SUPREME COURT OF FLORIDA

CASE NO. SC02-194

IN RE: 2002 JOINT RESOLUTION
OF APPORTIONMENT

BRIEF OF LEE COUNTY, FLORIDA, BOB JANES, DOUGLAS R. ST. CERNY, RAY JUDAH, ANDREW W. COY AND JOHN E. ALBION OBJECTING TO PLAN FOR SENATE REAPPORTIONMENT

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STATEMENT FACTS OF THE CASE AND THE FACTS

This is an original action mandated by the Florida Constitution, which requires that within fifteen (15) days after passage of a joint resolution of apportionment by the Florida Legislature at its regular session in the second year following each dicennial census, the Attorney General shall petition the Supreme Court for a declaratory judgment determining the validity of the apportionment. See Art. III, § 16(a), (c), Fla. Const.

In accordance with this directive, the Florida Legislature passed HJR 1987 on March 22, 2002, the final day of its regular 2002 legislative session. The House Joint Resolution adopted reapportionment plans for both the House of Representatives (Plan H062H001) and the Senate (Plan S17S0036), and was signed by officers of the Legislature and filed with the Secretary of State on March 28, 2002. The Attorney General, on April 8, 2002, petitioned this Court for a declaratory judgment, asking that the validity of the Legislature's state redistricting plans be judicially determined. The Attorney General also filed a brief at that time, suggesting that because of the lack of objective standards underpinning the adopted plans, it is impossible for the Court to determine their validity; and that, without some forthcoming explanation of the underlying rationale for the redrawn districts by the parties in interest, the petition for declaratory relief should be denied.

Lee County, Florida, and citizens Bob Janes, Douglas R. St. Cerny, Ray Judah, Andrew W. Coy and John E. Albion, individually and as duly elected members of the Board of County Commissioners of Lee County (hereafter, collectively "Lee County"), concur with the Attorney General's assessment, particularly as it relates to the redrawn Senate districts and their division of Lee County. They do not take issue with the Statement of the Case and Facts as set forth in the Attorney General's Brief, and in fact, adopt it as their own. The following additional facts are added to specifically address the unique features and circumstances relevant to Lee County and its citizens that require their filing of this brief objecting to the presently drawn and adopted state Senate districts.

Lee County is a political subdivision of the State of Florida which was established in 1887 and is governed by its duly adopted charter. It is located in Southwest Florida where it is bordered by Charlotte Bay and the Gulf of Mexico on the west, Charlotte County on the north, Hendry County on the east and Collier County on the south. The total land mass of Lee County encompasses approximately 804 square miles, and its population at the last census count was 440,882, ranking it seventh of Florida's 67 counties. During the ten years between census counts, Lee County's population grew by 31.6%, thus far exceeding the State's overall growth rate of 23%. The majority of Lee County's population (63%

almost 1,900 employees, Lee County's public school system ranks as the sixtieth largest school district in the nation out of 16,500 school districts, with approximately 57,000 students and a work force of over 8,500. The County is home to both a community college (Edison) and Florida's tenth and newest public university -- Florida Gulf Coast University -- with 1,000 employees and over 4,000 students in just its fifth year of existence. That student population is expected to grow to over 15,000 students within the next 10 years. It is also the home of Southwest Florida International Airport, which accommodates both national and international air traffic and employs over 2,500 people, when all airport tenants are included.

Apart from the County's ability to self-govern under the Constitution and its duly adopted charter, Lee County, somewhat uniquely, has over 50 special districts, the majority of which were authorized and created by the Florida Legislature. Among those special districts are the County's 15 Fire Control and Rescue Districts;[1] its Health Facility Special District; its Port Authority; and its six Water, Aquatic Plant and Mosquito Control Districts.

All of these characteristics make Lee County a unique and special part of the State of Florida, a growing county with a

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[1]A map of the County's Fire Control and Rescue Districts has been submitted as a part of Lee County's Appendix to this Brief, at Tab M.

cohesiveness and a community of interests that set it apart from other areas of the State such as those found on the east coast of Florida. As aptly put by one of its citizens in the Reapportionment Public Hearing held by the Florida Legislature on September 25, 2001, in North Fort Myers, Florida:

> I am very familiar with both the east and west coast. I feel that while the current redistricting issue is for the potential joining of the east and west coast districts, it would have a disastrous effect[] on the west coast of Florida. Our issues are not the same as the issues on the east coast. The east coast is concerned with mass transportation because the roads are overcrowded. We are concerned with building roads for our growing population.
>
> The east coast is trying to save an environment that they have already destroyed. We have a sensitive environment on the west coast that we are trying to protect. The east coast is struggling to build a residential base to support their business base, we are trying to build a business base to support our residential base. We are total opposites.
>
> While I love the east coast I do not want a Legislat[or] from the east coast making decisions for the west coast. Legislat[or]s are supposed to represent what the population wants. The majority of the population is on the east coast. With two distinct[] areas of the state being joined together I feel that our population will be used to add power to what the east coast needs changed. Therefore, we need our own representation. The west coast has watched what has happened to the east coast and we are here because we do not want the uncontrolled growth that's occurred on the east coast to occur here.

Testimony of Ms. Carol Orr Hartman, Transcript of Reapportionment Public Hearing, September 25, 2001, North Fort Myers Hearing, p. 40 A copy of this Transcript has been submitted as a part of Lee County's Appendix to this Brief, at Tab C. Ms. Hartman's sentiment was echoed by almost all of the approximate 70 witnesses who appeared and spoke at this particular hearing, including members of the County Commission. See Testimony of Commissioners St. Cerny and Albion, Transcript of Reapportionment Public Hearing, September 25, 2001, North Fort Myers Hearing, pp. 9-11, 100-103; and see Transcript generally for the testimony of other interested citizens.

Rather than pay heed to the concerns of Lee County's citizens who provided input to the House Redistricting Committee during its scheduled reapportionment public hearing in North Fort Myers, the Legislature eventually adopted a Senate redistricting plan that has divided Lee County among three separate districts, none of which will give the County a majority voice. Moreover, the districts as drawn by the Legislature also divide the County's largest incorporated areas, placing Cape Coral, Fort Myers and Bonita Springs into two separate districts each (Cape Coral and Fort Myers have both been split between Districts 21 and 37, while Bonita Springs has been made a part of Districts 37 and 27). Additionally, Lehigh Acres, a large platted subdivision in the eastern quadrant of the County, has been placed into both Districts

21 and 27. A map of Lee County, with the Senate District divisions, has been submitted as a part of Lee County's Appendix to this Brief, at Tab D.

Newly adopted Senate District 21 encompasses most of Manatee County, extending from the Gulf Coast along its northern boundary (but for one small area), and then southward along the eastern border of Manatee County into a small portion of western DeSoto County, continuing through the middle one-third of Charlotte County and, ultimately, ending in the northwest portion of Lee County, with one protruding bulb into the northeastern part of Lee County. The district boundaries are serpentine in nature, creating an enclave district consisting of a large portion of Sarasota County and the easternmost third of Charlotte County. A map of District 21 has been submitted as part of Lee County's Appendix to this Brief, at Tab G. Of the 399,556 people making up this district, 225,770, or 56.5%, are residents of Manatee County; 25,728, or 6.4%, reside in Charlotte County; 3,141, or 0.8%, live in DeSoto County; and 100,432, or 25.1%, are citizens of Lee County.[2]

Senate District 27 has multiple enclaves attached by narrow fingers of district property. It begins in Southeast Florida in Palm Beach County, stretching upward and westward to reach a single

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[2]These statistics were derived from the District by County Statistics provided by the Senate with its adopted Senate Plan, S17S0036. A copy of the District by County Statistics, S17S0036.xls, has been submitted as a part of Lee County's Appendix to this Brief, at Tab B.

point on the shores of eastern Lake Okeechobee. Large portions of the southern part of the lake are deceivingly included, as are certain other tiny land pockets adjacent to Lake Okeechobee in Palm Beach and Hendry Counties. The District then begins again in Glades County on the southwestern shore of Lake Okeechobee and extends finger-like westward through the bottom half of Glades County to Charlotte County where it encompasses the eastern third of that County, and then meanders due south to include Lee County's eastern and southern boundaries. A map of District 27 has been submitted as part of Lee County's Appendix to this Brief, at Tab E. Of the 399,568 people making up District 27, 234,824, or 58.8%, live in Palm Beach County; 401, or 0.1%, live in Charlotte County; 4,145, or 1.0%, live in Glades County; no one lives in the included portion of Hendry County; and 160,198, or 40.1%, are citizens of Lee County.[3]

Finally, Senate District 37 runs the entire length of Collier County's coast line, meeting and extending across the entire southern Lee County boundary, and moves northward along a thin strip of Lee County's coast, then snakes westward along and north of the Caloosahatchee River, surrounded by District 21 to the north and District 27 to the south. A map of District 37 has been submitted as part of Lee County's Appendix to this Brief, at Tab I. Of the 399,552 people making up this district, 219,294, or 54.9%,

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[3]See fn. 2, supra.

live in Collier County, while the remaining 180,258, or 45.1%, reside in Lee County.[4]

Lee County objects only to the boundaries as drawn for Senate Districts 21 and 27. It does not raise, as part of this Brief, objections to District 37.

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[4]See fn. 2, supra.

SUMMARY OF THE ARGUMENT

This Court is called upon by Florida's Constitution to, dicennially, determine whether the Legislature's adopted Senate and House of Representatives redistricting plan has been validly drawn. While the Florida Constitution specifically requires only that the districts be contiguous, the Court has taken the view that it must also determine whether the plan violates the Equal Protection Clause of the Fourteenth Amendment; whether the principle of one-man, one-vote is met; and whether the mandates of the federal Voting Rights Act have been satisfied.

Underlying all of these considerations is the issue of whether the district lines have been gerrymandered -- racially, politically or otherwise. The U.S. Supreme Court has stated that "reapportionment is one area in which appearances do matter." Thus, a state's failure to adhere to traditional redistricting principles such as compactness, contiguity, respect for established political subdivisions, and communities of interest may very well be evidence of unlawful gerrymandering.

Lee County believes such to be the case, with regard to the districts as drawn for Senate Districts 27 and 21. Lee County, after all, is the largest and most populated county in all of Southwest Florida; yet it has no majority in any of the three districts into which it falls. Moreover, several of its incorporated communities are split between districts; a large

unincorporated, but platted, subdivision is split between districts; its many Special Districts are split among the districts; and its regional, international airport and state university are grouped in a district with its population center on the east coast of Florida.

District 27, which stretches the entire width of the state, is neither compact nor contiguous. It combines populations from the urban, east coast Palm Beach area with large stretches of barely populated rural areas, to meet the eastern and central populations of Lee County. It uses Lake Okeechobee to give an appearance of contiguity where none exists. And it combines communities that have neither geographic, demographic or economic ties. Clearly, District 27 was pieced together for political expediency.

Similarly, District 21 meanders in serpentine fashion from the Gulf coast of Manatee County, through its eastern rural areas into the rural lands of DeSoto and Charlotte Counties, then, by encircling but excluding Sarasota County, comes back to the Gulf coast in the northwestern portion of Lee County. The district is neither compact nor does it include communities with interests in common.

Each of Districts 27 and 21 have been politically gerrymandered, to the extreme detriment of the citizens of Lee County. Its citizens will have no voice in the matters of particular concern to Lee County with the districts left as drawn,

and little hope of a fair chance to influence the political process. The plan as adopted should be declared invalid.

ARGUMENT

NEWLY ADOPTED SENATE DISTRICTS 21 AND 27 ARE INVALID AS A MATTER OF LAW

A. Legal Standards

Under the provisions of the Florida Constitution, this Court has 30 days from the filing of the Attorney General's petition for a declaratory judgment seeking a ruling on the validity of the Florida Legislature's recently adopted redistricting plan, in which to both permit adversary interests to submit their views as to the sufficiency of that plan and enter judgment as to its validity.[5] See Art. III, § 16(c), Fla. Const. This limited time frame caused the Court to opine in 1972 that its review is limited to determining only the facial validity of a redistricting plan and that "[j]udicial relief becomes appropriate only when a legislature fails to act according to federal and state constitutional requisites." See In Re Apportionment Law Appearing as Senate Joint Resolution No. 1305, 1972 Regular Session, 263 So. 2d 797, 800, 808 (Fla. 1972) (hereinafter cited as "In Re Senate Joint Resolution No. 1305, 1972"). This facial challenge included a review of the plan to determine whether the constitution required district lines to follow county or precinct lines; whether it met the one-man, one-vote principle; and whether multi-member districts were permitted. See id. In addition, the Supreme Court in In Re Senate

[5]The Attorney General's Petition for Declaratory Judgment was filed on April 8, 2002.

Joint Resolution No. 1305, 1972 retained jurisdiction to permit challengers to question the validity of the plan by presenting specific factual objections to it. See id. at 808.

Since 1972, however, the scope of this Court's review has slowly expanded. For example, in 1982, the Court considered the facial validity of the redistricting plan by not only examining whether the challenged districts comported with the contiguity requirement of the Florida Constitution, but also by determining whether the districts violated the Fourteenth Amendment's Equal Protection Clause. See In re Apportionment Law Appearing as Senate Joint Resolution 1E, 1982 Special Apportionment Session; Constitutionality Vel Non, 414 So. 2d 1040 (Fla. 1982)(hereinafter cited as "In re Senate Joint Resolution 1E, 1982")(applying City of Mobile, Alabama v. Bolden, 446 U.S. 55, 100 S. Ct. 1490, 64 L. Ed. 2d 47 (1980)). That scope of review further expanded in 1992, when, in addition to the consideration of facial challenges to the one-man, one-vote principle and contiguity, the Court stated that it was:

> obligated to consider the Voting Rights Act in our evaluation of the validity of the plan. At the same time, it is impossible for us to conduct the complete factual analysis contemplated by the Voting Rights Act...within our time constraints of article III, section 16(c). However, our analysis will include consideration of all of the statistical data filed herein...none of which are disputed...Any decision which requires consideration of facts that are unavailable in

> our analysis will have to be resolved in subsequent litigation...

In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, 597 So. 2d 276, 282 (Fla. 1992)(hereinafter cited as "In re Senate Joint Resolution 2G, 1992"). Consequently, in evaluating the facial validity of the redistricting plan now before it, this Court must consider whether the plan violates the one-man, one-vote principle; whether the constitutional mandate of contiguity is met; whether the plan is drawn in violation of the Equal Protection Clause of the Fourteenth Amendment; and, within the bounds of its limited time constraints, whether the plan violates the federal Voting Rights Act.

And, underlying each of these considerations is the issue of whether the districts, as drawn, were unlawfully gerrymandered -- racially, politically or otherwise. Political gerrymandering is a justiciable issue under the Equal Protection Clause of the Fourteenth Amendment. See Davis v. Bandemer, 478 U.S. 109, 125-26, 143, 106 S. Ct. 2797, 2806-07, 2816, 92 L. Ed. 2d 85 (1986). Therefore, this Court must also consider whether the newly drawn districts have been gerrymandered as part of its review of the facial validity of the redistricting plan.

Gerrymandering occurs when district lines are drawn to minimize voting strength or maximize political advantage. See id. A redistricting plan is subject to a gerrymandering challenge when it arbitrarily arranges district boundaries to give one group an

undue advantage over another group, thereby consigning that adversely affected group to minority status during the life of the redistricting plan or providing that group with little or no chance of improving its position at the next redistricting. See Waas, The Process and Politics of Legislative Reapportionment and Redistricting Under the Florida Constitution, 18 NOVA L. REV. 1001, 1012 (Winter, 1994).

To establish an Equal Protection violation in a political gerrymandering case, the challenger of the redistricting plan must "prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." See Bandemer, 478 U.S. at 127 (citing Bolden, 446 U.S. at 67-68); see also Republican Party of Virginia v. Wilder, 774 F. Supp. 400, 403-404 (W.D. Va. 1994). Regarding "intent," the Supreme Court has said that "[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." See Bandemer, 478 U.S. at 129. Regarding "effects," the Supreme Court held that "unconstitutional discrimination occurs ... 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." See id. at 132. Moreover, "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." Id. at 133.

Although not explicitly required by the United States Constitution, a state's adherence to the traditional redistricting principles of compactness, contiguity, respect for established political subdivisions, and community of interests "are objective factors that may serve to defeat a claim that a district has been gerrymandered." See Shaw v. Reno, 509 U.S. 630, 647, 113 S. Ct. 2816, 2827, 125 L. Ed. 2d 511 (1993). Conversely, a state's disregard of such principles may be evidence of constitutionally-suspect gerrymandering. Thus, although a redistricting plan's failure to adhere to contiguity, compactness, respect for established political subdivisions, and community of interests will not necessarily render the plan unconstitutional on its face, such failure is substantial evidence to support a claim of unconstitutional gerrymandering. "Put differently, we believe that reapportionment is one area in which appearances do matter." Id. at 647.

Furthermore, Florida presents a special venue in which to adjudge a district's lack of contiguity. The Florida Constitution, although not addressing the principles of compactness, respect for established political subdivisions, or community of interests, specifically requires that legislative districts be "either contiguous, overlapping, or identical territory." See Art. III,

§16(a), Fla. Const. Consequently, a non-contiguous district in Florida is not only evidence of unconstitutional gerrymandering, but such a factor also may render the plan unconstitutional per se. See In re Senate Joint Resolution 2G, 1992, 597 So. 2d at 279; In re Senate Joint Resolution 1E, 1982, 414 So. 2d at 1051.

According to this Court, "contiguous" means "being in actual contact: touching along a boundary or at a point." See In re Senate Joint Resolution 1E, 1982, 414 So. 2d at 1051. A district lacks contiguity when a part of the district "is isolated from the rest by the territory of another district" or when parts of the district "mutually touch only at a common corner or right angle." See id. Accordingly, a challenged district satisfies the test of contiguity only when there is more than just a touching of corners and no part of the challenged district is isolated from another by an intervening district. See id.

Courts in other states have also been called upon to apply the standard for contiguity to reapportionment schemes. For example, the court in Hays v. State of Louisiana, 839 F. Supp. 1188 (W.D. La. 1993) ("Hays I"),[6] reviewed the state's congressional districts

[6]The case has a lengthy history, resulting in two trips to the U.S. Supreme Court and three written lower court opinions. In the initial action, the district court found that Louisiana's 1992 congressional redistricting scheme represented impermissible racial gerrymandering in violation of the Equal Protection Clause. See Hays I, 839 F. Supp. at 1209. While the appeal of Hays I was pending before the United States Supreme Court, the Louisiana legislature adopted a new redistricting scheme. Consequently, the Supreme Court vacated and remanded Hays I to the district court for

as drawn by the state legislature in 1992 and concluded that a challenged district was not contiguous. In Hays I, the challenged district, Congressional District 4, "[l]ike the fictional swordsman Zorro, when making his signature mark, District 4 slashes a giant but somewhat shaky 'Z' across the state," seemingly narrowed to a single point at places and not more than 80 feet wide at other places along its attenuated path. Id. at 1199, 1200. The court held that "[d]istrict 4 was confected to satisfy the traditional districting criteria of contiguity, but only hypertechnically and thus cynically.... Such tokenism mocks the traditional criterion of contiguity." Id. at 1200. When District 4 was redrawn by the legislature, transforming it into a district resembling an "inkblot" spread across Louisiana, the district court again rejected it on grounds that it lacked contiguity, finding that the new district honored contiguity only "by cynical formalism." Hays III, 936 F. Supp. at 364, 368.

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further consideration in light of the new scheme. See Louisiana v. Hays, 512 U.S. 1230, 114 S. Ct. 2731, 129 L. Ed. 2d 853 (1994). On remand, the district court found the new scheme also represented unconstitutional racial gerrymandering. See Hays v. State of Louisiana, 862 F. Supp. 119, 126 (W.D. La. 1994) ("Hays II"). Upon appeal, the United States Supreme Court again vacated and remanded, holding, without considering the merits, that citizens who did not live in the challenged district lacked standing. See U.S. v. Hays, 515 U.S. 737, 115 S. Ct. 2431, 132 L. Ed. 2d 635 (1995). On remand, the district court once again held that the district design constituted racial gerrymandering in violation of the Equal Protection Clause, consistent with its previous two decisions, and thus fashioned its own redistricting plan. See Hays v. State of Louisiana, 936 F. Supp. 360 (W.D. La. 1996)("Hays III").

The second of the traditional redistricting principles, compactness, "generally refers to districts that are regular in shape, having no unnecessary bulges or protrusions." See Waas, 18 NOVA L. REV. at 1013. As defined in the dictionary, compact means "firmly put together, joined, or integrated; marked by arrangement of parts or units closely pressed, packed, or grouped ... with very slight intervals or intervening spaces; marked by concentration in a limited area." Webster's Third International Dictionary, 461 (1993). Although not constitutionally required of districts, compactness, like contiguity, is an objective factor that may be used to support a showing that legislatively drawn districts were not unconstitutionally gerrymandered. See Reno, 509 U.S. at 647.

There are a number of ways to measure compactness. See Karcher v. Daggett, 462 U.S. 725, 756, 103 S. Ct. 2653, 2673, 79 L. Ed. 2d 133 (1983); Polsby & Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 YALE L. & POL'Y REV. 301, 339 (1991). For instance, a relatively simple way, and probably the most accurate way, is to determine the smallest circle into which the district can be circumscribed and then compare the ratio of the area of the district inside the circle to the area of the circle itself; the closer these figures come to a 1 to 1 ratio, the more compact the district is considered to be. See Karcher, 462 U.S. at 756, n. 19 (Stevens, J., concurring); See also Carstens v. Lamm, 543 F. Supp.

68, 87 (D. Colo. 1982)(citing American Bar Association Special Committee on Election Law and Voter Participation, Congressional Redistricting 13 (1981)).

A classic example of a non-compact district is seen in Potter v. Washington County, Fla., 653 F. Supp. 121 (N.D. Fla. 1986), where a group of desired voters were attached to the traditional district by a long, narrow corridor, thereby creating a "geographic dragon-shaped area, with a small head and a long neck; a classic gerrymander." See id. at 130.

Similarly, in Hays II, the district court examined the challenged congressional district, which had been reworked by the legislature into an "inkblot," and found that it lacked compactness because it was "approximately 250 miles long, and meander[ed] through 15 parishes, making it considerably longer than any other district in the State." See Hays II, 862 F. Supp. at 126 (Shaw, C.Dist.J., concurring). Moreover, the court found that "District 4 cuts up four major population centers of Louisiana ... paying no respect to parish lines.... A district that stretches over as much territory, touching so many media and population centers, cannot be said to be compact." Id.

Finally, the third of the traditional redistricting principles which bears some discussion,[7] "community of interests," is "based on the premise that voters within the chosen community share similar interests and values." See Malone, Recognizing Communities of Interest in a Legislative Reapportionment Plan, 83 VA. L. REV. 461, 465 (March, 1997). Disrupting the cohesiveness of a "community of interest" may be evidence of constitutionally suspect gerrymandering. See Waas, 18 NOVA L. REV. at 1013. Moreover, the legislature must consider communities of interest at the time it is drawing the districts, rather than merely reciting communities of interest as a pretext for the plan ex post facto. See Shaw v. Hunt, 517 U.S. 899, 907, 116 S. Ct. 1894, 1901-1902, 135 L. Ed. 2d 207 (1996).

Because the Florida Constitution does not specifically require consideration of communities of interest in the reapportionment process, it provides no definition for the term. Other states do provide some assistance, however. Colorado's constitution, in consideration of reapportionment, requires that "communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible." See Art. V, § 47, Colo.

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[7]The fourth traditional principle of redistricting referenced in the text above, respect for established political subdivisions, needs no detailed discussion, but rather, is self-explanatory by its very terms.

Const.; see also Malone, 83 VA. L. REV. at 466. In Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982), the court was called upon to apply Colorado's constitutional requirement, and, in doing so, stated that "communities of interest represent distinctive units which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socio-economic status, or trade." Id. at 91.

Other courts, too, have recognized that "long-standing, industry-based, regional groups qualify as communities of interest." See Malone, 83 VA. L. REV. at 471. For instance, in Miller v. Johnson, 515 U.S. 900, 908, 919, 115 S. Ct. 2475, 2484, 2490, 132 L. Ed. 2d 762 (1995), the United States Supreme Court accepted the district court's conclusion that a community of interest did not exist in a challenged congressional district in Georgia due to widely spaced urban concentrations with no relevance to each other; long and narrow corridors stretching hundreds of miles through rural counties and swamps; concentrated African-American populations at the district's fringes; and the partitioning of counties. According to the Supreme Court, "the social, political and economic makeup of the [challenged] [d]istrict tells a tale of disparity, not community." See Miller, 515 U.S. at 908.

Similarly, in Hays I, the Louisiana district court found that the challenged Congressional District 4 did not embody its people

with "community of interests," but instead: 1) violated traditional ethno-religious divisions of the state; 2) improperly strung together an eclectic and incoherent industrial base; and 3) improperly joined diverse geographic regions together. See Hays I, 839 F. Supp at 1201. In Hays II, the court reiterated this finding, questioning "how one ... representative could adequately represent the varying interests of residents in such far-flung areas of the State." See Hays II, 862 F. Supp. at 127 (Shaw, C.Dist.J., concurring).

B. District 27 Fails to Provide the Requisite Compactness, Contiguity and Community of Interests Required

The Senate Districts challenged by Lee County contain many of the indicia of political gerrymandering. They lack the degree of compactness normally required of legislative districting; they contain non-contiguous areas; they include areas within each district for which there are no communities of interest; and they show a complete disregard for established political boundaries. The districts as adopted appear to subjugate the interests of the citizens of Lee County to, at best, mere numerical expediency, or, at worst, blatant political protectionism.

1. Compactness

Senate District 27 provides a classic example of the gerrymandering which has been condemned by the courts in the past. The District extends for over 150 miles across the State of Florida

from the Atlantic Ocean in Palm Beach County nearly to the Gulf of Mexico in Lee County. It includes urban, rural, and even uninhabited areas within its boundaries. The District, as configured, consists of three separate and distinct population areas joined by narrow extensions of property. These three areas consist of two separate enclaves within Palm Beach County and a third within Lee County. The first enclave within Palm Beach County includes the easternmost area of the District and is made up of a highly urbanized area. That area is joined by a very narrow finger of property to a second enclave within Palm Beach County which is largely rural and agricultural in nature. The second enclave ends at a single point on the eastern shore of Lake Okeechobee. It begins again on the western side of the Lake, eventually including the third significant population area within Lee County. The area between the various concentrations of population in Lee County and Palm Beach County extends for many miles across the State of Florida and is highly rural in nature. The total population within this rural area is only approximately 3,700 people.[8] The boundaries of District 27 meander across the State of Florida to such an extent that it fails to satisfy any reasonable standard of compactness.[9]

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[8]See Lee County's Appendix to Brief, Tab B.

[9]By comparison, using the circle ratio guideline set forth in Karcher v. Dagget, 462 U.S. at 756 n. 19, which indicates that the ideal compaction of a district should be as close to a 1 to 1 ratio

2. Contiguity

District 27 extends within Palm Beach County to a narrow single point on the eastern shore of Lake Okeechobee. The remainder of the eastern shore of Lake Okeechobee is excluded from District 27 by a slender finger-like extension of District 39 along the shores of the Lake. This single point of contact falls squarely within this Court's previously enunciated prohibition that "lands that mutually touch only at a common corner or right angle cannot be regarded as 'contiguous' within the proper meaning of the word when applying it in establishing House or Senate districts." In Re Apportionment Law Appearing as Senate Joint Resolution 1 E, 1982, 414 So. 2d at 1051 (Fla. 1982).

The District further includes, on the southern portion of Lake Okeechobee, areas that appear to be small pockets of district property separate and distinct from each other. Each pocket of property is separated from the others by finger-like extensions of areas included within Senate District 39. The only physical connection between these small pockets to any other property within District 27 is that they border the Lake itself.

Though this Court has determined that the presence of water without a connecting bridge, even if it necessitates land travel

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as possible, District 27 would require a circle that extends to the northern boundaries of Okeechobee County on the north and to Miami-Dade County on the south. It would also include nearly all of Broward, Palm Beach and Collier Counties. The ratio of this circle would be closer to 4 to 1 rather than 1 to 1.

outside of the district, does not necessarily violate the standard for contiguity, see In re Constitutionality of Senate Joint Resolution 2 G, 1992, 597 So. 2d at 279-280 (Fla. 1992), such principle is not applicable here. In that matter, portions of the contested districts were simply divided by rivers, channels or bays. However, in the configuration of District 27, the only relationship between the distinct islands of district property on the southern shore of Lake Okeechobee is that they border the Lake itself. The adopted Senate District attempts to use the waters of Lake Okeechobee to provide the necessary degree of contiguity where none either existed or was intended. District 27 does not satisfy the constitutional requirements of contiguity.

3. Community of Interest

The District boundaries make no effort to include areas that possess a community of interest. The majority of the population is within Palm Beach County whose cultural, economic and demographic factors are completely different from the population within the Lee County area of District 27. The boundary further divides areas where a well established community of interest exists. As adopted, the boundaries divide an area of unincorporated Lee County known as Lehigh Acres. This is a large, well-developed, platted subdivision which will now be separated between Districts 27 and 21.[10]

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[10]The boundaries of both District 21 and District 27 also separate the City of Cape Coral (between Districts 21 and 37), Bonita Springs (between Districts 27 and 37) and the City of Fort

The Lee County Port Authority governs the development and operations of Southwest Florida International Airport and Page Field General Aviation Airport. Each of these facilities significantly impacts upon growth and economic development within all of Lee County. For example, it was estimated in 1999 that the Southwest Florida International Airport generated in excess of two billion dollars in direct and induced economic benefits to the region. Similarly, Page Field generated an economic benefit in excess of thirty-five million dollars.[11] The vital interests of all citizens of Lee County are enhanced from the advancement and development of the International Airport, Paige Field and Florida Gulf Coast University, including those within Districts 21 and 37. Yet, these citizens will have no voice in determining the representation of the District where those facilities are located. Rather, that representation will largely be determined from a population base within Palm Beach County and which will not be significantly impacted by the enhancement and development of the Airport and the University. Such arbitrary placement of district lines clearly fails to recognize the community of interest that exists between these facilities and the population within Lee County.

Myers (between Districts 21 and 37). This will be addressed under subpoint D.

[11]See Lee County's Appendix to Brief, Tab L.

C. District 21 Fails to Provide the Requisite Compactness and Community of Interest

1. Compactness

District 21, which extends from the northern boundary of Manatee County for nearly 100 miles to the northwest portion of Lee County, also reflects political gerrymandering. This is demonstrated by its failure to satisfy the requirements of reasonable compactness for the purpose of redistricting. The boundaries themselves proceed in a serpentine manner from the northern border of Manatee County through DeSoto and Charlotte Counties, ultimately ending in Lee County. The intended results appear to be to create a compact and cohesive enclave for Sarasota County and the western portion of Charlotte County at the expense of the citizens of Lee County.

2. Community of Interest

Nor can such extended boundaries be justified on the basis of any community of interest. The portions of the District within western Manatee, DeSoto and Charlotte Counties are decidedly rural in nature. However, northwest Lee County contains significantly developed areas. The District boundaries divide Captiva Island and its resort community area and separate the City of Cape Coral, as well.[12] There is no community of interest between the resort-type

[12]Similar resort-type property in the Town of Longboat in Manatee County was excluded from the District and placed within the enclave created for Sarasota and Charlotte Counties in District 23.

development of Lee County, the urbanized area of Cape Coral, and the decidedly rural areas of Manatee, DeSoto and Charlotte Counties. Such strained placement of boundaries fails to provide the requisite degree of compactness or community of interest and is clearly indicative of political gerrymandering.

D. Both Challenged Senate Districts Ignore Established Jurisdictional Boundaries

Lee County, with a population of 440,882, constitutes the largest political subdivision within the Southwest Florida regional area and represents approximately 30% of that area's total population. The boundaries of both Districts 21 and 27 fail to recognize this significant population base and thereby deny the citizens of Lee County a majority representation in any of the created Senate districts, thus effectively limiting the political voice of the citizens of Lee County.[13]

The challenged Senate districts fail to respect established political boundaries and the community of interests which exist among its citizens. The District divisions further create a circumstance whereby the determination as to who will represent the

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[13]In District 21, only 25.1% of its population is from Lee County, while the majority of the District consists of Manatee County residents. District 27, which meanders completely across the State of Florida, only includes 40.1% of its population from Lee County, with 58.8% being from Palm Beach County. Finally, even District 37 only includes 45.1% of its population from Lee County. The predecessor to District 37 under the 1996 redistricting (District 25), in contrast, had approximately 55% of its population from Lee County.

interests of the residents of a municipality or established unincorporated community becomes largely a matter of the side of the street on which that particular resident lives. For example, the City of Cape Coral, the largest city in Southwest Florida, is divided by the boundaries of District 21 and District 37, leaving its interests to be determined by the citizens of Manatee and Collier Counties, respectively. Similarly, Bonita Springs, a recently incorporated municipality, and the City of Fort Myers are divided by the boundaries of District 37 and District 27, thereby leaving the representation of their political, economic and other interests to be selected by a majority of population from Collier and Palm Beach Counties. There is simply no rationale for such arbitrary placements of these boundaries. Though Lee County recognizes that, in the placement of district lines, a division of established political boundaries cannot always be avoided, when the citizens of Lee County and its municipalities are asked to bear the brunt of this many jurisdictional divisions, the inference of political gerrymandering becomes increasingly stronger.

Lee County also contains approximately 50 Special Districts, many of which encompass large areas of Lee County. These Special Districts provide many essential functions and services to the citizens of Lee County. Among these are the Fire Control and Rescue Districts (a map of which has been included as part of Lee County's Appendix to this Brief, at Tab M), the Health Facilities

Authority and Lee County Port Authority. The boundaries of these Special Districts are routinely divided by the adopted Senate districts which criss-cross Lee County. Though the adverse impacts resulting from the division of a county or municipality by district boundaries has been somewhat diminished by the advent of local governments' home rule powers under the 1968 Constitution, such mitigation of impacts does not exist in regard to these Special Districts. They have no such home rule powers but exist solely as creations of the Legislature. Their abilities to obtain meaningful representation for legislative authorization or to obtain funding is significantly diminished by the division of their boundaries caused by the legislatively drawn Senate districts.

In the case of In re Apportionment Law. Futch v. Stone, 281 So. 2d 484 (Fla. 1973), the Supreme Court, having already determined that the apportionment law was valid on its face, retained jurisdiction to address complaints concerning specific applications of the apportionment plan. The City of Jacksonville and others contested the division of its municipal area among various Senate districts, arguing that such division diluted its ability to effectively address matters of local concern with the Legislature. The Supreme Court, in rejecting this argument, stated:

> The Legislature has recognized the unique problems of municipalities in the form of local legislation, and has granted to cities broad home rule powers with the adoption of

> House Bill 1020 which, effective October 1, 1973, removes from the legislative arena the vast bulk of the local bills which have previously created a need for all citizens in a municipality to have an effective voice in selecting the senators and representative to present such local legislation.

Id. at 486. The Court went on to state:

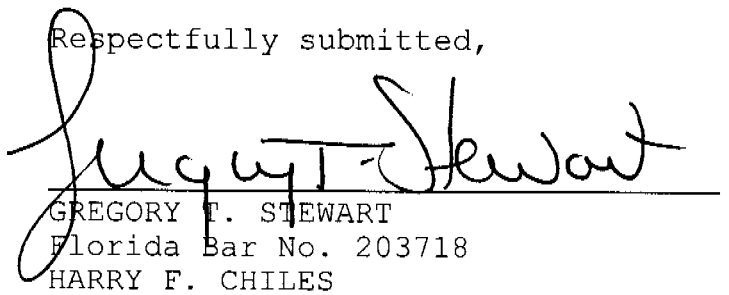
> While the problems presented by petitioners might have raised sufficient questions to require the appointment of a Commissioner in this cause prior to the adoption of House Bill 1020 by the 1973 Legislature, such questions no longer exist.

Id. Though the adverse impacts from the division of jurisdictional boundaries may no longer be as pronounced for municipalities and counties as before they were given their broad home rule powers to govern, such dilution clearly still exists as to Lee County's Special Districts.

CONCLUSION

For the foregoing reasons, Lee County asks the Court to determine that Senate Districts 21 and 27 are invalid.

Respectfully submitted,



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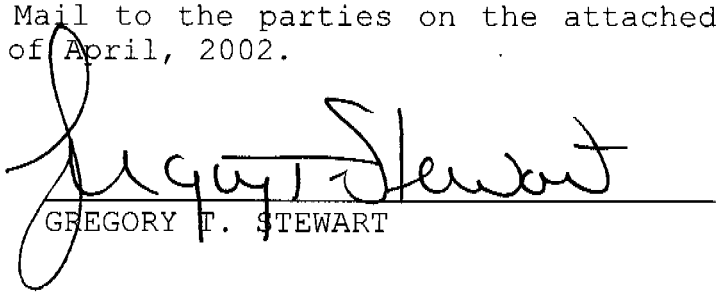
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the parties on the attached Service List, this 16th day of April, 2002.



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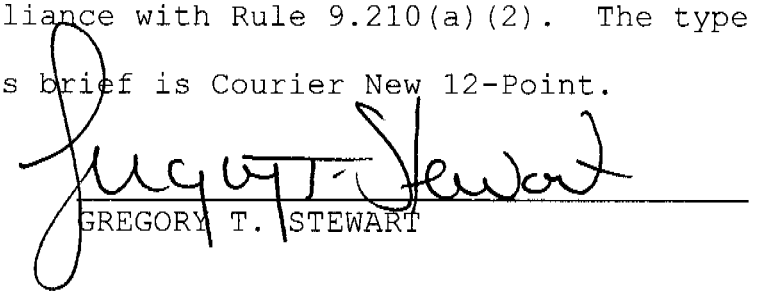

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