IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC02-194

IN RE: 2002 JOINT RESOLUTION OF APPORTIONMENT

BRIEF OF THE FLORIDA HOUSE OF REPRESENTATIVES AS PROPONENTS OF HOUSE JOINT RESOLUTION 1987

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I. STATEMENT OF THE CASE

This is an original proceeding brought by the Florida Attorney General pursuant to Article III, section 16(c) of the Florida Constitution for a declaratory judgment to determine the facial constitutionality of House Joint Resolution 1987 ("HJR 1987") apportioning the Legislature of the State of Florida.[1] Article III, section 16(c) provides:

> (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.

This Court, in its scheduling Order dated January 31, 2002, invited interested parties to file submissions in the form of briefs or comments with this Court regarding the validity of the joint resolution of apportionment. The House of Representatives of the Florida Legislature respectfully submits its brief as proponent of the validity of HJR 1987, specifically as it pertains to H062H001, the Plan of Apportionment for the Florida House of Representatives ("the House Plan"). HJR 1987 continues the practice that started in 1982 of using only single member

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[1] The full text of House Joint Resolution 1987 can be found in the Appendix to the Brief of Attorney General Bob Butterworth at Exhibit A.

districts for both the House and the Senate. The House Plan has a relative overall range (total deviation) of 2.79% for House districts, and recognizes compact populations of Hispanics and African-Americans when they exist in sufficient numbers to form substantial parts of populations of House districts.

This proceeding provides the Court with the fourth opportunity to review a joint resolution of apportionment under the provisions of Article III, section 16. See In re Constitutionality of Senate Joint Resolution 2G, 597 So. 2d 276 (Fla.), modified, In re Constitutionality of Senate Joint Resolution 2G, 601 So. 2d 543 (Fla. 1992); In re: Apportionment Law, 414 So. 2d 1040 (Fla. 1982); In re: Apportionment Law, 263 So. 2d 797 (Fla. 1972).

II. STATEMENT OF BACKGROUND FACTS

A. The 2000 Decennial Census

Pursuant to Article III, section 16(a) of the Florida Constitution, the Legislature must apportion the state at its regular session in the second year following each decennial census. In April 2001, the Department of Commerce, Bureau of the Census, completed delivery of the 2000 decennial Census to the Florida Legislature consistent with 13 U.S.C. § 141(c).[2]

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[2] Pursuant to Article X, section 8 of the Florida Constitution,"(a) Each decennial census of the state taken by (continued...)

According to the census, the official Florida population is 15,982,378. This represents an increase of 3,044,452 since the 1990 census, or 23.5%. Among Florida's counties, the largest increase in population was in Flagler County, with a rate of growth of +73.6%, and the lowest increase was in Monroe County, with a rate of growth of +2%. The census reported the (non-Hispanic) African American population for 2000 as totaling 2,335,505, as compared to the 1990 population of 1,759,534, or an increase from 13.6% of the total population in 1990 to 14.6% in 2000. The census also reported the Hispanic population for 2000 as totaling 2,682,715, as compared to the 1990 population of 1,574,143, or an increase from 12.17% of the total population in 1990 to 16.8% in 2000.

Based on the 2000 census, the ideal population for a House District is 133,186.

B. Pre-Legislative Activity: Public Access

The House began preparing for the 2002 reapportionment process in March 1997. It hired expert technical staff to evaluate the demographical statistics provided by the Census Bureau to assist in the redrawing of the legislative and congressional maps. The House also helped to develop FREDS 2000,

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[2](...continued)
the United States shall be an official census of the state."

a software product used to model and evaluate districts. The Legislature made FREDS 2000 available to public and university libraries for public use, and also made it available for purchase by the public for $20. FREDS 2000 contained all of the demographic data in the 2000 census provided to the state, together with voter registration information and election return results for the state and federal election cycles in 1992, 1994, 1996, 1998 and 2000.

The House first appointed its legislative Committees on Reapportionment in 1997 and charged them with the responsibility of aiding the House in developing legislative and congressional plans.

The House and Senate co-hosted 24 public hearings throughout the state between July 12, 2001 and October 17, 2001. House and Senate members participated in these hearings. Individuals were permitted to address the legislators at the public hearings, and to include written comments and backup material as part of their presentations. In addition, the Legislature invited the public to e-mail comments and plan submissions directly to the Redistricting Committees.[3]

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[3] The transcripts of the 24 hearings, together with documents and e-mails that the public submitted, can be found in the Appendix to the Brief of the Florida House of Representatives ("House Appendix"), Volume I.

C. The 2002 Legislative Session

After conducting the 24 public hearings, the Redistricting Committees met on October 22, 2001, November 26, 2001, December 3, 2001, January 7, 2002 and January 8, 2002.[4]

In anticipation of the daunting Constitutionally-mandated tasks of apportionment, cabinet reorganization, the passage of a budget and the revision of the state education code, as well as other Legislative business, the Florida Legislature convened in early session on January 22, 2002. On February 18, 2002, the House Procedural and Redistricting Council approved the House Plan and a Senate component, and joined them together as HJR 1987.[5]

HJR 1987 was brought to the floor of the House on March 5, 2001 on first and second reading.[6] Members of the House leadership prepared an analysis of the House districts found in HJR 1987, and used this analysis for the floor proceedings.[7] The

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[4] The transcripts of the House Committee and the meeting packets for each of these meetings can be found in the House Appendix, Volume II.

[5] The transcript of the Procedural and Redistricting Council meeting on February 18, 2002 can be found in the House Appendix, Volume III.

[6] The transcript of the floor proceedings on March 5, 2002 can be found in the House Appendix, Volume V, Tab 1.

[7] The district-by-district analysis of the House Plan can (continued...)

resolution was rolled over for third reading and taken up by the House again on March 6, 2002, where it passed with 86 yeas and 32 nays.[8]

HJR 1987 was then sent to the Florida Senate in Messages on March 7, 2002. The Senate received HJR 1987 in Messages on March 13, 2002 and referred it to the Reapportionment and Rules and Calendar Committees. On March 15, 2002, HJR 1987 was withdrawn from the Committees and taken to the Senate floor, where the Senate amended its reapportionment plan for the Senate, S17S0036, onto the resolution. On March 19, 2002, HJR 1987, as amended, was adopted on third reading by the Senate by a vote of 28 yeas and 9 nays.

HJR 1987 was returned to the House in Messages on March 22, 2002, the last day of the regular session. The House took up the resolution that day, where it was approved by a vote of 74 yeas to 43 nays, and was ordered to be engrossed and enrolled.[9] The Legislature adjourned sine die on March 22, 2002. On March 28, 2002, HJR 1987 was signed by officers and filed with the

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[7](...continued)
be found in the House Appendix, Volume V, Tab 2.

[8] The transcript of the floor proceedings of March 6, 2002 can be found in the House Appendix, Volume V, Tab 3.

[9] The transcript of the House floor proceedings on March 22, 2002 can be found in the House Appendix, Volume VI, Tab 3.

Secretary of State.

D. **The House Plan**

The full text of House Joint Resolution 1987 can be found in Exhibit A to the Brief of Attorney General Bob Butterworth. Volume V of the House Appendix contains a wall map and statistical packet for the House Plan. The statistical packet contains data relevant to the districts in the House Plan.

The House Plan creates 120 single member districts as set forth in Article III, section 16(a) of the Florida Constitution. The absolute overall deviation range from ideal population per House district is 3,733, and the House Plan has a total deviation percentage of 2.79%.

The House announced that it would create its plan in accordance with principles embodied in the United States and Florida Constitutions, and relevant federal law including the Voting Rights Act. See House Appendix, Volume V, Tabs 1 and 2. The House also attempted to minimize voter confusion by attempting, whenever possible, to maintain the core of existing districts. See House Appendix, Volume V, Tab 1 at 65. Contrary to the Attorney General's assertions, the House did consider traditional redistricting principles such as compactness, respect for county and municipal boundaries and communities of interest where feasible. See House Appendix, Volume V, Tab 1, at 65-70.

The House Plan provides an effective opportunity for African-American voters to elect representatives of their choice and includes thirteen House districts with African-American majority populations that are dispersed throughout the state where sufficiently large and compact populations exist. The House Plan also recognizes the increase in Florida's Hispanic population by increasing the number of House districts with Hispanic majority populations where sufficiently large and compact populations exist to eleven House districts in 2002.

III. STANDARD OF REVIEW

In an original proceeding brought by the Florida Attorney General pursuant to Article III, section 16(c) of the Florida Constitution, "the sole question to be considered by this Court in this proceeding is the facial constitutional validity" of the Joint Resolution. In re: Apportionment Law, 414 So. 2d 1040, 1052 (Fla. 1982). As this Court has previously stated,

> At the outset, we emphasize that legislative reapportionment is primarily a matter for legislative consideration and determination. Judicial relief becomes appropriate only when a legislature fails to reapportion according to federal and state constitutional requisites. If these requisites 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 the constitutional provisions relating to reapportionment require that we act with judicial restraint so as not to usurp the primary

> responsibility for reapportionment, which rests with the Legislature.

In re: Apportionment Law, 263 So. 2d 797, 799-800 (Fla. 1972).

The Attorney General has misstated this Court's role in this proceeding. According to the Attorney General, "[t]he designed purpose of this Court's role in the reapportionment process is to preclude, to the extent possible, future successful challenges to the reapportionments, particularly in federal court." Brief of Attorney General, at 1. As the Florida Constitution clearly states, however, the sole question for this Court to consider is the facial constitutional validity of the joint resolution.

IV. SUMMARY OF ARGUMENT

The House Plan is facially valid under the Fourteenth Amendment's Equal Protection requirement that the Plan satisfy "one person, one vote" and prevent purposeful discrimination on the basis of race. The districts that the House Plan creates satisfy the Florida Constitution's requirement that they be either "contiguous, overlapping or identical territory" because there is more than just a "touching of corners" and no part of a district is isolated from another by an intervening district.

This Court cannot engage in a complete factual analysis as required under Section 2 of the Voting Rights Act. In 1992, this Court created a hybrid Section 2 analysis, and as required by

this analysis, the House Plan affords racial and language minorities a substantial opportunity to elect candidates of their choice. The House Plan is not a political gerrymandering effort by the Republican majority of the House because there is no proof of intentional discrimination against an identifiable political group and no actual discriminatory effect on such a group. Finally, this Court should reject the Attorney General's argument that this Court create a new, unprecedented legal standard to guide its review under Article III, section 16.

V. ARGUMENT

Article III, section 16 of the Florida Constitution requires this Court to determine "the validity of the apportionment." It also articulates the standard for the redistricting of legislative districts--the Legislature "shall apportion the state in accordance with the constitution of the state and of the United States . . . [into] consecutively numbered [legislative] districts of either contiguous, overlapping or identical territory." Art. III, § 16(a), Florida Constitution.

As a starting point for its analysis of validity, this Court has held that "the fundamental doctrine of separation of powers and the constitutional provisions relating to reapportionment require that we act with judicial restraint so as not to usurp the primary responsibility for reapportionment, which rests with

the Legislature." In re: Apportionment Law, 263 So. 2d 797, 800 (Fla. 1972). In accordance with this principle of restraint, this Court plainly stated "our job is not to select the best plan, but rather decide whether the one adopted by the legislature is valid." In re Senate Joint Resolution 2G, 597 So. 2d at 285. Certainly, this Court recognizes that Legislative enactments are presumptively valid. See State v. McDonald, 357 So. 2d 405, 407 (Fla. 1978); State v. Wittman, 794 So. 2d 725, 727 (Fla. 3d DCA 2001). Therefore, in order to reject the plans that the Legislature adopted, this Court is required to hold that the adopted plans are invalid under federal or state law.

The required deference to the Legislature's decisions in crafting districts extends to review under federal law as well. The federal courts have emphasized on numerous occasions that "reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court." Chapman v. Meir, 420 U.S. 1, 27 (1975). As a result, federal courts are careful to respect a state's reapportionment and redistricting decisions, unless those decisions violate the Constitution or federal law. See Voinovitch v. Quilter, 507 U.S. 146 (1993). Accordingly, the federal courts have intervened in the redistricting choices of state legislatures for only two reasons: (1) to cure violations

of the Equal Protection Clause of the Fourteenth Amendment; and (2) to redress violations of the Voting Rights Act, 42 U.S.C. § 1973. In other words, the analytical framework for determining the validity of a redistricting plan is the following: a plan is presumed valid, unless the party challenging the validity of the plan can prove that the plan violates a specific constitutional standard or law.

This Court has previously ruled that the facial validity of the Joint Resolution of Reapportionment must only be measured against the specific requirements of Article III, section 16, the United States Constitution and relevant federal law, including the Voting Rights Act. See In re: Apportionment Law, 263 So. 2d 797, 807 (Fla. 1972). Any judicial review of the facial validity of the House Plan must therefore analyze: (1) the plan's validity under the Equal Protection Clause of the Fourteenth Amendment; (2) whether the plan meets the Florida Constitution's requirement that legislative districts be "either contiguous, overlapping or identical territory"; (3) whether the Plan affords racial and language minorities a substantial opportunity to elect candidates of their choice pursuant to the Voting Rights Act; and (4) whether the Plan is a political gerrymandering effort by the Republican majority of the House. See In re Constitutionality of Senate Joint Resolution 2G, 597 So. 2d 276, 278-286 (Fla. 1992).

Because the Attorney General has also argued that the Legislature must now adopt concrete standards in redistricting to avoid liability in potential future federal court lawsuits--an argument that would require this Court to ignore the clear dictates of Article III, section 16 as well as this Court's prior holdings--the House will address this argument as well.

A. The House Plan is Facially Valid Under the Equal Protection Clause of the Fourteenth Amendment.

1. The House Plan Satisfies the Fourteenth Amendment's Equal Protection Requirement of "One Person, One Vote."

A legislative redistricting plan must meet the standards of the Equal Protection Clause of the Fourteenth Amendment to be constitutionally valid. The Supreme Court in Reynolds v. Sims, 377 U.S. 533 (1964), defined this standard:

> [T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its 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.

Id. at 577. This Court has held that the Equal Protection Clause "requires that state legislatures be apportioned in such a way that each person's vote carries the same weight--that is, that each legislator represents the same number of voters." In re

Senate Joint Resolution 2G, 597 So. 2d at 278. To determine whether the House plan satisfies the Equal Protection Clause, this Court must analyze the population figures in each House district and determine if the legislature has made a "good-faith effort to achieve mathematical preciseness in the districts." Id.; see also Mahan v. Howell, 410 U.S. 315, 324-25 (1973).

According to the census, the official Florida population is 15,982,378. Based on this figure, the ideal population for a House District is 133,186. The largest House District is District 98, with a population of 135,043--deviating from the ideal population by 1,857, or 1.39%. The smallest House District is District 32, with a population of 131,310--deviating from the ideal population by 1,876, or 1.4%. Therefore, the maximum percentage deviation between the largest and smallest number of people per representative (statistical overall range) is 2.79%.

Although the districts do not comply precisely with the ideal population per district, mathematical exactness is not a requirement in state apportionment plans. See In re Senate Joint Resolution 2G, 597 So. 2d at 279 (citing Reynolds, 377 U.S. at 577). In White v. Regester, 412 U.S. 755, 763-64 (1973), the Supreme Court held that "minor deviations between State legislative districts [do not] substantially dilute the weight of individual votes in larger districts so as to deprive individuals

in these districts of fair and effective representation." The Supreme Court subsequently held "as a general matter . . . an apportionment plan with a maximum population deviation under 10% falls within the category of minor deviations." Brown v. Thomson, 462 U.S. 835, 842 (1983); see also Connor v. Finch, 431 U.S. 407, 418 (1977).

As the statistical overall range for the instant House Plan is 2.79%, it falls well under the 10% deviation threshold that the Supreme Court and this Court has set, and is per se valid under the Equal Protection Clause. This is true even if an alternative plan with a lesser population deviation is before this Court. See Gaffney v. Cummings, 412 U.S. 735, 741 (1972). The House has engaged in an honest and good faith effort to construct districts that are as nearly of equal population as practicable, and this Court should uphold the facial constitutionality of its plan under the Equal Protection Clause of the Constitution. The Attorney General agrees with the House that the deviation in both the House and Senate components of HJR 1987 are "well within the range permissible for state legislative apportionment." Attorney General's Brief at 20.

2. The House Plan Satisfies the Fourteenth Amendment's Equal Protection Requirement That Prevents Purposeful Discrimination On the Basis of Race.

The Equal Protection Clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Am. 14, § 1. "Its central purpose is to prevent the States from purposefully discriminating between individuals on the basis of race." Shaw v. Reno, 509 U.S. 630, 642 (1993)(citing Washington v. Davis, 426 U.S. 229, 239 (1976)). Legislative or congressional plans or schemes only violate the Fourteenth Amendment if they are adopted with a discriminatory purpose and have the effect of diluting minority voting strength. See Rogers v. Lodge, 458 U.S. 613, 616-17 (1982); White v. Regester, 412 U.S. 755, 765-66 (1973).

In Shaw v. Reno, the Court analyzed whether North Carolina "engaged in unconstitutional racial gerrymandering" in its creation of congressional district 12. 509 U.S. at 641. The Court held, in overturning the grant of a motion to dismiss, that

> a Plaintiff challenging a reapportionment statute under the Equal Protection Clause may state a claim by alleging that the legislation, though race-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification.

Id. at 649.

The Court provided further examples to aid in determining whether a district has been impermissibly gerrymandered on racial lines. For example, if a district line is "obviously drawn for

the purpose of separating voters by race," a court should carefully scrutinize the plan under the Equal Protection Clause regardless of the motivations underlying its adoption. Id. at 645 (citing Gomillion v. Lightfoot, 364 U.S. 339 (1960)). Also, if a State "concentrated a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions[,]" the plan may violate the Equal Protection Clause. Id. at 647 (internal citations omitted). The Supreme Court has more recently stated that a district violates the Equal Protection Clause if "race is the '*predominant* factor' motivating the legislature's districting decision." Easley v. Cromartie, --US--, 121 S. Ct. 1452, 1458 (2001) (emphasis in original).

Review of the House plan and the debates that took place in the House Committee, Procedural Council and on the floor reveals that the House's effort to reapportion the state was not an unjustifiable effort to separate voters into different districts on the basis of race, and race certainly was not the predominant factor in the fashioning of the districts.[10] The House Plan

[10] This is not to say that the districts do not comply with the requirements of Section 2 of the Voting Rights Act, as argued more specifically in section V-C below.

recognizes compact populations of Hispanics and African-Americans when they exist in sufficient numbers to form substantial parts of populations of House districts. Therefore, the House Plan complies with the Equal Protection requirement preventing states from purposefully discriminating against individuals on the basis of race.

B. The Legislative Districts that the House Plan Creates are "either contiguous, overlapping or identical territory" pursuant to Article III, section 16(a) of the Florida Constitution.

Article III, section 16(a) of the Florida Constitution requires that legislative districts be "either contiguous, overlapping or identical territory." This Court has previously defined contiguous as "being in actual contact: touching along a boundary or at a point." In re: Apportionment Law, 414 So. 2d 1040, 1051 (Fla. 1982) (quoting Webster's New Collegiate Dictionary 245 (1973)). That Court further stated that "a district lacks contiguity only when a part is isolated from the rest by the territory of another district." Id. (quoting Mader v. Crowell, 498 F. Supp. 226, 229 (M.D. Tenn. 1980)). A legislative district would also lack contiguity if the lands "mutually touch only at a common corner or right angle." Id.[11]

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[11] This Court has further refined the definition of a contiguous district to mean "one in which a person can go from any point within the district to any other point without leaving (continued...)

An examination of the record regarding the House Plan, including the maps of the House districts, reveals that there is more than just a "touching of corners" and that no part of any district is isolated from another by another part from an intervening district. Therefore, the House Plan satisfies the requirement of Article III, section 16(a). Furthermore, the Article III, section 16(a) requirement trumps the Attorney General's argument that "[t]he House Plan does not appear to respect county boundaries in urban areas." Attorney General Brief, at 26. This Court has held that "there is no requirement that district lines follow precinct or county lines, for the constitutional mandate (Fla. Const. art. III, s16(a), F.S.A.) is that the state be apportioned into 'districts of either contiguous, overlapping or identical territory.'" In re: Apportionment, 263 So. 2d at 801. Further, the Attorney General, in his 2002 Florida Reapportionment and Redistricting, Memorandum of Law, which is attached to his brief at Tab "J," contradicts

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[11](...continued)
the district, [but] such a definition does not impose a requirement of a paved, dry road connecting all parts of a district." In re Senate Joint Resolution 2G, 597 So. 2d at 279. The Court further held that "the presence in a district of a body of water without a connecting bridge, even if it necessitates land travel outside the district in order to reach other parts of the district, does not violate this Court's standard for determining contiguity under the Florida Constitution." Id. at 280.

his brief by recognizing "there is no state or federal constitutional mandate that county or other political boundaries be honored in drawing district lines." See Attorney General's Appendix, Tab J, at 6.

C. The House Plan Does not Violate Section 2 of the Voting Rights Act.

This Court, in In re Senate Joint Resolution 2G, rejected the "narrow view" that for purposes of Article III, section 16 review, this Court should ignore Section 2 of the Voting Rights Act, as amended, 42 U.S.C. § 1973 (a) ("Section 2"). In rejecting the narrow view, this Court acknowledged that it would be impossible to conduct a complete factual analysis, as required under Section 2, within the time frame set forth in Florida's Constitution for review of state legislative redistricting plans. See In re Senate Joint Resolution 2G, 597 So. 2d at 282. Any claim under Section 2, however, is unavoidably fact intensive. Therefore, in 1992, this Court adopted a hybrid Section 2 analysis. See id. The hybrid Section 2 analysis is limited to whether the plan affords minorities a substantial opportunity to elect candidates of their choice, an opportunity which must not be substantially less favorable than the other plans considered by the Legislature and the Joint Resolution adopted in 1992.

1. Section 2 Requires a Searching Factual Analysis, which this Court has Recognized It is Unable to

Complete within the Time Allotted by Article III, Section 16 of the Florida Constitution.

Section 2 prohibits any state or political subdivision of the state from imposing a "voting qualification or prerequisite to voting or standard, practice or procedure ... in a manner which results in the denial or abridgment of the right to vote on account of race or color." In 1982, reacting to a narrow interpretation of Section 2 by the Supreme Court, the United States Congress amended Section 2 to require only proof of a discriminatory result (as opposed to discriminatory intent) based on the totality of the circumstances. A violation under Section 2, therefore, exists only if:

> Based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of ... [a racial, color, or language minority class] ... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected ... is one circumstance which may be considered.

42 U.S.C. § 1973(b). The amended Section 2, however, specifically includes the following proviso: "[N]othing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." Id.

The Supreme Court has recognized that a violation of Section 2 may occur as a result of redistricting if district lines are manipulated such that the process results in the dilution of the voting strength of politically cohesive minority voters. See Voinovich v. Quilter, 507 U.S. 146 (1993); Growe v. Emison, 507 U.S. 25 (1993). Vote dilution may happen as a result of fragmenting the minority voters among several districts, where the majority can routinely out-vote the minority voters, or by packing the minority voters into one or a small number of districts to minimize their influence in the neighboring districts. Voinovich, 507 U.S. at 153-54. Section 2 thus prohibits fragmenting and packing where its result, "interact[ing] with social and historical conditions, impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters." Gingles v. Thornburg, 478 U.S. 30, 47 (1986).

To establish the factual predicate for a violation of Section 2, a plaintiff must first demonstrate the existence of three threshold conditions:

1) The size and geographic compactness of the minority population must be such as to enable the creation of a single-member district in which the minority group can elect a candidate of their choice;

2) The minority population is a politically cohesive

group; and

3) The majority population votes as a bloc to defeat the minority group's preferred candidate.

Id. at 50-51. If a plaintiff establishes that a specific community exhibits the above characteristics, then a court should examine the "totality of the circumstances" to determine if the device or practice in question results in the dilution of the electoral power of the minority population. Id. at 46-51.

The Gingles Court reviewed the extensive legislative history of the 1982 Amendments to the Voting Rights Act and gleaned the following as important factors in establishing that an electoral device or practice, in the totality of the circumstances, has created or led to vote dilution:

1) The history of voting-related discrimination in the state or political subdivision;

2) Extent of racial polarization in elections within the state or political subdivision;

3) Extent to which the state or political subdivision has used:

   a) unusually large election districts;
   b) majority vote requirements;
   c) anti-single shot provisions; or
   d) other voting practices that enhance the ability of the majority to discriminate against a 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.

See id. at 44-45. The Court also noted the following two factors, which may have probative value:

1) Whether there is a significant lack of responsiveness by elected officials to the particular needs of the group; and

2) Whether the policy underlying the use of the voting qualification, standard, practice, or procedure is tenuous.

See id. at 45.

As recognized by this Court and as is self-evident from the standard articulated in Gingles, the review required to establish liability under Section 2 is necessarily fact intensive. See In re Senate Joint Resolution 2G, 597 So.2d at 282. Given the time limitations imposed by Article III, section 16, and the Court's choice to engage in a Section 2 analysis, this Court had no option but to introduce a limited, hybrid Section 2 analysis in In re Senate Joint Resolution 2G. Consequently, this Court limited its review under Section 2 to a determination of whether

the plan afforded minorities a substantial opportunity to elect candidates of their choice based on comparing the adopted plan to the other plans considered by the Legislature and to the previously adopted plan. Id. at 282-85.

Since In re Senate Joint Resolution 2G, the Supreme Court has clarified the limits of Section 2 and refined the Gingles standard. In De Grandy v. Johnson, a case involving Florida's contested 1992 state legislative redistricting process, the United States Supreme Court refined its Gingles analysis. 512 U.S. 997, 1014 (1994). The Court rejected the notion that proportionality of representation constituted a safe harbor for States seeking to avoid liability under Section 2. As a necessary corollary to the Court's discussion of proportionality, the Court also rejected the implicit conclusion in the lower court's ruling that Section 2 required the maximization of districts in which minorities had an opportunity to elect candidates of their choice. The Court concluded that "[f]ailure to maximize cannot be the measure of §2." Id. at 1016.

In Bush v. Vera, 517 U.S. 952 (1996), the Supreme Court further addressed the limitations imposed by the Equal Protection Clause to a remedy addressing a violation of Section 2. The Court concluded that in the face of an Equal Protection Clause challenge to the creation of a majority-minority district,

Section 2 could serve as a compelling state interest necessary to satisfy strict scrutiny. The Section 2 district, however, in order to comply with the Equal Protection Clause and meet the narrow tailoring requirement of strict scrutiny, "must not subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid §2 liability." Id.

Even under the peculiar procedural posture of this case, which makes fact-specific inquiries impossible, this Court must heed the two principal lessons of Bush and De Grandy: (i) a district crafted to comply with Section 2 must necessarily be restricted to areas that have reasonably high concentrations of minorities sufficient to craft compact majority-minority districts; and (ii) the maximization of majority-minority districts is not a requirement of Section 2.

2. HJR 1987 Provides Minorities a Substantial Opportunity to Elect Candidates of Their Choice.

According to the 2000 Census, the population of Florida is 15,982,378. Non-Hispanic African-Americans comprise 14.86% of the population, or 2,375,222, and Hispanics total 16.18% of the population, or 2,586,207.[12] The voting age population of Florida

[12] The distribution of Florida's African-American population can be seen in Wall Map, Black Non-Hispanic % Population Census, House Appendix, Volume V, Tab 6.

is 12,336,038. Non-Hispanic African-Americans comprise 12.76% of the voting age population, or 1,574,048, and Hispanics comprise 15.53% of the voting age population, or 1,915,615.

Consistent with the requirements set forth by this Court, the House Plan provides minorities in the State of Florida with substantial opportunities to elect candidates of their choice. African-Americans constitute a majority of the voting age population in the following districts:

District	Population	Voting Age Population	Registered Voters
8	55	51	50
14	57	54	57
15	59	54	51
39	61	57	51
55	56	51	51
59	59	54	56
84	60	54	53
93	58	53	47
94	60	54	45
103	73	70	72
104	60	56	54
108	60	55	45
109	64	60	58

African Americans thus constitute the majority in thirteen of the 120 districts in the Florida House of Representatives, which

equals 10.8% of all districts. The adopted plan maintains the same number of African-American majority districts as the plan adopted in 1992 and contains the same number of African-American majority districts as the plan proposed by Democrats in the 2000 Legislative session.[13]

Hispanics constitute the majority voting age population in the following districts:

District	Population	Voting Age Population	Registered Voters
102	83	87	73
107	69	69	52
110	79	82	67
111	76	78	61
112	66	68	56
113	79	81	63
114	65	67	54
115	66	68	53
116	75	68	75
117	66	68	54
119	65	58	49

Hispanics thus constitute the majority in eleven of the 120

[13] The House Plan proposed by Representative Ryan, H099H002, which is included in the House Appendix, Volume 6, was offered as an amendment during floor debate on March 5, 2001, and provided for nine African-American districts: 14, 15, 39, 93, 94, 103, 104, 108 and 109 (the "Ryan Amendment").

districts in the Florida House of Representatives, which equals 9.2% of all districts. The adopted plan contains two more Hispanic majority districts than the plan adopted in 1992 and contains four more Hispanic majority districts than the plan proposed by Democrats in the 2002 Legislative session.[14] The increase in Hispanic representation reflects the overall increase in the Hispanic population in Florida and, specifically, in Miami-Dade County.

Unlike Florida's African-American population, however, the Hispanic population in Florida is not as widely dispersed throughout the state. Miami-Dade County comprises 14.10% of Florida's population, but contains 48.45% of the Hispanic population. Outside of Miami-Dade County, more than one-half of the state's remaining Hispanic population resides in Broward, Hillsborough, Orange and Palm Beach Counties. The general population ("Gen. Pop."), Hispanic population ("H. Pop."), the percentage that Hispanics comprise of the general population ("% H"), voting age population ("VAP"), Hispanic voting age population ("HVAP") and the percentage that Hispanics comprise of the voting age population ("%HVAP") is shown below:

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[14] The Ryan amendment only provided for nine Hispanic voting age majority districts: 102, 107, 110, 111, 112, 113, 114, 115 and 116.

County	Gen. Pop.	H. Pop.	% H	VAP	HVAP	%HVAP
Broward	1,623,018	260,651	16.06	1,240,089	189,347	15.27
Hillsbo-rough	998,948	172,422	17.26	745,810	119,857	16.07
Orange	896,344	160,005	17.85	670,004	111,667	16.67
Palm Beach	1,131,184	135,864	12.01	890,726	96,287	10.81

These four counties superficially appear to have sufficient Hispanic populations to form majorities in single member districts. The only way to create additional Hispanic majority districts, however, would require the combination of non-contiguous populations, in some cases joining widely-dispersed Hispanic households.[15] Such a combination of non-contiguous populations to create additional Hispanic majority districts would violate the Florida Constitution's requirement that legislative districts be contiguous. In all four of the counties listed above, the Hispanic populations are widely dispersed and not contiguous, and therefore could not form a majority single-member district. Outside of Miami-Dade, Broward, Hillsborough, Orange and Palm Beach Counties, there are no concentrations of Hispanic populations that are large enough and compact enough to

[15] See Wall Map, Hispanic Non-Black % Population 2000 Census, House Appendix, Volume V, Tab 7.

form a majority in a single member district.[16]

D. <u>The House Plan is Not Political Gerrymandering</u>.

The FREDS 2000 software that the Florida Legislature used contained data on both population and party registration. A review of the statistical packet generated by the FREDS 2000 program for the House Plan reveals that Florida is a state where no political party holds a majority of all registered voters.[17] At the time of the 1990 census, there were 8,746,037 registered voters. Democratic voters were the largest voter bloc with 3,801,142 voters, or 43.46% of the total. There were 374,324 fewer Republicans than Democrats, with a statewide total of 3,426,818, or 39.18% of the total. Independents, numbering 1,518,077, or 17.36%, made up the balance of the voters.

Voters of either party and independents are not

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[16] Section 5 of the Voting Rights Act requires that a covered jurisdiction which seeks to enact any change in voting qualification or prerequisite to voting, or standard, practice or procedure either institute an action in the United States District for the District of Columbia for a declaratory judgment that such qualification prerequisite, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or language or the submission of the proposed change to the Attorney General for a determination that the proposed change does not have either a discriminatory purpose or discriminatory effect. Five Florida counties are subject to the requirements of Section 5: Collier, Hardee, Hendry, Hillsborough and Monroe. The House concurs with the Attorney General that the House plan does not violate the intent or effect standards of Section 5.

[17] <u>See</u> House Appendix, Volume V, Tab 5.

homogeneously spread across the state; that is, each precinct, county and district is not a microcosm of the state. Under the House Plan, there are 17 districts with a majority of Republican registered voters.[18] By contrast, there are 37 districts in which Democrats form a majority of the registered voters.[19] In 66 districts, neither Republicans nor Democrats form a majority of the registered voters.[20] These districts have a range of registered Democratic voters of between 30.17% and 49.83%, and a range of registered Republican voters of between 29.80% and 49.96%; the average district has 18.54% registered independent voters.

The FREDS 2000 program also includes data showing how the voters in each of the House districts voted. The information shows that voters elected candidates from both political parties to statewide offices. For example, in 2000, voters in 69

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[18] The Republican majority registration districts are: 4; 18; 19; 37; 67; 69; 70; 74; 75; 76; 80; 82; 102; 110; 111; 115; and 117.

[19] The Democrat majority registration districts are: 5; 6; 7; 8; 9; 10; 11; 12; 14; 15; 21; 23; 27; 39; 55; 58; 59; 66; 78; 84; 86; 90; 92; 93; 94; 95; 96; 98; 99; 100; 103; 104; 105; 106; 108; 109; and 118.

[20] Those districts are: 1; 2; 3; 13; 16; 17; 20; 22; 24; 25; 26; 28; 29; 30; 31; 32; 33; 34; 35; 36; 38; 40; 41; 42; 43; 44; 45; 46; 47; 48; 49; 50; 51; 52; 53; 54; 56; 57; 60; 61; 62; 63; 64; 65; 68; 71; 72; 73; 77; 79; 81; 83; 85; 87; 88; 89; 91; 97; 101; 107; 112; 113; 114; 116; 119; and 120.

districts gave a majority of their votes to Presidential Candidate George W. Bush and Democratic Senatorial Candidate Bill Nelson.[21] In 1998, the voters in 81 districts gave a majority of their votes to Republican Comptroller candidate Bob Milligan and Democratic Agriculture Commissioner Bob Crawford.[22] Also in 1998, the voters in 110 of the 120 districts gave a majority of their votes to Republican Gubernatorial candidate Jeb Bush and Democratic Senatorial candidate Bob Graham.[23] In 1994, the voters in 87 districts split their votes, supporting both Republican Secretary of State candidate Sandra Mortham and

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[21] The House districts that split their votes for George W. Bush and Bill Nelson were: 1, 2, 3, 13, 16, 17, 20, 22, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 60, 61, 62, 63, 64, 65, 68, 71, 72, 73, 77, 79, 81, 83, 85, 86, 88, 89, 91, 97, 101, 106, 107, 108, 109, 112, 113, 114, 116, 119 and 120.

[22] The House districts that split their votes for Bob Milligan and Bob Crawford were: 3, 5, 6, 7, 9, 10, 11, 12, 16, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 79, 80, 81, 82, 83, 85, 87, 89, 91, 97, 101, 107, 111, 112, 113, 114, 115, 117, 119 and 120.

[23] The House districts that split their votes for Jeb Bush and Bob Graham were: 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119 and 120.

Democratic Attorney General candidate Bob Butterworth.[24]

It is against this political and historical background that the House Plan must be judged on the issue of political fairness.

In Davis v. Bandemer, 478 U.S. 109 (1986), the Supreme Court held that claims of partisan or political gerrymandering were justiciable. Id. at 113, 123-126. A plurality of the Court, however, established a stringent standard of proof for such equal protection claims, holding that a plaintiff must prove both discriminatory intent and effect to prevail: "[T]o succeed [on a claim of political gerrymandering] plaintiffs [are] required to prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." Id. at 127.

Proof of the first element, a discriminatory intent, does not present a substantial obstacle for "[a]s long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." Id. at 129 (footnote omitted).

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[24] The House districts that split their votes for Sandra Mortham and Bob Butterworth were: 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 20, 21, 22, 23, 25, 26, 27, 28, 29, 31, 32, 35, 36, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 77, 78, 79, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 103, 104, 105, 106, 108, 109, 115, 118, 119 and 120.

A showing that a redistricting plan was politically motivated to favor the incumbent political party, however, is insufficient to establish an equal protection violation. This Court emphasized this point during the last redistricting cycle, wherein the Court rejected claims that the redistricting plan was "nothing more than a gerrymandering effort by the Democratic majority of the legislature to protect Democratic incumbents," holding that "the protection of incumbents, standing alone, is not illegal." In re Senate Joint Resolution 2G, 597 So. 2d 276 at 285.

Courts following Davis have similarly rejected political gerrymandering claims based solely on claims that redistricting plans were drawn to protect the incumbent party. See, e.g., Holloway v. Hechler, 817 F. Supp. 617, 628 (D. W.Va. 1992)("The recognition of incumbency concerns is not unconstitutional *per se*."); Republican Party v. Wilder, 774 F. Supp. 400, 404 (W.D. Va. 1991)("[E]ven if the district boundaries were drawn *solely* for partisan ends . . . that would not be, in and of itself, a violation of the Equal Protection Clause.")(emphasis in original); Erfer v. Commonwealth, 2002 WL 418371, *5 (Pa. March 15, 2002)(rejecting plaintiffs' political gerrymandering claim based on the allegation that the "legislature deliberately drew the congressional districts so as to grant an advantage to the Republican party", where the plaintiffs failed to establish a

discriminatory effect); In re Reapportionment, 624 A.2d 323, 336 (Vt. 1993)("Political considerations are an inevitable component of redistricting and are not per se improper.").

Accordingly, a plaintiff must not only prove that the redistricting plan was the product of an intent to discriminate against the minority political party, but also that the plan has a discriminatory effect, which requires a showing that "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." Bandemer, 478 U.S. at 132. Indeed, a mere showing that "a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice," or of a "lack of proportional representation" is insufficient to meet the high threshold necessary to prove a discriminatory effect. Id. at 132.

The wisdom of the Supreme Court's approach to Bandemer is substantiated by the claims of political gerrymandering made in the last redistricting cycle and the results actually obtained at the polls. During the last redistricting cycle, opponents of the redistricting plan claimed that the plan was a Democratic effort to protect Democratic incumbents. See In re Senate Joint Resolution 2G, 597 So. 2d at 285. Nevertheless, time and the

unpredictability of political behavior has proven those fears unfounded as is plainly illustrated by the fact that both Houses of the Legislature are controlled by the Republican majority, resulting in the Democratic cries of political gerrymandering in the present redistricting cycle. See, e.g., Erfer, 2002 WL 418371 at *6 (evidence showing that "the number of congressional seats that Republicans are projected to win will be disproportionate to the percentage of the vote Republicans are anticipated to receive statewide" was insufficient to "establish that the discriminated against group has been effectively shut out of the political process"). Additionally, the political data of the Plan demonstrates that any claims of political unfairness or political gerrymandering are simply unfounded.

E. This Court Must Reject the Attorney General's Request that this Court Create a New Legal Standard to Guide its Review in this Process.

Beginning with the erroneous presumption that "[t]he designed purpose of this Court's role in the reapportionment process is to preclude, to the extent possible, future successful challenges to reapportionments, particularly in federal court[,]" the Attorney General asks this Court to shift the burden of proving validity of the joint resolution to the Legislature.

Attorney General's Brief at 1.[25] Such a shift would reverse this Court's constitutionally-mandated analytical framework for reviewing redistricting cases, under which this Court has clearly and correctly held that the Florida Constitution contemplates that these proceedings "be limited to a declaration that the Apportionment Plan on its face is either valid or invalid under the Constitution of the United States and the Constitution of the State of Florida." In re: Apportionment Law, 263 So. 2d 797, 808 (Fla. 1972).

Legislative enactments are presumptively valid. See State v. McDonald, 357 U.S. 405, 407 (Fla. 1978); State v. Wittman, 794 So. 2d 725, 727 (Fla. 3d DCA 2001). Therefore, it follows that for this Court to find an apportionment plan invalid, an opponent or protestor in this process has the burden of rebutting this presumption. See, e.g., In re: Apportionment Law, 263 So. 2d at 808 ("We hold that [the joint resolution] is valid on its face . . . without prejudice to the right of protestors to question the validity of the plan in appropriate proceedings . . . ."); In re:

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[25] The Attorney General's position is inconsistent with the positions he has taken in the past redistricting proceedings before this Court. Additionally, in Tab "J" of the Appendix to the Attorney General's Brief, is 2002 Florida Reapportionment and Redistricting, Memorandum of Law, Office of the Attorney Bob Butterworth, where the Attorney General fails to mention at all his brand new theory that the Legislature is required to follow standards never before applied by this Court.

Apportionment Law, 414 So. 2d 1040, 1052 (Fla. 1982) (same); cf., In re Senate Joint Resolution 2G, 597 So. 2d at 279, 282, 284 ("parties challenge the contiguity of four Senate districts[,]" "the opponents of the plan assert[,]" "several opponents of the plan attack the number of minority districts . . . .").

Notwithstanding this Court's clear rulings on this issue, the Attorney General, ignoring the burden in this special proceeding, argues that "[i]f the issues are not successfully rebutted by other interested parties, we suggest that the Court deny the petition for declaratory judgment . . . ." Attorney General's Brief at 3-4. Moreover, after presenting this Court with this unprecedented burden shift, the Attorney General erroneously argues that this Court should demand that the Legislature adopt or utilize "objective standards" other than those explicitly required by the United States and Florida Constitutions. See Attorney General's Brief at 2. Part of the Attorney General's justification for such an argument is the avoidance of liability in future attacks to the plans. Another justification is to prevent "arbitrary and disparate treatment of Florida's electorate." Attorney General's Brief at 29. The Attorney General's argument that the lack of objective standards renders HJR 1987 invalid, and the purported justifications for the standards, however, misconstrues the law, facts and role of

this Court in this special proceeding.

The House repeatedly announced that it would create a plan that conformed to principles required under the United States Constitution, relevant federal law (including the Voting Rights Act) and state constitutional principles. For example, in the House floor debate from March 5, 2002, in which the House discussed an amendment which eventually became the House Plan, Representative Ball, the Chairman of the House Redistricting Committee, stated:

> First, the members will note that the amendment substantially preserves the core of existing districts. This minimizes the risk of voter confusion and enhances the continuity of member representation of his or her district. Second, the plan improves the compactness and overall appearance of the existing districts. Third, it adapts to the varied but substantial population growth in this state and the political, social, and economic problems that such growth generates. Fourth, the plan recognizes and attempts to account for the fact that the character of many parts of Florida is changing and will continue to change in the next ten years. Communities once exclusively rural are becoming more urban. Agricultural areas are increasingly concerned with issues once reserved only for more populated areas. This amendment does a better job of recognizing these changing communities of interest . . . .

House Appendix, Volume V, Tab 1, at 64. The debate thereafter concerned the specific reasons for the change of district lines in the various areas of the state. See House Appendix, Volume V, Tab 1, at 65-69. On March 6, 2002, Representative Byrd, in

discussing HJR 1987, stated:

> the House joint resolution is a culmination of a fair, open, legal, and member-driven process. The districts contained in both the Senate and House plans attempt to accomplish many goals, some of which are to reflect the great communities of interest throughout our state and to maintain the core of many of the existing districts and also to comply with other traditional redistricting criteria.

House Appendix, Volume V, Tab 2, at 21.

Although the House considered traditional redistricting principles, it recognized that these principles conflict with and compete against one another. For example, the goal of compactness may sometimes prevent the joinder of communities of interest. Compliance with constitutional principles and the Voting Rights Act may require that political boundaries (i.e., county and municipal boundaries) be crossed in order to ensure that compact minority communities meet Gingles requirements.

The Attorney General ignores these realities, stating for example that "[t]he House Plan does not appear to respect county boundaries in urban areas. . . . Under the proposed House Plan, three House districts would include portions of Broward and Miami-Dade Counties." Attorney General's Brief at 26. He fails to mention, however, that these three districts are majority-minority districts, complying with the Voting Rights Act. Certainly, the House's decision to cross county boundaries in

order to keep compact and politically cohesive communities together and to comply with the Voting Rights Act is both laudable and consistent with the Legislature's overriding principle: compliance with the law.

The Attorney General also challenges the geographic boundaries of certain districts. See Attorney General's Brief at 25-27. However, he is unable to directly support his argument with any caselaw. Instead, he relies on a quote from Shaw v. Reno that "reapportionment is one area in which appearances do matter" to bolster his argument that certain House districts are, in his opinion, "extremely contorted." He states that "[these] districts merit an explanation. Any inappropriate motive could be assumed from such contortions . . . ." Attorney General's Brief at 27. Shaw, however, dealt with contorted majority-minority districts, and the Attorney General fails to mention that virtually none of the districts he concludes are "contorted" are majority-minority districts. Moreover, the Supreme Court has stated that a compact and "regular looking" district is not a federal constitutional obligation. See Gaffney v. Cummings, 412 U.S. 735, 752 n.18 (1973)(district "compactness or attractiveness has never been held to constitute an independent federal requirement."). In Bush v. Vera, the Court concluded that "irregular district lines" could be drawn for "incumbency

protection" and "to allocate seats proportionately to major political parties."

The Attorney General admits that HJR 1987 meets the requirements imposed by the United States and Florida Constitutions. See Attorney General's Brief at 19-22. He also explicitly states that "[i]t is true, of course, that the United States Constitution does not require the use of any particular standards for reapportionment, other than population equality. And the only explicit standards of the Florida Constitution are that districts be contiguous and separately numbered." Attorney General's Brief at 27. He argues, however, that the failure to adopt concrete standards might deny the basic right guaranteed by the Florida Constitution to be "equal before the law." He does not, however, articulate how a redistricting process that he admits satisfies the "one person, one vote" requirement can lead to unequal application of the law. Is the vote of a citizen less if he votes in a district populated by a majority of people from a different political party? Is the vote of a citizen less if he votes in a district that is not reflective of his own sense of community? Is the vote of a citizen less if he votes in a district that includes individuals living in any city or county other than the one in which he or she lives?

The Attorney General erroneously cites Bush v. Gore, 531

U.S. 98 (2000), on numerous occasions as precedent for the notion that enactment of standards by the Legislature is necessary to ensure the equal application of the law. However, redistricting is a uniquely legislative function, and the Supreme Court has specifically held that legislative bodies do not have to articulate their reasons for adopting statutes. See, e.g., United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166 (1980)("Where, as here, there are plausible reasons for Congress' action, our inquiry is at an end. It is, of course, 'constitutionally irrelevant whether this reasoning in fact underlay the legislative decision,' because this Court has never insisted that a legislative body articulate its reasons for enacting a statute. This is particularly true where the legislature must necessarily engage in a process of [balancing legislative concerns]." (quoting Flemming v. Nestor, 363 U.S. 603, 612 (1960)).

Finally, the Attorney General's arguments fail for an even more fundamental reason: assuming arguendo that he was correct and objective criteria needed to be adopted by the Legislature in the passage of redistricting plans, the Legislature adopted objective criteria and applied this criteria, as well as requirements imposed by the United States and Florida Constitutions, this Court and federal law. The committee and

floor debate transcripts reveal that the House considered objective principles in drawing the districts.

District 101: The Attorney General argues that this District impermissibly separates communities of interest because it contains populations from Collier and Broward counties. See Attorney General's Brief at 25. The House followed the requirements under the Equal Protection Clause of "one person, one vote" in that the total population of District 101 is 132,313, or 873 less than the ideal House population. This district complies with Article III, section 16(a)'s requirement that it be "either contiguous, overlapping or identical territory." District 101 essentially preserves the core of the former District 102, which this Court previously ruled was constitutionally valid. See In re Senate Joint Resolution 2G, 597 So. 2d at 285-86. According to floor debate, this district

> [c]ombines with similar suburban communities in Collier and Broward Counties that are linked by the transportation corridor and I-75 . . . . [and] [c]ombines similar communities concerned with the environment, particularly water rights issues and the preservation of the Everglades, land use and development. There are also communities of senior citizens sharing common interests within the District.

Testimony of Representative Ball, House Appendix, Volume V, Tab 1, at 76.

District 109: The Attorney General argues that this

district impermissibly combines the coastal community of Miami Beach with the very different community of Brownsville in the urban core of Miami. See Attorney General's Brief at 25-26. The House followed the requirements under the Equal Protection Clause of "one person, one vote" in that the total population of District 109 is 132,383, or 803 less than the ideal House population. This district complies with Article III, section 16(a)'s requirement that it be "either contiguous, overlapping or identical territory." The justification for this district was stated on the floor of the House:

> The current district is underpopulated by 27,700 people. And that caused some pretty strict changes in that area. We decided it was important to reflect a trend that is evident within the area. In the last decade, the Morningside area has seen some pretty dynamic changes. The arts community has moved in and cafes and artists' studios are now evident. The district is the home of the Miami design district and the new performing arts center. Uniting a community that's undergoing arts renaissance with Miami Beach makes sense to me. It also unites the luxury homes in Bay Point with the luxury homes west of Pine Tree Drive. In addition, the newly refurbished Venetian Causeway ends in this portion of Miami and the revitalization and continued redevelopment depends on this corridor. Finally, it is a forward-looking area in the City of Miami that's going through the same revitalization that this portion of the City of Miami Beach went through a decade ago.

Testimony of Representative Ball, House Appendix, Volume V, Tab

1, at 140-41.[26]

Districts 86 and 87: The Attorney General argues that these two districts "might raise an issue of potential political gerrymandering." Attorney General's Brief at 28. The Attorney General's statement can hardly be taken as an indictment of these districts, particularly because he later discusses the high standard for proof of political gerrymandering set by the Supreme Court in Davis v. Bandemer, 478 U.S. 109 (1986). Id. The House followed the requirements under the Equal Protection Clause of "one person, one vote" in that the total population of District 86 is, 133,526, or 340 more than the ideal House population, and the total population of District 87 is 133,861, or 675 more than the ideal House population. This district complies with Article III, section 16(a)'s requirement that it be "either contiguous, overlapping or identical territory."

Gainesville-Alachua Districts: The Attorney General briefly argues that because Alachua County is divided into four districts (10, 11, 22 and 23) and the City of Gainesville into three, the

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[26] Moreover, District 109 continues a practice of combining parts of Miami Beach with the mainland. In 1982, this Court approved a redistricting plan that split Miami Beach into three districts: 103, 104 and 105. District 105 took in South Beach, downtown Miami (and much of the area now part of District 109), Dodge Island, the Brickell area and Coconut Grove. A map showing the 1982 districts in Miami-Dade County is included in the House Appendix at Volume 5.

House did not protect communities of interest. Attorney General's Brief at 26. He fails to mention, however, that the 2000 Decennial Census showed the districts surrounding Alachua County (Districts 1 through 11) to be a combined 13,500 under the ideal district population, forcing the House to substantially revise the districts in this region and to include additional portions of Alachua County in redrawing the districts outside the county in order to meet the "one person, one vote" requirement. Significantly, these issues were evidently less of a concern to the Attorney General in 1992 when he approved division of Alachua County into three districts and Leon County—which had a similar population and communities of interest as Alachua County—into four districts. Further, the Attorney General in 1992 endorsed the splitting of neighboring Marion County into eight districts, which this Court found to be valid.

Miami-Dade, Broward, Palm Beach and Collier Districts: The Attorney General, on page 6 of his 2002 Florida Reapportionment and Redistricting Memorandum of Law, Attorney General's Appendix at J, states that "[c]ompactness is not a constitutional requirement, and there is no state or federal constitutional mandate that county or other political boundaries be honored in drawing district lines. Nevertheless, the Attorney General argues that Miami-Dade and Broward share three House districts,

and that Broward shares seven districts with Miami-Dade, Collier or Palm Beach counties. See Attorney General's Brief at 26-27. All of these districts comply with the Equal Protection requirement of "one person, one vote," and are "either contiguous, overlapping or identical territory." The mere overlap of county boundaries is not unconstitutional, in fact, the respect of county and municipal boundaries is not a requirement. The House followed constitutional requirements and traditional redistricting principles (where appropriate) in the creation of these, and all, districts.

VI. CONCLUSION

The Florida House of Representatives respectfully requests, for the reasons stated in this Brief, that the Florida Supreme Court follow the duty imposed on it by the United States and Florida Constitutions, as well as its past precedents, and uphold the validity of HJR 1987, and specifically the House Plan, because it satisfies the requirements of the United States and Florida Constitutions, the Voting Rights Act and relevant federal law. The House respectfully urges this Court to reject the position taken by Florida's Attorney General, which would require this Court to ignore the clear dictates of Article III, section 16 of the Florida Constitution, and which is wholly unsupported by the law.

Respectfully submitted,

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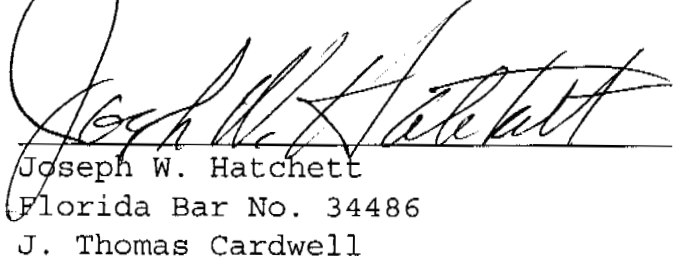

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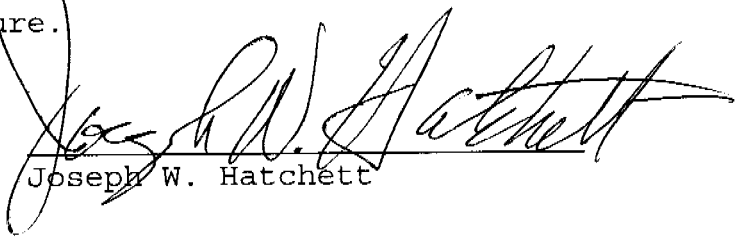

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