

RECENT CASES

STATE CONSTITUTIONS — RACIAL GERRYMANDERING — FLORIDA SUPREME COURT HOLDS STATE NON-DIMINISHMENT CLAUSE CANNOT JUSTIFY RACE-PREDOMINANT DISTRICT. — *Black Voters Matter Capacity Building Institute, Inc. v. Secretary, Florida Department of State*, 415 So. 3d 180 (Fla. 2025).

State constitutions serve as important sources of individual rights. They often extend broader protections than the Federal Constitution¹ and have, in some instances, included affirmative mandates to remedy racial discrimination.²

Recently, however, the Florida Supreme Court (Court) in *Black Voters Matter Capacity Building Institute, Inc. v. Secretary, Florida Department of State*,³ responding to a challenge to the State’s congressional districting plan under the non-diminishment clause of the Florida Constitution’s Fair Districts Amendment, curtailed the power of its state constitution to require race-conscious remedies addressing racial discrimination. Federal constitutional law requires a state that seeks to employ a race-conscious remedy to identify in advance the specific discrimination it targets and to document evidence that the remedy would substantially address it. The Court held that only the Florida Legislature may choose to create such a record. However, if a plaintiff seeking to enforce the Florida Constitution were to bring such evidence, nothing in U.S. Supreme Court (Supreme Court) equal protection jurisprudence would prevent a state court from requiring adequate legislative consideration, or from acting itself, if necessary. And following the Court’s past Fair Districts Amendment case law, the Florida Constitution would not only permit but require state courts to do so.

In 2010, Florida’s voters approved a pair of constitutional amendments proposed by citizens’ initiative known collectively as the Fair Districts Amendment.⁴ The amendment established identical standards for state legislative⁵ and congressional⁶ districting.⁷ At issue here was the non-diminishment clause, which prohibits “districting changes that have the effect of diminishing minority voters’ ability to elect representatives of their choice, regardless of whether the Legislature acted with a

¹ See Jessica Bulman-Pozen & Miriam Seifter, *State Constitutional Rights and Democratic Proportionality*, 123 COLUM. L. REV. 1855, 1866–68 (2023) (listing examples).

² Cf. *Crawford v. Bd. of Educ.*, 551 P.2d 28, 30 (Cal. 1976) (declaring “a [state] constitutional obligation . . . to alleviate such racial segregation in the public schools, *regardless of the cause of such segregation*”); *Sheff v. O’Neill*, 678 A.2d 1267, 1282–83 (Conn. 1996) (same).

³ 415 So. 3d 180 (Fla. 2025).

⁴ *Id.* at 185.

⁵ FLA. CONST. art. 3, § 21.

⁶ FLA. CONST. art. 3, § 20.

⁷ *Black Voters Matter*, 415 So. 3d at 185.

discriminatory purpose.”⁸ Notably, the amendment also required compactness and prohibited both partisan gerrymandering and incumbent protection.⁹

Black Voters Matter concerned what had been Congressional District 5 prior to Florida’s 2022 congressional redistricting (Benchmark CD5). Benchmark CD5 traces its history to 1992. After the Legislature failed to adopt a congressional map following the 1990 census, a federal court — seeking to comply with Section 2 of the Voting Rights Act of 1965¹⁰ (VRA) — drew a map with a majority-Black district in North Florida.¹¹ The district’s borders evolved over time, including through litigation,¹² and it eventually lost its Black majority,¹³ but it continuously performed for Black voters by electing their candidate of choice from 1992 through 2020.¹⁴ The Court drew the final form of Benchmark CD5, stretching from Jacksonville to Tallahassee, after it held that the predecessor district had violated the Fair Districts Amendment’s compactness requirement, and the Legislature had failed to pass a new map with a compact and non-diminishing district in its place.¹⁵ After the 2020 census, the Legislature passed a new congressional map that included a district substantially similar to Benchmark CD5, but in March of 2022¹⁶ the Governor vetoed that plan as an unconstitutional racial gerrymander under the Federal Equal Protection Clause.¹⁷ The Legislature then passed the aforementioned 2022 plan the following month,¹⁸ without a Black-performing district in North Florida.¹⁹

The plaintiffs, a group of civic organizations and voters, sued the Legislature and the Secretary of State, arguing that the new map violated the non-diminishment clause by failing to include a Black-

⁸ *Id.* at 186 (emphasis omitted); see FLA. CONST. art. 3, § 20(a).

⁹ *Black Voters Matter*, 415 So. 3d at 185–86 (quoting FLA. CONST. art. 3, § 20).

¹⁰ 52 U.S.C. § 10301 (“No voting . . . practice . . . shall be imposed or applied by any State . . . 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 . . .” *Id.* § 10301(a)).

¹¹ See *Black Voters Matter*, 415 So. 3d at 188; DeGrandy v. Wetherell, 794 F. Supp. 1076, 1090 (N.D. Fla. 1992).

¹² See *Johnson v. Mortham*, 926 F. Supp. 1460, 1495 (N.D. Fla. 1996) (holding the 1992 court-drawn district to be an unconstitutional racial gerrymander).

¹³ See *Black Voters Matter*, 415 So. 3d at 188.

¹⁴ See *id.* at 188 (quoting *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1300–01 (S.D. Fla. 2002)) (elections of 1992 to 2014; *id.* at 189 (elections of 2016 to 2020)).

¹⁵ See *id.*

¹⁶ Letter from Ron DeSantis, Governor of Fla., to Laurel Lee, Sec’y of State of Fla. (Mar. 29, 2022) [hereinafter Veto Message], <https://www.flgov.com/eog/sites/default/files/press/SLA-BIZHUB22032912100.pdf> [https://perma.cc/5B6G-TARK].

¹⁷ *Black Voters Matter*, 415 So. 3d at 190 (quoting Veto Message, *supra* note 16); see also Memorandum from Ryan Newman, Gen. Couns., Exec. Off. of the Governor, to Ron DeSantis, Governor of Fla. 1 (Mar. 29, 2022), <https://www.flgov.com/eog/sites/default/files/press/SLA-BIZHUB22032912102.pdf> [https://perma.cc/Q5M8-5H46].

¹⁸ See Act of April 22, 2022, ch. 2022-265, 2022 Fla. Laws 2351, 2447.

¹⁹ See *Black Voters Matter*, 415 So. 3d at 190 (noting parties’ stipulation thereto).

performing district in North Florida.²⁰ The trial court considered three issues: first, whether the non-diminishment clause protects only minority districts meeting the preconditions for Section 2 violations established in *Thornburg v. Gingles*²¹ (especially compactness and majority of voting-age population); second, whether a non-diminishing district in North Florida could be required consistent with the Equal Protection Clause; and third, whether Florida's public official standing doctrine barred the state defendants from raising the Equal Protection Clause as a defense to a non-diminishment violation.²² After the trial court held for the plaintiffs on all three issues,²³ the First District Court of Appeal, sitting en banc, reversed.²⁴ Disregarding Florida Supreme Court precedent that measured the diminishment from the preexisting plan as a benchmark,²⁵ the First District held that, to establish a relevant benchmark district, plaintiffs must prove that they are part of a "naturally occurring community" who had "some cohesive voting power" in that district,²⁶ which the plaintiffs failed to do.²⁷

The Florida Supreme Court affirmed the First District's judgment only.²⁸ Writing for the majority, Chief Justice Muñiz held that the plaintiffs failed to prove that the State could draw a map complying with both the non-diminishment clause and the Equal Protection Clause.²⁹ The Court first clarified that its prior non-diminishment precedents were binding on lower courts and reaffirmed its benchmark test for diminishment.³⁰ The Court then allowed the state defendants to raise their equal protection defense, holding that the public official standing doctrine did not apply "because the government is defending a statute (i.e., the Enacted Plan), not challenging one."³¹

However, the Court rejected the Secretary's argument that the non-diminishment clause only prohibits diminishment from a district meeting the *Gingles* factors, reaffirming that the clause protects any preexisting district whose minority voters "vote cohesively" and where

²⁰ See *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, No. 2022-CA-666, 2023 WL 5695485, at *1 (Fla. Cir. Ct. Sep. 2, 2023).

²¹ 478 U.S. 30 (1986).

²² See *Black Voters Matter*, 2023 WL 5695485, at *5.

²³ See *id.* at *5, *8, *11.

²⁴ See *Sec'y of State Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 375 So. 3d 335, 339 (Fla. Dist. Ct. App. 2023) (en banc).

²⁵ See *id.* at 349–50.

²⁶ *Id.* at 355.

²⁷ See *id.* at 356.

²⁸ *Black Voters Matter*, 415 So. 3d at 200.

²⁹ *Id.* Chief Justice Muñiz was joined by Justices Couriel, Grosshans, Francis, and Sasso.

³⁰ See *id.* at 192–93.

³¹ *Id.* at 195.

minority voters' candidate of choice is "likely to prevail."³² The Court held that the new map therefore violated the non-diminishment clause.³³

The Court then turned to the State's defense that complying with the non-diminishment clause in this case would result in an unconstitutional racial gerrymander. Under Supreme Court precedent, a district whose design was predominantly motivated by race is permitted by the Equal Protection Clause only when it is narrowly tailored to achieve a compelling government interest,³⁴ and remedying racial discrimination is only a compelling interest to justify racial classification when the State has "identif[ied] the discrimination with specificity in advance" and had "a 'strong basis in evidence' to conclude that remedial action is necessary."³⁵ Because the new map was entitled to the presumption of validity for statutes, the Court held that once the state defendants raised the equal protection issue, the plaintiffs bore the burden of proving that a federally constitutional remedy existed.³⁶

In evaluating whether the plaintiffs met that burden, the Court first concluded that compliance with the non-diminishment clause was not a compelling interest *per se*.³⁷ The Court focused on the clause's lack of a "pre-enactment record identifying . . . discrimination" or "pre-enactment documentation of the evidence necessary to establish a proper connection between the amendment's means and ends."³⁸ The Court declared that "the Legislature itself would have to specify and justify the compelling interest, with a fresh evidentiary record" of discrimination in order to justify drawing a race-predominant district.³⁹ Though compliance with Section 5⁴⁰ of the VRA — which similarly prevents covered jurisdictions from enforcing laws that diminish minority voting power⁴¹ — is often presumed to be a compelling interest *per se*, the Court distinguished the non-diminishment clause from Section 5. Among other factors, the Court noted that the Fair Districts Amendment

³² *Id.* at 193 (citing *League of Women Voters of Fla. v. Detzner (Apportionment VIII)*, 179 So. 3d 258, 286 n.11 (Fla. 2015)).

³³ *See id.* at 194.

³⁴ *See id.* at 195–96 (quoting, *inter alia*, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 192 (2017); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2162–63 (2023)).

³⁵ *Id.* at 196 (quoting *Shaw v. Hunt*, 517 U.S. 899, 910 (1996)).

³⁶ *Id.* at 197–98.

³⁷ *Id.* at 196; *see also id.* (quoting *Shaw*, 517 U.S. at 909–10).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 52 U.S.C. § 10304.

⁴¹ Michael J. Pitts, *Section 5 of the Voting Rights Act: A Once and Future Remedy?*, 81 DENV. U. L. REV. 225, 225, 235 (2003).

was a citizens' initiative, and so lacked anything like Section 5's "voluminous [congressional] record" of discrimination.⁴²

The Court next held that the plaintiffs failed to prove that it was possible for the State to comply with both constitutions by drawing a Black-performing district in North Florida that was *not* race-predominant.⁴³ The Court emphasized that the plaintiffs' only proposed remedial district, a district substantially similar to the one adopted in 2020,⁴⁴ was ultimately based on Benchmark CD5, which itself was drawn by the Court for explicitly race-related purposes.⁴⁵ The Court also noted that the remedial district would run afoul of the Fair Districts Amendment's compactness requirement,⁴⁶ and that the amendment prohibited consideration of factors such as incumbency protection and political advantage, leaving race as the only plausible motivation.⁴⁷ Because the plaintiffs failed to show that the State could create a map that complied with both the non-diminishment clause and the Equal Protection Clause, the Court upheld the equal protection-compliant plan enacted in 2022,⁴⁸ reasoning that the federal provision is supreme over the state provision.⁴⁹

Justice Labarga dissented on two grounds. He first argued that, as defendants raising an affirmative defense and alleging racial predominance, the state defendants should have borne the burden of proving that race predominated in the remedial map.⁵⁰ He further argued that — even if the plaintiffs bore the burden of proof — because the trial court and the parties had operated under the opposite premise below, the Court should have remanded and afforded the plaintiffs an opportunity to prove that a non-diminishing and non-race-predominant district was possible.⁵¹

The *Black Voters Matter* Court misapplied federal equal protection doctrine. In so doing, it created a false dichotomy: Either the Legislature has already identified specific discrimination and has evidence that

⁴² *Black Voters Matter*, 415 So. 3d at 197. The Court did not clarify whether a citizens' initiative passed by referendum could *ever* have the type of preenactment record required, but the Court has considered sponsors' advertisements and third-party voter guides in interpreting initiatives. *See, e.g.*, Advisory Op. to Governor re: Implementation of Amend. 4, the Voting Restoration Amend., 288 So. 3d 1070, 1077 (Fla. 2020) (per curiam).

⁴³ *See Black Voters Matter*, 415 So. 3d at 198. If a district is not race-predominant, it cannot be an unconstitutional racial gerrymander. *See, e.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 182 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)).

⁴⁴ *See Black Voters Matter*, 415 So. 3d at 198.

⁴⁵ *Id.* The Court acknowledged its error in previously assuming that non-diminishment clause compliance was a compelling state interest and decided that it should not "compound" that error. *Id.* at 199.

⁴⁶ *Id.* at 198.

⁴⁷ *See id.* at 199.

⁴⁸ *Id.* at 200.

⁴⁹ *See id.* at 197–98, 200.

⁵⁰ *See id.* at 201 (Labarga, J., dissenting).

⁵¹ *See id.* at 201–02.

a race-conscious remedy is necessary, making a race-conscious remedy available, or it has not, and race-conscious remedies are categorically unavailable. This dichotomy denies would-be plaintiffs any opportunity to demonstrate to the courts that the requisite evidence exists. Instead, if a plaintiff can bring sufficient evidence to demonstrate that the Legislature could comply with the non-diminishment clause and federal constitutional law by creating the necessary record, the court should at least require that the Legislature squarely consider that evidence. If the court, applying due deference finds that the Legislature refused to consider that evidence or gave it insufficient consideration, Fair Districts Amendment case law requires that the court itself cure the non-diminishment violation.

The Court largely grounded its decision in a line of Supreme Court cases limiting the government's use of race-conscious remedial action to instances of specific, identified racial discrimination.⁵² In *Shaw v. Hunt*,⁵³ the Supreme Court laid out a two-part test for whether the cited discrimination is sufficient to support race-conscious remedial action⁵⁴: First, the State "must identify that discrimination . . . with some specificity before they may use race-conscious relief,"⁵⁵ and "[s]econd, the institution that makes the racial distinction must have had a 'strong basis in evidence' to conclude that remedial action was necessary, 'before it embarks on an affirmative-action program.'"⁵⁶ This framework applies not only to state legislatures but to any "institution" of the state, including courts.⁵⁷

The *Shaw* Court applied this framework to strike down the North Carolina Legislature's redistricting plan as a racial gerrymander.⁵⁸ It upheld the trial court's finding that the legislature was not motivated by evidence of specific discrimination.⁵⁹ The Supreme Court refused to consider evidence introduced during litigation that was not before the legislature prior to passage.⁶⁰

In *Shaw*, the North Carolina Legislature was defending against a racial gerrymandering challenge to a plan already enacted without the requisite findings. But *Black Voters Matter* arose in materially different circumstances. Since the race-conscious remedy at issue was not yet enacted, any evidence introduced in litigation would be available for the

⁵² *Id.* at 196 (majority opinion) (quoting and citing *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996)).

⁵³ 517 U.S. 899 (1996).

⁵⁴ The *Shaw* Court expanded on the Supreme Court's previous holding in *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986), that racial preferences must be based on prior discrimination. *See id.* at 274 (plurality opinion).

⁵⁵ *Shaw*, 517 U.S. at 909 (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 504 (1989)).

⁵⁶ *Id.* at 910 (quoting *Wygant*, 476 U.S. at 277 (plurality opinion) (emphasis added)).

⁵⁷ *Cf. Shelley v. Kraemer*, 334 U.S. 1, 14 (1948) ("[T]he action of state courts . . . is to be regarded as action of the State within the meaning of the Fourteenth Amendment . . .").

⁵⁸ *See Shaw*, 517 U.S. at 910–11.

⁵⁹ *Id.* at 910.

⁶⁰ *See id.*

Legislature to consider before creating a map with a race-predominant district.⁶¹ As the Florida Legislature emphasized in its brief, its arguments were not “a counterclaim or cross-claim of racial gerrymandering”⁶² to which the standards governing racial gerrymandering apply.⁶³ Instead, they were merely a defense that no “lawful remedy” to the non-diminishment violation existed.⁶⁴ Accordingly, all the plaintiffs needed to do was prove that a “lawful remedy” did exist — that is, that the State *could* create a federally constitutional, non-diminishing district — and not that the Legislature had *already* found that non-diminishment would remedy specific discrimination.

Indeed, the Court implied that, had the plaintiffs “prove[n] the possibility of complying with both the non-diminishment clause and the Equal Protection Clause” by offering a non-race-predominant remedial district, the challenge would have been upheld.⁶⁵ But the plaintiffs should have had another option: Had they brought evidence of discrimination that would justify a race-conscious plan, such evidence might also “prove the possibility” of a “lawful remedy” and thus defeat the equal protection defense raised by the state defendants.⁶⁶ For example, a plaintiff might bring evidence that the State had intentionally drawn political boundaries⁶⁷ or used eminent domain⁶⁸ to disaggregate a minority community, and that the disaggregation continues to dilute minority voting power. A race-predominant district remedying such past discrimination might pass constitutional muster just as a non-race-predominant remedial district would.

Perhaps anticipating this argument, the Court disclaimed any role in building a record of discrimination: “Given the Legislature’s constitutional role as the primary policy maker in our state, whether to take on

⁶¹ See *Black Voters Matter*, 415 So. 3d at 196; see also Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 EMORY L.J. 299, 326 (2023) (explaining that only an actual district — and not a law regulating redistricting — is subject to a racial gerrymandering challenge); cf. Transcript of Oral Argument at 101, *Louisiana v. Callais*, No. 24-109 (U.S. reargued Oct. 15, 2025), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/24-109_5i36.pdf [<https://perma.cc/BYF9-F8WE>] (Justice Jackson, suggesting that strict scrutiny applies to a “particular map” and not Section 2 itself); *id.* at 21 (Justice Kavanaugh, clarifying that “it’s [not] the statute[;] [i]t’s the particular application of the statute that entails [racial gerrymandering]”).

⁶² Florida Legislature’s Answer Brief at 63, *Black Voters Matter*, 415 So. 3d 180 (No. SC23-1671).

⁶³ *Id.* at 64.

⁶⁴ *Id.*

⁶⁵ See *Black Voters Matter*, 415 So. 3d at 200.

⁶⁶ For a history of voting rights and discriminatory voting practices in Florida, see generally JONEL NEWMAN, *VOTING RIGHTS IN FLORIDA 1982–2006* (2006), https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1010&context=fac_short_works [<https://perma.cc/7ADE-LSAM>].

⁶⁷ See, e.g., Lee Sloan & Robert M. French, *Race and Governmental Consolidation in Jacksonville*, 21 NEGRO EDUC. REV. 72, 73, 76 (1970) (describing how Jacksonville enlarged its city limits partly to protect the city’s white majority).

⁶⁸ See, e.g., RUSS RYMER, *AMERICAN BEACH 192–93* (1998) (describing how Jacksonville’s majority-Black Sugar Hill neighborhood was razed).

that burden is a matter for the Legislature's discretion."⁶⁹ But the same non-diminishment precedents reaffirmed by the *Black Voters Matter* Court⁷⁰ recognized that the Fair Districts Amendment represented "instructions given to the Legislature by the citizens," and that the Court had "the constitutional obligation" to ensure the Legislature's adherence to those "constitutional imperatives."⁷¹ That obligation should be no weaker when the path open to the Legislature to adhere to the amendment is to create a *Shaw*-compliant record in support of a race-conscious remedy.

In a striking analogy to *Black Voters Matter*, *In re Senate Joint Resolution of Legislative Apportionment 1176*⁷² (*Apportionment I*) saw the Florida Senate raise the non-diminishment clause as a defense to a compactness challenge.⁷³ But in *Apportionment I*, the Court recognized that its "obligation" to enforce the Fair Districts Amendment precluded it from simply "accept[ing] the Legislature's assurances that it followed the law."⁷⁴ The Court ruled on non-diminishment despite the "fact-intensive" nature of the issue,⁷⁵ holding that the Senate's supporting factual analysis was inadequate to conclude that the proposed compact district would necessarily diminish Black voting power.⁷⁶ The Court, conducting its own analysis, made the opposite finding.⁷⁷ Such judicial review of legislative factfinding is consistent with Florida separation of powers jurisprudence, under which courts "may defer to legislative statements of policy and fact" but "must conduct their own inquiry" into the facts.⁷⁸

The Court reemphasized its powers of review in *League of Women Voters of Florida v. Detzner*⁷⁹ (*Apportionment VII*). Holding that the enacted map had been influenced by partisan intent in violation of the amendment,⁸⁰ the Court "require[d] the Legislature to redraw the map, based on the directions set forth by this Court,"⁸¹ and further urged the Legislature to receive proposals and hear testimony from the public and "publicly document the justifications for its chosen configurations."⁸²

⁶⁹ *Black Voters Matter*, 415 So. 3d at 196.

⁷⁰ See, e.g., *id.* at 186, 194, 198.

⁷¹ *In re Senate Joint Resol. of Legis. Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 684 (Fla. 2012).

⁷² 83 So. 3d 597 (Fla. 2012).

⁷³ The amendment expressly prioritizes non-diminishment over compactness. See *id.* at 599.

⁷⁴ *Id.* at 609.

⁷⁵ *Id.* at 626.

⁷⁶ See *id.* at 656–57.

⁷⁷ See *id.* at 666–68.

⁷⁸ *Est. of McCall v. United States*, 134 So. 3d 894, 906 (Fla. 2014) (emphasis omitted) (quoting *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 627 (Fla. 2003)) (refusing to defer to a legislative finding of fact that was "not fully supported by available data").

⁷⁹ 172 So. 3d 363 (Fla. 2015).

⁸⁰ *Id.* at 416.

⁸¹ *Id.* at 413.

⁸² *Id.* at 415.

The Court also declared that it could impose its own map if necessary.⁸³ It ultimately did so in *League of Women Voters of Florida v. Detzner*⁸⁴ (*Apportionment VIII*) after holding that the Legislature's justifications were inadequate since the Legislature failed to "seriously consider" proposed alternatives.⁸⁵ Though the Legislature determined that the alternatives would be unconstitutionally diminishing, the Court rejected this justification because the Legislature's analysis was merely "cursory."⁸⁶

Florida courts enforcing the amendment have the authority to require the Legislature to consider testimony and proposals, to review the quality of those considerations, to overrule the Legislature when the considerations are inadequate, and to impose their own maps if necessary. The *Black Voters Matter* Court carved out an exception for cases triggering strict scrutiny under the Federal Constitution, relying on the Legislature's role as "primary policy maker."⁸⁷ But the "policy" had already been made by the people and constitution of Florida: Do not diminish.

The Federal Equal Protection Clause does not require that the *Legislature* make the record to support a compelling interest on its own initiative, only the "institution"⁸⁸ taking race-conscious action. Where state constitutions require race-conscious remedial action, whether in a redistricting context or otherwise, a state court enforcing that requirement is such an institution. If a plaintiff can show that strict scrutiny could be satisfied, the Federal Constitution does not relieve Florida courts of their duty to faithfully enforce the non-diminishment clause.

⁸³ *See id.* at 413.

⁸⁴ 179 So. 3d 258 (Fla. 2015).

⁸⁵ *Id.* at 280; *see id.* at 297–98.

⁸⁶ *Id.* at 280.

⁸⁷ 415 So. 3d at 196.

⁸⁸ *Shaw v. Hunt*, 517 U.S. 899, 910 (1996).