

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-

IN RE: Constitutionality of
House Joint Resolution 25E.

PETITION FOR DECLARATORY JUDGMENT

Pursuant to Article III, Section 16(c), Florida Constitution, Charles J. Crist, Jr., Attorney General of the State of Florida, petitions this Court for a declaratory judgment determining the validity of House Joint Resolution 25E, which apportions Districts 76, 101 and 112 of the Florida House of Representatives.¹ In support of this petition, the Attorney General alleges:

1. This Court has jurisdiction to address the constitutionality of House Joint Resolution 25E pursuant to the provisions of Article III, Section 16, Florida Constitution (1968), and its continuing jurisdiction to review legislative redistricting plans adopted after objections by the Department of Justice under its preclearance authority of Section 5 of the Voting Rights Act of 1965 as amended. 42 U. S. C. Section 1973(c). See In re Constitutionality of Senate Joint Resolution 2G, Special

¹House Joint Resolution 25 E contains the boundary lines for all 120 House Districts. However, only Districts 76, 101 and 112 are affected by this joint resolution.

Apportionment Session 1992 Resolution, 601 So. 2d 543 (Fla. 1992).

2. The Attorney General, as the state's chief legal officer, has standing to bring this petition pursuant to Article III, Section 16 and Article IV, Section 4(c), Florida Constitution, and Section 16.01, Florida Statutes.

3. The history of the current legislative redistricting plan is as follows. On March 22, 2002, the Legislature passed House Joint Resolution 1987, which apportioned the Florida Senate and House of Representatives based on population figures established by the 2000 census. On April 8, 2002, the Attorney General filed his petition for a declaratory judgment, and this Court invited all those interested to file briefs and comments directed to the joint resolution. On May 3, 2002, this Court determined that the plan was valid under the equal protection requirements of one person, one vote, as well as the state constitutional geographic requirements for contiguity. In re Constitutionality of House Joint Resolution 1987, 817 So. 2d 819 (Fla. 2002). The plan was then submitted to the Department of Justice as required by Section 5 of the Voting Rights Act of 1965, as amended ("Section 5"), 42 U.S.C. Section 1973(c).

4. The Department of Justice did not interpose any objection to the Florida Senate plan, but objected to one House District, HD 101, out of the 120 districts in the 2002 redistricting plan for the Florida House of Representatives. The basis for the

Department of Justice's objection was that the plan failed to include certain Hispanic residents of Collier County in a majority-Hispanic district.

5. In addition to this single objection, House Joint Resolution 1987 was the subject of voting rights litigation in federal court. As is reflected in Martinez v. Bush, 234 F. Supp. 2d 1275, 1288 (S. D. Fla. 2002), the Department of Justice, on July 1, 2002, informed that proposed House District 101 was retrogressive under Section 5's analytical framework. Because of the Department's objection, the court held an emergency evidentiary hearing and adopted as an interim plan the remedial recommendation submitted by then-Speaker of the House Tom Feeney, concluding that the interim plan "solve(d) the Section 5 problem." See July 9, 2002 Order which appears in Composite Exhibit D. The court made clear, however, that the interim plan was to serve only for the 2002 election of members of the Florida Legislature. Id. The Martinez court ultimately rejected all of the plaintiffs' constitutional and statutory challenges to Florida's House, Senate and Congressional redistricting plans.

6. On October 24, 2003, during a special legislative session, the Legislature adopted House Joint Resolution 25E on the subject of apportionment, specifically directed to the Department of Justice's objection. A true and correct copy of the Joint Resolution is attached as Exhibit A. This Joint Resolution creates the three affected House districts in a manner that renders the entire plan identical to the interim plan

adopted by the three-judge panel in Martinez. Under the Martinez adoption and the House Joint Resolution, Hispanic residents of Collier County are now included in a majority-Hispanic district, District 112. Under the standard announced in Georgia v. Ashcroft, ____ U. S.____, 123 S. Ct. 2498, 156 L. Ed. 2d 428 (2003), the plan, viewed in its entirety, is not retrogressive for purposes of Section 5 of the Voting Rights Act.

7. The legal description of the three affected House districts appear on pages 156-157 for House District 76; 214-218 for House District 101; and 229-234 for House District 112. See Exhibit A. The attached maps, marked as Exhibit B, are accurate depictions of the boundary lines for the three affected districts as described in the Joint Resolution. The statistical data for each of the three House Districts created by House Joint Resolution 25 E, compared with the previous districts under House Joint Resolution 1987, accompany this petition as Exhibit C. Composite Exhibit D comprises the Department of Justice's objection letter of July 1, 2002 directed to House District 101; the Motion for Emergency Relief filed in the Martinez case by then-Speaker Tom Feeney; and the Martinez court order granting the emergency relief and enacting the plan now embodied in House Joint Resolution 25 E as an interim remedial plan.

8. The scope of this Court's review in this proceeding is "extremely limited"

and should be confined to the same issues that the Court found appropriate for its consideration last year in In re Constitutionality of House Joint Resolution 1987, 817 So. 2d 819, 824 (Fla. 2002). Specifically, the Court should consider only whether the districting plan in House Joint Resolution 25 E satisfies the “one person, one vote” requirement of the United States and Florida Constitutions, and the contiguity requirement of the Florida Constitution. See *id.* at 825-27. Although the Attorney General believes the plan complies with Section 5 and remedies the Department of Justice’s objection, that issue is not before the Court. The Department of Justice will conduct the requisite Section 5 review when the State submits the plan for preclearance.

9. This Court has already found the 120 House districts in House Joint Resolution 1987 to be in compliance with the one person, one vote requirement, as well as the requirement for contiguity. In re Constitutionality of House Joint Resolution 1987, 817 So. 2d 819 (Fla. 2002). The changes in population to House Joint Resolution 1987 in Districts 76, 101 and 112 as they appear in House Joint Resolution 25 E do not affect the one person, one vote requirement because the minimal population deviations are well within constitutionally accepted norms. Moreover, each of the three affected districts meets the contiguity requirement of the Florida Constitution. Therefore, this Court’s decision in In re Constitutionality of House Joint

Resolution, supra, remains applicable to and binding on these points.

10. The Attorney General, consistent with the requirements imposed upon him as described above, hereby submits House Joint Resolution 25E as the Florida Legislature's plan to cure the objection of the Department of Justice and to make this plan govern legislative elections until such time as the next decennial apportionment plan is duly adopted pursuant to Article III, Section 16, Florida Constitution.

11. The Attorney General requests that this Court determine that House Joint Resolution 25 E is a valid plan of apportionment.

DATED this _____ day of _____, 2003 at Tallahassee, Florida.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL
Florida Bar No. 0362190
The Capitol, Plaza Level
Tallahassee, Florida 32399-1050

L. Clayton Roberts
Executive Deputy Attorney General
Florida Bar No. 0044709

George L. Waas
Senior Assistant Attorney General
Florida Bar No. 0129967

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to The Honorable Johnnie Byrd, Speaker of the Florida House of Representatives, and The Honorable James E. "Jim" King, Jr., President of the Florida Senate, at their offices in The Capitol, Tallahassee, Florida, on the ____ day of November, 2003.

L. Clayton Roberts