IN THE SUPREME COURT OF FLORIDA

IN RE: CONSTITUTIONALITY OF
SENATE JOINT RESOLUTION 2G,
SPECIAL APPORTIONMENT
SESSION 1992

CASE NO. 79,674

JOINT BRIEF OF THE FLORIDA LEGISLATURE AS PROPONENTS

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STATEMENT OF THE CASE

This is an original proceeding brought by the Florida Attorney General pursuant to Article III, §16(c) of the Florida Constitution for a declaratory judgment to determine the facial constitutionality of Senate Joint Resolution 2-G ("SJR 2-G") apportioning the Legislature of the State of Florida.[1]

Both chambers of the Florida Legislature respectfully submit their joint brief as proponents of the validity of Senate Joint Resolution 2-G in all regards. The Joint Resolution continues the tradition started in 1982 of using only single member districts for both the House and the Senate. It has a relative overall range (total deviation) of 1.99% for House districts and of .87% for Senate districts and recognizes compact populations of Hispanics and blacks when they exist in sufficient numbers to form substantial parts of populations of House and Senate districts.

THE 1992 PRE-SESSION AND SESSION ACTIVITY

The Legislature convened in early session on January 14, 1992 and adjourned sine die on March 13, 1992 without adopting a joint resolution of apportionment. Thereafter, pursuant to Article III, §16 of the Florida Constitution, Governor Lawton Chiles called the

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[1] This is the third occasion for this Court to review a joint resolution of apportionment under the provisions of Article III, §16. See In re: Apportionment Law, 263 So.2d 797 (Fla. 1972); and In re: Apportionment Law, 414 So.2d 1040 (Fla. 1982). Unlike earlier reapportionment cycles, Article III, §16 and its process are being assailed. See Appendix I, April 17, 1992 Memorandum in De Grandy, et al. v. Wetherell, et al., USDC ND Fla. Case No. 92-40015-WS, pages 18-26.

Legislature to reconvene on April 1, 1992 for a session to last not more than thirty consecutive days (Appendix II). SJR 2-G was adopted by the House on the tenth day of the special apportionment session on April 10, 1992. SJR 2-G passed the Senate on April 9, 1992 by a vote of 21 yeas to 19 nays, and passed the House by vote of 68 yeas to 44 nays. (See Appendix III)

PRE-LEGISLATIVE ACTIVITY: PUBLIC ACCESS

The Legislature began preparing for the 1992 reapportionment in 1988. Each chamber hired separate expert technical staff and provided them with state of the art computer systems. Committees on Reapportionment in both chambers were appointed in 1991 and charged with the responsibility of aiding the Legislature in developing legislative and congressional plans.

The 28 member Senate Committee had 2 Hispanic and 2 black members. The 38 member House Committee had 2 Hispanic and 6 black members. (See Appendix IV)

The House and Senate co-hosted thirty-two public hearings throughout the State between September 19, 1991 and December 4, 1991. House and Senate members participated in these hearings. Their purpose was to increase public awareness on reapportionment and to receive public input prior to the development or adoption of any redistricting or reapportionment plans.

Once the dates and sites for the meetings were selected, (See schedule, Appendix V), the Legislature issued public service announcements (p.s.a.) and contracted with the Florida Association of Broadcasters to ensure broadcast of the p.s.a. In an

unprecedented step, the Legislature conducted two statewide teleconferences. The focus of the first teleconference was Congressional reapportionment and the focus of the second was Legislative reapportionment. Throughout the process, members of the Legislature were provided access to the computers to draw districts. Additionally, fact sheets disclosing population data, both absolute and percentages, for whites, blacks, Hispanics, and party registration and other data were made available to legislators and to the public.

The openness of Florida's process should be a model for other states. Through the process of disclosure of relevant data and compromise, the Legislature adopted SJR 2-G which continues modern Florida's tradition of providing fair and effective representation for its diverse and growing population.

THE OFFICIAL U.S. 1990 CENSUS

The Florida Constitution, Article III, §16(a), requires the Legislature, at its regular session in the second year following each decennial census, to apportion the State. According to the U.S. Department of Commerce, the official Florida population is 12,937,926.

Between 1980 and 1990 Florida's population increased by +32.75% ranging from a county high increase in Flagler of +163% to a county low decrease in Gadsden of -1.11%. The U.S. Department of Commerce reported changes in minority populations as well. The official census reported a .3% decrease in the percentage of the (non-Hispanic) black population, from 13.8% to 13.5%, and a 3.37%

increase in the percentage of the Hispanic population, from 8.80% to 12.17%.

There is ongoing controversy concerning undercount of minorities in the U.S. Census. The Notice of Final Decision from the United States Department of Commerce, Volume 56, C.F.R. No. 140, July 22, 1991, page 33582, et seq., concerning the official census tabulation acknowledged the problem of differential participation and undercount of minorities. An Early Post Enumeration Survey (PES) estimates that the Florida (net) undercount ranges from 2.4% to 2.7% or represents well in excess of 300,000 people. Based upon a post-enumeration sample size by state, Commerce reported an initial (gross) estimated undercount for blacks of 4.8% and for Hispanics of 5.2% and a differential undercount for non-blacks of 1.7%.[2] Later estimates report the undercount was over-estimated by a third.

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[2] Florida is an intervenor in a suit to force an adjustment for this undercount. The City of New York, et al. v. United States Department of Commerce, et al., USDC ED N.Y. Case No. 88-Civ-3474 (JMcL). Additionally, House leadership, and black and Hispanic members of the House, and other minority citizens filed suit to compel an adjustment for this undercount and to force an allocation of Federal funds based upon adjusted population data reflecting the undercount, Florida House of Representatives, et al. v. Robert A. Mosbacher, Secretary of Commerce, et al., USDC ND Fla. Case No. 91-40556-MP. The Florida House of Representatives also filed a suit under the Freedom of Information Act, Florida House of Representatives, Honorable T. K. Wetherell, Speaker v. United States Department of Commerce, USDC ND Fla. Case No. 91-40387-WS, USCA Eleventh Circuit Case No. 92-2022, to require full disclosure of the estimated undercount data. The House prevailed at the trial court and the Department of Commerce was ordered to release the adjusted data. A stay from the Eleventh Circuit was obtained and the case was briefed and argued under an expedited schedule. A decision is pending.

Based upon the official U.S. Census (unadjusted for undercount of minorities), the ideal population for a Senate district is 323,448 and the ideal population for a House district is 107,816.

THE PLANS

THE HOUSE PLAN

Data relevant to the districts in SJR 2-G are presented in "Representative Districts: A Plan Of Apportionment For The Florida House Of Representatives" which accompanies the Petition of the Attorney General.

The House plan creates 120 single member districts. The absolute overall range from ideal population - 107,816 - is 2,143. The relative overall range (total deviation) is 1.99%. Hispanic and black majority districts were under-populated by approximately 1.5% to account for the acknowledged (net) undercount in the official U.S. Census.

Thirteen (non-Hispanic) black majority (total) population districts are created. They are dispersed throughout the State where sufficiently large and compact populations exist and are: #8 (Gadsen, Leon) 51.33%; #14 (Duval) 55.68%; #15 (Duval) 56.36%; #39 (Orange) 54.33%; #55 (Hillsborough, Manatee, Pinellas) 52.14%; #59 (Hillsborough) 55.71%; #84 (Palm Beach) 57.41%; #93 (Broward) 55.64%; #94 (Broward) 55.78%; #103 (Dade) 59.51%; #104 (Dade) 56.39%; #108 (Dade) 62.84%; #109 (Dade) 59.61%.

Additionally, three black influence[3] districts were created in District #3 (Escambia) 29.88%; #23 (Alachua, Marion) 33.70%; and #118 (Dade) 33.25%.

Nine Hispanic majority districts were created where sufficiently large and compact populations exist. Census data reflects that some Hispanic and resident alien populations in Dade are extremely geographically concentrated. Majority Hispanic districts are in South Florida and are: #102 (Collier, Dade) 65.62%; #107 (Dade) 65.04%; #110 (Dade) 82.11%; #111 (Dade) 75.73%; #112 (Dade) 67.69%; #113 (Dade) 73.92%; #114 (Dade) 77.45%; #115 (Dade) 65.34%; #117 (Dade) 68.33%.

Additionally, seven Hispanic influence districts were created: #58 (Hillsborough) 31.2%; #103 (Dade) 27.80%; #106 (Dade) 32.30%; #109 (Dade) 34.49%; #116 (Dade) 46.7%; #118 (Dade) 27.09%; and #119 (Dade) 26.63%.

In contrast, the 1982 plan contained only seven House districts with Hispanic population of 58% or higher and only seven House districts with a black population of 52% or higher. In Re: Apportionment Law, 414 So.2d 1040, 1045 (1982). The relative frequency of minority districts has improved both in absolute

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[3] This term is used in this brief as shorthand to designate districts with more than 25% minority population. It is not intended to determine the more complex issue as to the extent of "influence". For example, blacks and Hispanics are elected in districts with less than 50% minority population. See data for Senate District #7, and House Districts #9, #23, #55, #65, #91, and #118.

numbers and as evaluated in the context of the relative percentage of black and Hispanic population changes.

THE SENATE PLAN

The Senate Plan creates 40 single member districts. The absolute overall range from ideal population - 323,448 - is 2,808. The relative overall range (total deviation) is .87%. The Hispanic and black majority districts were not under-populated to account for undercount in the official U.S. census.

SJR 2-G creates two (non-Hispanic) black majority (total) population districts. These districts, in the two urban areas where sufficiently large and compact populations exist, are: #36 (Dade) 57.6%; #30 (Broward, Dade) 58%. SJR 2G also creates three black influence districts: #2 (Duval, Alachua, St. Johns, Clay, Putnam) 49.2%; #14 (Orange, Seminole) 31.2%; #3 (Bay, Calhoun, Franklin, Gadsden, Gulf, Jackson, Jefferseon, Leon, Liberty, Madison, Wakulla) 28.4%. Three majority Hispanic Senate districts were created in South Florida, the only area where large and compact concentrations of Hispanics reside. They are: #37 (Dade) 63.3%; #39 (Dade) 74.6%; #34 (Dade) 65.1%.

SJR 2-G is an improvement compared to the 1982 plan, which was hailed as a milestone. The 1980 Senate plan only created two Hispanic districts with populations in excess of 55% and only one Senate district with a majority black population. Like the House plan, the relative frequency of black and Hispanic districts in the Senate plan has improved in absolute numbers and as evaluated in

light of the relative percentages of black and Hispanic population changes.

THE LAW

Other than the text of Article III, §16, there are no provisions in the Florida Constitution prescribing the manner or standards by which apportionment is to be accomplished. Accordingly, the validity of SJR 2-G must generally be measured against the requirements of the Federal Constitution. See In re: Apportionment Law, Senate Joint Res. No. 1305, 263 So.2d 797, 807 (Fla. 1972). (There are no provisions in the Florida Constitution more stringent than the Fourteenth Amendment.) See also Id. at 807 where this Court stated its responsibilities in determining the constitutionality vel non of a legislatively adopted joint resolution of apportionment:

> At the outset, we emphasize that legislative reapportionment is primarily a matter for legislative consideration and determination. Judicial relief becomes appropriate only when the legislature fails to reapportion according to Federal and state constitutional requisities. If these are met, we must refrain, at this time, from injecting our personal views into the proposed reapportionment plan. Even though we may disagree with the legislative policy in certain areas, the fundamental doctrine of separation of powers and constitutional provisions relating to reapportionment require that we act with judicial restraint so as not to usurp the primary responsibility for reapportionment that rests with the legislature. (emphasis supplied)

See also In re: Apportionment Law, Senate Joint Res. 1 E, 414 So.2d 1040, 1045 (plan clearly meets the "one person, one vote" and equal

protection requirements of the Fourteenth Amendment to the United States Constitution.

CONTIGUITY

All districts in the Florida House and Senate plans are contiguous, as required by Article III, §16(a), when measured under the standard articulated in In re: Apportionment Law 1982, 414 So.2d 1040, 1051 (Fla. 1982), i.e., no part of a district is isolated from the rest of the district by the territory of another district and no district has lands that mutually touch only at a common corner or right angle.

POPULATION EQUALITY

Senate Joint Resolution 2-G satisfies the population equality requirement of the Fourteenth Amendment for both House and Senate districts.

The constitutional validity of legislative redistricting plans are determined according to the standards of the Equal Protection Clause of the Fourteenth Amendment. In Reynolds v. Sims, 377 U.S. 533, 577 (1964), the Court stated:

> By holding as a federal requisite both houses of the state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make a good faith effort to construct districts, in both houses of the legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement. (emphasis supplied)

The distinction between mathematical standards for Legislative and Congressional plans was noted in Reynolds:

> [S]ome distinctions may well be made between congressional and state legislative representation. Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a state than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State.

Id. at 578.

In Mahan v. Howell, 410 U.S. 315 (1973), the Supreme Court reaffirmed and explained the dichotomy between congressional and legislative redistricting. Mahan addressed the reapportionment plan for the Virginia General Assembly that had a 16.4% maximum deviation from the ideal district. Although the District Court found that the variances in the plan were the result of a desire to maintain the integrity of traditional and city boundaries, it concluded that a 16.4% deviation was sufficient to invalidate the plan. Id. at 319.

Reviewing the district court's decision, Supreme Court Justice Brennan framed the issue, in the context of State legislative reapportionment, as "whether or not the Equal Protection Clause of the Fourteenth Amendment [permits only] the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality". The Court concluded that the constitutionality of Virginia's legislative redistricting plan was not to be judged by the more stringent standards for Congressional redistricting. Id. at 324. Instead, the Court held that the test in Reynolds v. Sims applied and that states need only make an

honest good faith effort to construct legislative districts as nearly of equal population as is practicable. Id. (quoting Reynolds v. Sims, 377 U.S. at 577).

Maximum population deviation under 10% between state legislative districts is constitutionally de minimis..

The United States Supreme Court has recognized that absolute mathematical equality in State legislative redistricting is "hardly a workable constitutional requirement". Reynolds, 377 U.S. at 577. "[M]inor deviations between State legislative districts" do not constitute a prima facie case of invidious discrimination under the Fourteenth Amendment to the United States Constitution. See White v. Regester, 412 U.S. 755, 764 (1973) (District Court erred in holding that any deviations from equal population among legislative districts must be justified by acceptable reasons grounded in state policy). Specifically, the White Court stated that:

> Insofar as the District Court's judgment on the conclusion that the population differential of 9.9% from the ideal district between District 3 and District 85 made out a prima facie equal protection violation under the Fourteenth Amendment, absent special justification, the Court was in error. It is plain from Mahan v. Howell and Gaffney v. Cummings (citations omitted) that state reapportionment statutes are not subject to the same strict standards applicable to reapportionment of congressional seats. . .For the reasons set out in Gaffney v. Cummings, supra, we do not consider relatively minor population deviations among state legislative districts to substantially dilute the weight of individual votes in larger districts so as to deprive individuals in these districts of fair and effective representation.

Id. at 763-764. The Court has since held "as a general matter, that an apportionment plan with a maximum population deviation

under 10% falls within the category of minor deviations". Brown v. Thomson, 462 U.S. 843, 846 (1983) citing, Connor v. Finch, 431 U.S. 407 (1977), and White v. Regester, 412 U.S. 755 (1973)). See also Chapman v. Meier, 420 U.S. 1 (1974), where the Court stated:

> As contrasted with congressional districting, where population equality appears not to be the preeminent, if not sole, criterion which to adjudge constitutionality, when state legislative districts are at issue we have held that minor population deviations do not establish a prima facie constitutional violation. For example, in Gaffney v. Cummings, we permitted a deviation of 7.83% with no showing of invidious discrimination. In White v. Regester, a variation of 9.9% was likewise permitted. (citations omitted)

Id. at 23.

Therefore, so long as the State has made an honest good faith effort to construct districts as nearly of equal population and the districts are otherwise non-discriminatory, a plan with less than 10% absolute deviation is per se valid under the Equal Protection Clause. This is true even if an alternative plan with a lesser population deviation is before the Court. See Gaffney, 412 U.S. 740-741 (1972) (challenger's showing of numerical deviations from population equality among legislative districts failed to make out a prima facie violation of the Equal Protection Clause "whether the deviations are considered alone or in combination with the additional fact that another plan could be conceived with lower deviations among the State's legislative districts"). See also White, 412 U.S. at 763-764, and Brown, 462 U.S. at 842-843.

SJR 2-G meets the requirements of the Fourteenth Amendment. The absolute overall range from the ideal population in its House districts is 2,143 and the relative overall range (total deviation) is 1.99%. The absolute overall range from the ideal population in the Senate districts is 2,808 and the relative overall range (total deviation) is .87%. Accordingly, this Court should declare that SJR 2G complies with the population equality requirements of both the Constitutions.

Challengers to SJR 2G bear the burden of presenting facts to demonstrate that it was the intention of the Florida Legislature that SJR 2-G discriminates against members of the electorate and that the plan has that effect. See e.g., City of Mobile v. Bolden, 446 U.S. 55 (1980):

> We have recognized, however, that [such] leislative apportionments could violate the Fourteenth Amendment if their purpose were invidiously to minimize or cancel out the voting potential of racial or ethnic minorities. To prove such a purpose it is not enough to show that the group allegedly discriminated against has not elected representatives in proportion to its numbers. A plaintiff must prove that the disputed plan was "conceived or operated as [a] purposeful devic[e] to further racial. . .discrimination. (citations omitted)

Id. at 66. There can be no such good faith allegation.

THE FIFTEENTH AMENDMENT

The Fifteenth Amendment to the United States Constitution provides that the right of citizens of the United States to vote shall not be denied by any state on account of race, color or previous condition of servitude. Proof of intent to discriminate

is required. City of Mobile v. Bolden, 446 U.S. 55 (1980). SJR 2G does not "deny" a right to vote. Further, as demonstrated by the statistical and population data accompanying the Senate and House plans, they are generous in their creation of responsible minority districts of access and of influence status both in numbers and in areas where such districts did not previously exist.

THE VOTING RIGHTS ACT.

Congress amended Section 2 in 1982[4] to provide:

> (a) No voting qualifications 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 to any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 1973b(f)(2) of this title [Section 4(f)(2) of the original Act], as provided in subsection (b) of this Section.
>
> (b) A violation of subsection (a) of this Section is established if, based on the **totality of circumstances**, it is shown that the political process 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) of this Section in that its members have less opportunity 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**

[4] 42 U.S.C. §1973 (1988). Section 1983 codifies, as amended, the Voting Rights Act of 1965, Pub. L. No. 89-110, §2, 79 Stat. 445. The Voting Rights Act of 1965, §2 was amended in 1975, Pub. L. No. 94-73, 89 Stat. 402, and in 1982, Pub. L. No. 97-205, 96 Stat. 134.

have members of a protected class elected in numbers equal to their proportion in the population.

The 1982 amendment was a response to the United States Supreme Court's decision in Mobile v. Bolden, 446 U.S. 55 (1980), in which the Court held that plaintiffs must show that a challenged electoral system was enacted or maintained for the purpose of denying or diluting the voting strength of a racial minority. The 1982 amendment rejected the purpose or intent test and replaced it with an earlier "result" test from White v. Regester, 412 U.S. 755 (1973) which focused on the effect of the challenged structure or practice on minority electoral opportunities.[5]

A report from the Senate Judiciary Committee accompanied the amended Voting Rights Act bill. It elaborated on a non-exclusive list of typical factors - the totality of circumstances - which could be probative of a §2 violation:

> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
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> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
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> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-

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[5] Congress incorporated the results test in the paragraph that formerly constituted the entire §2 and designated that paragraph as subsection (a) and added a new subsection (b) to make clear that an application of the results test requires an inquiry into the "totality of the circumstances". Chisom v. Roemer, 111 S.Ct. 2354, 2363 (1991).

single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

See Thornburg v. Gingles, 478 U.S. 30 (1986) and Solomon v. Liberty County, 899 F.2d 1012 (11th Cir. 1990) (en banc) for application of these "totality factors" to a Section 2 analysis. The split Solomon panel is indicative of the complexity of this analysis, even after weeks of hearings and multiple briefs.

The 1982 amendment was a response to the Supreme Court's decision in Mobile v. Bolden, 446 U.S. 55 (1980). In Bolden, the Supreme Court held that plaintiffs must show the challenged electoral system was enacted or maintained for the purpose of denying or diluting the voting strength of a racial minority. The 1982 amendment replaced the "intent" test with an earlier test from White v. Regester, 412 U.S. 755 (1973), which focused on the result of effect of the challenged structure or practice on minority electoral opportunities.

Therefore, this Court's instant review cannot be dispositive of the ultimate Section 2 determination.[6] Section 2 requires an "intensely local appraisal of the design and impact of the contested electoral mechanism" with a "flexible, fact-intensive inquiry into the past and present reality of the political process" Gingles, 478 U.S. 79, an inquiry beyond the scope of this Court's Article III, §16 review.

SJR 2-G provides Florida's minorities with effective opportunity to participate in the electoral process.

Florida's diverse Hispanic (Columbian, Cuban, Mexican, Nicaraguan, Puerto Rican, and others) and black populations represent approximately 25.32% of its population. Their numbers are not spread uniformly throughout the State and they are not always concentrated in discreet communities. See data in "Representative Districts: A Plan Of Apportionment For The Florida

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[6] There is precedent for such a qualified review. See In re: Apportionment, 414 So.2d 1040, 1052. "This holding is without prejudice to the right of any protestor to question the validity of the plan as applied in appropriate proceedings. . .".

House of Representatives". By way of example, Gadsden, Jefferson, and Madison counties have numerically small black populations in excess of 40% of the total county population, and Citrus, Pasco counties have black populations of less than 2%. Only Dade has an Hispanic population in excess of 40% and only Hardee and Hendry have Hispanic populations in excess of 20%. Twenty-three of Florida's 67 counties have Hispanic populations of less than 2%.

SJR 2-G establishes black majority House districts within those parts of 10 counties which have sufficiently large and geographically compact minority populations. Similarly, it creates Hispanic majority House districts in Dade County which (alone) has sufficiently large and geographically compact Hispanic populations.

As stated above at page 5, both the Senate and the House plans increase the number of Hispanic and black majority districts from the numbers that were created in 1982. The House plan creates thirteen (non-Hispanic) black majority (total) population districts and nine majority Hispanic districts. Likewise, SJR 2-G creates two black majority Senate districts and three Hispanic majority Senate districts. SJR 2-G also creates a total of eleven minority districts with minority populations of 25% to 49%.

The Court should conclude SJR 2-G satisfies the requirements of the Voting Rights Act and provides Florida's Hispanic and black populations with an effective opportunity to participate and to elect candidates of choice.

PARTISAN FAIRNESS

Partisan fairness, placed at issue in a "gerrymander"[7] context, was discussed by the United States Supreme Court in Davis v. Bandemer, 478 U.S. 109 (1986). Bandemer was the first instance in which the United States Supreme Court held that partisan gerrymander claims were justiciable.[8] That case was premised upon Fourteenth Amendment equal protection requirements and presented extreme facts. See e.g., 478 U.S. at 114; n. 2, 117, n. 5.

Six Justices concluded that partisan gerrymandering claims were justiciable and four of them also determined that a claim of political unfairness or gerrymandering required a threshold showing of discriminatory vote dilution. Justice O'Connor, Burger, and Rehnquist concluded that gerrymandering was a political question

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[7] "Gerrymandering is discriminatory districting. It equally covers squiggles, multi-member districting, or simple non-action, when the result is racial or political malrepresentation." R. Dixon Democratic Representation, "Reapportionment in Law and Politics", e.g., 459 (1968).

[8] The Court's limited involvement into the "political thicket" of redistricting is marked by its incremental rulings in Smiley v. Holm, 285 U.S. 355 (1932); Colegrove v. Green, 328 U.S. 549 (1946); Gomillion v. Lightfoot, 364 U.S. 339 (1960); and, finally, by Reynolds v. Sims, 377 U.S. 533 (1964). The Court evaluated a multi-member Georgia districting plan and determined the plan was not unconstitutional, per se, but held "It might well be that. . .an apportionment scheme under the circumstances of a particular case, would operate to cancel out the voting strength of racial or political elements of the voting population". Fortson v. Dorsey, 379 U.S. 433, 439 (1965). Similarly, in Gaffney v. Cummings, 412 U.S. 735, 736 (1973), the Court recognized that "What is done in arranging for elections, or to achieve political ends or allocate political power is not wholly exempt from judicial scrutiny under the Fourteenth Amendment". It recognized certain types of districts may be "vulnerable if racial or political groups have been fenced out of the process and their voting strength invidiously minimized".

that the Court should avoid and that no judicially manageable standards existed to litigate gerrymandering cases.

Other considerations were stated by a plurality, however:

> The mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm.
>
> * * *
>
> Unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will **consistently degrade** a voter's or a group of voters' influence on the political process as a whole.
>
> * * *
>
> An equal protection violation may be found only where the electoral system **substantially** disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.
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> * * *
>
> A mere lack of proportionate results in one election cannot suffice. . .equal protection violations must be found only where a history (actual or projected) of disproportionate results appears in conjunction with similar indicia (lack of political power and the denial of fair representation).

The Bandemer court found no gerrymandering.

A similar evaluation of alleged gerrymander was made in Badham v. Eu 694 F.Supp. 664 (ND Cal. 1988), review denied 109 S.Ct. 829. That panel used the Bandemer analysis, observed that the plaintiff

party had not been "shut out" of the process and concluded there was no political unfairness.

Political data accompanying SJR 2-G evidences 67 of 120 House districts have majority Democrat registration, and 24 of 40 Senate districts have majority Democrat registration. In 14 House districts, the margin of Democrat registered voters over Republican registered voters is less than 10%, and in 5 Senate districts the margin of Democrat registered voters over Republican registered voters is less than 10%. The Florida Legislature submits SJR 2-G presents no basis for claim of political unfairness.

CONCLUSION

For these reasons, both chambers of the Florida Legislature respectfully request this Court to validate SJR 2-G as facially complying with the requirements of the State and Federal Constitutions and with the requirements of the Voting Rights Act.

They concurrently request this Court, as it did in 1982, to retain exclusive state jurisdiction to consider any and all future proceedings relating to the validity, as applied, of this apportionment plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copy of the foregoing has been served on **GEORGE L. WAAS**, Esquire, Assistant Attorney General, and **GERALD B. CURINGTON**, Esquire, Senior Assistant Attorney General, Department of Legal Affairs, The Capitol - Suite 1501, Tallahassee, Florida 32399-1050, and **GEORGE N. MEROS, JR.**, Esquire, Rumberger, Kirk & Caldwell, 106 E. College, Tallahassee, Florida 32301, by hand delivery, this 20 day of April 1992.

JAMES A. PETERS

APPENDIX

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO.: 92-40015WS

MIGUEL De GRANDY, et al.,

Plaintiffs,

vs.

T.K. WETHERELL, in his official capacity, et al.,

Defendants/Third Party Plaintiffs,

vs.

WILLIAM P. BARR, as Attorney General of the United States of America,

Third Party Defendant.
_____/

CASE NO.: 92-40131

FLORIDA STATE CONFERENCE OF NAACP BRANCHES, et al.,

Intervenor/ Plaintiffs,

vs.

LAWTON CHILES, et al.,

Defendants.
_____/

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON COUNTS I, II, III, IV, V, AND VI OF PLAINTIFFS' SECOND AMENDED COMPLAINT

Plaintiffs, Miguel DeGrandy, et al., respectfully file this memorandum of law in support of their motion for summary judgment.

INTRODUCTION

The undisputed facts and case law demonstrate that Plaintiffs are entitled to summary judgment for the following reasons:

With respect to Counts I and II of the Second Amended Complaint, all parties concede that the current congressional, state house and state senate districts are malapportioned and violate the Equal Protection Clause of the United States Constitution, the Voting Rights Act, or both.

With respect to Counts III and IV, the parties concede that the Federal Constitution and 2 U.S.C. §2 require the State of Florida to conduct congressional redistricting in time for 1992 elections. The State of Florida has failed to do so. Plaintiffs are therefore entitled to summary judgment on those Counts, at least with respect to congressional redistricting.

With respect to Counts V and VI, Plaintiffs will demonstrate that Article III, Section 16 of the Florida Constitution is unconstitutional facially and as applied. The section lacks guidelines or any procedural safeguards, and it has permitted a violation of Plaintiffs' right to full and fair participation in 1992 elections.

In addition to summary judgment in favor of Plaintiffs on these Counts, Plaintiffs request that the Court order and adjudge that the current lines for congressional, state house and state senate districts are invalid and cannot be used for 1992 elections, and further, that 1992 elections cannot be conducted at large. Plaintiffs also request all such additional injunctive and other relief necessary to protect their rights.

UNDISPUTED FACTS

Defendants Wetherell and Wallace stipulate that a justiciable case or controversy exits. Defendants Margolis and Gordon stipulate that a justiciable case or controversy existed as of March 27, 1992. Defendants Chiles, Butterworth and Smith do not stipulate that a case or controversy exists as to each of them. (Stipulation of parties, Court Docket #73, para. 1).

This Court has jurisdiction over this action. (Stip. para. 2).

A Three-Judge Court has been properly convened. (Stip. para. 3).

Venue of this action properly lies in the Northern District of Florida, Tallahassee Division. (Stip. para. 4).

The district lines currently in effect for all of Florida's congressional, state house and state senate districts are malapportioned. (Stip. para. 9).

According to the 1990 federal decennial census, the population of the State of Florida is 12,937,926, an increase of 3,213,602 persons since the 1980 decennial census. This increase of population entitles Florida to an additional four members in the United House of Representatives, increasing the size of the state's congressional delegation from 19 to 23 members, pursuant to 2 U.S.C. §2. (Stip. para. 31).

Because of the increase of the state's population and congressional delegation, the Florida Legislature is required to redistrict the state's congressional districts in conformity with the Constitution of the United States, 2 U.S.C. §2, and the Voting Rights Act of 1965, as amended. (Stip. para. 32).

Florida's state senate and house of representatives will also have to be redistricted due to the increase in population and the redistribution of population among the various districts, and due to the requirements of the Voting Rights Act. (Stip. para. 33).

Due to the increase in Florida's population and population shifts within the state, the present districts for each and every state house, state senate, and congressional district in the state contain population variations that exceed constitutional limits. (See para. 92 of Second Amended Complaint, admitted by Defendants).

Plaintiffs' votes will be diluted in some current districts if they are not reapportioned in a timely fashion. (See partial admission of Defendants Wetherell and Wallace to para. 96 of Second Amended Complaint).

Neither Florida Statutes nor the Constitution provide any time line within which redistricting must occur, and Article I, Section 2 of the United States Constitution and 2 U.S.C § 2 require congressional districting plans be prepared in advance of the 1992 elections. (See admission of Defendants Wetherell and Wallace to para. 80 of Second Amended Complaint).

Pursuant to Florida Statutes, qualifying for federal office opens on July 6 and closes on July 10, 1992. (Stip. para. 34).

Candidate qualification for state office (including state senate and house of representatives) opens on July 13 and closes on July 17, 1992. (Stip. para. 35).

The first primary election is September 1, 1992. (Stip. para. 36).

The general election is November 3, 1992. (Stip. para. 37).

Article III, Section 16, Florida Constitution, states:

> (a) SENATORIAL AND REPRESENTATIVE DISTRICTS. The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty or more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive

days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment.

(b) FAILURE OF LEGISLATURE TO APPORTION: JUDICIAL REAPPORTIONMENT. In the event a special apportionment session of the legislature finally adjourns without adopting a joint resolution of apportionment, the attorney general shall, within five days, petition the supreme court of the state to make such apportionment. No later than the sixtieth day after the filing of such petition, the supreme court shall file with the secretary of state an order making such apportionment.

(c) JUDICIAL REVIEW OF APPORTIONMENT. Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

(d) EFFECT OF JUDGMENT IN APPORTIONMENT: EXTRAORDINARY APPORTIONMENT SESSION. A judgment of the supreme court of the state determining the apportionment to be valid shall be binding upon all the citizens of the state. Should the supreme court determine that the apportionment made by the legislature is invalid, the governor by proclamation shall reconvene the legislature within five days thereafter in extraordinary apportionment session which shall not exceed fifteen days, during which the legislature shall adopt a joint resolution of

apportionment conforming to the judgment of the supreme court.

(e) EXTRAORDINARY APPORTIONMENT SESSION: REVIEW OF APPORTIONMENT. Within fifteen days after the adjournment of an extraordinary apportionment session, the attorney general shall file a petition in the supreme court of the state setting forth the apportionment resolution adopted by the legislature, or if none has been adopted reporting that fact to the court. Consideration of the validity of a joint resolution of apportionment shall be had as provided for in cases of such joint resolution adopted at a regular or special apportionment session.

(f) JUDICIAL REAPPORTIONMENT. Should an extraordinary apportionment session fail to adopt a resolution of apportionment or should the supreme court determine that the apportionment made is invalid, the court shall, not later than sixty days after receiving the petition of the attorney general, file with the secretary of state and order making such apportionment.

(Stip. para. 38).

The reapportionment process provided in Article III, Section 16, Florida Constitution, does not ensure passage of and adoption of reapportionment plans prior to the election dates in 1992. (See admission of Defendants Wetherell and Wallace to para. 72 of Second Amended Complaint).

Article III, Section 16, makes no provision for legislative redistricting if preclearance is denied by the United States Department of Justice. (Stip. para. 40).

No African-American has been elected to Congress in Florida in this century. (Stip. para. 24).

An Hispanic-American was elected to Congress in Florida for the first time in a special election 1989. (Stip. para. 25).

On April 1, 1992, Defendants T.K. Wetherell and Gwen Margolis sent a letter to the Florida Supreme Court concerning redistricting and the pending federal court litigation. (Exhibit 2.)

The April 1, 1992 letter from T.K. Wetherell and Gwen Margolis was not authorized by vote of the legislature or by proclamation. (T.K. Wetherell Dep., p. 7, Ex. 5.) The letter was not distributed to the press or to the public at-large. (T.K. Wetherell Dep., pp. 12-13, Ex. 5.)

Despite the fact that the April 1 letter characterized the pending federal litigation, Defendants did not send notice to Plaintiffs' counsel that a communication with the Florida Supreme Court had occurred. (T.K. Wetherell Dep., pp. 12-13, Ex. 5.)

On April 2, 1992, the Florida Supreme Court entered an order in response to the letter of T.K. Wetherell and Gwen Margolis, establishing an expedited schedule of briefs and oral argument proceedings to be conducted under Article III, Section 16. (*See* Exhibit 3.)

At no time prior to entry of the April 2 order did the Supreme Court provide an opportunity for any person or entity to respond to the Margolis and Wetherell letter of April 1.

The Supreme Court order of April 2 was entered eight days prior to any passage of a joint resolution of apportionment, and 12 days prior to the initiation of its jurisdiction through filing by the Attorney General of a petition for declaratory judgment under Article III, Section 16.

In January 1992, Justice Ben Overton of the Florida Supreme Court requested of Defendant Peter Wallace that Justice Overton and members of his staff be permitted to have a meeting with the staff of the House Reapportionment Committee to discuss reapportionment technology. (Wallace Dep., pp. 8-10, Ex. 4.)

Later in January, Justice Overton and members of his staff met with members of the House Reapportionment Committee staff. Some time later, the staff of the House Reapportionment Committee delivered to Justice Overton two legal memoranda discussing redistricting standards and applicable case law. (Wallace Dep., pp. 14-15, Ex. 4.)

At the time of the distribution of the legal memoranda to the Supreme Court, there is nothing to indicate that the public or members of the legislature were made aware that a House Reapportionment Committee had contacted a justice of the Florida Supreme Court, or that it had distributed legal memoranda to the court. Additionally, there is nothing to indicate that Plaintiffs or their attorneys were advised at any time that legal memoranda had been distributed to the Florida Supreme Court. (Wallace Dep., p. 16, Ex. 4.)

I. SUMMARY JUDGMENT ON COUNT I SHOULD BE GRANTED BECAUSE PRESENT DISTRICT LINES ARE MALAPPORTIONED AND UNCONSTITUTIONAL.

Count I of the Plaintiffs' Second Amended Complaint seeks a declaration that the current district lines for each and every state house, state senate and congressional district in Florida is malapportioned and violative of the

one-person, one-vote principle of the Equal Protection Clause of the United States Constitution. Defendants have stipulated to precisely these facts. Specifically, Defendants have stipulated to paragraph 92 of the complaint, which states:

> Due to the increase in Florida's population and population shifts within the State, the present districts for each and every state house, state senate, and congressional seat in the State contain population variations that exceed constitutional limits.

(See answers of Defendants to Second Amended Complaint.) Defendants reaffirm these admissions in paras. 32 and 33 of the parties' stipulation filed with this Court (Docket #73). The attached affidavit of Dr. Richard Scher confirms these stipulations. (Exhibit 1).

Accordingly, the parties agree that the current congressional and legislative districts are malapportioned and violate the Equal Protection Clause of the United States Constitution. Based upon these admissions, Plaintiffs are entitled to summary judgment on Count I.

II. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON COUNT II BECAUSE CURRENT DISTRICTS VIOLATE THE VOTING RIGHTS ACT.

With respect to Count II of the Second Amended Complaint, the parties have essentially stipulated that the present district lines violate the Voting Rights Act, 42 U.S.C. § 1973, *et seq*. Specifically, in paragraphs 32 and 33 of the stipulation submitted to the Court, the parties agreed that Florida's congressional delegation and legislative districts will have to be redistricted due to the "increase in population and the redistribution of the population among the various districts, and due to the requirements of the Voting Rights Act." (Emphasis added). Moreover, Defendants Wetherell and Wallace admitted in their answer in paragraph 96 that "the present districts for each state house, state senate and congressional district in the State contain population variances which must be adjusted during the reapportionment session or special sessions following the 1990 [official] census calculation and that plaintiffs' votes will be diluted in some current districts if they are not reapportioned in a timely fashion." (See answer of Defendants Wetherell and Wallace to Second Amended Complaint, para. 96) (emphasis added).

Further, the attached affidavit of Dr. Richard Scher demonstrates that the current legislative and congressional districts in Florida dilute minority voting strength and prevent Black and Hispanic voters from having an equal opportunity to participate in the 1992 election process and to elect representatives of their choice. (Exhibit 1).

In sum, all parties have stipulated that the current district congressional and legislative districts are malapportioned and violate the Equal Protection Clause of the United States Constitution, and must be reconfigured in time for 1992 elections. Moreover, Defendants cannot adduce competent evidence to refute the affidavit of Dr. Richard Scher that, in view of the dramatic demographic changes that have occurred in Florida in the past ten years, the current district lines dilute minority voting strength in violation of the Voting Rights Act. Accordingly, Plaintiffs are entitled to summary judgment on Count I and II of the Second Amended Complaint.

III. PLAINTIFFS ARE ENTITLED TO PARTIAL SUMMARY JUDGMENT ON COUNTS III AND IV OF THE SECOND AMENDED COMPLAINT, AS THEY PERTAIN TO CONGRESSIONAL REDISTRICTING.

Plaintiffs are entitled to partial summary judgment on Counts III and IV of the complaint as they pertain to congressional redistricting. The parties concede that Plaintiffs have a federal constitutional and statutory right to congressional redistricting in advance of 1992 elections. (Stipulation, ¶ 32.) Moreover, Defendants will now concede that the Florida Legislature has failed to conduct congressional redistricting and will not do so sufficiently in advance of 1992 elections.

The parties have stipulated that "because of the increase in the state's population and congressional delegation, the Florida Legislature is required to redistrict the state's congressional districts, in conformity with the Constitution of the United States, 2 U.S.C § 2 and the Voting Rights Act of 1965, as amended." (Stip., para. 32). Additionally, Defendants Margolis and Gordon admit that "the State of Florida is required to prepare a congressional [re]districting before the 1992 elections." (See para. 80 of Defendants Margolis and Gordon's answer).

Thus, there is no dispute that Plaintiffs have a constitutional and statutory right to congressional redistricting in advance of the 1992 elections. There is also no dispute that Florida has failed to conduct congressional redistricting. Defendants will concede that all legislative sessions have ended without a congressional redistricting plan, and that no special session is scheduled for the conduct of congressional redistricting.

The State of Florida has failed to comply with its federal constitutional and statutory obligation to conduct congressional redistricting in advance of the 1992 elections. Accordingly, Plaintiffs are entitled to a partial summary judgment on Counts III and IV of the Second Amended Complaint, to the extent that each pertains to congressional redistricting.

IV. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON COUNT V BECAUSE ARTICLE III, SECTION 16 OF THE FLORIDA CONSTITUTION IS UNCONSTITUTIONAL ON ITS FACE.

The undisputed facts and case law demonstrate that Article III, Section 16, Florida Constitution, is unconstitutional on its face. The provision lacks procedural safeguards necessary to prevent deprivation of fundamental

constitutional rights, and it is unconstitutionally vague because it lacks sufficient guidelines to prevent arbitrary and discriminatory enforcement.

A. Article III, Section 16 is Facially Unconstitutional Because It Violates Procedural Due Process.

Article III, Section 16 violates procedural due process under the Fourteenth Amendment to the United States Constitution, U.S. Const. Amend. XIV, §1. Under the Due Process Clause, a state cannot deprive a litigant of life, liberty or property without providing procedural safeguards adequate to insure that the deprivation is not erroneous. *Connecticut v. Doehr*, 111 S.Ct. 2105 (1991); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975).

The core requirements of procedural due process are notice and a meaningful opportunity to be heard. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). The type of notice and hearing that due process requires, along with other constitutionally required procedural safeguards, is determined in light of the significance of the property or constitutional rights at

stake, and the competing governmental interest involved. *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976).

In this case all parties would agree that the statutory right to vote conferred upon citizens by the state is a constitutionally cognizable property right. *See* Chaps. 97-106, Fla. Stat. (1991). There is similar agreement that Plaintiffs enjoy a federal constitutional right to vote and to participate fully in an election. *Dunn v. Blumstein*, 405 U.S. 330 (1972). Moreover, federal courts have noted consistently that the right to vote is fundamentally important:

> As this court has stressed on numerous occasions, '[t]he right to vote freely for the candidate of one's choice is at the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.' *Reynolds v. Sims*, 377 U.S. 533, 555....The right is fundamental 'because preservative of all rights.' *Yick Wo v. Hopkins*, 118 U.S. 356, 370...

Harman v. Forssenius, 380 U.S. 528, 537 (1965).

Article III, Section 16 lacks adequate procedural safeguards to ensure that plaintiffs' fundamental right to vote will not be arbitrarily undermined. *Reynolds v. Sims*, 377 U.S. 533 (1964), and its progeny require that

redistricting occur in sufficient time to conduct 1992 elections on the basis of redistricted lines. *Reynolds* held that if reapportionment were accomplished with less frequency than every ten years, "it would assuredly be constitutionally suspect." *Reynolds*, 377 U.S. 584. Since the last reapportionment occurred in Florida in 1982, any failure to reapportion the current district lines for terms commencing on or after January 1993, would render Florida's present apportionment scheme more than ten years old and constitutionally invalid. *Flateau v. Anderson*, 537 F.Supp. 257, 264 (S.D.N.Y. 1982). Thus, the Constitution requires that new district lines be in place in time for Florida's 1992 election. Moreover, those lines must be in place <u>well in advance</u> of the 1992 elections, which begin in July of this year. *Scott v. Germano*, 381 U.S. 407, 410 (1965); *Flateau*, 537 F.Supp. at 264-266. As noted by Dr. Scher in the attached affidavit, district lines must be approved and in place by June 1, 1992, if Plaintiffs are to be able to participate on a fair and equal basis in 1992 elections. (See attached Affidavit of Dr. Scher). (Exhibit 1).

The language of Article III, Section 16 does not fulfill that mandate. Specifically, while subsection (a) of

Section 16 provides that the Legislature shall conduct redistricting in the regular session in the second year following the decennial census, the section does not state when that regular session must occur. Indeed, under Article III, Section 3, regular sessions may occur in March of each year, or they may be changed by general law. Thus, Article III, Section 16 permits the regular session to occur in any month of the second year following the decennial census (as may be provided by the Florida Constitution or by change of general law). Thus, Section 16 permits the regular session to occur in November or December of a given year, well beyond the time for that year's elections. In the absence of a date certain by which redistricting must occur, Section 16 permits redistricting to occur after Plaintiffs' right to vote and to participate in that year's elections is lost. Section 16 is without any procedural safeguards to prevent this constitutional deprivation.

More generally, but no less significant, the remaining redistricting schedule in Section 16 lacks procedural safeguards to ensure that redistricting will be completed in time for elections during the second year after the decennial census. As noted in Plaintiffs' Second Amended

Complaint, the timelines in Section 16 permit the redistricting process to extend 200 days from the date of the beginning of the regular session. Under the express provisions of Section 16, redistricting in Florida could extend well into the third year following the decennial census, in violation of *Reynolds v. Sims* and its mandate that redistricting occur every ten years.

Section 16 is also lacking in substantive standards by which a joint resolution of apportionment should be judged. The only substantive standard set out in Section 16 is that the joint resolution must apportion the state "in accordance with the Constitution of the state and of the United States into...districts of either contiguous, overlapping or identical territory,...." The section makes no reference to the manner in which compliance with the Federal or Florida Constitutions should be evaluated, and it is entirely silent as to whether redistricting should be evaluated on the basis of federal statutes such as the Voting Rights Act of 1965, as amended.

Among the most egregious deficiencies in Section 16 is its failure to provide a meaningful hearing for those who would challenge a joint resolution of apportionment on

constitutional or federal statutory grounds. The Florida Supreme Court has held that the review contemplated by Section 16 is a "legal" review that does not contemplate or premit evidentiary proceedings. *In re Apportionment Law, Senate Joint Resolution No. 1305*, 263 So.2d 797, 808 (Fla. 1972); *In re Apportionment Law, etc.*, 414 So.2d 1040, 1045 (Fla. 1982). This "facial" review is an empty remedy for one who would seek to protect the paramount constitutional right to vote and the right of an African-American or Hispanic to participate on a fair and equal basis in the electoral process under the Voting Rights Act.

Due process requires notice and a <u>meaningful</u> opportunity to be heard and to protect one's interest. "Both the hearing provided. . .and the notice of that hearing, must be reasonable and meaningful in the time and manner in which they occur." *Craig v. Carson,* 449 F.Supp. 385, 391 (M.D. Fla. 1978). With rights far less important at stake, federal courts have held that a litigant has a right to an evidentiary proceeding before it suffers even a monetary deprivation. *United States v. State of Arkansas,* 791 F.2d 1573, 1576-77 (8th Cir. 1986) (although the state was properly reinstated to action, and although adverse findings

were made against state in the earlier action, state was entitled to evidentiary proceedings to determine liability for costs). Indeed, Florida courts have held that an evidentiary hearing is necessary before one can be held in contempt for failure to make child support payments. *Robbins v. Robbins,* 429 So.2d 424, 431 (Fla. 3d DCA 1983).

Here, the Florida Supreme Court must assess the validity of a joint resolution of apportionment on the basis of the Voting Rights Act and the intense requirements of Section 2 of that Act. That analysis simply cannot be done on the basis of a "facial" review. Such an analysis requires nothing less than the type of painstaking analysis this Court will be undertaking beginning April 27. Because the Florida Supreme Court, under Section 16, permits a person's right to vote and a minority's right to participate equally in the election process to slip away without even the opportunity to present evidence or to cross examine, Section 16 plainly violates due process. *Matthews v. Eldridge,* 424 U.S. 319 (1976).

Section 16 is deficient for the additional reason that it is silent, in substance, as to the notice to be afforded adversary parties. The section also makes no

provision for the manner in which the public should be notified that the Attorney General has petitioned for a declaratory judgment.

Recently, Defendants demonstrated with remarkable clarity the absence of procedural safeguards in Article III, Section 16. On April 1, 1992, without notice to the press or to the public at large, Defendants T.K. Wetherell and Gwen Margolis sent a letter to the Florida Supreme Court concerning redistricting. (See Exhibit 2). That letter was not authorized by vote of the legislature or by proclamation. (Exh. 5, p.7). Moreover, despite the fact that Defendants characterized the present federal litigation in disparaging terms in that letter, Defendants did not provide any notice to Plaintiffs or to their counsel that such an ex parte communication with the Florida Supreme Court had occurred. (Exh. 5, pp.12-13).

Less than 24 hours later, the Florida Supreme Court entered an order in response to this unauthorized letter, establishing an expedited schedule of briefs and oral argument for proceedings to be conducted under Article III, Section 16. This order was entered without the opportunity of any adversary interest to respond to Defendants'

unauthorized letter. Moreover, and perhaps most notably, this order was entered without the Court having any jurisdiction under Article III, Section 16, since no joint resolution of apportionment had been passed and no petition for declaratory judgment had been submitted to the Court (Exhibit 3).

Additionally, Plaintiffs recently learned that in January, 1992, Justice Ben Overton of the Florida Supreme Court requested of defendant Peter Wallace that Justice Overton and staff be permitted to have a meeting with staff of the House Reapportionment Committee to discuss reapportionment technology. (Exh. 4, pp.8-10). Defendant Wallace agreed, and in late January Justice Overton and members of his staff met with members of the House Reapportionment Committee staff. Later, staff of the House Reapportionment Committee delivered to Justice Overton two legal memoranda discussing redistricting standards and applicable case law. (Exh. 4, pp.14-15). Amazingly, neither the public, other legislators, nor these Plaintiffs were given any notice of these communications. (Exh. 4, p.16). At no time has the Supreme Court requested of any of these Plaintiffs their legal evaluation of redistricting standards.

As noted earlier, the adequacy of any safeguards found in Article III, Section 16 must be evaluated in the context of the importance of the individual interest involved and competing governmental interests. *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). With respect to the interests of Plaintiffs, it is already established that the right to vote is of paramount importance. With respect to the state's interest, Plaintiffs concede that the state has a substantial interest in redistricting. The state, however, has no legitimate interest in a redistricting process that does not provide for a specific date by which redistricting must occur to ensure fair 1992 elections, does not provide a meaningful hearing to evaluate redistricting plans, and does not specifically provide for the manner in which adversary interests should be heard in the process.

In view of Plaintiffs' fundamental right to vote, the complete absence of meaningful safeguards in Section 16, and in view of the manner in which the state constitution has been misused by Defendants, Plaintiffs respectfully request that this Court order and adjudge that Article III, Section 16 violates procedural due process.

B. **Article III, Section 16 Is Invalid On Its Face For The Additional Reason That It Is Unconstitutionally Vague.**

A statute or state constitutional provision is impermissibly vague if it lacks "sufficient guidelines to prevent arbitrary and discriminatory enforcement", *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982); *IDK, Inc. v. Clark County*, 836 F.2d 1185, 1191 (9th Cir. 1988).

> If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who would apply them. A vague statute impermissibly delegates basic policy to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications.

Village of Hoffman Estates, 455 U.S. at 498.

For the same reasons that Article III, Section 16 violates procedural due process, the provision is unconstitutionally vague because it is subject to arbitrary and discriminatory enforcement. Specifically, because Section 16 does not provide a date certain by which redistricting must occur, and permits Defendants to implement its provisions during the middle or latter part of 1992 and even into 1993, it violates Plaintiffs' constitutional rights

to vote. Moreover, Section 16 makes no explicit or implicit provision for evaluation of redistricting plans on the basis of the Voting Rights Act, thereby depriving minority voters of the right to participate on an equal basis in elections and to elect representatives of their choice.

Due to its vagueness, the Florida Supreme Court has held that it has the power to decide the constitutionality of redistricting plans without conducting evidentiary hearings. It is ironic -- and unconstitutional -- that the most basic procedural protections afforded to litigants in Small Claims Court to adduce testimony and to cross examine are not available to those citizens who would seek to convince the Supreme Court that a redistricting plan violates constitutional rights. Finally, in the absence of a uniform means to provide notice to adversary interests and afford an opportunity to be heard, Article III, Section 16 has permitted the sort of unannounced, inappropriate contact between members of the Legislature and the Florida Supreme Court that have been discussed above.

For each of the above reasons, Article III, Section 16, Florida Constitution, is invalid on its face, and summary judgment should be entered on Count V.

V. ARTICLE III, SECTION 16 IS UNCONSTITUTIONAL AS APPLIED

Summary judgment should be entered in favor of Plaintiffs on Counts VI of the complaint because Article III, Section 16, is unconstitutional as applied.

As noted above, *Reynolds v. Sims* establishes that if reapportionment were accomplished with less frequency than every ten years, "it would assuredly be constitutionally suspect." *Reynolds*, 377 U.S. 584. Since the last reapportionment occurred in Florida in 1982, any failure to reapportion the current district lines for terms commencing on or after January 1993, would render Florida's present apportionment scheme more than ten years old and constitutionally invalid. *Flateau v. Anderson*, 537 F.Supp. at 264. Thus, the Constitution requires that new district lines be in place well in advance of 1992 qualifying. (Exhibit 1).

This Court was forced to assume jurisdiction of this case because Defendants and the indeterminate time lines in Article III, Section 16, were depriving Plaintiffs of their right to vote. The Court's assumption of jurisdiction and

its refusal to follow blindly the state constitutional timelines are directly supported by decisional law:

> The United States Supreme Court has repeatedly declared that regardless of the requirements of state constitutions, the delay inherent in following [a] state constitutional prescription for approval of [reapportionment measures] cannot be allowed to result in an impermissible deprivation of [the citizens] right to an adequate voice in the election of legislators to represent them....
>
> When the delay caused by such state constitutional prescriptions conflicts with a citizen's constitutional right to cast an equally weighted vote, a court has the power to set aside the state constitutional provision. 'Acting under general equitable principles,' the court must determine whether circumstances require the immediate effectuation of the federal constitutional right....

Assembly v. Dukemejian, 30 Cal. 638, 659; 180 Cal.Rptr. 297, 639 P.2d 939 (1982). (Citing *Roman v. Sincock*, 377 U.S. 695, 711-712 (1964) and *Reynolds v. Sims*, 377 U.S. 533, 584 (1964)).

Accordingly, the Florida Legislature, notwithstanding the time lines in Article III, Section 16, had an obligation to have district lines in place well in advance of 1992 elections. This has not occurred. Article III, Section 16 is unconstitutional as applied because it has permitted this

delay to deprive Plaintiffs of their rights. *Flateau v. Anderson*, 537 F.Supp. 257, 265; *Harman v. Forssenius*, 380 U.S. 528, 540-541 (1965).

Defendants would have this Court believe that the Legislature's eleventh-hour passage of a joint resolution of state apportionment (which came about only as a reaction to assumption of federal court jurisdiction), resolves the unconstitutionality of Article III, Section 16. Defendants' suggestion is wrong. The joint resolution of apportionment is but the first step of a process that should have occurred long ago, if Plaintiffs' rights were to have been preserved. First, the Florida Supreme Court is not even scheduled to hear oral argument on the joint resolution until April 29. At some later time the court will either hold the plan valid or invalid. If the plan is found valid, it must then be submitted to the Department of Justice for preclearance review. It is just as impossible now as when this Court assumed jurisdiction to suggest that the Florida Supreme Court will hold this joint resolution to be valid, have the plan thereafter submitted to the Department of Justice for preclearance, and thereafter have it precleared by June 1,

1992. This will not occur, and absent protection by this Court, Plaintiffs' right to vote will be lost.

Equally significant, the Florida Supreme Court review is wholly insufficient to preserve Plaintiffs' constitutional rights. The Florida Supreme Court has already held that it will conduct only a facial review of the validity of the joint resolution of apportionment without evidentiary proceedings. It is impossible, and contrary to basic notions of due process, to evaluate the constitutionality of a redistricting plan in the absence of an ability to produce evidence, cross-examine witnesses, and conduct the same type of evidentiary proceeding that one would have the benefit of in a basic personal injury case. Because Article III, Section 16 permits such a cursory and insufficient review of the joint resolution of apportionment, the provision is unconstitutional as applied for that reason as well. Plaintiffs are entitled to summary judgment on Count VI.

VI. THIS COURT SHOULD ORDER THAT THE CURRENT CONGRESSIONAL AND LEGISLATIVE DISTRICT LINES CANNOT BE USED FOR 1992 ELECTIONS, AND THAT ELECTIONS CANNOT BE HELD AT LARGE.

Due to the parties' agreement that the current district lines are malapportioned and unconstitutional, in

entering summary judgment on Counts I and II of the complaint, the Court should at a minimum order that the present district lines cannot be used for 1992 elections, and that 1992 elections cannot be conducted at-large.

The Supreme Court stated in *Reynolds v. Sims,* 377 U.S. at 585, that "once a state's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to ensure that no further elections are conducted under the invalid plan." *Accord, Assembly v. Dukemjian,* 30 Cal.3d 638, 667, 180 Cal. Rptr. 297, 639 P.2d 939 (1982). Because this Court has the opportunity to prepare a redistricting scheme in time for 1992 elections, and because *Reynolds v. Sims* and numerous later cases steadfastly hold that current malapportioned district lines should not be used under such circumstances, this Court should order that 1992 elections cannot be held on the basis of 1980 district lines.

Similarly, conducting congressional or legislative elections at-large would violate federal law and would be unconstitutional. While Section 99.091, Florida Statutes, provides that congressional elections be conducted at-large

pending redistricting, that provision directly contravenes 2 U.S.C. § 2c, and is therefore unconstitutional and invalid under the Supremacy Clause. Section 2c of Title 2 of the United States Code provides that:

> In each state entitled. . .to more than one representative under an apportionment made [by the president of the total number of representatives among the several states], there shall be established by law a number of districts equal to the number of representatives to which such state is so entitled, and representatives shall be elected only from districts so established. . .

Defendants may contend that Section 2a(c) of Title 2 commands at-large elections, but that assertion is contrary to the express terms of the statute and case law. The legislative history of Section 2c reveals, as does its plain language, that Congress intended to supersede the provisions of 2a(c). *Assembly v. Dukemejian,* 30 Cal.3d 638, 662, 180 Cal. Rptr. 297, 639 P.2d 939 (1982); *Whitcomb v. Chavis,* 403 U.S. 124, 158, n.39 (1971); *Preisler v. Secretary of State of Missouri,* 279 F.Supp. 952, 968-969 (W.D. Mo. 1967); *Simpson v. Mahan,* 212 Va. 416, 185 S.E.2d 47, 48 (1971).

Similarly, even Defendants would not contend that state legislative elections should be run at-large. Such

elections would unquestionably dilute minority voting strength in contravention of the Voting Rights Act.

Accordingly, Plaintiffs respectfully request that, at a bare minimum, this Court order that present district lines cannot be used for 1992 elections, and that 1992 elections cannot be held on the basis of at-large districts.

CONCLUSION

For all of the above reasons, Plaintiffs respectfully request this Court enter summary judgment on Counts I, II, III, IV, V, and VI of Plaintiffs' Second Amended Complaint. Plaintiffs further request all declaratory and injunctive relief requested in the complaint and necessary to remedy all injuries sustained as a result of Defendants' actions. Further, Plaintiffs respectfully request costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted, this 17th day of April, 1992.

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been duly furnished by U.S. Mail/Hand/Facsimile

delivery to: All Counsel on the attached Consolidated Service List, this 17th day of April, 1992.

GEORGE N. MEROS, JR., ESQUIRE
Florida Bar No.: 0263321
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DJG/cjn
R046-07618
4/17/92

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INDEX TO EXHIBITS

Proclamation

State of Florida
Executive Department
Tallahassee

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

WHEREAS, the Twelfth Legislature of the State of Florida, under the Florida Constitution, 1968 Revision, convened in regular session for the year 1992 on January 14, 1992, and adjourned on March 13, 1992, and

WHEREAS, the Legislature, during the Regular Session of 1992, failed to apportion the State as required by Article III, Section 16, of the Florida Constitution, and

WHEREAS, it is the duty of the Governor under Article III, Section 16, of the Florida Constitution, to reconvene the Legislature in Special Apportionment Session.

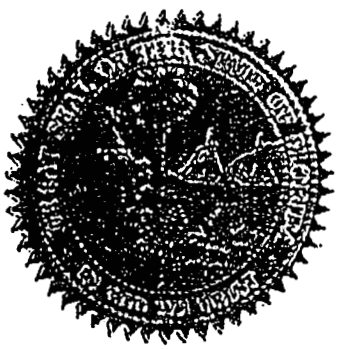
WHEREAS, it is appropriate to convene the Legislature prior to the time established by the Proclamation of the Governor signed on March 23, 1992.

NOW, THEREFORE, I, LAWTON CHILES, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 16, Florida Constitution, do hereby proclaim as follows:

Section 1. The Legislature of the State of Florida is convened in Special Session commencing at 9:00 a.m. on Thursday, April 2, 1992, not to exceed thirty consecutive days.

Section 2. The Legislature of the State of Florida is convened for the sole and exclusive purpose of apportioning the State in accordance with the Constitution of the State and of the United States.

Section 3. The Proclamation of the Governor signed March 23, 1992, convening the Legislature of the State of Florida at 12:00 noon Wednesday, April 8, 1992, for a period not to exceed thirty consecutive days, is hereby dissolved.



IN TESTIMONY WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 1st day of April, 1992.

GOVERNOR

ATTEST:

SECRETARY OF STATE

FLORIDA HOUSE OF REPRESENTATIVES

Tallahassee
32399-1300

April 20, 1992

John B. Phelps
Clerk of the House

424 The Capitol
(904) 488-1157

CERTIFICATE

This is to certify that the attached is a true and correct copy of page 358 from the daily Journal of the House of Representatives, 1992 Special Session "G", relating to the vote on passage of SJR 2-G.

John B. Phelps
Clerk of the House

JBP/krl
Attachments

275, Block 276, Block 277, Block 278, Block 279, Block 280, Block 283; Block Group 3, Block Group 9.

Rep. Reaves moved the adoption of the amendment, which failed of adoption. The vote was:

Yeas—45

Albright	Grindle	Johnson, Buddy	Sanderson
Arnall	Gutman	Jones, Dennis	Sansom
Bainter	Hanson	King	Sembler
Banjanin	Harden	Laurent	Simone
Brown	Hargrett	Lewis	Starks
Corr	Hawkes	Lombard	Thomas
De Grandy	Hawkins	McEwan	Valdes
Diaz-Balart	Hill	Mortham	Webster
Feeney	Hoffmann	Muscarella	Wise
Foley	Holland	Pruitt	
Garcia	Ireland	Reaves	
Graham	Irvine	Rojas	

Nays—66

The Chair	Figg	Lawson	Rudd
Abrams	Flagg	Liberti	Rush
Arnold	Frankel	Lippman	Saunders
Ascherl	Friedman	Logan	Silver
Bloom	Geller	Long	Simon
Boyd	Glickman	Mackenzie	Smith, C.
Brennan	Goode	Mackey	Smith, K.
Bronson	Gordon	Martinez	Stafford
Burke	Hafner	Mims	Stone
Chestnut	Harris	Mishkin	Tobiassen
Chinoy	Healey	Mitchell	Tobin
Clark	Holzendorf	Ostrau	Trammell
Clemons	Jamerson	Peeples	Viscusi
Cosgrove	Johnson, Bo	Press	Wallace
Crady	Jones, C. F.	Rayson	Young
Davis	Jones, Daryl	Reddick	
Deutsch	Kelly	Ritchie	

Votes after roll call:
Nays—Graber

On motion by Reps. Lombard and Bo Johnson, the rules were waived by two-thirds vote and the bill was read the third time by title.

Rep. Wallace suggested the absence of a quorum. A quorum was present.

The question recurred on the passage of SJR 2-G. The vote was:

Yeas—68

The Chair	Davis	Johnson, Bo	Ostrau
Abrams	Deutsch	Jones, C. F.	Peeples
Arnold	Figg	Jones, Daryl	Press
Ascherl	Flagg	Kelly	Rayson
Bloom	Frankel	Lawson	Reddick
Boyd	Friedman	Liberti	Ritchie
Brennan	Geller	Lippman	Roberts
Bronson	Glickman	Logan	Rojas
Burke	Goode	Long	Rudd
Chestnut	Gordon	Mackenzie	Rush
Chinoy	Hafner	Mackey	Saunders
Clark	Harris	Martinez	Silver
Clemons	Healey	Mims	Simon
Cosgrove	Holzendorf	Mishkin	Smith, C.
Crady	Jamerson	Mitchell	Smith, K.
Stafford	Tobiassen	Trammell	Wallace
Stone	Tobin	Viscusi	Young

Nays—44

Albright	Graham	Ireland	Pruitt
Arnall	Grindle	Irvine	Reaves
Bainter	Gutman	Johnson, Buddy	Sanderson
Banjanin	Hanson	Jones, Dennis	Sansom
Brown	Harden	King	Sembler
Corr	Hargrett	Laurent	Simone
De Grandy	Hawkes	Lewis	Starks
Diaz-Balart	Hawkins	Lombard	Thomas
Feeney	Hill	McEwan	Valdes
Foley	Hoffmann	Mortham	Webster
Garcia	Holland	Muscarella	Wise

Votes after roll call:
Yeas—Graber

So the bill passed, as amended, and was immediately certified to the Senate.

Explanation of Vote

I rise in defense of 4,403 citizens in the Newberry area of Alachua County. When we conducted the public hearing on reapportionment in Alachua County, we heard from citizens from all walks of life. We heard from environmentalists and developers, from educators and businesspersons, and from Democrats and Republicans.

This hearing allowed real people to have their voice heard and become involved in the process. Most of these citizens said that they wanted to maintain Alachua County with two state Representatives. The original house plan listened to these citizens and reflected their concerns by keeping Alachua County with only two Representatives.

The current plan does not reflect the wishes of the people in Newberry. Now Alachua County will be divided among three Representatives. The 4,403 residents of Newberry are placed in the largely rural District 10. I believe that this is unfair to these citizens.

We will reduce the access of these citizens to their state Representative. These Newberry residents will be in a district which covers nine other counties. The district stretches from Tallahassee to Marion County. Since Newberry will be a small outlying section of the district, it may not have enough votes to influence the election. Therefore, these citizens may have less influence on their Representative.

Newberry's community of interest is not with the rural areas in this new District 10. Newberry should stay in the districts in Alachua County.

Unfortunately, this problem can not be corrected at this stage of the process. Overall, I have been satisfied with our reapportionment efforts and with the results of the process. The plan we have before us treats the other 13 million residents in Florida fairly. We have done a good job to secure access for minorities and wherever possible we have kept communities of interest together.

So, while I regret the situation in Newberry, I will support this overall plan. My hope is that the residents of Newberry can work with their new state Representative and become a viable force in their district. Thank you.

Rep. Cynthia Moore Chestnut
District 23

Adjournment

On motion by Rep. Bo Johnson, the House adjourned at 3:18 p.m. *sine die.*

THE FLORIDA SENATE

OFFICE OF THE SECRETARY

Suite 404, The Capitol
Tallahassee, Florida 32399-1100
(904) 487-5270

JOE BROWN
Secretary

April 20, 1992

CERTIFICATE

This is to certify that the attached is a true and correct copy of page 372 of the Journal of the Senate, for April 9, 1992, Special Session G, a special apportionment session, which accurately reflects the vote on final passage of SJR 2-G.

Joe Brown
Secretary

ROLL CALLS ON SENATE BILLS

SJR 2-G—Amendment 7A

Yeas—19

Bankhead	Crotty	Jennings	Myers
Bruner	Diaz-Balart	Johnson	Plummer
Burt	Dudley	Kiser	Scott
Casas	Grant	Langley	Souto
Crenshaw	Grizzle	McKay	

Nays—20

Madam President	Gardner	Kurth	Walker
Beard	Girardeau	Malchon	Weinstein
Dantzler	Gordon	Meek	Weinstock
Davis	Jenne	Thomas	Wexler
Forman	Kirkpatrick	Thurman	Yancey

SJR 2-G—Amendment 7

Yeas—21

Madam President	Gardner	Malchon	Weinstock
Beard	Girardeau	Meek	Wexler
Childers	Gordon	Thomas	Yancey
Dantzler	Jenne	Thurman	
Davis	Kirkpatrick	Walker	
Forman	Kurth	Weinstein	

Nays—19

Bankhead	Crotty	Jennings	Myers
Bruner	Diaz-Balart	Johnson	Plummer
Burt	Dudley	Kiser	Scott
Casas	Grant	Langley	Souto
Crenshaw	Grizzle	McKay	

SJR 2-G—Substitute Amendment 9

Yeas—20

Bankhead	Crenshaw	Grizzle	McKay
Beard	Crotty	Jennings	Myers
Bruner	Diaz-Balart	Johnson	Plummer
Burt	Dudley	Kiser	Scott
Casas	Grant	Langley	Souto

Nays—20

Madam President	Gardner	Kurth	Walker
Childers	Girardeau	Malchon	Weinstein
Dantzler	Gordon	Meek	Weinstock
Davis	Jenne	Thomas	Wexler
Forman	Kirkpatrick	Thurman	Yancey

SJR 2-G—Amendment 8

Yeas—20

Madam President	Gardner	Kurth	Walker
Childers	Girardeau	Malchon	Weinstein
Dantzler	Gordon	Meek	Weinstock
Davis	Jenne	Thomas	Wexler
Forman	Kirkpatrick	Thurman	Yancey

Nays—20

Bankhead	Crenshaw	Grizzle	McKay
Beard	Crotty	Jennings	Myers
Bruner	Diaz-Balart	Johnson	Plummer
Burt	Dudley	Kiser	Scott
Casas	Grant	Langley	Souto

SJR 2-G
Motion to Reconsider Amendment 8

Yeas—20

Madam President	Forman	Kirkpatrick	Walker
Beard	Gardner	Malchon	Weinstein
Childers	Girardeau	Meek	Weinstock
Dantzler	Gordon	Thomas	Wexler
Davis	Jenne	Thurman	Yancey

Nays—19

Bankhead	Crotty	Jennings	Myers
Bruner	Diaz-Balart	Johnson	Plummer
Burt	Dudley	Kiser	Scott
Casas	Grant	Langley	Souto
Crenshaw	Grizzle	McKay	

SJR 2-G
After Reconsideration—Amendment 8

Yeas—21

Madam President	Gardner	Malchon	Weinstock
Beard	Girardeau	Meek	Wexler
Childers	Gordon	Thomas	Yancey
Dantzler	Jenne	Thurman	
Davis	Kirkpatrick	Walker	
Forman	Kurth	Weinstein	

Nays—19

Bankhead	Crotty	Jennings	Myers
Bruner	Diaz-Balart	Johnson	Plummer
Burt	Dudley	Kiser	Scott
Casas	Grant	Langley	Souto
Crenshaw	Grizzle	McKay	

SJR 2-G

Yeas—21

Madam President	Gardner	Malchon	Weinstock
Beard	Girardeau	Meek	Wexler
Childers	Gordon	Thomas	Yancey
Dantzler	Jenne	Thurman	
Davis	Kirkpatrick	Walker	
Forman	Kurth	Weinstein	

Nays—19

Bankhead	Crotty	Jennings	Myers
Bruner	Diaz-Balart	Johnson	Plummer
Burt	Dudley	Kiser	Scott
Casas	Grant	Langley	Souto
Crenshaw	Grizzle	McKay	

Motion to Recess until 1:15 p.m.

Yeas—22

Madam President	Gardner	Malchon	Weinstein
Beard	Girardeau	Meek	Weinstock
Childers	Gordon	Scott	Wexler
Dantzler	Jenne	Thomas	Yancey
Davis	Kirkpatrick	Thurman	
Forman	Kurth	Walker	

Nays—18

Bankhead	Crotty	Jennings	Myers
Bruner	Diaz-Balart	Johnson	Plummer
Burt	Dudley	Kiser	Souto
Casas	Grant	Langley	
Crenshaw	Grizzle	McKay	

CORRECTION AND APPROVAL OF JOURNAL

The Journal of April 8 was corrected and approved.

ADJOURNMENT

On motion by Senator Thomas, the Senate adjourned sine die at 4:17 p.m.

Florida House of Representatives

T. K. Wetherell, Speaker
Committee on Reapportionment

Peter Rudy Wallace
Chairman

John F. Cosgrove
Vice Chairman

April 20, 1992

CERTIFICATE

This is to certify that the attached is a true and correct list of the members of the House Committee on Reapportionment identified by race, ethnicity, and political party affiliation.

George H. Meier
Staff Director

George H. Meier, Staff Director
801 The Capitol Tallahassee, Florida 32399-1300 (904) 488-3928

April 20, 1992

FLORIDA HOUSE OF REPRESENTATIVES
HOUSE COMMITTEE ON REAPPORTIONMENT
MEMBERS

NAME	PARTY	RACE/ETHNICITY
The Honorable Peter Rudy Wallace, Chairman State Representative, District 56 House Committee on Reapportionment	Democrat	White
The Honorable John F. Cosgrove, Vice-Chairman State Representative, District 119 House Committee on Reapportionment	Democrat	White
The Honorable Joseph R. Mackey, Jr., Chairman State Representative, District 12 House Redistricting Subcommittee	Democrat	White
The Honorable James C. Burke, Chairman State Representative, District 107 Senate Redistricting Subcommittee	Democrat	Black
The Honorable Peter R. Deutsch, Chairman State Representative, District 90	Democrat	White
The Honorable Michael I. Abrams State Representative, District 101	Democrat	White
The Honorable F. Allen Boyd, Jr. State Representative, District 11	Democrat	White

NAME	PARTY	RACE/ETHNICITY
The Honorable Mary Brennan State Representative, District 57	Democrat	White
The Honorable Irlo Bronson, Jr. State Representative, District 77	Democrat	White
The Honorable Kathy Chinoy State Representative, District 20	Democrat	White
The Honorable George A. Crady State Representative, District 13	Democrat	White
The Honorable Miguel A. De Grandy State Representative, District 110	Republican	White/Hispanic
The Honorable Mario Diaz-Balart State Representative, District 115	Republican	White/Hispanic
The Honorable Mary Figg State Representative, District 60	Democrat	White
The Honorable Ronald C. Glickman State Representative, District 66	Democrat	White
The Honorable Art Grindle State Representative, District 35	Republican	White
The Honorable James T. Hargrett, Jr. State Representative, District 63	Democrat	Black
The Honorable James C. Hill, Jr. State Representative, District 80	Republican	White

NAME	PARTY	RACE/ETHNICITY
The Honorable Jeffrey C. Huenink State Representative, District 58	Republicann	White
The Honorable Frances L. Irvine State Representative, District 21	Republican	White
The Honorable Douglas L. Jamerson State Representative, District 55	Democrat	Black
The Honorable Bolley L. Johnson State Representative, District 4	Democrat	White
The Honorable C. Fred Jones State Representative, District 42	Democrat	White
The Honorable Daryl Jones State Representative, District 118	Democrat	Black
The Honorable Michael Edward Langton State Representative, District 15	Democrat	White
The Honorable John Laurent State Representative, District 43	Republican	White
The Honorable Frederick Lippman State Representative, District 97	Democrat	White
The Honorable Willie Logan, Jr. State Representative, District 108	Democrat	Black
The Honorable Bruce McEwan State Representative, District 38	Republican	White

NAME	PARTY	RACE/ETHNICITY
The Honorable Sandra Barringer Mortham State Representative, District 52	Republican	White
The Honorable Steve Press State Representative, District 86	Democrat	White
The Honorable alzo J. Reddick State Representative, District 40	Democrat	Black
The Honorable Charlie Roberts State Representative, District 31	Democrat	White
The Honorable Dixie Newton Sansom State Representative, District 32	Republican	White
The Honorable Ronald A. Silver State Representative, District 100	Democrat	White
The Honorable Peggy Simone State Representative, District 68	Republican	White
The Honorable David L. Thomas State Representative, District 71	Republican	White
The Honorable Daniel Webster State Representative, District 41	Republican	White

THE FLORIDA SENATE

OFFICE OF THE SECRETARY

Suite 404, The Capitol
Tallahassee, Florida 32399-1100
(904) 487-5270

JOE BROWN
Secretary

April 20, 1992

CERTIFICATE

This is to certify that the attached is a true and correct copy of the membership of the Senate Committee on Reapportionment, including the Legislative and Congressional Subcommittees.

Joe Brown
Secretary

SENATE STANDING COMMITTEE AND SUBCOMMITTEES

(With Revisions)

April 2, 1992

Reapportionment

Full Committee:		
Senator Gordon, Chairman	Caucasian	Democrat
Senator Girardeau, Vice-Chairman	African-American	Democrat
All members of Legislative and Congressional subcommittees		
Legislative Subcommittee:		
Senator Thomas, Chairman	Caucasian	Democrat
Senator Casas, Vice-Chairman	Hispanic	Republican
Senator Bankhead	Caucasian	Republican
Senator Crotty	Caucasian	Republican
Senator Dudley	Caucasian	Republican
Senator Forman	Caucasian	Democrat
Senator Gardner	Caucasian	Democrat
Senator Girardeau	African-American	Democrat
Senator Kirkpatrick	Caucasian	Democrat
Senator Kiser	Caucasian	Republican
Senator Plummer	Caucasian	Democrat
Senator Walker	Caucasian	Democrat
Congressional Subcommittee:		
Senator Thurman, Chairman	Caucasian	Democrat
Senator Souto, Vice-Chairman	Hispanic	Republican
Senator Childers	Caucasian	Democrat
Senator Dantzler	Caucasian	Democrat
Senator Davis	Caucasian	Democrat
Senator Grant	Caucasian	Republican
Senator Jenne	Caucasian	Democrat
Senator Jennings	Caucasian	Republican
Senator Johnson	Caucasian	Republican
Senator Kurth	Caucasian	Democrat
Senator Langley	Caucasian	Republican
Senator Malchon	Caucasian	Democrat
Senator McKay	Caucasian	Republican
Senator Meek	African-American	Democrat
Senator Weinstock	Caucasian	Democrat

Florida House of Representatives

T. K. Wetherell, Speaker
Committee on Reapportionment

Peter Rudy Wallace
Chairman

John F. Cosgrove
Vice Chairman

April 20, 1992

CERTIFICATE

This is to certify that the attached is a true and correct copy of the dates and locations of the public hearings held by the Committee on Reapportionment in the State of Florida prior to the redistricting process.

George H. Meier
Staff Director

APPENDIX V

George H. Meier, Staff Director
801 The Capitol **Tallahassee, Florida 32399-1300** **(904) 488-3928**

Public Hearings Schedule

SEPTEMBER

11-13 TALLAHASSEE COMMITTEE MEETINGS

19 (Thu)	**Pensacola** Pensacola Junior College, Main Campus Hagler Auditorium, Room 252 1000 College Boulevard	**2:00 p.m. - 6:00 p.m.**
20 (Fri)	**Panama City** City Commission Chamber City Hall, 2nd Floor 9 Harrison Avenue	**1:00 p.m. - 5:00 p.m.**
23 (Mon)	**Tallahassee** City Commission Chamber City Hall, 2nd Floor 300 South Adams Street	**9:30 a.m. - 12:30 p.m.**
24 (Tue)	**Lake City** Florida Sports Hall of Fame 601 Hall of Fame Drive	**10:00 a.m. - 2:00 p.m.**
	Gainesville City Commission Chamber A. Clarence O'Neill Auditorium, 4th Floor City Hall Municipal Building 200 E. University Avenue	**6:00 p.m. - 10:00 p.m.**
25 (Wed)	**Jacksonville** Jacksonville Community College Downtown Administration Building Room 451 501 West State Street	**2:00 p.m. - 8:00 p.m.**

OCTOBER

2 (Wed)	**Wauchula*** County Commission Chamber Courthouse Annex, A202 412 W. Orange Avenue	**6:00 p.m. - 10:00 p.m.**
3 (Thu)	**Sarasota** City Commisson Chamber City Hall, Main Foyer 1565 1st Street	**1:00 p.m. - 5:00 p.m.**
4 (Fri)	**St. Petersburg** City Commission Chamber City Hall, 2nd Floor 175 5th Street North	**9:30 a.m. - 12:30 p.m.**

7-10 TALLAHASSEE COMMITTEE MEETINGS

14 (Mon)	**Key West*** Marriott Casa Marina Resort Keys Ballroom 1500 Reynolds Street	**9:00 a.m. - 12:00 Noon**
	Opa Locka City Commission Chamber City Hall, 1st Floor 777 Sharazad	**6:00 p.m. - 10:00 p.m.**

OCTOBER

15 (Tue)	**Miami** Metro-Dade Government Cultural Center Center for Fine Arts Auditorium 2nd Floor, Plaza Level 101 West Flagler Street	**10:00 a.m. - 1:00 p.m.**
	South Dade South Dade Government Center Library 2nd Floor Auditorium 10750 S. W. 211th Street	**6:00 p.m. - 10:00 p.m.**
16 (Wed)	**Boca Raton** City Council Chamber City Hall, 1st Floor 201 West Palmetto Park Road	**10:00 a.m. - 12:00 Noon**
16 (Wed)	**West Broward** Northwest Federated Women's Club 2161 N. W. 19th Street	**6:00 p.m. - 10:00 p.m.**
17 (Thu)	**Hollywood** City Commission Chamber City Hall, 2nd Floor, Room 219 2600 Hollywood Boulevard	**12:00 p.m. - 3:00 p.m.**
24 (Thu)	**Ft. Myers** City Council Chamber City Hall, 1st Floor 2200 2nd Street	**2:00 p.m. - 6:00 p.m.**
25 (Fri)	**Naples*** County Commission Chamber Collier County Government Center Building F, 3rd Floor 3301 East Tamiami Trail	**9:30 a.m. - 12:30 p.m.**
26 (Sat)	**LaBelle*** LaBelle High School Auditorium 4050 Garden Road	**10:00 a.m. - 12:00 Noon**
28 (Mon)	**West Palm Beach** West Palm Beach Public Library 1st Floor 100 Clematis Street	**10:00 a.m. - 2:00 p.m.**
29 (Tue)	**Ft. Pierce** County Commission Chamber Administration Annex 3rd Floor 2300 Virginia Avenue	**1:00 p.m. - 5:00 p.m.**
30 (Wed)	**Melbourne** Brevard County Government Center 3rd Floor, Building C Multi-Purpose Room 2725 St. Johns Street	**9:30 a.m. - 12:30 p.m.**

NOVEMBER

2 (Sat)	**Ft. Lauderdale** Broward County Public Library 3rd Floor (3C) 100 South Andrews Avenue	**10:00 a.m. - 2:00 p.m.**
4-7	**TALLAHASSEE COMMITTEE MEETINGS**	
11 (Mon)	Veterans Day Holiday	

NOVEMBER

13 (Wed)	**Titusville** City Council Chamber City Hall, 2nd Floor 555 S. Washington Avenue	**12:00 Noon - 2:00 p.m.**
	Daytona Beach City Commission Chamber City Hall, 2nd Floor 301 South Ridgewood	**6:00 p.m. - 9:00 p.m.**
14 (Thu)	**Ocala** Marion County Public Health Unit 1st Floor Auditorium 1801 S. E. 32nd Avenue	**10:00 a.m. - 2:00 p.m.**
18 (Mon)	**Tampa*** County Commission Board Room County Courthouse 2nd Floor, Room 214B 419 Pierce Street	**6:00 p.m. - 10:00 p.m.**
19 (Tue)	**Brooksville** Southwest Florida Water Management District 1st Floor Board Room 2379 Broad Street (U.S. 41 South)	**1:00 p.m. - 4:00 p.m.**
20 (Wed)	**Lakeland** City Council Chamber City Hall, 3rd Floor 228 South Massachusetts Avenue	**9:30 a.m. - 12:30 p.m.**
23 (Sat)	**Winter Park** City Commission Chamber City Hall, 2nd Floor 401 Park Avenue South	**10:00 a.m. - 2:00 p.m.**
	Orlando Valencia Community College West Campus Building 4, Room 120 1800 West Kirkman Road	**6:00 p.m. - 8:00 p.m.**
28-29	Thanksgiving Holidays	

DECEMBER

4 (Wed)	**Miami - West Dade** Ruben Dario Middle School Auditorium 350 Northwest 97 Avenue Miami	**6:00 p.m. - 10:00 p.m.**
9-12	**TALLAHASSEE COMMITTEE MEETINGS**	
16-20	**TALLAHASSEE COMMITTEE MEETINGS** Appropriations Committee	

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