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SENATE REAPPORTIONMENT COMMITTEE HEARING
WEDNESDAY, MARCH 14, 2012
3:30 P.M.

Transcribed by:
CLARA C. ROTRUCK
Court Reporter

1 T A P E D P R O C E E D I N G S

2 SENATOR GAETZ: Members of the Senate
3 Reapportionment Committee, please take your
4 seats so that we can be about our father's
5 business, and those who are here as visitors,
6 please take your seats as well.

7 The Senate Committee on Reapportionment is
8 called to order. The administrative assistant,
9 please call the roll.

10 THE CLERK: Senator Gaetz?

11 SENATOR GAETZ: Here.

12 THE CLERK: Senator Margolis?

13 SENATOR MARGOLIS: Here.

14 THE CLERK: Senator Altman?

15 SENATOR ALTMAN: Here.

16 THE CLERK: Senator Benacquisto?

17 SENATOR BENACQUISTO: Here.

18 THE CLERK: Senator Braynon?

19 SENATOR BRAYNON: Here.

20 THE CLERK: Senator Bullard?

21 Senator Dean?

22 SENATOR DEAN: Here.

23 THE CLERK: Senator Detert?

24 SENATOR DETERT: Here.

25 THE CLERK: Senator Diaz de la Portilla?

1 Senator Evers?
2 SENATOR EVERS: Here.
3 THE CLERK: Senator Flores?
4 Senator Garcia?
5 SENATOR GARCIA: Here.
6 THE CLERK: Senator Gardiner?
7 SENATOR GARDINER: Here.
8 THE CLERK: Senator Gibson?
9 SENATOR GIBSON: Here.
10 THE CLERK: Senator Hays?
11 Senator Joyner?
12 SENATOR JOYNER: Here.
13 THE CLERK: Senator Latvala?
14 SENATOR LATVALA: Here.
15 THE CLERK: Senator Lynn?
16 SENATOR LYNN: Here.
17 THE CLERK: Senator Montford?
18 SENATOR MONTFORD: Here.
19 THE CLERK: Senator Negrón?
20 SENATOR NEGRÓN: Here.
21 THE CLERK: Senator Rich?
22 SENATOR RICH: Here.
23 THE CLERK: Senator Sachs?
24 SENATOR SACHS: Here.
25 THE CLERK: Senator Simmons?

1 SENATOR SIMMONS: Here.

2 THE CLERK: Senator Siplin?

3 SENATOR SIPLIN: Here.

4 THE CLERK: Senator Smith?

5 SENATOR SMITH: Here.

6 THE CLERK: Senator Sobel?

7 SENATOR SOBEL: Here.

8 THE CLERK: Senator Storms?

9 SENATOR STORMS: Here.

10 THE CLERK: Senator Thrasher?

11 SENATOR THRASHER: Here.

12 THE CLERK: Senator Wise?

13 SENATOR WISE: Here.

14 THE CLERK: Quorum is present.

15 SENATOR GAETZ: Thank you very much, and
16 good afternoon, Senators. It seems like we
17 just saw each other, didn't we, on the floor,
18 like a couple of days ago? Good afternoon, and
19 I would like to thank you for being with us
20 today, and I would also like to welcome on
21 behalf of the Committee our two newest members,
22 Leader Smith and Senator Wise. So thank you
23 both for being here, and we appreciate your
24 contribution to the Committee.

25 Senator Storms on the floor made several

1 recommendations as to communication with the
2 public, and I know that our professional staff
3 was paying close attention, and I would ask you
4 on behalf of the Committee to effectuate the
5 representations that I made to Senator Storms
6 on the floor.

7 The purpose of our meeting today is to
8 hear a professional staff presentation about
9 the Supreme Court opinion which this special
10 session responds to. The presentation will
11 cover where we are in the process and what the
12 calendar looks like moving forward. We will
13 also cover the Court's interpretation of Tier 1
14 and Tier 2 standards in the Constitution, and
15 the Court's conclusions in the majority opinion
16 regarding the Senate plan and the districts
17 which the Court invalidated.

18 Are there any questions about our business
19 for this day? If not, I will turn to Mr.
20 Guthrie and ask him to begin our presentation.

21 Mr. Guthrie, you are recognized.

22 MR. GUTHRIE: Thank you, Chairman Gaetz,
23 and welcome to the Extraordinary Apportionment
24 Session.

25 You sit where nobody has ever sat before.

1 Since the Constitution was adopted by the
2 people of Florida in 1968, we have had Article
3 III, Section 16, which provides the process for
4 adoption and review of redistricting plans.
5 Every time before we have followed what is the
6 normal course of adopting a resolution at the
7 regular session: The Attorney General
8 petitioning the Supreme Court, the Supreme
9 Court entering its judgment that the plans were
10 valid, and the Joint Resolution then being
11 binding on all citizens of the state.

12 This time, for the first time ever, the --
13 we are taking a detour. The Supreme Court,
14 during its initial review, determined that
15 certain elements of the Senate plan were not
16 valid. So on the chutes and ladders diagram
17 that we looked at several times early on, we
18 are taking this detour. And as we all know,
19 within five days, the Governor has reconvened
20 the Legislature in a 15-day extraordinary
21 session. It is our mandatory and sole duty
22 during this session to come up with a joint
23 resolution conforming with the judgment of the
24 Court.

25 If the Legislature is successful in

1 adopting a -- such a joint resolution
2 conforming with the judgment of the Court, then
3 the joint resolution goes back to the Supreme
4 Court through the Attorney General, and within
5 30 days, again the Supreme Court will render
6 its opinion as to whether or not the new
7 resolution adopted by the Florida Legislature
8 is valid.

9 If the Supreme Court determines that it is
10 valid, then the new plans will take effect
11 subject to pre-clearance by the U.S. Department
12 of Justice. If the Supreme Court determines
13 that the joint resolution again is invalid,
14 then the job falls to the Supreme Court to come
15 up with a remedial plan for Senate districts in
16 the state.

17 If the Legislature fails to adopt a joint
18 resolution of apportionment during the 15-day
19 regular -- extraordinary session, then within
20 15 days, the Attorney General petitions the
21 Court to make the apportionment. So that is
22 where we are in terms of the process that is
23 set out in the Florida Constitution.

24 Let's put that schedule on a calendar. So
25 we had the regular session starting

1 January 10th. The Legislature, within 31 days,
2 was able to complete its work and put the joint
3 resolution before the Supreme Court for its
4 initial review. The Supreme Court took 29 of
5 the 30 days allotted to the Court by the
6 Constitution to make its review, and we heard
7 back last Friday that the Supreme Court found
8 the House plans to be valid and found certain
9 elements of the Senate plan to be invalid.

10 So we find ourselves today at the first
11 day of a 15-day extraordinary session that will
12 end on the 28th of March. If -- and after that
13 adjournment with the adoption of a new joint
14 resolution, the Attorney General has 15 days to
15 Petition the Supreme Court to review the second
16 resolution of apportionment. That time will
17 run April 12th. The Supreme Court again has 30
18 days to determine whether the districts are
19 valid, and the -- so that gets us all the way
20 to the second week in May of 2012, and then the
21 U.S. Justice Department still must pre-clear
22 the plans that come out of the state process.
23 So rather than the United States Department of
24 Justice having the 60 days that they prescribe
25 by rule is required for pre-clearance review,

1 there would only be 19 days left before
2 candidate qualifying starts on June 4th. So it
3 is a very, very tight and compressed schedule.
4 It points to us the importance of the
5 responsible action that the Florida Legislature
6 took in starting its session so early, in
7 moving with unprecedented speed to pass a joint
8 resolution out of the Senate, and I think we
9 have put ourselves in a situation where it
10 still will be possible for us to conduct
11 orderly elections for 2012.

12 SENATOR GAETZ: And, Mr. Guthrie, if we
13 could just stop there. Are there questions
14 about the schedule? Questions about the
15 schedule or about what Mr. Guthrie has just
16 explained? If not, why don't you proceed, sir.

17 MR. GUTHRIE: As we have at almost all of
18 our meetings, we start and return again to the
19 constitutional standards for redistricting.
20 Article III, Section 16, provides for Senate
21 Districts 30 to 40 that are contiguous, and the
22 new Article III, Section 21, provides that --
23 the Tier 1 and Tier 2 standards that we are
24 going to be going over in greater detail. We
25 are going to look at those standards through

1 the lens that the Supreme Court provided us
2 through the conclusions they enunciated in
3 their opinion.

4 Let's look at those standards. The first
5 of those is no plan or district shall be drawn
6 with the intent to favor a party or an
7 incumbent. What the Supreme Court concluded in
8 its opinion is that the effects of the plan,
9 the shape of district lines and the
10 demographics of an area are all factors that
11 serve as objective indicators of intent. So
12 they believe that you can look at the map and
13 statistics about the map, and from that
14 determine what the intent of the map-drawer
15 was. Lack of compactness, contiguity or
16 population equality can serve as indicia of
17 improper intent. So that is -- that is the
18 conclusions of the Supreme Court regarding the
19 first of the Tier 1 standards.

20 The second of the Tier 1 standards is
21 providing minority voting opportunities. The
22 Supreme Court concluded that the Legislature
23 cannot eliminate majority-minority districts or
24 weaken other historically performing minority
25 districts where doing so would actually

1 diminish a minority group's ability to elect
2 its preferred candidates. Some opponents to
3 the Legislature's plan alleged that the plan
4 was retrogressive, that it caused a
5 diminishment of minority voting opportunities.
6 The Supreme Court did not in its facial review
7 agree with those objections. And they also --
8 the opponents also alleged that certain of our
9 districts were packed, and the Supreme Court
10 did not agree with that conclusion either.

11 The Supreme Court did add, though, that
12 functional analysis of these districts to
13 determine whether or not minority candidates
14 are going to be successful requires that you
15 have political data and that you consider how
16 the minority group has voted in the past. So
17 they did make a finding that there is a desire
18 for these functional analyses using political
19 data.

20 SENATOR SIPLIN: Mr. Chairman?

21 SENATOR GAETZ: Senator Siplin for a
22 question.

23 SENATOR SIPLIN: Yes, sir. What does
24 functional analysis mean?

25 MR. GUTHRIE: Functional analysis -- and

1 we can turn to the Court's opinion, and it is
2 particularly on page 63 where Justice Pariente
3 sort of spells out what she is thinking on
4 that, but it is basically looking at the
5 registered -- registration figures for minority
6 voters in the district and how elections turn
7 out in those districts. So the combination of
8 looking at registration and how elections are
9 decided, not simply using the voting age
10 population of districts to stand for whether
11 minority candidates will have opportunities or
12 not.

13 SENATOR GAETZ: Senator Sobel.

14 SENATOR SOBEL: Thank you, Mr. Chair.

15 In breaking out Tier 1 standards, are they
16 equal, intent to favor a party or incumbent,
17 and the other Tier 1 standard, minority voting
18 opportunities, are they equal in weight or
19 priority according to the Court, or is the main
20 standard intent to favor party or incumbent?

21 MR. GUTHRIE: Yes, subsection c of the new
22 constitutional amendment says that the --
23 within a -- within subsection a and within
24 subsection b, so within Tier 1, the standards
25 are of equal weight. Within Tier 2, the

1 standards are of equal weight, but Tier 2
2 standards are secondary to your Tier 1
3 standards.

4 SENATOR SOBEL: Thank you.

5 SENATOR GAETZ: Leader Rich.

6 SENATOR RICH: Thank you, Mr. Chair.

7 SENATOR GAETZ: Leader, could you pull
8 your mike a little closer, please, ma'am?

9 SENATOR RICH: In light of the question
10 about functional analysis and in light of what
11 is in the actual opinion talking about the
12 election history and voting patterns within the
13 jurisdiction, voter registration and turnout
14 information and other similar information are
15 very important to an assessment of the actual
16 effect of a voting district. So I guess my
17 question is, is there a plan at this point,
18 given what is in this opinion, to do some
19 functional analysis test such as the House did,
20 and if we are planning that, what -- you know,
21 what would it look like?

22 SENATOR GAETZ: Mr. Guthrie.

23 SENATOR RICH: Would it be the same as the
24 one that the House did, or something else?

25 MR. GUTHRIE: We are intending to do a

1 functional analysis similar to what the House
2 did, and I -- you can presume that it will look
3 similar to that analysis and kind of follow the
4 guidance provided by the Supreme Court in the
5 passage you read as to the relevant factors.

6 SENATOR RICH: Okay. Thank you.

7 SENATOR GAETZ: Other questions or
8 comments at this point? If not, Mr. Guthrie,
9 please continue.

10 MR. GUTHRIE: Okay. The third of the Tier
11 1 standards is contiguity. The Supreme Court
12 reaffirmed its decision from multiple decades
13 previous that a district is not contiguous if
14 part of the district is isolated from the rest
15 of the district by territory of another
16 district. So if it is in two pieces, then it
17 is not contiguous, or if two parts of the
18 district touch only at a right angle. If they
19 just meet at a point, but don't have a land or
20 water corridor between the two pieces, that
21 would not be contiguous. And there really were
22 no issues on review about contiguity.
23 Everybody agreed that the plans being
24 considered were contiguous in terms of that
25 definition.

1 So turning to the Tier 2 standards, among
2 those is that districts shall be as near in
3 population as practicable. What the Supreme
4 Court concluded is that the equal population
5 requirement must give way to Tier 1 standards
6 and must be balanced with other Tier 2
7 considerations. What that means is that the --
8 contrary to the precise mathematical equality
9 that you achieved with your congressional plan
10 and that some were arguing ought to also apply
11 to Senate and House districts, the Supreme
12 Court found that deviations for state
13 legislative districts were appropriate and were
14 constitutional.

15 The Court did provide guidance, though,
16 that any deviation from the goal of
17 mathematical precision must be based upon
18 compliance with other constitutional standards.
19 So if it is necessary to have deviations, and
20 the House plan had deviations almost as high as
21 four percent total deviation, that is
22 permissible if it is being done for the purpose
23 of keeping counties whole, keeping cities
24 whole, following political and geographic
25 boundaries, et cetera.

1 Okay. Tier 2 standards, the second of
2 those is compactness. The Court determined in
3 its conclusions that compactness means
4 geographical, not functional compactness. We
5 had some discussions of that term in this
6 meeting. The Senate took a position that
7 functional compactness was what the
8 Constitution required. The Supreme Court
9 concluded that compactness means the shape
10 needs to be -- well, I will go into the second
11 bullet here. The shape needs to be logically
12 drawn and cannot be -- and districts that are
13 bizarrely-shaped should be avoided, unless
14 necessary for purposes of achieving a Tier 1
15 objective.

16 And then finally, that compactness can be
17 evaluated both visually and by employing
18 standard mathematical measurements. So the
19 Court, in its opinion, made reference to Reock
20 scores and to convex hull scores. In some of
21 the briefs and other materials that were
22 submitted to the Court, parties also talked
23 about a Polsby-Popper ratio. What those three
24 mathematical formula basically relate to --
25 Reock is you fit the district inside of a

1 circle, okay. Whatever shape the district is,
2 you make it fit into the smallest circle that
3 will contain that district, and then you take
4 the ratio of the area of the district to the
5 area of the circle, and the higher the number,
6 the more compact the district is presumed by
7 that measure to be. Convex hull is similar,
8 except instead of putting a circle around the
9 district, what you do is you put a rubber band
10 around the district. So you stretch a rubber
11 band around the outside of the district, you
12 determine the area of that shape and you
13 compare it to the area of the district, and
14 that, again, gives you a number between zero
15 and one. The closer to one it is, the higher
16 your compactness. And Polsby-Popper is the
17 third measure of that type. What it does is
18 takes the perimeter of the district, it -- so
19 you measure the boundary of the district all
20 the way around, you expand that out to make a
21 circle and then you determine the area of the
22 circle -- that circle as the divider and the
23 area of the district. So they are very similar
24 measures of geometric compactness, and the
25 Court said that compactness can be evaluated

1 both visually, simply looking at the district,
2 and by employing standard mathematical
3 measurements by which they met --

4 SENATOR GARDINER: Mr. Chair?

5 SENATOR GAETZ: Leader Gardiner for a
6 question, please.

7 SENATOR GARDINER: Sorry, Mr. Chairman, we
8 have a mechanical malfunction back here. But,
9 John, to the question of compactness, everybody
10 has a legal opinion as to what the Supreme
11 Court said, and for those of us that are not
12 attorneys, that is kind of dangerous, but there
13 are some people that have argued that
14 compactness has now been put essentially to a
15 Tier 1 level. So I am interested in your
16 opinion, also the attorney's opinion, regarding
17 compactness, but the other issue that has come
18 up is regarding the minority access seats, that
19 it would appear that the Supreme Court is
20 looking at not just the number of minorities,
21 but the political performance of those
22 minorities. And if that is the case, what
23 threshold do you have to hit in order to get
24 that political performance? So if you have a
25 minority access seat that's say 50 percent or

1 52 percent, if the Court is giving you some
2 flexibility, can you bring it down to 43 or
3 46 percent, but it is still going to perform at
4 the level -- have y'all and the attorneys
5 looked at compactness compared to minority
6 seats in that respect?

7 SENATOR GAETZ: Mr. Guthrie, and then we
8 may want to ask Mr. Bardos to comment as well.

9 MR. GUTHRIE: Yeah, I mean, my first
10 comment on that is I, too, am not a lawyer and
11 would seek legal counsel on questions of that
12 nature.

13 MR. BARDOS: On the first question of the
14 -- of compactness, I would not say that the
15 Court elevated it to a Tier 1 priority. I
16 think the Court recognized, as the language of
17 the Constitution provides, that it is a Tier 2
18 priority, but the Court did recognize that
19 there is an interaction between Tier 1 and Tier
20 2 priorities. So a district, for example, that
21 is less compact might be -- might be telling of
22 whether there was an intent to favor or
23 disfavor a political party or an incumbent. So
24 it serves as some indicator of whether there
25 was compliance with the Tier 1 requirements.

1 Similarly, there is an interaction between
2 the Tier 2 compactness requirement and the
3 minority protection provisions in the first
4 tier, so that if it is possible to comply
5 with both, then it is our duty to comply with
6 both. So simply serving a minority protection
7 provision in Tier 1 does not exempt compliance
8 from Tier 2 unless it is not possible to comply
9 with Tier 2 at the same time.

10 SENATOR GARDINER: But they -- and Mr.
11 Chairman, if I could follow up?

12 SENATOR GAETZ: Leader, please.

13 SENATOR GARDINER: But they allow for
14 political performance to be considered in
15 determining the minority access, is that
16 correct?

17 MR. BARDOS: Right, and I think that is a
18 separate issue. They do allow that; in fact,
19 they require it. It requires a functional
20 analysis, not simply an examination of the
21 voting age population. So the Court indicated
22 what measures it would find relevant to whether
23 minority districts perform and have the ability
24 to elect. So, for example, it looked at
25 election results in the gubernatorial elections

1 of 2010 and 2006, the presidential election in
2 2008, it looked at voter registration data, for
3 example, the democratic percentage of
4 registered voters or the percentage of
5 registered Democrats who are African-American
6 or the percentage of African-American
7 registered voters who are Democrats, and then
8 it also looked at turnout data, the percentage
9 of general election voters or primary election
10 voters who are Democrats or African-American,
11 or the percentage of voters who actually turned
12 out who are Democrats who are African-American.
13 So these different combinations of turnout
14 data, elections -- election results and voter
15 registration data were all necessary components
16 of the functional analysis in determining
17 compliance with the Tier 1 standards.

18 SENATOR GAETZ: Leader Smith and then
19 Senator Storms. Leader Smith.

20 SENATOR SMITH: Thank you. Going back to
21 the compactness over here, going back to the
22 definitions of compactness, you mentioned three
23 tests. I wasn't on the last committee, as you
24 know. Did you use any of those tests in the
25 past in the Senate plan, and also, will you use

1 any or all of those tests in your response to
2 the Court's decision?

3 SENATOR GAETZ: Mr. Guthrie.

4 MR. GUTHRIE: Thank you.

5 The Senate redistricting system in all of
6 the plans, all of the plans submitted to the
7 Senate, we enhanced the program mid-December.
8 By December 15th, we had this in place where
9 the -- all of the variables that you need for
10 calculating all of those measures that I just
11 discussed are available in the Senate
12 redistricting system and on the Senate website
13 for all of the plans submitted by the public or
14 considered by the Legislature, as they have
15 been since December 15th.

16 We did not include compactness measures
17 among the measures that were initially
18 submitted to the Supreme Court with the
19 Petition, but I expect that we will be
20 including such measures when we come back to
21 this Committee, you know, for consideration of
22 a proposed plan and when we submit the plan to
23 the Supreme Court.

24 SENATOR GAETZ: Leader Smith for
25 follow-up.

1 SENATOR SMITH: Of the three tests that
2 you mentioned, which one in particular, or will
3 it be a hybrid of the three that we will be
4 using?

5 MR. GUTHRIE: We will report the three
6 numbers, which are just ratios from zero to
7 one.

8 SENATOR SMITH: So with each -- I'm sorry,
9 Mr. Chair.

10 SENATOR GAETZ: Go ahead, Leader, please.

11 SENATOR SMITH: So with each district that
12 you come up with, in your reporting will be
13 this is their Reock score or this is the other
14 score, we will do that for each one of them?

15 MR. GUTHRIE: Yes.

16 SENATOR SMITH: Okay, thank you.

17 SENATOR GAETZ: Did that -- do you wish to
18 follow up, Leader?

19 Senator Storms, then Senator Gibson,
20 please. Senator Storms.

21 SENATOR STORMS: Well, I am trying to
22 understand the Court's analysis on compactness
23 and as it relates to minority access seats, so
24 as I would draft my -- if I were drafting a
25 flow chart of the Court's opinion -- I guess

1 this is directed at the attorney and legal
2 counsel for it. As I would draft my flow
3 chart, my first threshold that I would get over
4 would be is this a minority access seat -- if I
5 am not talking about just a non-minority access
6 seat, first I ask the question, is it a
7 minority access seat? Is it a Voting Rights
8 Act seat? If yes, then the next order of
9 business is to analyze it for compactness. It
10 seemed to me that the Court has analyzed it for
11 compactness first according to the software
12 that it used, that it purchased, and that
13 seemed to be the mathematical analysis of
14 compactness, and that is -- what we would call
15 the functional analysis. But after they met
16 that threshold, then the next thing that they
17 did was they pulled the map back and said,
18 okay, now, with that analysis, how does the
19 district look. And if the district looks -- we
20 call it geographical in this first bullet, but
21 if it looks bizarre or it is not shaped in a
22 compact form, then the Court said, can you
23 achieve more compactness visually,
24 geographically, by analyzing the performance of
25 that district. And so I just wondered if -- if

1 I have that understanding -- is that the
2 accurate understanding, and how are we pulling
3 these pieces together? What are -- what's the
4 order of thresholds that we should go through
5 in analyzing it if that is not accurate?

6 SENATOR GAETZ: Mr. Guthrie.

7 MR. GUTHRIE: This is all complicated
8 stuff, how these standards interrelate to one
9 another. The answer that Mr. Bardos gave a few
10 minutes ago was -- touched on the very point
11 that you are raising, how do we reconcile these
12 standards. Mr. Bardos, would you want to take
13 another shot at --

14 MR. BARDOS: I think if we are looking at
15 the diminishment standard in Tier 1, the first
16 question is whether, as the Court stated, it is
17 either a majority-minority district or a
18 historically performing minority district, and
19 if it is such a district, then it must remain
20 such a district; otherwise, it would be
21 diminishment. But the Court did also look at
22 the interaction between the Tier 1 and Tier 2
23 standards and assessed whether it is possible
24 to preserve the district without diminishment
25 and at the same time comply with the Tier 2

1 standard. So Tier 1 still comes first, but
2 there is definitely an interaction between the
3 two tiers.

4 SENATOR STORMS: What -- Mr. Chair?

5 SENATOR GAETZ: Senator Storms to follow
6 up.

7 SENATOR STORMS: Well, so then -- so that
8 my question really goes to what happens after
9 we deal with how we achieve compactness? It
10 seems to me that the Court said first you look
11 at the functional analysis, you look at the
12 mathematical equation, and then after doing
13 that, you take a look and see if the tools that
14 you used to achieve a compact district actually
15 produced a visually compact district, or did it
16 produce something that was not
17 geographically/visually compact. And if your
18 usage of the functional compactness produced
19 something that is unshapely or doesn't appear
20 by visually looking at it to be compact, then
21 you have to use other tools. Is that how we
22 should approach it, and is that an accurate
23 analysis?

24 SENATOR GAETZ: Mr. Bardos.

25 MR. BARDOS: I would just make the

1 distinction that the functional analysis
2 relates to whether the district has the ability
3 to perform for minority voters, and then
4 separately we have the compactness analysis,
5 which relies primarily on a visual inspection
6 and then secondarily on mathematical measures.
7 And so both of those work in harmony with one
8 another. I don't think there is a -- obviously
9 the diminishment standard has constitutional
10 priority, but then the visual inspection and
11 the mathematical measures come in aid of that.
12 But the functional analysis is directed at the
13 separate question of minority voting rights,
14 and they both must be satisfied if they can be
15 both be satisfied. I don't know if that
16 answers the question.

17 SENATOR GAETZ: Senator Storms, are you --

18 SENATOR STORMS: The only thing that I
19 would add to that, Mr. Chair -- and I do think
20 that this issue is important. The only thing
21 that I would add to that is I don't think that
22 the Court first started with a visual analysis
23 of the compactness. It seemed to me in their
24 opinion that they started -- that they looked
25 at the functional analysis of it, of what we

1 tried to do from compactness, but then they
2 came to looking at it and saying, "But you used
3 all of this, but it did not produce a visually
4 compact or geographically compact."

5 So it would seem to us we would still be
6 permitted -- it would seem to me that we would
7 still be able to be permitted to use functional
8 tools first without just going to say, "Okay,
9 well, first, we have to draw a square, so first
10 draw a square, and then let's plug in all the
11 functional tools." I don't think that the
12 Court said that. I think what the Court said
13 is, "You can use your functional tools, but
14 just make sure at the end when you pull back
15 the map, that it makes something that is --
16 that is visually compact, and if it doesn't,
17 then you have to go back and re-tool."

18 So I just am trying to stress that we
19 don't have to start first with compactness,
20 with geographical compactness, because if that
21 is the case, all we need to do is draw grids on
22 the map, and that can't be what the Court was
23 saying.

24 SENATOR GAETZ: Mr. Guthrie.

25 MR. GUTHRIE: Yeah, my understanding,

1 Senator Storms, is that you and the Court are
2 providing us the same direction there.
3 Compactness is a standard that is -- it is Tier
4 2. It -- the Court allows -- let's go to the
5 next slide. We are looking at political and
6 geographical boundaries. In the third bullet
7 here, the Court makes a conclusion that
8 following a municipal boundary will not
9 necessarily violate compactness. So making all
10 of the standards work together is going to keep
11 you from coming up with a plan that is nothing
12 but circles.

13 SENATOR GAETZ: Let's go to Senator Gibson
14 and then Senator Braynon. Senator Gibson.

15 SENATOR GIBSON: Thank you, Mr. Chair.

16 I have a two-part question, I think. When
17 you talk about trying to make the -- I don't
18 know, get the circumference of the circle or --
19 from the district, are you speaking in terms of
20 the way the district currently exists that you
21 do your functional analysis to get the shapes?
22 And the second part of that is, since minority
23 voting opportunities is part of Tier 1, do you
24 start there and then take your functional
25 analysis to other areas around that particular

1 district? Where is your starting point?

2 MR. GUTHRIE: Yes, the --

3 SENATOR GAETZ: Mr. Guthrie.

4 MR. GUTHRIE: And Mr. Bardos is trying to
5 help us make a distinction between functional
6 analysis, which relates to looking at the
7 election results and turnout numbers by race
8 and things beyond voting age population for
9 determining opportunities of minority voters in
10 an area to elect a candidate of their own
11 choosing, that is what the Court refers to as
12 functional analysis, and these quantitative
13 geometric compactness measures which are used
14 to -- as a guide for determining whether or not
15 shapes are compact. Those can be applied both
16 to the benchmark districts, the districts that
17 are currently in place, and to the proposed new
18 districts. So for any of these measures, we
19 can run them both against the benchmark plan,
20 alternative plans and the plan that the
21 Legislature ultimately adopts.

22 SENATOR GAETZ: Senator, did you want to
23 follow up, or is that satisfactory for the
24 moment?

25 SENATOR GIBSON: May I ask a follow-up?

1 SENATOR GAETZ: Of course you may.

2 SENATOR GIBSON: Thank you. Thank you,
3 Mr. Chair, and I know it is very complicated, I
4 was not really good in math in school, but if
5 you already have districts, as we all do, then
6 why wouldn't you start with what exists to
7 apply the -- all of the formulas that have to
8 be applied to then come up with what the new
9 district lines should look like sort of?

10 SENATOR GAETZ: Well, Mr. Guthrie, I would
11 like you to respond to that, but my very
12 layman's reading, and math was not my long suit
13 either, but my layman's reading of the Court is
14 that the Court agreed with those who offered
15 the criticism that the proposed Senate plans
16 looked too much like the districts that we
17 started with, that were the 2002 template.
18 Whether you would agree or disagree with that,
19 my layman's read is that the Court implied, if
20 not expressed, agreement with critics who said
21 this looks like a lot like what you started
22 with. But, Mr. Guthrie, can I -- yes, of
23 course, ma'am.

24 SENATOR GIBSON: Just -- but wouldn't that
25 be because we didn't apply the other -- the

1 functional analysis in the way that it is laid
2 out? I mean, we started where we started with
3 the districts that we have, but the Court, I
4 think, is saying that what we ended up with was
5 not inclusive enough of the formulas so that
6 the districts look different.

7 SENATOR GAETZ: Mr. Guthrie.

8 MR. GUTHRIE: I hear what you are saying
9 there, Senator, that one issue that the Supreme
10 Court had was that the Senate failed to look at
11 political data as a justification or
12 determinate of where -- of minority
13 opportunities, and -- but then they gave us
14 some direction, particularly in northeast
15 Florida where they said that the opponents had
16 shown a more compact district in Duval County
17 that the Supreme Court believed did not
18 diminish opportunities of minority voters, and
19 so they put the two of those together to reach
20 a conclusion.

21 Now, I think you are exactly right that
22 the Senate could perform a functional analysis
23 of voting and of minority opportunities in
24 northeast Florida, and if that functional
25 analysis showed that it was necessary to go to

1 St. Augustine or Palatka or Daytona Beach in
2 order to create a district that, in fact, would
3 preserve opportunities for minority voters to
4 elect candidates of their own choosing, that
5 would provide the necessary justification for
6 such a district. But as Mr. Bardos said
7 earlier, if you can have a performing district
8 that is also compact, the Supreme Court is
9 saying one that serves both goals is superior
10 to one that merely serves one.

11 SENATOR GAETZ: Senator Braynon -- I'm
12 sorry, Senator Gibson, did that satisfy you for
13 the moment? Senator Braynon.

14 SENATOR BRAYNON: You hit on a few things
15 I was about to ask about, so let me ask a very
16 basic question first before I ask my questions,
17 which is, are we going to start with what we
18 have -- what we sent to the Supreme Court, or
19 are we starting over? And that may be to the
20 Chair.

21 SENATOR GAETZ: Well, thank you very much
22 for that question, and, of course, it is the
23 will of the Committee and the Senate, but I
24 would defer to counsel, but I am told that a
25 principle that we should keep in mind is that

1 the remedy should not exceed the problem. We
2 shouldn't go remedying things that were not
3 pointed out as problems.

4 Now, having said that, I don't think that
5 you can only affect eight districts -- and this
6 may be a good segue after Senator Sobel is
7 finished and after you are finished, Senator
8 Braynon, with your questions, may be a good
9 segue to get into the districts themselves, but
10 unless the Court is going to let us go out into
11 the Atlantic Ocean, the Gulf of Mexico, Georgia
12 and Alabama, we are going to have to stay
13 inside Florida. So if you make changes to the
14 eight districts that were found to be invalid,
15 my guess is it would be impossible to do so
16 without making some adjustments to contiguous
17 districts. But if the question is, are we
18 going to start with a clean sheet of paper,
19 unless it is the will of this Committee that we
20 throw out a map which was largely agreed to by
21 the Courts, I would say that it would be our
22 direction, again, subject to the will of this
23 Committee and the will of the Senate, to
24 correct those problems which were pointed out
25 and then to deal with any ancillary issues

1 associated with that, because when you move a
2 line in one district that is next to another
3 district, you very well may have to make
4 adjustments. So that is my opinion, but that
5 is subject to the will of this Committee and
6 the will of the Senate.

7 And, Senator Braynon, would you yield to
8 President Margolis, and then we will come back
9 to you?

10 SENATOR BRAYNON: Okay.

11 SENATOR GAETZ: Madam President.

12 SENATOR MARGOLIS: How are you intending
13 to deal with the numbering issue, because that
14 seems to be a very big issue that affects
15 everybody?

16 SENATOR GAETZ: Well, Madam President, if
17 you would allows us to, if we could get the
18 other questions out of the way and then get
19 into the specifics of the Court's opinion, I
20 think we will get there. But, Senator Braynon,
21 you have the floor.

22 SENATOR BRAYNON: Thank you.

23 Okay. So the reason I ask is because I
24 read quite a bit of this, if not all of it, and
25 we have -- we have been going over the

1 definitions and things like -- things of that
2 nature, and a lot of the stuff that you've
3 mentioned here, the opinion says we just
4 applied wrong straight across. It says
5 inconsistent definitions of political and
6 geogra- -- that the Senate did this because
7 they operated under an inconsistent definition
8 of political and geographic boundaries, which
9 you are clarifying now, or they clarified for
10 us. It mentioned that we did some things
11 because we did not perform a functional
12 analysis. I know many times we said during our
13 meetings that, well, we drew this district
14 because this one was a minority district, but
15 if we didn't do a functional analysis -- which
16 not to say I told you so, but I mentioned a few
17 times --

18 SENATOR GAETZ: That's okay, you can.

19 SENATOR BRAYNON: -- that we needed that
20 information in order to say that this performed
21 at an XYZ level to be a minority district. So
22 if we never did the correct functional analysis
23 to come to that conclusion on many things,
24 whether it be geographical boundaries,
25 minorities, then aren't we -- don't we owe it

1 to what the opinion said, that we may need to
2 go back over -- even if we start with what we
3 had, there are quite a few definitions of very
4 basic principles that we might -- may have done
5 somewhat wrong or may have misunderstood as
6 the -- or didn't have the -- as it said, we
7 operated under not having the definitions
8 properly.

9 SENATOR GAETZ: Well, Senator Braynon, I
10 would just say this, that I think you make an
11 excellent point, and as we consider a committee
12 amendment to the resolution that was introduced
13 on the floor today, we are going to have to
14 defend the entire Senate map just like we did
15 before.

16 SENATOR BRAYNON: Uh-huh.

17 SENATOR GAETZ: And so I think we are
18 well-served to pay attention to the Court's
19 opinion as to functional analysis. That may be
20 something different than what some critics are
21 saying, and that is we should just start with a
22 clean sheet of paper and draw a map of Florida
23 and start over. But I think the points that
24 you make are very valid points.

25 Yes, sir, you are recognized.

1 SENATOR BRAYNON: So I guess in saying
2 that, it mentions -- I know that certain
3 districts were challenged in the court case,
4 and then -- and those are the ones that they
5 opined on, but then even if you go to 161, it
6 says, "While no party challenged District 14,
7 the Senate likewise should perform the
8 necessary analysis on that district as well,"
9 almost as implying that, you know, just because
10 they didn't challenge it, it doesn't mean that
11 there are other districts that we may need to
12 look at. Are we planning to also look at other
13 districts, I mean, as a result of -- whether it
14 be the movement that we have because of the
15 districts that we plan to move, or things that
16 maybe show out -- maybe show the same
17 inconsistencies, but they just weren't
18 challenged?

19 SENATOR GAETZ: Well, I think, Senator
20 Braynon, subject to the will of the Committee,
21 it would be our intention to go through the
22 Supreme Court's opinion with tweezers and to
23 look for all of the areas where the Court has
24 made a declaration of one sort or another, and
25 to follow that declaration as faithful as we

1 can. So if the Court says you should have
2 performed a functional analysis on a particular
3 district, then in our defense of how that
4 district is configured in a revised Senate
5 joint resolution, we have to be able to say,
6 "Here is our defense, here is the functional
7 analysis we did." Again, I would point out
8 that is different from, you know, declaring
9 that the whole -- that the whole map is
10 completely invalid, as some critics would do,
11 but wherever the Court has indicated that we
12 need to make a change, I think it is incumbent
13 on us not to argue with the Court, but to do
14 what the Court said.

15 And next, Senator Sobel, and then we will
16 go to you, Leader Rich. Senator Sobel.

17 SENATOR SOBEL: Thank you, Mr. Chair.

18 In the Court's wisdom, they said,
19 "Following a municipal boundary will not
20 necessarily violate compactness." Would that
21 also apply to counties?

22 SENATOR GAETZ: Mr. Guthrie.

23 MR. GUTHRIE: Yes, I believe it would.

24 SENATOR SOBEL: Follow-up, Mr. Chairman?

25 SENATOR GAETZ: Yes, Senator Sobel, of

1 course.

2 SENATOR SOBEL: And then rivers, railways,
3 Interstates and state roads are geographical
4 boundaries. I believe in the Court's wisdom
5 they would include them as well. And my
6 question here is, how do they rank compared to
7 other standards?

8 SENATOR GAETZ: Mr. Guthrie.

9 MR. GUTHRIE: The political and
10 geographical boundaries are in Tier 2. The
11 Court did make note of the fact that complying
12 with that standard includes a phrase, "where
13 feasible," so they -- the Court made a bit of a
14 distinction based on that, but I think the
15 Court is expecting, as the people of Florida
16 who passed this -- these amendments are
17 expecting, that the Legislature will balance
18 all of the standards in the precedence set by
19 the language of the Constitution, with the
20 guidance provided by the Supreme Court, in
21 order to come up with effective districts for
22 representation.

23 SENATOR GAETZ: And I would just say,
24 Senator Sobel, that, again, I read this as a
25 layman, but I think in some cases the Courts

1 were impressed by rivers, and in other cases
2 they were not impressed by rivers. I think it
3 depends on the river. And we just need to be
4 mindful of that as we go back through our
5 analysis.

6 Leader Rich.

7 SENATOR RICH: Thank you, Mr. Chair.

8 This isn't the comment that I was going to
9 make, but I just want to follow up to what you
10 just said, and I think what the Court said is
11 that we need to be consistent with what we do,
12 and they saw the House as being consistent in
13 using those boundaries and maybe that we
14 weren't.

15 But I do want to just mention this issue
16 about whether or not we are looking at the
17 whole map, because as you mentioned, if you
18 have eight districts, then, obviously --
19 personally, I think, you know, you have to look
20 at the entire map, because eight districts in
21 one way or another, once you start to move the
22 boundaries, the lines affect every other
23 district. But the Court, to my understanding,
24 said that the other areas were valid as -- I
25 guess as it relates to facial review, but I

1 don't think that that means that they are
2 saying that there might not be something else
3 wrong with some of the other districts, and I
4 am just going to throw one out as an example,
5 because I had used it in my closing remarks
6 when we, you know, sent the map first out of
7 here.

8 And if you look at the new District 32,
9 which was District 34, it was not included in
10 the list of eight districts that were declared
11 invalid, but when I look at it, its boundaries
12 were geographically doubled or more than its
13 previous boundaries, and it now stretches from
14 Miramar in the southern end of Broward County
15 to far north past Pahokee and into Lake
16 Okeechobee with diverse population centers that
17 are, you know, drastically geographically
18 separated over far-reaching ends of two
19 counties and extending on the west side from --
20 into a large portion of the Everglades, all the
21 way over into the center of Boca Raton. So, to
22 me, when I look at that, I think that there are
23 real issues with that. And just because it
24 wasn't mentioned, I would like to throw out
25 that I think we should be looking at the entire

1 map, and just because facially the Court didn't
2 say that this district or another district had
3 some issues doesn't mean that there aren't some
4 issues there that, you know, we could not
5 possibly address. So I just wanted to put that
6 out there.

7 SENATOR GAETZ: Thank you very much,
8 Leader.

9 Senator Latvala, and then unless we have
10 some really compelling questions, we might want
11 to get into specific comments that the Court
12 made about particular districts and leave time
13 for public comment. Senator Latvala, you are
14 recognized.

15 SENATOR LATVALA: Thank you, Mr. Chairman.

16 Of course, I am not a lawyer and I am not
17 a legal expert, but common sense would tell me
18 that where specific districts were mentioned by
19 the Court and upheld by the Court, my common
20 sense would tell me that we're -- it is a very
21 risky proposition to go changing those
22 boundaries. And I for one member -- as one
23 member of the Committee, believe that we should
24 concentrate on the issues that were
25 specifically pointed out to us by the Court and

1 not -- and minimize the changes we make to
2 neighboring districts just based on what we
3 have to do, and when there are districts that
4 are specifically validated by the
5 interpretation of the Court, that we shouldn't
6 touch them at all. That is my opinion.

7 SENATOR GAETZ: Thank you, Senator
8 Latvala, and let me turn to Mr. Bardos, who can
9 cite us the specific Court -- the section of
10 the Court's opinion that might be instructive
11 here. And I would just say that that is why we
12 have amendments. If there are individual
13 Senators who believe that whatever comes out of
14 this Committee is insufficient and there needs
15 to be a wider swath cut, that is why we have an
16 amendatory process and that is why the
17 Chairman's amendment will be published well in
18 advance of the amendment deadline, so that if
19 you feel you need to cut a wider swath, that
20 you have every opportunity to do so.

21 Mr. Bardos.

22 MR. BARDOS: Thank you.

23 So in the conclusion of the Court's
24 opinion, it notes that it was asked to give
25 very specific instructions on how the

1 Legislature can remedy the plan, and the Court
2 stated that its duty is not to dictate the
3 apportionment plan, but to provide the Senate
4 with sufficient guidance in our interpretation
5 of the standards, and then it identified four
6 things that the Legislature should do.

7 One was that it should "remedy the
8 constitutional problems with respect to these
9 districts," and there it was referring to
10 Senate Districts 1, 3, 6, 9, 10, 29, 30 and 34.
11 So "remedy the constitutional problems with
12 respect to these districts, redrawing these
13 districts and any affected districts in
14 accordance with the standards as defined by
15 this Court." So that would be the eight
16 districts and any districts that are impacted
17 when the eight are redrawn.

18 It also said that the Legislature should
19 conduct the functional analysis, which Mr.
20 Guthrie has said that we will do, and that the
21 Legislature should determine whether it was
22 feasible to utilize municipal boundaries -- the
23 municipal boundaries of Lakeland, and finally
24 to adopt an incumbent-neutral numbering scheme.

25 So the Court was quite specific about the

1 four things that -- in its guidance that the
2 Legislature should do, and so it provided --
3 did provide some road map there for what our
4 task is.

5 SENATOR GAETZ: Thank you very much. If
6 there's no other comment or question at this
7 point, Mr. Guthrie, what I would like to do,
8 with the Committee's indulgence, is to provide
9 a few minutes at the end for public comment.
10 We always want to do that at all of our
11 committee meetings. So if you can get to the
12 specifics that Mr. Bardos just mentioned and
13 walk us through that, I'd be grateful.

14 MR. GUTHRIE: And for later review, the
15 conclusions that Mr. Bardos just spoke of are
16 on page six and seven in your meeting packet,
17 so you can reread those there, but let's turn
18 now to the specific issues that the Supreme
19 Court asked the Legislature to address.

20 The first is that the Court found that
21 the -- or that the Legislature is prohibited
22 from numbering districts with the intent to
23 favor or disfavor an incumbent, and they
24 further concluded that a system that
25 significantly advantages incumbents by

1 increasing the length of time that they may
2 serve by two years most assuredly favors
3 incumbents. The Court went on to say the
4 purpose --

5 SENATOR GAETZ: Excuse me, Mr. Guthrie.
6 Senator Detert.

7 SENATOR DETERT: Thanks.

8 If you would back up to the other slide.
9 Aren't those two things right there on that
10 page contradictions? You are not supposed to
11 favor or disfavor an incumbent, but then the
12 second paragraph says that incumbents shouldn't
13 have, you know, a ten-year seat, they should
14 only have an eight-year seat basically.

15 SENATOR GAETZ: Mr. Guthrie.

16 MR. GUTHRIE: I believe the key words in
17 the second bullet here -- it is a -- it is the
18 fact that the Senate provided a system, a rule,
19 that consistently -- what the rule did is those
20 who had two-year terms before redistricting got
21 four-year terms after redistricting. Those who
22 had four-year terms before redistricting got
23 two-year terms after redistricting. Two plus
24 four or four plus two both add up to six, so a
25 consequence of that --

1 SENATOR DETERT: The criticism is that --

2 SENATOR GAETZ: Senator Detert.

3 SENATOR DETERT: Thank you, Chair.

4 So the criticism then is that there was a
5 system?

6 SENATOR GAETZ: Yes, Senator Detert.

7 SENATOR DETERT: Got it.

8 SENATOR GAETZ: Senator Lynn.

9 SENATOR LYNN: Thank you, Mr. Chairman.

10 And that criticism, that happened late in
11 the process, which seemed, you know, all of a
12 sudden, the numbers changed, and I know I had a
13 question about that myself. So if we have to
14 address that, we are addressing the entire map,
15 is that correct?

16 SENATOR GAETZ: Senator Lynn, as to the
17 numbering system?

18 SENATOR LYNN: Yes.

19 SENATOR GAETZ: Absolutely.

20 SENATOR LYNN: Uh-huh.

21 SENATOR GAETZ: Mr. Guthrie, go ahead.

22 MR. GUTHRIE: And so with numbering, I and
23 my staff have been giving some thought as to
24 what options the Senate might want to consider
25 as a way of resolving this, and this is really

1 something for the Committee to consider as we
2 meet here today and again next week. One
3 possibility would be to apply a different rule
4 that -- one that limits incumbents to the
5 minimum term in office, so one that said that
6 we are going to try to enforce the eight is
7 enough campaign slogan through redistricting.
8 So people that had a two-year term prior to
9 redistricting would get a two-year term after
10 redistricting so that they then would get one
11 four-year term and then be done serving in the
12 Senate. Persons who had four-year terms prior
13 to redistricting would get a four-year term
14 after redistricting and again would be termed
15 out of the Senate. So that -- you could apply
16 a rule like that.

17 The criticism of such a rule is, as was
18 mentioned, that seems to disfavor incumbents,
19 and it particularly is going to disfavor those
20 incumbents who have a two-year term, a two-year
21 term and a four-year term, they are running for
22 election three times in order to get two terms
23 in the Senate when the normal Senate term as
24 provided by the State Constitution is four
25 years.

1 A VOICE: Mr. Chairman?

2 SENATOR GAETZ: Okay, we will take a few
3 questions. Senator Sachs.

4 SENATOR SACHS: Thank you very much, Mr.
5 Chairman. My question is this --

6 SENATOR GAETZ: I think your mike may not
7 be on, ma'am. It is possible it is --

8 SENATOR SACHS: It has a Band-Aid.

9 SENATOR GAETZ: It has a Band-Aid? So it
10 is a sick little mike.

11 SENATOR SACHS: I will move over here.
12 Thank you very much, Mr. Chairman.

13 My question is this: How is -- what was
14 the pattern, what was the rule for the last
15 number of terms in which we have done
16 redistricting? In other words, it seems like
17 we have a number of choices here, none of which
18 seems to be necessarily good for us to choose
19 at this time. What has been the norm in the
20 State of Florida for a numbering of these
21 geographic districts for the Senate?

22 SENATOR GAETZ: Mr. Guthrie.

23 MR. GUTHRIE: Well, all those prior
24 re-numberings, as the Court notes in its
25 opinion, were before Amendment 21 became part

1 of the State Constitution. The method that was
2 used is the Senate chose which numbers went
3 with which districts, and what the Senate set,
4 that's what was.

5 SENATOR SACHS: If I may follow up?

6 SENATOR GAETZ: Yes, of course, Senator
7 Sachs.

8 SENATOR SACHS: Thank you very much, Mr.
9 Chairman.

10 Was the same pattern used by the Senate
11 for the last number of years before we had
12 these two amendments, sir?

13 SENATOR GAETZ: Mr. Guthrie.

14 MR. GUTHRIE: In every redistricting of
15 which I am aware since the Constitution took
16 effect in 1968, the Senate chose to assign
17 numbers to districts, and that has been
18 something -- you know, it was an issue that was
19 considered on the Senate floor, but it was not
20 anything that the Supreme Court looked at.

21 SENATOR GAETZ: Senator Montford, and then
22 Senator Garcia.

23 SENATOR MONTFORD: Thank you, Mr. Chair.

24 A question, and maybe it is -- I suggest
25 we may look at it a little differently. We are

1 focusing on the incumbent, but I suggest we may
2 want to focus on the voters, and that -- is the
3 question is whether or not it would be fair for
4 a particular set of voters, citizens, if you
5 will, that would have to go through three
6 elections in six years. It is not just the
7 incumbent that I think we should focus on, but
8 it is the question of the community and the
9 citizens themselves, how many elections should
10 they have to endure. Has that thought ever
11 occurred to anybody, Mr. --

12 SENATOR GAETZ: I can tell you, Senator
13 Montford, that a number of individuals who have
14 talked with me over the course of time from --
15 people from the public have said the same
16 thing, but Mr. Guthrie?

17 MR. GUTHRIE: Yes, that is something that
18 we have considered along the way. We are
19 taking our guidance, though, from the Supreme
20 Court opinion, and the opinion says that a
21 system that increases the time that they may
22 serve most assuredly favors incumbents. So
23 because of the way the two plus four, four plus
24 two, works, a system that gives that due
25 consideration to the hardship cause to voters

1 is going to have an effect of having many
2 Senators get a lengthened period of service in
3 the Senate.

4 SENATOR GAETZ: Senator Garcia and then
5 Leader Rich and then Latvala and then Lynn.
6 Away we go.

7 SENATOR GARCIA: Thank you, Mr. Chairman.

8 And I understand the Supreme Court has
9 this opinion, but in the fact that we are not
10 supposed to favor or disfavor any incumbent, in
11 the amendments that were passed, does it
12 mention anything about the numbering of the
13 districts? From my -- can you help me
14 understand that part, as I -- I don't think it
15 does, but --

16 MR. GUTHRIE: A question that was briefed
17 to the Supreme Court and discussed at oral
18 argument was whether the scope of Amendment 5
19 went to renumbering of districts, and the
20 Court's opinion was that it does.

21 SENATOR GAETZ: Leader Rich.

22 SENATOR RICH: Thank you, Mr. Chair.

23 I just kind of wanted to make a comment
24 about -- I mean, the voters also voted that
25 they wanted us only to serve eight years. So I

1 think -- and I don't know, correct me if I am
2 wrong, but I think that basically what the
3 Court said is that they wanted as few people to
4 serve more than eight years as possible, and
5 that whatever -- however we number, that that
6 is the direction we should be going, not in a
7 system that creates as many as possible
8 incumbents to serve ten years.

9 SENATOR GAETZ: Let's look at the law and
10 see what it says. Mr. Bardos, could you give
11 us a little bit of legal framework here in
12 understanding Leader Rich's point?

13 MR. BARDOS: Right. Well, the Court was
14 not -- it did not give us a specific direction
15 as to how we can remedy the defect in the
16 numbering system. Obviously, as stated, that
17 if there is a systematic effort to favor
18 incumbents, that would violate the
19 Constitution, but it did also recognize that
20 the eight-year term limit provision is not an
21 eight-year cap, it is not that members cannot
22 serve beyond eight years, it simply provides
23 that a candidate running for reelection who by
24 that time has served eight years may not run
25 again. So the Court recognized that the -- it

1 is not a violation of the Constitution for
2 somebody who has been in office for, say, seven
3 years, to run again for a four-year term. That
4 would be consistent with the Constitution.

5 So I -- while the Court didn't say it, I
6 think that what it was wary of was a systematic
7 effort to favor incumbents, but it did not read
8 the term limits provision as a hard-and-fast
9 eight-year limitation.

10 SENATOR GAETZ: Senator Latvala.

11 SENATOR LATVALA: Thank you, Mr. Chairman,
12 a couple of questions.

13 First of all, let's get back to Senator
14 Sachs's original question, because I really
15 don't think you answered that question in its
16 -- in its totality. When she asked you how the
17 Legislature numbered districts prior to term
18 limits, you said, well, it was numbered by the
19 Senate, but you didn't say how they were
20 numbered by the Senate. As I recall, and
21 correct me if I am wrong, in the '60s and '70s
22 and '80s and for the most part in the '90s, we
23 started with District No. 1 in the Panhandle,
24 in Pensacola, the First District, and we came
25 all the way down through the state sequentially

1 and ended up with No. 40 somewhere in the
2 vicinity of Miami and Key West, is that not
3 correct?

4 SENATOR GAETZ: Mr. Guthrie.

5 MR. GUTHRIE: It is generally true that
6 the numbering went from the northeast to the
7 south, but -- or, excuse me, from the northwest
8 to the south, but there was not a hard-and-fast
9 rule to determine that districts are always
10 numbered next to each other. Senator Gibson in
11 Jacksonville today represents Senate District
12 1, for instance.

13 SENATOR LATVALA: What I said, Mr. -- I'm
14 sorry.

15 SENATOR GAETZ: No, go ahead, please,
16 Senator Latvala.

17 SENATOR LATVALA: What I said, Mr.
18 Guthrie, was prior to term limits and prior to
19 the last redistricting --

20 MR. GUTHRIE: Oh, okay.

21 SENATOR LATVALA: -- in 2002. In other
22 words, when I was in the Senate before, all the
23 Dade -- Miami-Dade Senators sat on the back row
24 because they all were numbers in the 30s, okay.
25 The odd-numbered people sat on one side of the

1 room and the even-numbered people sat on the
2 other side of the room. Is that not correct?

3 SENATOR GAETZ: Mr. Guthrie.

4 MR. GUTHRIE: I remember the tradition of
5 having the Senate split by, you know, by odds
6 and evens, yes, but the provision that --
7 well -- and I misspoke earlier that the
8 question of numbering was some -- a question
9 that very much was before the Florida Supreme
10 Court in its 1982 in re apportionment case
11 where the Senate took the position that
12 Senators who were elected two years prior had
13 been elected to four-year terms and should be
14 allowed to serve out those terms, as happens in
15 some other states, but the Supreme Court
16 determined in 1982 that terms must be
17 truncated. So the issue with numbers in 1972
18 and 1982 and 1992 was mostly who was going to
19 get a two-year term and who was going to get a
20 four-year term after redistricting.

21 SENATOR GAETZ: Senator Latvala.

22 SENATOR LATVALA: But for the most part,
23 the numbers started with No. 1 in the Panhandle
24 and ended up with No. 40 somewhere in south
25 Florida, is that not correct?

1 MR. GUTHRIE: I believe that is right,
2 yes.

3 SENATOR LATVALA: Okay.

4 SENATOR GAETZ: Senator Latvala.

5 SENATOR LATVALA: The decision that was
6 made on the numbering this year was not made
7 based on any kind of sequential numbering, it
8 was based -- and maybe you could explain how we
9 decided to do that, you know, it was made
10 purposely to advantage everyone who got elected
11 and only had a two-year term, to let them
12 finish out their term and then run again, is
13 that not correct? I mean, in other words, we
14 had even a piece in the analysis that explained
15 it. I think Senator Negrón might have been the
16 one that thought the scenario up, but it was --
17 it was explicitly to advantage every member of
18 the Senate, Democrat or Republican, and give
19 them a maximum amount of time. And maybe you
20 could explain that to us now, what that -- what
21 that theory was.

22 SENATOR GAETZ: Mr. Guthrie.

23 MR. GUTHRIE: I would not state it quite
24 that way, Senator. I believe what the -- the
25 tone of the staff analysis was to avoid causing

1 undue hardship or extra hardship to some
2 Senators, and to try to treat Senators the same
3 with respect to renumbering. So persons who
4 had a shortened term prior to redistricting
5 were first in line to get a longer term after
6 redistricting. Persons who had a full term
7 prior to redistricting were last in line to get
8 a four-year term after redistricting.

9 SENATOR GAETZ: We will take a question,
10 yes, Senator Latvala, for a final follow-up.

11 SENATOR LATVALA: The -- and I guess that
12 is one way of explaining it. The -- but the
13 point I am trying to make is that the -- that
14 the decision and the reading of the Court was
15 based on everyone getting that advantage, and
16 not just an incidental, accidental situation of
17 a sequential numbering throughout the state and
18 certain people got the advantage because their
19 district happened to be at a place where a
20 certain number was -- you know, was arrived at;
21 in other words, that's the distinguishing thing
22 I am trying to get at here is it was because
23 everyone was treated that way, not because some
24 people accidentally in the way that the
25 numbering was done were treated that way. Is

1 that not correct?

2 SENATOR GAETZ: Mr. Guthrie.

3 MR. GUTHRIE: Mr. Bardos, would you point
4 to --

5 SENATOR GAETZ: Mr. Bardos.

6 MR. BARDOS: Sure. I think that is pretty
7 accurate. The Court somewhere referred to the
8 purposeful manipulation, in its words, of the
9 district numbers --

10 SENATOR GAETZ: Here it is.

11 MR. BARDOS: -- and I think that it was
12 the fact -- there it is, "purposefully
13 manipulating the numbering of the districts in
14 order to allow incumbents to serve in excess of
15 eight years." So I think that was at the heart
16 of it, and the fact that it was systematic,
17 that there was a rule by which that was
18 accomplished. I don't think it was the fact
19 that there happened to be one or more
20 incumbents who received the opportunity to
21 serve for more than eight years.

22 SENATOR GAETZ: Senator Lynn.

23 SENATOR LYNN: I guess my question is very
24 similar to Senator Latvala's, because I was --
25 when we left with having seen maps and so forth

1 and we saw -- not when we left. We had seen
2 the maps and we saw numbers on those maps, and
3 in my mind, those were the numbers. And the
4 next time we looked at something, suddenly all
5 of the numbers were different, and there was an
6 explanation given, such as has been explained,
7 which appears to be very kind and understanding
8 to members, but I guess I have a concern, for
9 instance, what was my District 7 -- and, to me,
10 it doesn't matter, I won't even be here, but it
11 is so totally different. So anybody who
12 planned to run and did plan to run for District
13 7, in fact, has a whole different world now and
14 a totally different numbered district, which
15 can effect, you know, the two years, the four
16 years and so forth. And I am just wondering
17 why we didn't -- why we weren't more arbitrary
18 in just tossing it to the gods, because I think
19 that is what exactly the Courts are saying
20 right now.

21 SENATOR GAETZ: Well, if we could
22 possibly, just because we do have a time limit
23 today, maybe in answer to Senator Lynn's
24 question, why don't we move to the potential
25 options on a going-forward basis and then move

1 into the individual districts that were
2 specifically cited by the Court and leave time
3 for the public comment.

4 MR. GUTHRIE: So another rule that the
5 Senate maybe could apply for determining which
6 districts are odd or which are even is some
7 sort of a geographic rule where starting from
8 the west -- so, again, a mechanical system, but
9 we would just say which district has the
10 highest longitude number, and give that
11 district number one, and then which has the
12 second highest and on through the 40 districts.
13 The difficulty with that -- such a rule is A,
14 explaining it, and B, it may have a consequence
15 that somebody infers intent from.

16 The Senate could -- the third bullet here,
17 Senator Latvala, is numbering the districts in
18 an orderly pattern, which is exactly the model
19 you talked about, but that will involve making
20 choices along the way of which -- you know,
21 whether the next district is odd or the next is
22 even, which I think will cause questions.

23 And so the fourth possibility for coming
24 up with a standard that -- and here is what the
25 Supreme Court in its opinion concluded the

1 Legislature should do. The Legislature should
2 renumber the districts in an incumbent-neutral
3 manner, and a way that I believe would be
4 assuredly incumbent-neutral would be to simply,
5 as Senator Lynn said, randomly assign odd or
6 even numbers by chance to the districts.

7 So those are the four options that I and
8 my staff were able to come up with for
9 numbering districts.

10 SENATOR GAETZ: Okay. Senator Storms, but
11 let's try to be respectful of the fact that we
12 may have public comment.

13 SENATOR STORMS: Okay. So be short then.

14 SENATOR GAETZ: Yes, ma'am, if you could.

15 SENATOR STORMS: So I guess my issue with
16 the randomly assigning odd and even numbers is
17 if we did that and say, for instance, all of
18 the minority seats were the ones that came out
19 -- just by random you did that and they are the
20 ones who came up short, there isn't anything we
21 are going to be able to do to convince anybody
22 that that wasn't -- that the fix wasn't in. Or
23 just say, for instance, that all of them came
24 out so that one geographic location all had the
25 same number. I don't know how you are going to

1 convince anybody that it didn't work -- that
2 that wasn't intentional. And it seems to me
3 that you really open yourself up to an outcome
4 that can really jeopardize, you know, what we
5 are trying to do. So I just want to put that
6 out there.

7 SENATOR GAETZ: Okay.

8 SENATOR STORMS: That would be a serious
9 problem. I don't know how we would overcome
10 that if everybody -- all the minority seats got
11 the least number of years. What would you do
12 with that?

13 SENATOR GAETZ: Well, Senator Storms,
14 particularly since the Court -- and, again,
15 this is my layman's view -- the Court says that
16 effect proves intent, it certainly is a
17 consideration we need to keep in mind.

18 President Margolis.

19 SENATOR MARGOLIS: Mr. Chairman, it seems
20 to me that people voted for eight is enough,
21 and that is probably what we should be looking
22 at. And so everybody is going to run this
23 year, and if they have -- you know, if they
24 have served four years, then they have a
25 four-year seat. If they served six years, they

1 have a two-year seat. I mean, you started with
2 two years -- some of them -- some started with
3 two-year terms, some started with four-year
4 terms. Why don't we just say eight is enough
5 and figure out at the end of the eight years
6 whether people are going -- can run again or
7 not run again?

8 SENATOR GAETZ: Excellent point.

9 SENATOR MARGOLIS: Why don't we have an
10 implementing legislation to do just that?

11 SENATOR GAETZ: Excellent point,
12 absolutely.

13 Senator, go ahead, please.

14 SENATOR WISE: The -- Mr. Chair, what do
15 you do with a person who gets a one-year term
16 because of a resignation or whatever from a
17 Senator, and then we are into reapportionment
18 and then you get a two-year term, do you get
19 then two more four-year terms? Because that's
20 what I got. That is what Senator Gibson could
21 have. So it really -- it's logically doesn't
22 happen the way we think it is going to be. Is
23 it fair to have somebody with less than eight
24 years? Now, that is the question, and, you
25 know, I just pose that to you.

1 SENATOR GAETZ: Good point, Senator Wise.

2 Why don't you proceed?

3 MR. GUTHRIE: That is it then on numbering
4 options.

5 SENATOR GAETZ: And let me just say that
6 individual Senators who have suggestions,
7 concerns, criticisms, proposals, we invite you
8 to make them to professional staff or convey
9 them to President Margolis as our Vice-Chair or
10 to me or to the Majority or Minority Leaders,
11 because this is an issue we will have to
12 address in the amendment that the Committee
13 considers, absolutely.

14 Yes, Senator Lynn.

15 SENATOR LYNN: I just feel compelled to
16 say, all through the years, people -- Senator
17 Thrasher had three years, he had -- each time
18 -- some people had to run every few years.
19 Senator Wise had to run, I don't know how many
20 times he has run, it just happens, somebody
21 dies --

22 SENATOR GAETZ: He's run nine times.

23 SENATOR LYNN: -- somebody quits, you
24 know, or somebody stays -- something happens,
25 and you cannot plan for all those incidents,

1 you just can't. You do the maps according to
2 the best you can, you number in the fairest way
3 you can and let the chips fall where they may.
4 If someone is going to end up running more than
5 somebody else, that is just a luck of the draw,
6 and people do that. It's always been that way.
7 So I don't think that is a great big worry.

8 SENATOR GAETZ: Good observation. And,
9 Senator Detert, we will let you give the
10 benediction to this portion of the program.

11 SENATOR DETERT: That is because I am
12 generally brief, and I will be again, but I
13 disagree, Chair, with the staff's conclusion
14 about numbering them in an orderly way from
15 west to east, starting in the Panhandle, going
16 1, 2, 3, 4, 5, 6. Yes, along the way, some
17 decisions are going to have to be made, but I
18 don't think it would involve gerrymandering
19 decisions. But if you are going to throw darts
20 at a board or have lottery balls pop up and you
21 are going to start with the first district at
22 the top of the Panhandle being No. 37, I think
23 a rational person is going to look at that and
24 go, "How the heck did they come up with this,
25 did they just throw darts at a board," which we

1 could probably legally do. I just think it
2 makes more sense to have it sequentially and
3 just have a pattern and, once again, let the
4 chips fall where they may, or do whatever
5 Senator Latvala says, you start No. 1 at the
6 Panhandle, No. 40 is Key West and you fill in
7 the middle, and that is pretty random.

8 SENATOR GAETZ: Thank you. Thank you for
9 that suggestion.

10 Okay, Mr. Guthrie --

11 MR. GUTHRIE: One point of clarification
12 on that, if I may, Mr. Chairman?

13 SENATOR GAETZ: Sure.

14 MR. GUTHRIE: The -- I believe with
15 whatever scenario we use or option the Senate
16 chooses to use for numbering its district, we
17 will follow some sort of an orderly pattern
18 from the -- you know, one end of the state to
19 the other, so that voters won't be confused by
20 having Senate Districts 2, 18 and 37 in their
21 -- in their area. But you could accomplish
22 that by determining through a game of chance
23 which districts get odd and which get even, and
24 then coming back and manually numbering the
25 districts systematically, as you discussed,

1 which is kind of what we have in the -- in the
2 current map. So we have Districts 1, 3 and 5
3 in the Panhandle, for instance, in the plan
4 that the Senate passed during regular session.

5 SENATOR GAETZ: Okay.

6 MR. GUTHRIE: The next several slides are
7 all in your meeting packet. We don't have to
8 go into a whole lot of detail, but what we are
9 going to do is focus briefly on the districts
10 where the Supreme Court did express issues.

11 The first was in the Panhandle where the
12 Senate followed political and geographic
13 boundaries to create a coastal district and
14 also to create a rural district. The Supreme
15 Court said that the horizontal orientation of
16 Panhandle districts violates compactness and
17 utilization of political and geographic
18 boundaries, and it sacrificed compactness,
19 which is a constitutional imperative, to keep
20 coastal communities together. So the Court
21 took issue with Districts 1 and 3, and that is
22 one area that we will be looking at to modify
23 the plan.

24 The next is in northeast Florida where the
25 Court expressed issues with Districts 6 and 9.

1 As Senator Gibson mentioned earlier, part of
2 the issue there was that there was not a
3 regression study or a functional analysis
4 performed on the districts, but the Court also
5 found that District 6 sacrifices compactness
6 when not necessary to avoid a conflict with the
7 minority voting protection provision, okay, and
8 further found that a district based solely in
9 Duval County would be much more compact and
10 would likely afford black voters the
11 opportunity to elect candidates of choice.

12 SENATOR GAETZ: Let's stop here for a
13 second. Any questions about what the Court
14 found as to northwest and northeast Florida?
15 Any questions as to the Court's findings?

16 Okay. Please move on.

17 MR. GUTHRIE: Okay. And the Court also
18 mentioned that District 9, which is to the east
19 of District 6, likely will be impacted also
20 when -- if District 6 is made into a Duval-only
21 district.

22 The next area that the Court looked at was
23 Senate District 10 in the Orlando area. The
24 territory east of Orlando, and this territory
25 represents about 160,000 persons, the Court

1 referred to that as a -- an appendage and could
2 not understand the basis for the district being
3 that shape. They mentioned that Districts 12
4 and 14, the adjacent minority districts, also
5 should be considered as part of reviewing
6 District 10. So District 10 is visually
7 non-compact as a result of what they called the
8 bizarrely-shaped appendage between Districts 12
9 and 14, the area east of Orlando, and that it
10 does not consistently follow any political or
11 geographic boundary, and they -- the Court
12 believed that it was an attempt to reach out to
13 clearly encompass an incumbent, and, therefore,
14 was constitutionally invalid.

15 SENATOR GAETZ: Any comments on the
16 Court's findings as to central Florida, the
17 central Florida district? Any comments or
18 questions? If not, please go on.

19 MR. GUTHRIE: The next area where the
20 Court took issue was Senate District 30 in
21 southwest Florida. The Court recognizes that
22 Senate District 30 is adjacent to the Section 5
23 minority opportunity district, 40, that comes
24 out of Miami-Dade County and includes Monroe,
25 Collier and Hendry Counties, which are all

1 three Section 5-covered jurisdictions, but the
2 Court noticed that the district connects to
3 Cape Coral along Ft. Myers Beach and Sanibel,
4 and determined that a more compact shape could
5 have been drawn in that -- in that area.

6 SENATOR GAETZ: Okay. Southwest Florida,
7 the southwest Florida finding by the Court, any
8 comments or questions? Any comments or
9 questions? Okay.

10 MR. GUTHRIE: A conclusion of the Court
11 here is that intending to tie coastal
12 communities together, something that this
13 Committee considered extensively in its
14 deliberations, is not a constitutional
15 justification for departure from Tier 2
16 standards.

17 The next area where the Court found an
18 objection was with Districts 34 and 29 in
19 Broward and Palm Beach Counties. What the
20 Court concluded was that the districts were
21 drawn to favor an incumbent and a political
22 party by keeping District 29 essentially the
23 same as its predecessor district. So they saw
24 that District 34 goes from Ft. Lauderdale to
25 West Palm Beach, and that creates an area of

1 population to the east which is -- cannot be in
2 another district and, therefore, is in District
3 29, and that the Court found was a problem
4 because District 29 leans Republican and is in
5 an area of the state that is largely
6 Democratic. So the Court believed that it
7 would be possible to create a -- new
8 configurations of districts in Broward and Palm
9 Beach County where overall the districts would
10 be more compact and more neutral.

11 SENATOR GAETZ: Comments or questions on
12 the southeast portion of the map? Any
13 questions or comments as to the Court's
14 findings, any observations? If not --

15 MR. GUTHRIE: And --

16 SENATOR GAETZ: Go ahead.

17 MR. GUTHRIE: And the last area was the
18 City of Lakeland. The City of Lakeland is
19 outlined in red on the screen here. A part of
20 the City of Lakeland is in District 24, part of
21 the City of Lakeland is in District 16. What
22 the Court concluded, as Mr. Bardos stated
23 earlier, was the Senate failed to adhere to any
24 consistent definition of political and
25 geographic boundary. This is especially

1 evident because, in the case of District 24,
2 the Senate placed inland Lakeland with coastal
3 communities of Manatee County. And so the
4 Court did not find District 24 to be invalid,
5 but they suggested that the Senate look at that
6 area in its review of the new map.

7 SENATOR GAETZ: Any comments or questions
8 on the Lakeland issue? Is Senator Dockery
9 here?

10 SENATOR DOCKERY: Yes.

11 SENATOR GAETZ: Senator Dockery, I know
12 that you had had some -- you had wanted to
13 share some ideas about that area. You are
14 recognized even though you are not on the
15 Committee. We are delighted that you are here.

16 SENATOR DOCKERY: Thank you, Mr. Chairman.

17 I would just say to the extent that we
18 could put the City of Lakeland in one district,
19 Polk County has six hundred -- over 600,000
20 individuals, it is cut into four Senate
21 districts, if we can get that down to two or
22 three Senate districts and keep Lakeland
23 together, I think that that makes a lot more
24 sense and leads to less spread-out districts
25 for Polk. But I am certainly -- I certainly

1 understand that that will create a domino
2 effect, so I am going to sit down and meet with
3 staff afterwards to see how we can address that
4 issue.

5 SENATOR GAETZ: Good. Thank you very
6 much.

7 Any other comments from any Senators on
8 the Lakeland matter?

9 Mr. Guthrie.

10 MR. GUTHRIE: So that is the conclusion of
11 our overview of the prescriptions and
12 conclusions from the opinion that I included in
13 this presentation.

14 The next steps for the Committee, as the
15 Chairman noted on the floor, by 12:00 noon on
16 Saturday, the Chairman plans to have an
17 amendment addressing or conforming to the
18 judgment of the Court on the Senate
19 redistricting website. By 12:00 noon Monday,
20 the Senate determined timely amendments will be
21 offered by other members of the Senate. This
22 Committee will meet again next Tuesday from
23 nine o'clock until six o'clock for a
24 Reapportionment Committee meeting. We will
25 consider a plan conforming to the judgment of

1 the Court. We will also need to consider at
2 that meeting and you will need to determine at
3 that meeting a method for numbering the
4 districts consistent with the opinion of the
5 Court. Then on -- so we will have a committee
6 report coming out on Tuesday night. We would
7 like -- and the Senate voted on the floor this
8 afternoon that floor amendments will be filed
9 by noon on Wednesday, March 21st, and then the
10 Senate will convene and take up as a special
11 order Senate Joint Resolution 2-B on Thursday,
12 March 22nd. That session will start at
13 nine o'clock in the morning and continue until
14 completion. If necessary, the Senate will
15 convene again on Friday, March 23rd, for the
16 third reading and final passage of Senate Joint
17 Resolution 2-B.

18 SENATOR GAETZ: Mr. Guthrie, would you go
19 back to the slide just previous to that? I
20 would like to just take a moment so that we all
21 have the same understanding. The Senate this
22 morning decided that amendments would be filed
23 by twelve o'clock noon Monday, and that is an
24 amendment to, in effect, the resolution that we
25 placed in play this morning on the Senate

1 floor.

2 I want to make sure that we give everyone
3 an opportunity to review, comment and offer
4 their suggestions. So between now and the time
5 that a Chairman's amendment is put forth in
6 this Committee, you all have an open invitation
7 to contact professional staff, to contact your
8 Majority and Minority Leaders, to contact the
9 Vice-Chair of the Committee, myself, with any
10 input that you have. We will govern those
11 conversations by the same rule that we have
12 governed other conversations with members of
13 the Senate and House, and that is that we will
14 not take any discussion -- and none has been
15 offered, and I have been very proud of
16 Democrats and Republicans in this regard -- we
17 will not take any discussion about what is good
18 for me or what is bad for me, or what is good
19 for somebody who might run or what is bad for
20 somebody who might run. Instead, our
21 conversation will be limited to how can we
22 approach the Supreme Court's ruling with a
23 remedy that will be compliant with the Supreme
24 Court's opinion, how can we approach the facts
25 of the matter, not to argue with the Court, not

1 to talk about what is good or bad for anybody,
2 challenger or incumbent, or any political
3 party, but how can we approach this problem in
4 a way that will bring us a compliant response
5 to the Supreme Court. But we invite, request
6 and solicit your opinions and your input in
7 that regard.

8 Now, in an abundance of what I hope the
9 Committee will agree is openness to suggestion,
10 even though the amendment deadline is noon on
11 Monday for the Reapportionment Committee
12 meeting the next day, I will supply the -- a
13 Chairman's amendment -- and it is called that
14 even though it will be a committee amendment --
15 a Chairman's amendment at noon on Saturday so
16 that everyone has a chance to review it. If
17 you don't like it, you have a chance to post
18 amendments to it. So my suggestions or the
19 Committee's suggestions taken together will be
20 posted 48 hours before the amendment deadline,
21 and then you have an amendment deadline that
22 relates to the Committee's meeting the next
23 day. Is everybody clear on what our time frame
24 is? Because if you have ideas, suggestions or
25 counter-proposals, we want to give everyone an

1 opportunity to make those available to the
2 Committee and to the public and to the press.
3 Any -- anything that we get in the nature of a
4 proposal, as we mentioned on the floor this
5 morning, has to show the consequences
6 statewide, if there are any, and then we also
7 want to make it available so that the public
8 can comment on it.

9 Senator Gibson, you had a question, ma'am,
10 or an observation?

11 SENATOR GIBSON: Thank you, Mr. Chair.

12 Just for clarification, the Chairman's
13 amendment, which is you, Mr. Chair, will go --
14 come out on Saturday, and I wasn't sure if you
15 said we have until then to give input to you
16 and our various leaders and the Committee to be
17 included in the Chair's amendment? I mean, if
18 that is the case, one time says the amendment
19 will be posted noon or earlier, and then the
20 other says -- on our paper it says no later
21 than noon. So I am trying to figure out if
22 there is, in fact, opportunity for input before
23 it is posted, what is the deadline for that
24 input. And then the second part of my question
25 is, since this is a Chairman's amendment on

1 Saturday, on Monday for the committee amendment
2 deadline, is that to the Chairman's amendment,
3 which will then become the committee amendment?
4 I am a little confused.

5 SENATOR GAETZ: I apologize, Senator
6 Gibson. You know, this happens once every ten
7 years, so we don't have -- we don't have a lot
8 of people except Mr. Guthrie and Senator
9 Latvala who can -- and President Margolis who
10 can give us the history lesson here, but let me
11 see if I can explain it.

12 It is called a Chairman's amendment
13 because somebody has to offer it, and the
14 Committee can't offer it until the Committee
15 votes on it, and the Committee may vote it down
16 or may change it or may accept it. So you make
17 an excellent point. If you -- I would love to
18 have input, broadly speaking, from anyone who
19 cares to provide it to what we are calling a
20 Chairman's amendment.

21 Now, if you have input, I wouldn't wait
22 until eleven o'clock a.m. Saturday to provide
23 it, just for logistical reasons. So I would
24 ask that if you have input, please give it to
25 us today, tomorrow, Friday, let us know what

1 your thinking is, and if we can incorporate it,
2 we will.

3 Just one second, Leader, and I will get to
4 you as soon as I answer the second part of
5 Senator Gibson's question, if I can.

6 Then at noon on Monday, that is an
7 opportunity -- people may look at the
8 Chairman's amendment and say, you know, "I
9 don't like it very much, they didn't take my
10 input, I've got a better idea, I would like to
11 amend the Chairman's amendment." And so file
12 that amendment by noon on Monday, and then at
13 our committee meeting on Tuesday, we will have
14 a series of votes. We will explain what we are
15 calling a Chairman's amendment, which will
16 certainly have more authors than one, and then
17 we will take up any amendments to the
18 Chairman's amendment and then develop, in
19 effect, a melded proposal that the Committee
20 hopefully would agree to, and we will take that
21 to the floor as a committee substitute. Does
22 that make sense?

23 Okay. And I apologize, Leader Gardiner,
24 please, you are recognized.

25 SENATOR GARDINER: Thank you, Mr.

1 Chairman, and along those same lines, is it
2 possible after the Chairman's amendment is
3 filed if staff would make themselves available
4 over the weekend to help the members if they
5 need help in preparing an amendment to that
6 particular amendment? And the second part of
7 that, Mr. Chairman, is I think one thing that
8 would be helpful, too, is I think everybody has
9 a different opinion regarding what the Florida
10 Supreme Court has told us, and for those of us
11 that may want to draft something, having access
12 to all of the legal team as a member of the
13 Committee would also be helpful, just to make
14 sure that we are staying within the confines
15 that you, Mr. Chairman, and the Florida Supreme
16 Court has provided us. I think that would be
17 very helpful, too. So if that were available
18 to us over the weekend, I think it would make
19 it a much -- a very smooth process.

20 SENATOR GAETZ: Thank you, Leader
21 Gardiner. The answer to the first part of the
22 question is yes, and that is that you certainly
23 would have access to professional staff to help
24 in the crafting of amendments to the amendment.
25 In fact, we would strongly encourage -- it is

1 not required. If you don't want to deal with
2 professional staff, that is fine, but we would
3 certainly encourage it, because that way your
4 amendment can be -- can be technically correct
5 and won't be discarded because of some
6 technical imperfection. So for your own
7 reasons and your own purposes, I would urge you
8 to do that.

9 Secondly, we are operating on a short
10 leash here, and so if we have 40 Senators who
11 all want to meet with John Guthrie, then we are
12 going to have a problem, because, you know, we
13 can keep him awake, we can pump him full of
14 coffee, but we can't -- each Senator can't have
15 a three-hour meeting with John Guthrie and meet
16 the timeline that the Constitution lays down.
17 But within reason, we certainly want to
18 accommodate you. Mr. Bardos is internal
19 counsel to the Committee. He is available
20 starting now. I know that members -- some
21 members have already talked with Mr. Guthrie
22 and with committee staff, that is great. We
23 will be as available as possible.

24 At some point, we will have to -- we will
25 have to actually take pen to paper, and I think

1 Senator Gibson was getting to that earlier, and
2 that was, you know, when do we quit taking
3 input and start drafting a Chairman's
4 amendment. I would say that we will start
5 drafting a Chairman's amendment today, but we
6 will take input as we go along. We will
7 probably -- Mr. Guthrie, from a -- just from a
8 technical standpoint to make sure we get things
9 up on the website and we have all the technical
10 issues dealt with, when would you say you are
11 not going to take anymore phone calls from me?

12 MR. GUTHRIE: It is -- depending on how
13 close we want to cut it, it is somewhere
14 between ten and eleven o'clock on Saturday
15 morning.

16 SENATOR GAETZ: Well, let's say -- let's
17 say if you could please get to Mr. Guthrie over
18 the weekend, as Leader Gardiner has indicated,
19 today, tomorrow, the next day, over the
20 weekend, that would be very helpful and allow
21 Mr. Guthrie time to make sure that we have a
22 technically perfected proposal to lay before
23 you. So if you have ideas now, now is a good
24 time, if you have ideas this afternoon, this
25 afternoon is a good time, but if you wait until

1 late Saturday morning, you may have to file an
2 amendment to the amendment, which is entirely
3 permissible as well.

4 Senator Montford.

5 SENATOR MONTFORD: Thank you, Mr. Chair.
6 It is on another subject, not this one.

7 SENATOR GAETZ: Sure. Before we get to
8 any other subjects, are we clear on the
9 scheduling? Are we clear on the scheduling?
10 Does anybody have any questions about the
11 scheduling?

12 If not, Senator Montford, you are
13 recognized.

14 SENATOR MONTFORD: Thank you, Mr. Chair.

15 Senator Storms this morning on the floor
16 brought up an excellent point, and that was
17 this Committee, under your leadership, has gone
18 to extraordinary length receiving public input
19 and all, and I think you said this morning the
20 staff had already thought about that. Have you
21 shared that today and I missed it or -- in
22 terms of how do you -- how do you respond to
23 that?

24 SENATOR GAETZ: Before midnight tonight,
25 we will send an e-mail to every single person

1 who gave us their e-mail address, and that is
2 approaching 5,000 people, saying we are in
3 extraordinary special session, here is a link
4 to the Supreme Court's opinion, here are the
5 issues that the Supreme Court -- we'll provide
6 a link to this presentation that you have seen
7 today, all of the slides, and we will -- we
8 will indicate that we are open for business in
9 terms of public input. All the way through the
10 process, all the way until the last vote by the
11 last member of the House is recorded, we are
12 open for business for public input. We will
13 take public input today in our last few minutes
14 of this meeting, and I would hope that next
15 week when the Committee meets, if there are
16 individuals from interest groups or political
17 parties or just private citizens who would like
18 to share their thoughts in person, we will take
19 that as well.

20 SENATOR MONTFORD: Thank you, Mr. Chair.

21 SENATOR GAETZ: Other comments about the
22 process? Yes, sir, Senator Latvala.

23 SENATOR LATVALA: Let's get back to
24 numbering for a minute, Mr. Chairman. The
25 Chairman's amendment that comes out on

1 Saturday, I think I understood you to say we
2 weren't going to decide how we were going to
3 number until the meeting on Tuesday. So how
4 are we going to number the Chairman's amendment
5 that comes out on Saturday?

6 SENATOR GAETZ: We are not going to decide
7 anything until the meeting of the Committee,
8 but the Chairman's amendment will have a
9 proposed numbering system.

10 SENATOR LATVALA: Okay. So the Chairman's
11 amendment will be whatever the Chairman
12 decides -- will reflect the decision that you
13 are proposing for how the numbering is to be
14 done?

15 SENATOR GAETZ: We are going to take --
16 we've gotten a great deal of input today. It's
17 been varied. Some of the input has been
18 inconsistent, as is expected, we have had
19 different opinions today on the numbering
20 system. We will take more input as long as
21 that input is provided by members of the
22 Committee, by the public. At some point, as
23 Chairman, I have to propose an amendment, and
24 so my amendment will include a proposal for a
25 numbering system, which the Committee then can

1 accept, change, throw over its shoulder, and
2 hence the need for an amendatory process in the
3 Committee.

4 SENATOR LATVALA: Thank you.

5 SENATOR GAETZ: Senator Gibson, of course.

6 SENATOR GIBSON: Thank you, Mr. Chair.

7 And in terms of all of the tiers and the
8 functional analysis as the Chairman's amendment
9 comes together, are we going to have the data
10 that backs up the changes included in the
11 amendment or is sent to us or -- I think that
12 probably helps us to be a little more
13 deliberative in suggestions we may make. How
14 is that particular part going to be handled?

15 SENATOR GAETZ: Mr. Guthrie.

16 MR. GUTHRIE: The data that the House used
17 for conducting its functional analysis and that
18 the Supreme Court referred to in its opinion is
19 all publicly available on the House website, so
20 it is available to everyone now, and we will be
21 using that data and perhaps some other data to
22 conform with the judgment of the Court.

23 SENATOR GAETZ: Other comments or
24 questions? Other comments or questions? Any
25 other comments or questions having to do with

1 the work of this Committee, with the substance
2 of the reapportionment issues that are before
3 us before we turn to public comment?

4 Leader Rich, may I turn to you for any
5 concluding comments you might want to make?

6 SENATOR RICH: Thank you, Mr. Chair.

7 I really don't have, you know, much to
8 add. I just -- I just feel, you know, we have
9 been given direction by the Supreme Court, and
10 it is our responsibility now to create a plan
11 that complies with the Constitution and with
12 the will of the voters, and I hope that we will
13 in the end do that.

14 SENATOR GAETZ: Thank you very much.

15 Leader Smith, any comments?

16 SENATOR SMITH: No.

17 SENATOR GAETZ: Leader Gardiner. I am
18 afraid you have a bad mike, Leader.

19 SENATOR GARDINER: I was just commenting
20 I've been gone for a week and I've already
21 forgotten how to work the microphone.

22 Thank you, Mr. Chairman, and I appreciate
23 your leadership on this and the openness to the
24 members. And, you know, obviously I am not an
25 attorney. When I read the opinion, there is --

1 I have a little bit different opinion on some
2 others, but the only thing I would just add on
3 the numbering, I know the Florida Supreme Court
4 believes that we all want to serve additional
5 years, but please keep in mind that there are
6 some that are more than content just serving
7 another term and finishing out. So don't
8 everybody assume that everybody wants to be
9 away from their family even longer amount of
10 time, so just keep that in mind. But thank
11 you, Mr. Chairman, for all your hard work, and
12 we look forward to seeing the Chairman's
13 amendment.

14 SENATOR GAETZ: Thank you very much,
15 Leader.

16 Madam President, may I turn to you for any
17 comments you might wish to make as our
18 Vice-Chair?

19 SENATOR MARGOLIS: I thought this was an
20 excellent meeting, it gave us an incredible
21 amount of information, and I have to tell you
22 that it happens really with every
23 reapportionment, there's issues that have to be
24 taken care of. I think it is a rare
25 opportunity to take care of the issues that the

1 Supreme Court has sent us, and I will be
2 delighted if we can get this done in the 15
3 days. Thank you.

4 SENATOR GAETZ: As will I. Thank you very
5 much, Madam President.

6 Are there members of the public who wish
7 to speak to the Committee? Any members of the
8 public wish to provide testimony as to the work
9 of this Committee? Third call, any members of
10 the public?

11 If not, President Margolis moves we rise.

12 (Whereupon, the proceedings were
13 concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF LEON)

I hereby certify that the foregoing transcript is of a tape-recording taken down by the undersigned, and the contents thereof were reduced to typewriting under my direction;

That the foregoing pages 2 through 91 represent a true, correct, and complete transcript of the tape-recording;

And I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

Dated this 28th day of March, 2012.

CLARA C. ROTRUCK

Notary Public

State of Florida at Large

Commission Expires:

November 13, 2014