

IN THE SUPREME COURT
STATE OF FLORIDA
CASE NO. SC03-1912

IN RE: CONSTITUTIONALITY OF HOUSE JOINT RESOLUTION 25E

BRIEF OF THE
FLORIDA HOUSE OF REPRESENTATIVES and FLORIDA SENATE
AS PROPONENTS OF HOUSE JOINT RESOLUTION 25E

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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 validity of House Joint Resolution 25E ("HJR 25E"), which alters three Representative Districts in the Plan previously approved by this Court.

In compliance with this Court's scheduling order entered on November 6, 2003, the Florida House of Representatives and the Florida Senate hereby submit this brief in support of the validity of HJR 25E, which continues to meet the equal protection standard of one-person, one-vote and the state constitutional requirement of contiguity. Specifically, the House respectfully requests that this Court grant the Petition filed by the Florida Attorney General, seeking a declaratory judgment as to the validity of Districts 76, 101, and 112.¹

II. STATEMENT OF THE FACTS

On March 22, 2002, the Florida Legislature enacted a House redistricting plan, HJR 1987. On April 8, 2002, the Florida Attorney General filed HJR 1987 with this Court and sought declaratory judgment, as required by the Florida Constitution, Article III, Section 16(c). This Court, in its limited review, approved the plan contained in HJR 1987 on May 3, 2002. See In re Constitutionality of House Joint Resolution 1987, 817 So. 2d 819 (Fla. 2002). In approving the plan, this Court found that

¹The full text of House Joint Resolution 25E can be found in the Appendix submitted with the Attorney General's Petition.

HJR 1987 satisfied the two principles to be addressed by the Court: the equal protection requirement of one-person, one-vote and the geographic requirement of contiguity.

Thereafter, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, HJR 1987 was submitted to the Department of Justice for preclearance. The Department did not interpose any objection to the Senate plan nor 119 of the districts in the House plan in HJR 1987. The Department did enter an objection to House District 101 and thus refused to preclear the 2002 redistricting plan for the House.

In response to the objection from the Department, Tom Feeney, as Speaker of the House of Representatives and on behalf of the House, filed, on July 2, 2002, a Motion for Emergency Relief in the case of Martinez v. Bush, 234 F.Supp.2d 1275 (S.D. Fla. 2002). See Motion for Emergency Relief (copy attached as Exhibit A). This motion contained an attached Interim Plan, proposed for carrying out the upcoming 2002 elections.²

On July 9, 2002, the Southern District court issued an order granting Speaker Feeney's Motion and adopting H406H020 as the Interim House plan, because it resolved the Department's limited objection, "affects only three districts and leaves intact those other districts which were part of the state house plan originally enacted by the legislature." See Order Granting Speaker's Motion for Emergency Relief and Enacting Interim Remedial State House Plan at p.2 (copy attached as Exhibit B).

² The Motion was served on and invited assistance from the Department of Justice in the Southern District's analysis of the Interim plan, and the Department was represented in the hearing conducted on the Motion.

Based on this finding, the federal court ordered the Secretary of State to "conduct the 2002 elections for the state house under the interim remedial plan enacted by the court." See Order Granting Speaker's Motion, supra, at p.3. On December 3, 2002, after a lengthy trial in the Martinez case, the court issued its opinion memorializing its order of July 2, 2002, finding the 2002 reapportionment plans did not violate state and federal law. See Martinez, 234 F. Supp.2d at 1279-80, 1348.

On October 20, 2003, the Florida Legislature convened in a Special Session. During the Special Session, the Legislature considered the adoption of the Interim plan ordered by the Martinez court. On October 21, 2003 the House passed HJR 25E, and the same was then passed on October 24, 2003 by the Senate.

III. STANDARD OF REVIEW

This Court's jurisdiction over the instant proceeding stems from its original jurisdiction under Article III, Section 16 of the Florida Constitution and this Court's interpretation thereof in In re Constitutionality of House Joint Resolution 1987.

Article III, Section 16(c) provides:

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.

As found by this Court in In re Constitutionality of House Joint Resolution 1987, 817 So. 2d at 824, this Court's review, pursuant to Article III, Section 16(c), consists of examination of the apportionment plan's "adherence to the one-person, one vote constitutional requirement and the state constitutional

requirement that the districts contain contiguous, overlapping, or identical territory." Id.³ This Court has further recognized that a "joint resolution of apportionment identified in article III, section 16, Florida Constitution, upon passage is presumptively valid." Id. at 825.

The Representatives of this State, elected under the very plan now embodied in HJR 25E, voted to enact the court-ordered Interim plan as the permanent redistricting plan for the Florida House of Representatives. Therefore, in accordance with the Florida Constitution, this Court should now undertake a review of HJR 25E to determine whether the plan satisfies principles of one-person, one-vote and is contiguous.

IV. SUMMARY OF THE ARGUMENT

Since this Court's thirty-day review of HJR 25E under Article III, Section 16(c) of the Florida Constitution is limited to the plan's facial validity, this brief will only focus on the issues reviewed by this Court in In re Constitutionality of House Joint Resolution 1987, where the Court previously found the substantially similar HJR 1987 to be a valid apportionment plan. The first issue is the plan's constitutional validity under the equal protection standard of one-person, one-vote. The second issue involves the plan's compliance with the state constitutional requirement that legislative districts contain contiguous, overlapping or identical territory.

³This Court also expressly recognized in In re Constitutionality of House Joint Resolution 1987, 817 So.2d at 825, that other fact-based claims cannot be reviewed within the confines of Article III, Section 16.

The redistricting plan for the House of Representatives, HJR 25E, is facially valid, just as it was for HJR 1987. Because HJR 25E is nearly identical to HJR 1987, except for changes made to Districts 76, 101 and 112, this Court need only review these changes to reach its determination. The minimal change to HJR 1987 does not alter this Court's basis for approving the plan previously, thus this Court should reach the same conclusions as to HJR 25E.

V. ARGUMENT

A. HJR 25E Satisfies the Equal Protection Standard of One-Person, One-Vote

As this Court previously concluded with regards to Florida's Representative Districts, HJR 25E complies with the equal protection standard of one-person, one-vote. See In re Constitutionality of House Joint Resolution 1987, 817 So. 2d at 827. The Equal Protection Clause requires that a legislative redistricting plan construct districts "as nearly of equal population as is practicable." Id. at 826. As this Court affirmed in In re Senate Joint Resolution 2G, 597 So. 2d 276, 278 (Fla. 1992) (citing Reynolds v. Sims, 377 U.S. 533 (1964)), 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."

Pursuant to the 2000 census, Florida's official population

for purposes of this review is 15,982,378.⁴ HJR 25E apportions the House into 120 districts. See Statewide Map of HJR 25E (copy attached as Exhibit C). Consequently, the ideal population per House District is 133,186. In both HJR 1987 and HJR 25E, the most populous House District is District 98, with a population of 135,043 and a deviation of 1.39%.

Also in both HJR 1987 and HJR 25E, the least populous House District is District 32, with a population of 131,310 and a deviation of 1.4%. Therefore, the maximum deviation according to percentages between the most and least populous districts is 2.79% and is the exact deviation that this Court approved previously.⁵ See Statewide Districts Statistics (copy attached as Exhibit D).

More importantly, this Court concluded that the deviation presented in HJR 1987, and now in HJR 25E, falls under ten percent and within the category of constitutionally valid minor deviations. See In re Constitutionality of House Joint Resolution 1987 at 827; see also Brown v. Thomson, 462 U.S. 835, 842 (1983). Thus, HJR 25E continues to "achieve[] a mathematical preciseness in the districts that complies with the equal protection requirements of both the Florida and United States Constitutions." In re Constitutionality of House Joint Resolution 1987 at 827.

⁴ As previously noted by the Court, the evaluation of the plan should be performed using the population figures on which the Legislature based its reapportionment plan. See In re House Joint Resolution 1987 at 825, fn. 4.

⁵ The total district population of District 76 in HJR 25E is 132,709; District 101 is 133,642; and District 112 is 131,626.

B. The Districts in HJR 25E Contain Contiguous, Overlapping, or Identical Territory

Article III, § 16(a), of the Florida Constitution, requires that state legislative districts contain either contiguous, overlapping or identical territory. This Court in In re Constitutionality of Senate Joint Resolution 2G, 597 So. 2d at 279 (citing In re Apportionment Law, Senate Joint Resolution 1E, 414 So. 2d 1040, 1051 (Fla. 1982)), defined contiguous as being "in actual contact: touching along a boundary or at a point."

A contiguous district has also been defined as one where a person "can go from any point within the district to any other point without leaving the district, [although] such definition does not impose a requirement of a paved, dry road connecting all parts of a district." In re Constitutionality of House Joint Resolution 1987, 817 So. 2d at 828. This Court also found that "[c]ontiguity does not require convenience and ease of travel, or travel by terrestrial rather than marine forms of transportation." Id.

When this Court previously addressed HJR 1987, it reached the conclusion that all of the districts of HJR 1987 satisfied the Article III, § 16(a), requirement of "contiguous, overlapping or identical territory." In re Constitutionality of House Joint Resolution 1987, 817 So. 2d at 828. The changes approved of by the Southern District to Districts 76, 101 and 112 do not compromise their contiguous nature. See Comparison Map of Districts 76, 101, and 112 (copy attached as Exhibit E). Because HJR 25E does not affect the contiguity of the

Representative Districts, this Court should again find all Representative Districts in compliance with the Article III, Section 16(a) requirement.

VI. CONCLUSION

The Florida House of Representatives and the Florida Senate submit this Brief as proponents of the validity of HJR 25E and the Florida Attorney General's Petition for Declaratory Judgment. In its review some eighteen months ago, this Court found the substantially similar HJR 1987 to meet those fundamental standards under the Equal Protection Clause and the Florida Constitution. Because the requirements of one-person, one-vote and geographic contiguity continue to be met in the plan submitted by the Florida Attorney General, the Florida House of Representatives and the Florida Senate respectfully request that this Court grant the Petition and declare HJR 25E valid.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of the Florida House of Representatives as Proponents of House Joint Resolution 25E was furnished by U.S. Mail this ___ day of November, 2003 to the following parties:

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

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