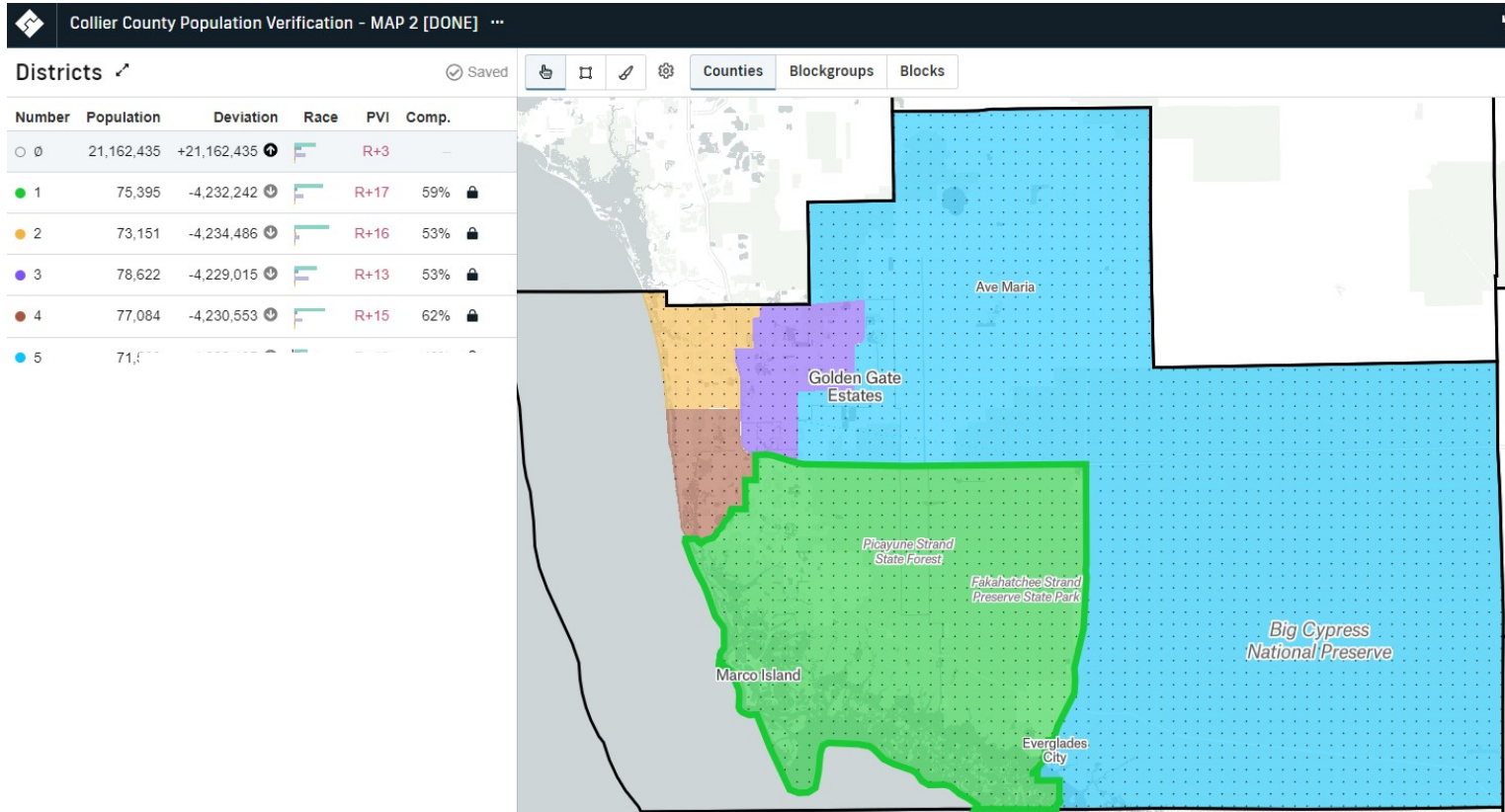
Bond Data Verification Maps



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MAP 2



Collier County Population Verification - MAP 2 [DONE] ... Share Resources Export Evaluate

Number	Population	Deviation	Race	White	Black	Asian	Hispanic	Native	Pacific	Majority race	VAP	VAP White	VAP Black	VAP Asian	VAP Hispanic	VAP Native	VAP Pacific	PVI	Dem.
0	21,162,435	+21,162,435		51%	17%	4%	26%	2%	0%	White	17,026,063	54%	16%	4%	25%	2%	0%	R+3	
1	75,409	-4,232,228		70%	8%	2%	20%	1%	0%	White	66,821	75%	6%	1%	17%	1%	0%	R+17	
2	73,151	-4,234,486		83%	2%	3%	11%	1%	0%	White	64,268	85%	2%	2%	10%	1%	0%	R+16	
3	78,622	-4,229,015		54%	8%	2%	34%	1%	0%	White	62,325	58%	7%	2%	32%	1%	0%	R+13	
4	77,084	-4,230,553		73%	5%	2%	19%	1%	0%	White	67,560	77%	4%	2%	16%	1%	0%	R+15	
5	71,486	-4,236,151		32%	13%	2%	53%	2%	0%	Hispanic	52,195	36%	12%	2%	50%	2%	0%	R+10	

Collier County Population Verification - MAP 2 [DONE] ...

Evaluate x

Required

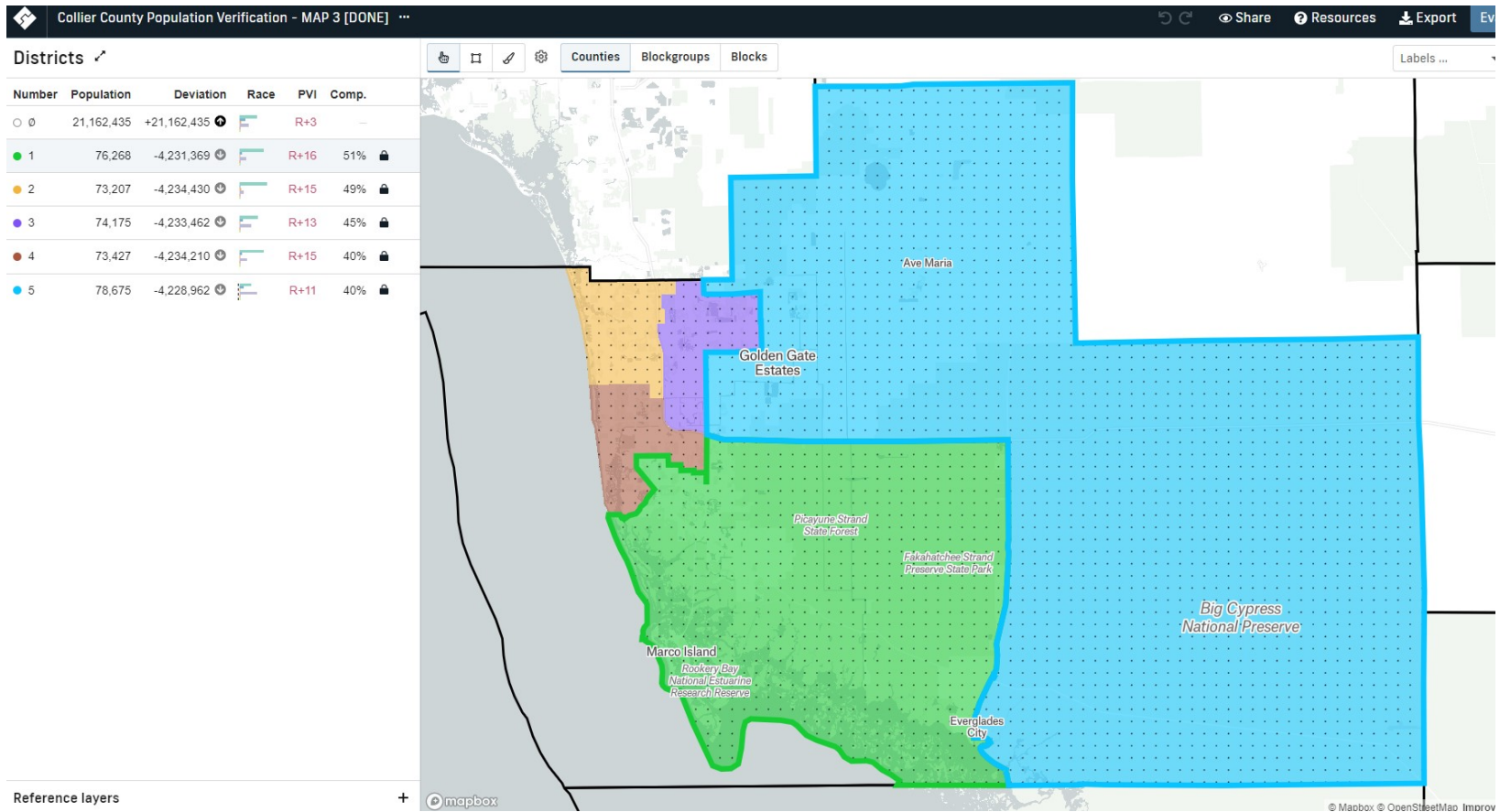
- ✘ **E1**
The U popul:
- ✔ **Contiguity** 5 / 5
All parts of a district must be in physical contact with some other part of the district, to the extent possible.

Optional

- Competitiveness** 5 R
A competitiveness metric evaluates the plan based on the average partisan lean of each district.
- Compactness** 53%
A district that is more spread out has a lower compactness. Low compactness can be an indicator of gerrymandering.
- Majority-Minority** 1 / 5
A majority-minority district is a district in which a racial minority group or groups comprise a majority of the district's total population.

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MAP 3

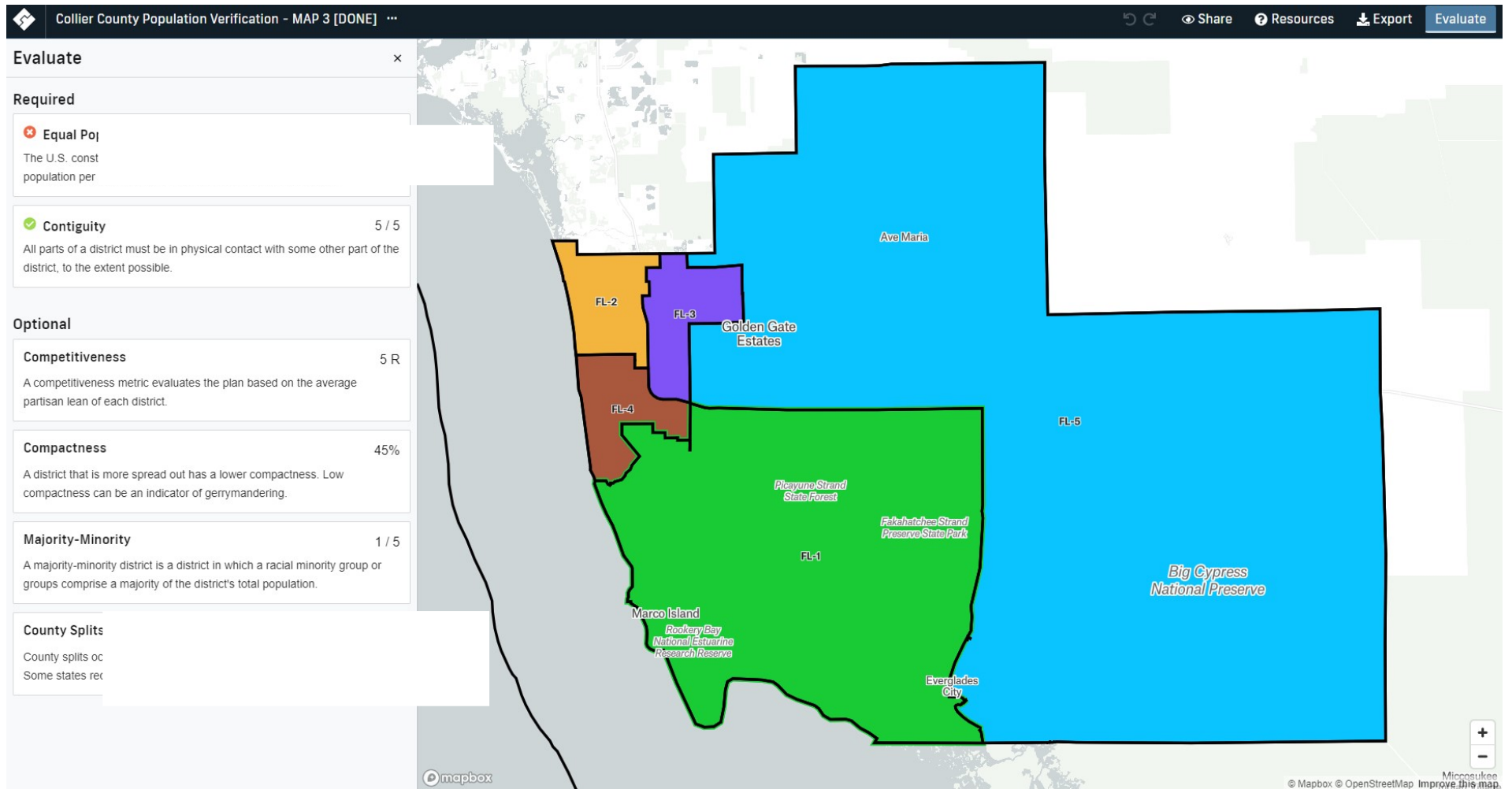


2021 Collier County Redistricting
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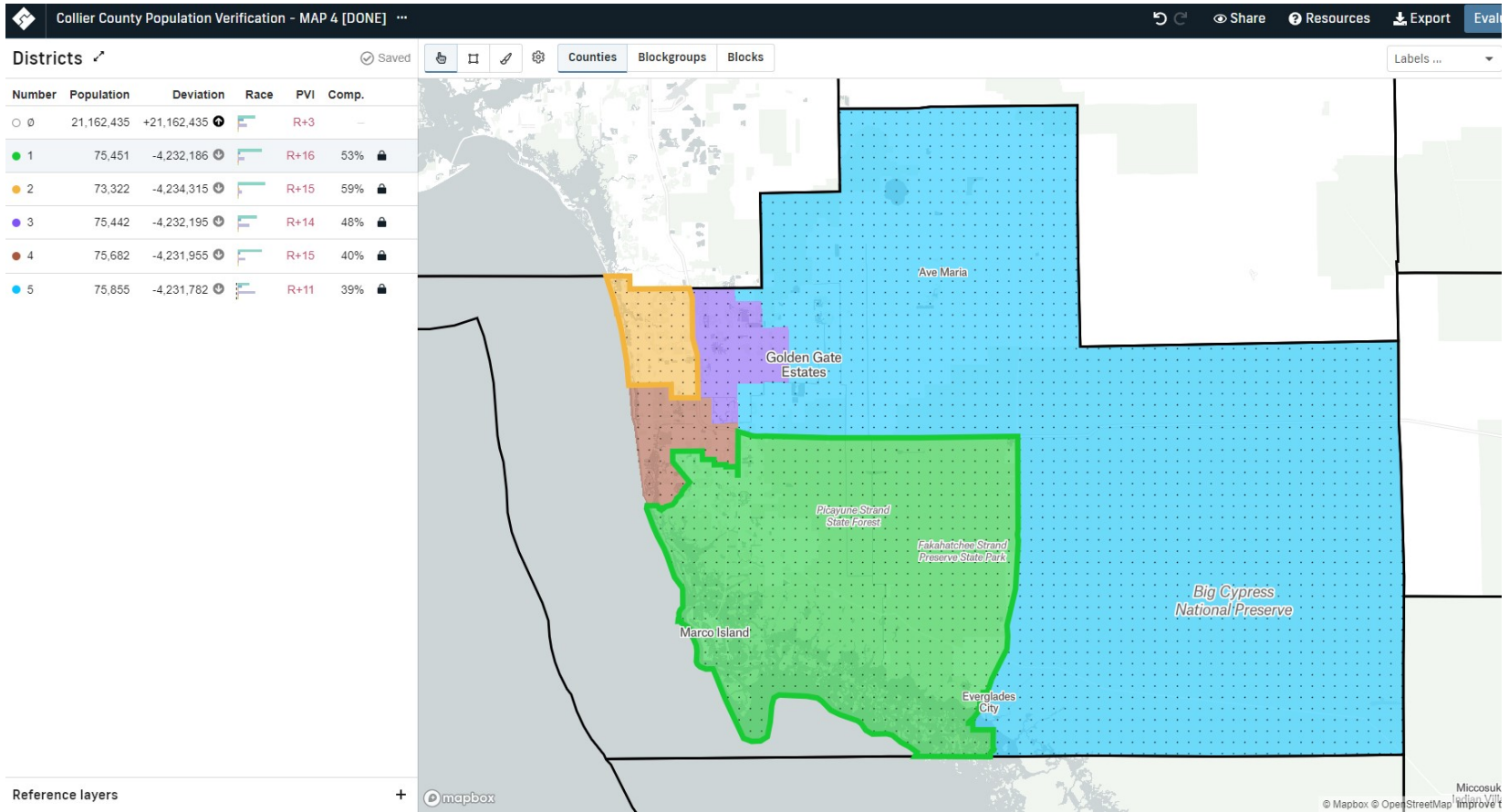
Districts

Number	Population	Deviation	Race	White	Black	Asian	Hispanic	Native	Pacific	Majority race	VAP	VAP White	VAP Black	VAP Asian	VAP Hispanic	VAP Native	VAP Pacific	PVI	Dem.
0	21,162,435	+21,162,435		51%	17%	4%	26%	2%	0%	White	17,026,063	54%	16%	4%	25%	2%	0%	R+3	
1	76,268	-4,231,369		72%	7%	1%	18%	1%	0%	White	68,118	76%	6%	1%	15%	1%	0%	R+16	
2	73,207	-4,234,430		82%	2%	3%	12%	1%	0%	White	64,264	84%	2%	2%	10%	1%	0%	R+15	
3	74,175	-4,233,462		55%	8%	2%	33%	1%	0%	White	58,813	59%	7%	2%	31%	1%	0%	R+13	
4	73,427	-4,234,210		71%	5%	2%	20%	1%	0%	White	64,045	76%	4%	2%	17%	1%	0%	R+15	
5	78,675	-4,228,962		35%	12%	2%	51%	2%	0%	Hispanic	57,929	38%	11%	2%	48%	2%	0%	R+11	

2021 Collier County Redistricting
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MAP 4

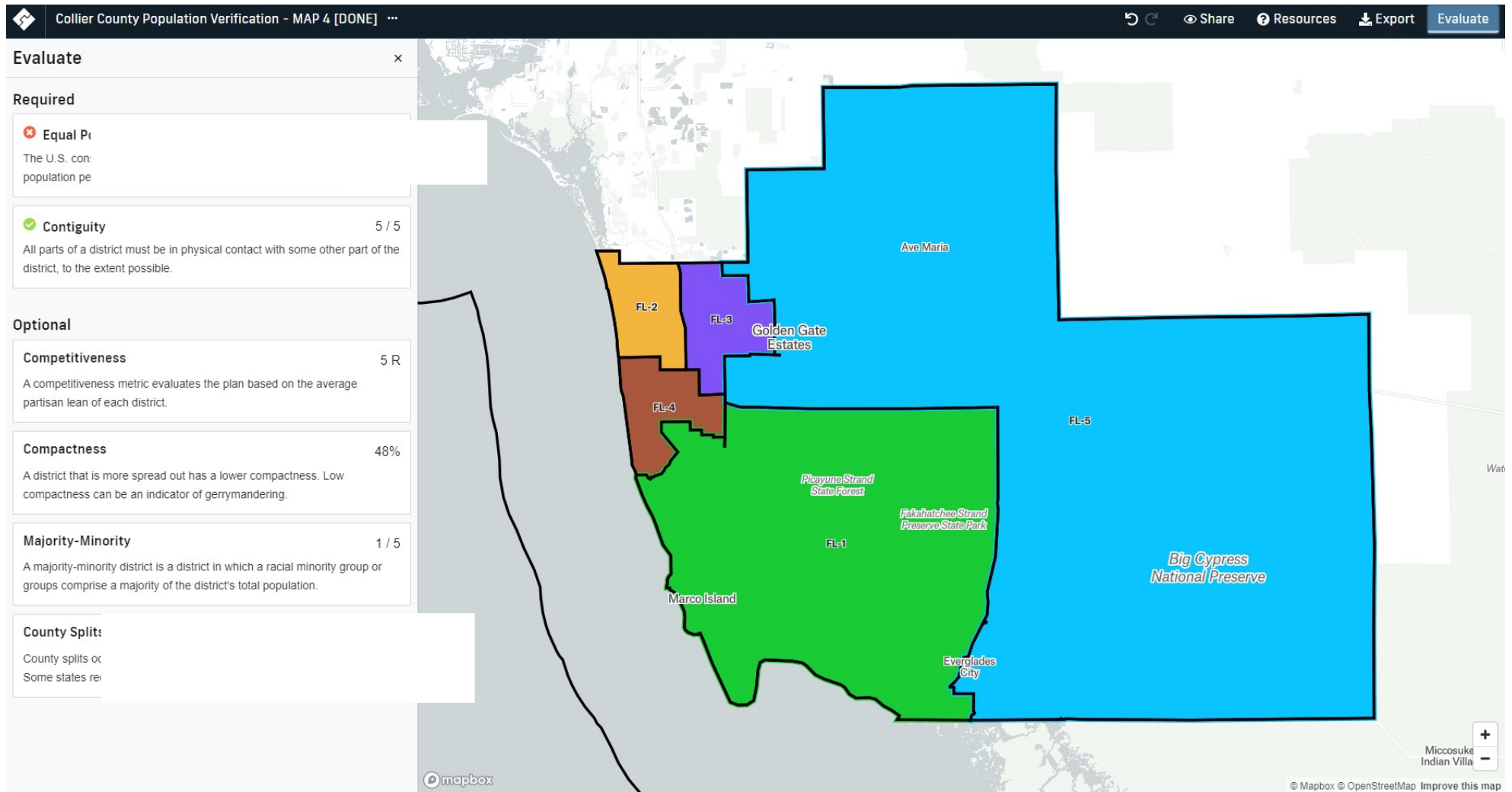


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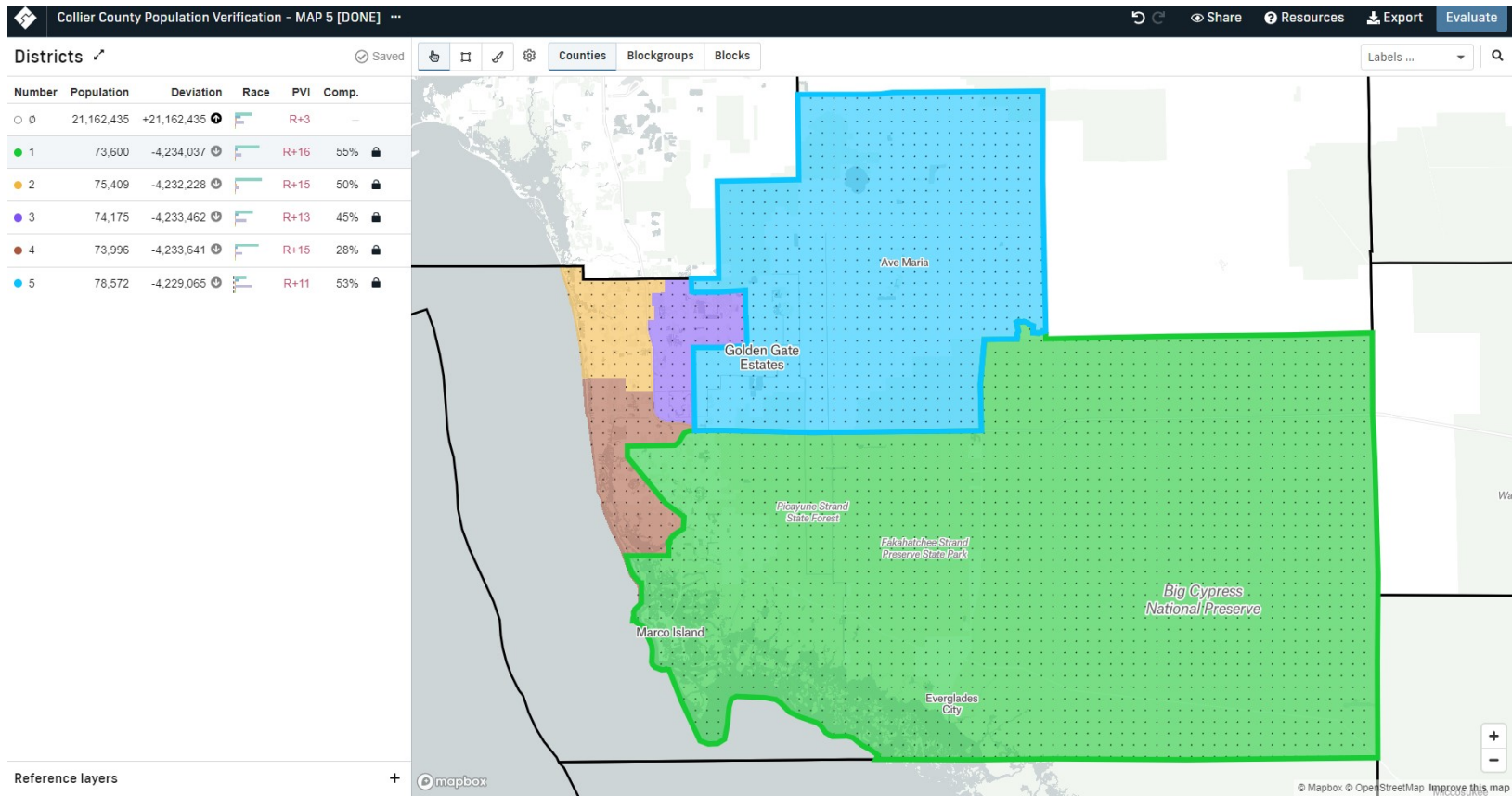
Districts

Number	Population	Deviation	Race	White	Black	Asian	Hispanic	Native	Pacific	Majority race	VAP	VAP White	VAP Black	VAP Asian	VAP Hispanic	VAP Native	VAP Pacific	PVI	Dem.
0	21,162,435	+21,162,435		51%	17%	4%	26%	2%	0%	White	17,026,063	54%	16%	4%	25%	2%	0%	R+3	
1	75,451	-4,232,186		72%	7%	1%	18%	1%	0%	White	67,424	76%	6%	1%	16%	1%	0%	R+16	
2	73,322	-4,234,315		82%	2%	3%	12%	1%	0%	White	64,293	84%	2%	2%	10%	1%	0%	R+15	
3	75,442	-4,232,195		56%	8%	2%	33%	1%	0%	White	60,056	60%	7%	2%	30%	1%	0%	R+14	
4	75,682	-4,231,955		70%	5%	2%	21%	1%	0%	White	65,579	75%	4%	2%	18%	1%	0%	R+15	
5	75,855	-4,231,782		34%	12%	2%	51%	2%	0%	Hispanic	55,817	38%	12%	2%	48%	2%	0%	R+11	

2021 Collier County Redistricting
 Independent Review by Bond, Schoeneck & King, PLLC



MAP 5



2021 Collier County Redistricting
 Independent Review by Bond, Schoeneck & King, PLLC

Districts

Number	Population	Deviation	Race	White	Black	Asian	Hispanic	Native	Pacific	Majority race	VAP	VAP White	VAP Black	VAP Asian	VAP Hispanic	VAP Native	VAP Pacific	PVI	Dem.
0	21,162,435	+21,162,435		51%	17%	4%	26%	2%	0%	White	17,026,063	54%	16%	4%	25%	2%	0%	R+3	
1	73,600	-4,234,037		73%	7%	1%	18%	1%	0%	White	65,944	77%	5%	1%	15%	1%	0%	R+16	
2	75,409	-4,232,228		82%	2%	3%	12%	1%	0%	White	66,233	84%	2%	2%	10%	1%	0%	R+15	
3	74,175	-4,233,462		55%	8%	2%	33%	1%	0%	White	58,813	59%	7%	2%	31%	1%	0%	R+13	
4	73,996	-4,233,641		70%	6%	2%	21%	1%	0%	White	64,334	75%	4%	2%	18%	1%	0%	R+15	
5	78,572	-4,229,065		35%	12%	2%	51%	2%	0%	Hispanic	57,845	38%	11%	2%	48%	2%	0%	R+11	

2021 Collier County Redistricting
Independent Review by Bond, Schoeneck & King, PLLC

