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IN RE: 2002 JOINT RESOLUTION  
OF APPORTIONMENT

CASE NO. SC02-194

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BRIEF OF CITY OF BONITA SPRINGS, FLORIDA

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## INTRODUCTION AND SUMMARY OF ARGUMENT

The City of Bonita Springs submits this Brief pursuant to the April 9, 2002 Court Order, setting oral argument and requirements for filing submissions. This Brief is filed by the City of Bonita Springs, Lee County, Florida, and Paul Pass, Wayne Edsall, Jay G. Arend, Robert Wagner, John Warfield, David Piper, Ben Nelson, individually and as members of the Bonita Springs City Council in support of the Brief filed by Florida Attorney General.

The City of Bonita Springs incorporated on December 31, 1999, and is located in Lee County, Florida, bordering northern Collier County. It is a coastal community in Southwest Florida, with a significant Hispanic population. In accord with the 2000 Census, approximately 16% of the population of the City of Bonita Springs is Hispanic. While there are many communities with Hispanic populations throughout South Florida, the reapportionment plan drawn has persons living near the Gulf of Mexico sharing a district extending to the Atlantic Ocean. The residents of Bonita Springs do not share any community of interest issues with a representative from Palm Beach County, whether it is relative to the Gulf of Mexico such as red tide or specific to the quality of life, such as funding of

state roads located in Southwest Florida. It is logical to conclude that the issues pertaining to Bonita Springs would be little more than a passing concern to a legislator living on the other part of the state, but representing this area.

In Hunt v. Cromartie, 526 U.S. 541 (1999), the U.S. Supreme Court held that while a jurisdiction may engage in constitutional political gerrymandering, a reapportionment cannot be so oddly shaped that they suggest lines were drawn simply for racial purposes. While the Florida constitution does not mandate regularity of district shape, the district should be reasonably compact, and regular, taking into account traditional districting principles, such as maintaining communities interest and traditional boundaries.

#### **STATEMENT OF CASE AND FACT**

Plan S17S0036 divides the City of Bonita Springs into District 27 and District 37, respectively. District 37 extends from Marco Island to Naples (Collier County), covering Bonita Springs, Sanibel, Cape Coral and Fort Myers (Lee County). District 27 makes the remarkable journey, starting at Bonita Springs on the Southwest coast,

extending northern bound through Lee County, taking in an eastern third of Charlotte County, the Southern half of Glades County and then extending through Palm Beach County, diagonally bisecting Palm Beach County. The majority of the population is based in Palm Beach County.

#### ARGUMENT

Justice McDonald, in his dissenting opinion to In re Constitutionality of Senate Joint Resolution 26, Special Apportionment Session 1992, 601 So.2d 543 (Fla. 1992) expressed that he could not concur in the plan adopted by the majority. His reasoning followed that:

Historically, the traditional base for political representation was geographical communities. These communities with cities, counties, or other previously cohesive political entities are divided or ripped asunder to accommodate the present districts. Gerrymandering and weird contiguity geography, never previously favored, are endorsed in the goal to create minority districts. I do not think that was intended. I abhor discrimination. I resent it and oppose it. Discrimination is a two-way street, however, and traditional communities should not be the victims of it to afford special consideration to any segment of society. We can approve or devise a plan to accommodate the concerns of minorities and community values. We should do so. (emphasis added).

In Hunt v. Cromartie, 526 U.S. 541 (1999), the U.S. Supreme Court held that while a jurisdiction may engage in constitutional political gerrymandering, a reapportionment cannot be so oddly shaped that they suggest lines were drawn simply for racial purposes. While the constitution does not mandate regularity of district shape, the district should be reasonably compact, and regular, taking into account traditional districting principles, such as maintaining communities' interest and traditional boundaries.

City of Bonita Springs does acknowledge that in last year's Cromartie decision, Easley v. Cromartie, 121 S.Ct. 1452 (2001) that in a case where majority-minority districts (or the approximate equivalent) are at issue and where racial identification correlates highly with political affiliation, the party attacking the legislatively drawn boundaries must show at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles. The City of Bonita Springs believes that on their face, the Florida Supreme Court could conclude that those districting alternatives would have brought about significantly greater racial balance.

It is unnecessary to restate the brief of the Attorney General, but the City of Bonita Springs agrees in the position set forth in with his Statement of Case and Facts, particularly with the legislative reapportionment process and the concerns of the southwest Florida community. With the sophistication of the FREDS system, the oddly shaped, weird contiguity geography drawn could have been replaced with a map following the traditional districting principles, such as maintaining communities' interest and traditional boundaries.

The City of Bonita Springs is looking for relief in the form of a reapportionment plan evidencing some "reasonable efforts to avoid . . . liability" Bush v. Vera, 517 U.S. 952, 978 (1996). While population equality in district 27 may have been achieved, its reapportionment illustrates the "tentacles of districts" example described by the Attorney General. From the way this district is apportioned, the residents of Southwest Florida are not being assured of the one person, one vote so principled in this State and Nation.

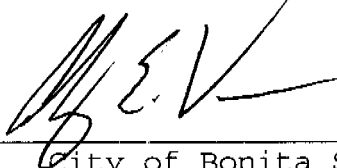
#### CONCLUSION

The City of Bonita Springs would respectfully request that this Court conclude that the presented reapportionment plans, on the basis of the evidence presented by the



Attorney General, is not valid, especially as it applies to Districts 27 and 37. Such a conclusion by this Court would invoke application of Article III, Section 16 (d) of the Florida Constitution, and the concerns could be addressed by the Legislature. Such conclusion would advance the fair treatment of the residents of Southwest Florida, to ensure that persons in Bonita Springs can select their representatives rather than the representatives selecting Bonita Springs to add population, but not community of interest.

Respectfully submitted this 15<sup>th</sup> day of April, 2002.



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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to the parties listed below, this 15<sup>th</sup> day of April 2002.



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I hereby certify that this brief was prepared with 12-point Courier New font in compliance with Fla. R. App. P. 9.210 (a) (2).

  
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