HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/SJR 2C Apportionment
SPONSOR(S): Reapportionment, Galvano
TIED BILLS: **IDEN./SIM. BILLS:** HJR 5C

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Redistricting	9 Y, 4 N	Takacs	Poreda

SUMMARY ANALYSIS

The Florida Constitution requires the Legislature, by joint resolution at its regular session in the second year after the United States Census, to apportion state legislative districts. The United States Constitution requires the reapportionment of the United States House of Representatives every ten years, which includes the distribution of the House's 435 seats between the states and the equalization of population between districts within each state.

The 2010 Census revealed an unequal distribution of population growth amongst the State's legislative and congressional districts. Therefore districts must be adjusted to correct population differences.

On February 9, 2012, the Florida Legislature passed SJR 1176, reapportioning the 120 state House districts and 40 state Senate districts. On March 9, the Court issued a 191-page majority opinion, unanimously finding the state House map valid. By a 5-to-2 vote, the Court found the state Senate map invalid. The Legislature then met in an Extraordinary Session and on March 27, passed SJR 2B, reapportioning the 40 state Senate districts. On April 27, by a 5-to-2 vote, the Court found the new state Senate map valid.

Shortly thereafter, the state Senate map was challenged in the Circuit Court of the Second Judicial Circuit in Leon County by the League of Women Voters of Florida and other groups as *The League of Women Voters of Florida vs. Kenneth W. Detzner*.

On July 28, 2015, shortly before the case of *The League of Women Voters of Florida vs. Kenneth W. Detzner* was to go to trial, the Senate entered into a stipulation and consent judgment with the Plaintiffs and agreed the enacted state Senate map will be revised prior to the 2016 primary and general elections. Because the Plaintiffs and the Senate had entered into a stipulation that required the Senate Plan to be redrawn, the House did not object to the entry of the consent judgment and agreed to be bound by its terms.

Redistricting Plan H110S9079: As approved by the House Select Committee on Redistricting, map H110S9079 in CS/SJR 2-C reapportions the resident population of Florida into 40 State Senate districts, as required by state and federal law.

When compared to the existing 40 State Senate districts, this proposed committee bill would:

- Reduce the number of counties split from 24 to 16;
- Reduce the number of cities split from 47 to 13;
- Reduce the total perimeter, width and height of the districts, consistently, based on various geographical methods of measuring compactness;
- Maintain elected representation for African-American and Hispanic Floridians.

Upon approval of the Legislature, the Plan will be the subject of an evidentiary hearing in the Circuit Court of the Second Judicial Circuit in Leon County as a part of *The League of Women Voters of Florida vs. Kenneth W. Detzner.* The evidentiary hearing has been set for December 14-18, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

On July 28, 2015, the Plaintiffs and the Florida Senate requested entry of a consent judgment in the Circuit Court of the Second Judicial Circuit in Leon County based on a Stipulation and that request was granted by the Court on that same day. The Stipulation stated:

"In light of the factual findings and legal analysis announced by the Florida Supreme Court in League of Women Voters of Florida v. Detzner,…the Florida Senate stipulates and agrees that the apportionment plan adopted by the Florida Legislature on March 27, 2012, to establish Florida's Senate districts (The "Enacted Senate Plan") violates the provision of Article III, Section 21(a) of the Florida Constitution providing that "[i]n establishing legislative district boundaries…[n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent," because the Enacted Senate Plan and certain individual districts were drawn to favor a political party and incumbents."[1]

The Stipulation further stated:

"Accordingly, the Florida Senate stipulates and agrees that the Enacted Senate Plan shall not be enforced at the 2016 primary and general elections."[2]

"The Florida Senate further stipulates and agrees that, in the forthcoming remedial proceedings in this case, the burden shall be shifted to the Legislature to justify its decisions in drawing Senate district boundaries, no deference shall be afforded to the Legislature's decisions in drawing any Senate district boundaries, and the review of the Remedial Senate Plan and individual districts shall be subject to the same standards as set forth in *Apportionment VII*."[3]

The 2010 Census

According to the 2010 Census, 18,801,310 people resided in Florida on April 1, 2010. That represents a population growth of 2,818,932 Florida residents between the 2000 to 2010 censuses.

After the 2000 Census, the ideal populations for each district in Florida were:

- Congressional: 639,295
- State Senate: 399,559
- State House 133,186

After the 2010 Census, the ideal populations for each district in Florida are:

- Congressional: 696,345
- State Senate: 470,033
- State House: 156,678

The 2010 Census revealed an unequal distribution of population growth amongst the State's legislative and congressional districts. Therefore districts must be adjusted to comply with "one-person, one vote," such that each district must be substantially equal in total population.

[1] Consent Judgment, July 28, 2015, Case No,:2012-CA-2842, Circuit Court of the Second Judicial Circuit in Leon County, Florida, Page 1

[2] Consent Judgment, July 28, 2015, Case No,:2012-CA-2842, Circuit Court of the Second Judicial Circuit in Leon County, Florida, Page 1

[3] Consent Judgment, July 28, 2015, Case No,:2012-CA-2842, Circuit Court of the Second Judicial Circuit in Leon County, Florida, Page 2

Table 1 below shows the changes in population for each of Florida's current congressional districts and their subsequent deviation from the new ideal population of 696,345 residents.

Table 1. Florida Senate Districts 2002-2011

Florida Senate Districts 2002-2011	2000	2010
Total State Population, Decennial Census	15,982,378	18,801,310
Maximum Number of Districts	40	40
Ideal District Population (Total State Population / 40)	399,559	470,033

District	2000 Population	2000 Deviation		2010 Population	2010 Deviation	
		Count	%		Count	%
1	399,563	4	0.0%	424,456	-45,577	-9.7%
2	399,543	-16	0.0%	449,902	-20,131	-4.3%
3	399,512	-47	0.0%	495,081	25,048	5.3%
4	399,586	27	0.0%	433,628	-36,405	-7.7%
5	399,573	14	0.0%	515,369	45,336	9.6%
6	399,586	27	0.0%	451,464	-18,569	-4.0%
7	399,552	-7	0.0%	432,554	-37,479	-8.0%
8	399,568	9	0.0%	525,674	55,641	11.8%
9	399,552	-7	0.0%	527,435	57,402	12.2%
10	399,547	-12	0.0%	565,921	95,888	20.4%
11	399,543	-16	0.0%	433,661	-36,372	-7.7%
12	399,594	35	0.0%	531,959	61,926	13.2%
13	399,563	4	0.0%	394,766	-75,267	-16.0%
14	399,571	12	0.0%	457,489	-12,544	-2.7%
15	399,559	0	0.0%	560,770	90,737	19.3%
16	399,549	-10	0.0%	431,916	-38,117	-8.1%
17	399,577	18	0.0%	456,960	-13,073	-2.8%
18	399,553	-6	0.0%	404,822	-65,211	-13.9%
19	399,553	-6	0.0%	477,068	7,035	1.5%
20	399,578	19	0.0%	576,207	106,174	22.6%
21	399,556	-3	0.0%	529,870	59,837	12.7%
22	399,568	9	0.0%	419,763	-50,270	-10.7%
23	399,561	2	0.0%	458,330	-11,703	-2.5%
24	399,554	-5	0.0%	524,254	54,221	11.5%
25	399,580	21	0.0%	428,398	-41,635	-8.9%
26	399,517	-42	0.0%	481,892	11,859	2.5%
27	399,568	9	0.0%	551,555	81,522	17.3%
28	399,573	14	0.0%	545,085	75,052	16.0%
29	399,534	-25	0.0%	397,144	-72,889	-15.5%
30	399,553	-6	0.0%	458,703	-11,330	-2.4%
31	399,544	-15	0.0%	432,649	-37,384	-8.0%
32	399,576	17	0.0%	428,898	-41,135	-8.8%
33	399,552	-7	0.0%	404,290	-65,743	-14.0%
34	399,596	37	0.0%	481,165	11,132	2.4%
35	399,563	4	0.0%	438,861	-31,172	-6.6%
36	399,575	16	0.0%	418,626	-51,407	-10.9%
37	399,552	-7	0.0%	480,189	10,156	2.2%
38	399,540	-19	0.0%	442,810	-27,223	-5.8%
39	399,606	47	0.0%	483,183	13,150	2.8%
40	399,488	-71	0.0%	448,543	-21,490	-4.6%

The law governing the reapportionment and redistricting of congressional and state legislative districts implicates the United States Constitution, the Florida Constitution, federal statutes, and a litany of case law.

U.S. Constitution

The United States Constitution requires the reapportionment of the House of Representatives every ten years to distribute each of the House of Representatives' 435 seats between the states and to equalize population between districts within each state.

Article I, Section 4 of the United States Constitution provides that "[t]he Time, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators." The U.S. Constitution thus delegates to state legislatures authority, subject to congressional regulation, to create congressional districts.

In addition to state specific requirements to redistrict, states are obligated to redistrict based on the principle commonly referred to as "one-person, one-vote."[4] In *Reynolds v. Sims*, the United States Supreme Court held that the Fourteenth Amendment required that seats in state legislature be reapportioned on a population basis. The Supreme Court concluded:

> …"the basic principle of representative government remains, and must remain, unchanged – the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies…The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races. We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."[5]

The Court went on to conclude that decennial reapportionment was a rational approach to readjust legislative representation to take into consideration population shifts and growth.[6]

In addition to requiring states to redistrict, the principle of one-person, one-vote, has come to generally stand for the proposition that each person's vote should count as much as anyone else's vote.

The requirement that each district be equal in population applies differently to congressional districts than to state legislative districts. The populations of congressional districts must achieve absolute mathematical equality, with no *de minimis* exception.[7] Limited population variances are permitted if they are "unavoidable despite a good faith effort" or if a valid "justification is shown."[8]

In practice, congressional districting has strictly adhered to the requirement of exact mathematical equality. In *Kirkpatrick v. Preisler* the Court rejected several justifications for violating this principle, including "a desire to avoid fragmenting either political subdivisions or areas with distinct economic and social interests, considerations of practical politics, and even an asserted preference for geographically compact districts."[9]

For state legislative districts, the courts have permitted a greater population deviation amongst districts. The populations of state legislative districts must be "substantially equal."[10] Substantial equality of population has come to generally mean that a legislative plan will not be held to violate the Equal

[4] *Baker v. Carr*, 369 U.S. 186 (1962).
[5] *Reynolds v. Sims,* 377 U.S. 533, 568 (1964).
[6] *Reynolds v. Sims,* 377 U.S. 584 (1964).
[7] *Kirkpatrick v. Preisler,* 394 U.S. 526, 531 (1969).
[8] *Kirkpatrick v. Preisler,* 394 U.S. 526, 531 (1969).
[9] *Kirkpatrick v. Preisler,* 394 U.S. 526, 531 (1969).
[10] *Reynolds v. Sims,* 377 U.S. 533, 568 (1964).

Protection Clause if the difference between the smallest and largest district is less than ten percent.[11] Nevertheless, any significant deviation (even within the 10 percent overall deviation margin) must be "based on legitimate considerations incident to the effectuation of a rational state policy,"[12] including "the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts, or the recognition of natural or historical boundary lines."[13]

However, states should not interpret this 10 percent standard to be a safe haven.[14] Additionally, nothing in the U.S. Constitution or case law prevents States from imposing stricter standards for population equality.[15]

After Florida last redistricted in 2002, Florida's population deviation ranges were 2.79% for its State House districts, 0.03% for it State Senate districts, and 0.00% for its Congressional districts.[16] For the State House districts enacted by the Legislature in 2012, Florida's population deviation range is 3.97%.

The Voting Rights Act

Congress passed the Voting Rights Act (VRA) in 1965. The VRA protects the right to vote as guaranteed by the 15th Amendment to the United States Constitution. In addition, the VRA enforces the protections of the 14th Amendment to the United States Constitution by providing "minority voters an opportunity to participate in the electoral process and elect candidates of their choice, generally free of discrimination."[17]

The phraseology for types of minority districts can be confusing and often times unintentionally misspoken. It is important to understand that each phrase can have significantly different implications for the courts, depending on the nature of a legal complaint.

A "majority-minority district" is a district in which the majority of the voting-age population (VAP) of the district consists of a minority group. A "minority access district" is a district in which the dominant minority community is less than a majority of the VAP, but is still large enough to elect a candidate of its choice through either crossover votes from majority voters or a coalition with another minority community.

A "crossover district" is a minority-access district in which the dominant minority community is less than a majority of the VAP, but is still large enough that a crossover of majority voters is adequate enough to provide that minority community with the opportunity to elect a candidate of its choice. A "coalition district" is a minority-access district in which two or more minority groups, which individually comprise less than a majority of the VAP, can form a coalition to elect their preferred candidate of choice.

Lastly, an "influence district" is a district in which a minority community is not sufficiently large to form a coalition or meaningfully solicit crossover votes and thereby elect a candidate of its choice, but is able to affect election outcomes.

Section 2 of the Voting Rights Act

One common challenge to congressional and state legislative districts is a vote-dilution claim under Section 2 of the Voting Rights Act. Section 2 provides: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State…in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color."[18] The purpose of Section 2 is to ensure that minority voters have an equal opportunity

[11] *Chapman v. Meier,* 420 U.S. 1 (1975); *Connor v. Finch,* 431 U.S. 407, 418 (1977).
[12] *Reynolds,* 377 U.S. at 579.
[13] *Swann v. Adams,* 385 U.S. 440, 444 (1967).
[14] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 36.
[15] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 39.
[16] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Pages 47-48.
[17] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 51.
[18] 42 U.S.C. Section 1973(a) (2006).

along with other members of the electorate to influence the political process and elect representatives of their choice.[19]

In general, Section 2 challenges have been brought against districting schemes that either disperse members of minority communities into districts where they constitute an ineffective minority—known as "cracking"[20]—or which concentrate minority voters into districts where they constitute excessive majorities—known as "packing"—thus diminishing minority influence in neighboring districts. In prior decades, it was also common that Section 2 challenges would be brought against multimember districts, in which "the voting strength of a minority group can be lessened by placing it in a larger multimember or at-large district where the majority can elect a number of its preferred candidates and the minority group cannot elect any of its preferred candidates."[21]

The Supreme Court set forth the criteria of a vote-dilution claim in *Thornburg v. Gingles*.[22] A plaintiff must show:

1. A minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district;

2. The minority group must be politically cohesive; and

3. White voters must vote sufficiently as a bloc to enable them usually to defeat the candidate preferred by the minority group.

The three "*Gingles* factors" are necessary, but not sufficient, to show a violation of Section 2.[23] To determine whether minority voters have been denied an equal opportunity to influence the political process and elect representatives of their choice, a court must examine the totality of the circumstances.[24]

This analysis requires consideration of the so-called "Senate factors," which assess historical patterns of discrimination and the success, or lack thereof, of minorities in participating in campaigns and being elected to office. [25] Generally, these "Senate factors" were born in an attempt to distance Section 2 claims from standards that would otherwise require plaintiffs to prove "intent," which Congress viewed as an additional and largely excessive burden of proof, because "It diverts the judicial injury from the crucial question of whether minorities have equal access to the electoral process to a historical question of individual motives."[26]

In *Johnson v. De Grandy*, the Court decided that while states are not obligated to maximize the number of minority districts, states are also not given safe harbor if they achieve proportionality between the minority population(s) of the state and the number of minority districts.[27] Rather, the Court considers the totality of the circumstances. In "examining the totality of the circumstances, the Court found that, since Hispanics and Blacks could elect representatives of their choice in proportion to their share of the voting age population and since there was no other evidence of either minority group having less opportunity than other members of the electorate to participate in the political process, there was no violation of Section 2."[28]

In *League of United Latin American Citizens (LULAC) v. Perry*, the Court elaborated on the first *Gingles* precondition. "Although for a racial gerrymandering claim the focus should be on compactness in the

[19] 42 U.S.C. Section 1973(b); *Voinovich v. Quilter*, 507 U.S. 146, 155 (1993).
[20] Also frequently referred to as "fracturing."
[21] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 54.
[22] 478 U.S. 30 (1986).
[23] *Johnson v. De Grandy*, 512 U.S. 997, 1011-1012 (1994).
[24] 42 U.S.C. Section 1973(b); *Thornburg vs. Gingles*, 478 U.S. 46 (1986).
[25] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 57.
[26] Senate Report Number 417, 97th Congress, Session 2 (1982).
[27] *Johnson v. De Grandy*, 512 U.S. 997, 1017 (1994).
[28] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 61-62.

district's shape, for the first *Gingles* prong in a Section 2 claim the focus should be on the compactness of the minority group."[29]

Lastly, In *Bartlett v. Strickland*, the Supreme Court provided a "bright line" distinction between majority-minority districts and other minority "crossover" or "influence" districts. The Court "concluded that §2 does not require state officials to draw election district lines to allow a racial minority that would make up less than 50 percent of the voting-age population in the redrawn district to join with crossover voters to elect the minority's candidate of choice."[30] However, the Court made clear that States had the flexibility to implement crossover districts, where no other prohibition exists. In the opinion of the Court, Justice Kennedy stated as follows:

> "Much like §5, §2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts…When we address the mandate of §2, however, we must note it is not concerned with maximizing minority voting strength…and, as a statutory matter, §2 does not mandate creating or preserving crossover districts. Our holding also should not be interpreted to entrench majority-minority districts by statutory command, for that, too, could pose constitutional concerns…States that wish to draw crossover districts are free to do so where no other prohibition exists. Majority-minority districts are only required if all three *Gingles* factors are met and if §2 applies based on a totality of the circumstances. In areas with substantial crossover voting it is unlikely that the plaintiffs would be able to establish the third *Gingles* precondition—bloc voting by majority voters." [31]

Section 5 of the Voting Rights Act

Section 5 of the Voting Rights Act of 1965, as amended, was an independent mandate separate and distinct from the requirements of Section 2. "The intent of Section 5 was to prevent states that had a history of racially discriminatory electoral practices from developing new and innovative means to continue to effectively disenfranchise Black voters."[32]

Section 5 required states that comprise or include "covered jurisdictions" to obtain federal preclearance of any new enactment of or amendment to a "voting qualification o prerequisite to voting, or standard, practice, or procedure with respect to voting."[33] This included districting plans.

Five Florida counties—Collier, Hardee, Hendry, Hillsborough, and Monroe—had been designated as covered jurisdictions.[34]

Preclearance may have been secured either by initiating a declaratory judgment action in the District Court for the District of Columbia or, as is the case in almost all instances, submitting the new enactment or amendment to the United States Attorney General (United States Department of Justice).[35] Preclearance must have been granted if the qualification, prerequisite, standard, practice, or procedure "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[36]

The purpose of Section 5 was to "insure that no voting procedure changes would be made that would lead to retrogression[37] in the position of racial minorities with respect to their effective exercise of the

[29] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 62.
[30] *Bartlett v. Strickland,* No. 07-689 (U.S. Mar. 9, 2009).
[31] *Bartlett v. Strickland,* No. 07-689 (U.S. Mar. 9, 2009).
[32] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 78.
[33] 42 U.S.C. Section 1973c.
[34] Some states were covered in their entirety. In other states only certain counties were covered.
[35] 42 U.S.C. Section 1973c.
[36] 42 U.S.C. Section 1973c
[37] A decrease in the absolute number of representatives which a minority group has a fair chance to elect.

electoral franchise."[38] Whether a districting plan was retrogressive in effect requires an examination of "the entire statewide plan as a whole."[39]

The Department of Justice required that submissions for preclearance include numerous quantitative and qualitative pieces of data to satisfy the Section 5 review. "The Department of Justice, through the U.S. Attorney General, has 60 days in which to interpose an objection to a preclearance submission. The Department of Justice can request additional information within the period of review and following receipt of the additional information, the Department of Justice has an additional 60 days to review the additional information. A change, either approved or not objected to, could be implemented by the submitting jurisdiction. Without preclearance, proposed changes were not legally enforceable and cannot be implemented."[40]

However, in 2013, the United States Supreme Court declared in *Shelby County v. Holder* that the so-called "coverage formula" in Section 4 of the VRA—the formula by which Congress selected the jurisdictions that Section 5 covered—exceeded Congress's enforcement authority under the Fifteenth Amendment. The preclearance process established by Section 5 of the VRA is thus no longer in effect. *Shelby County* does not, however, affect the validity of the statewide diminishment standard in the Florida Constitution.

Majority-Minority and Minority Access Districts in Florida

Legal challenges to Florida's 1992 state legislative and congressional redistricting plans resulted in a significant increase in elected representation for both African-Americans and Hispanics. Table 2 illustrates those increases. Prior to 1992, Florida Congressional Delegation included only one minority member, Congresswoman Ileana Ros-Lehtinen.

Table 2. Number of Elected African-American and Hispanic Members in the Florida Legislature and Florida Congressional Delegation

	Congress		State Senate		State House	
	African-American	**Hispanic**	**African-American**	**Hispanic**	**African-American**	**Hispanic**
Pre-1982	0	0	0	0	5	0
1982 Plan	0	0-1	2	0-3	10-12	3-7
1992 Plan	3	2	5	3	14-16	9-11
2002 Plan	3	3	6-7	3	17-20	11-15

Prior to the legal challenges in the 1990s, the Florida Legislature established districts that generally included minority populations of less than 30 percent of the total population of the districts. For example, Table 3 illustrates that the 1982 plan for the Florida House of Representatives included 27 districts in which African-Americans comprised 20 percent of more of the total population. In the majority of those districts, 15 of 27, African-Americans represented 20 to 29 percent of the total population. None of the 15 districts elected an African-American to the Florida House of Representatives.

Table 3. 1982 House Plan

[38] *Beer v. United States*, 425 U.S. 130, 141 (1976).
[39] *Georgia v. Ashcroft*, 539 U.S. 461, 479 (2003).
[40] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 96.

Only Districts with Greater Than 20% African-American Population[41]

Total African-American Population	House District Number	Total Districts	African-American Representatives Elected
20% - 29%	2, 12, 15, 22, 23, 25, 29, 42, 78, 81, 92, 94, 103, 118, 119	15	0
30% - 39%	8, 9	2	1
40% - 49%	55, 83, 91	3	2
50% - 59%	17, 40, 63, 108	4	4
60% - 69%	16, 106,	2	2
70% - 79%	107	1	1
TOTAL			10

Subsequent to the legal challenges in the 1990s, the Florida Legislature established districts that were compliant with provisions of federal law, and did not fracture or dilute minority voting strength. For example, Table 4 illustrates that the resulting districting plan doubled the number of African-American representatives in the Florida House of Representatives.

Table 4. 2002 House Plan
Only Districts with Greater Than 20% African-American Population[42]

Total African-American Population	House District Number	Total Districts	African-American Representatives Elected
20% - 29%	10, 27, 36, 86	4	1
30% - 39%	3, 23, 92, 105	4	3
40% - 49%	118	1	1
50% - 59%	8, 14, 15, 55, 59, 84, 93, 94, 104, 108	10	10

[41] It is preferred to use voting age population, rather than total population. However, for this analysis the 1982 voting age population data is not available. Therefore total population is used for the sake of comparison.
[42] It is preferred to use voting age population, rather than total population. However, since the 1982 voting age population data is not available for Table 2, total population is again used in Table 3 for the sake of comparison.

60% - 69%	39, 109	2	2
70% - 79%	103	1	1
TOTAL			18

Equal Protection – Racial Gerrymandering

Racial gerrymandering is "the deliberate and arbitrary distortion of district boundaries...for (racial) purposes."[43] Racial gerrymandering claims are justiciable under the Equal Protection Clause.[44] In the wake of *Shaw v. Reno*, the Court rendered several opinions that attempted to harmonize the balance between "competing constitutional guarantees that: 1) no state shall purposefully discriminate against any individual on the basis of race; and 2) members of a minority group shall be free from discrimination in the electoral process."[45]

To make a *prima facie* showing of impermissible racial gerrymandering, the burden rests with the plaintiff to "show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district."[46] Thus, the "plaintiff must prove that the legislature subordinated traditional race-neutral districting principles…to racial considerations."[47] If the plaintiff meets this burden, "the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest,"[48] i.e. "narrowly tailored" to achieve that singular compelling state interest.

Florida Constitution, Article III, Section 16

Article III, Section 16 of the Florida Constitution requires the Legislature, by joint resolution at its regular session in the second year after the Census is conducted, to apportion the State into senatorial districts and representative districts.

The Florida Constitution is silent with respect to process for congressional redistricting. Article 1 Section 4 of the United States Constitution authorizes each state legislature to apportion seats designated to that state by providing the legislative bodies with the authority to determine the times place and manner of holding elections for senators and representatives. Consistent therewith, Florida has adopted its congressional apportionment plans by legislation subject to gubernatorial approval.[49] Congressional apportionment plans are not subject to automatic review by the Florida Supreme Court.

Florida Constitution, Article III, Section 20

As approved by Florida voters in the November 2010 General Election, Article III, Section 20 of the Florida Constitution establishes the following standards for congressional redistricting:

> "In establishing congressional district boundaries:
>
> (a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

[43] *Shaw v. Reno*, 509 U.S. 630, 640 (1993)
[44] *Shaw v. Reno*, 509 U.S. 630, 642 (1993)
[45] *Redistricting Law 2010*. National Conference of State Legislatures. November 2009. Page 72.
[46] *Miller v. Johnson*, 515 U.S. 900, 916 (1995).
[47] *Miller v. Johnson*, 515 U.S. 900, 916 (1995).
[48] *Miller v. Johnson*, 515 U.S. 920 (1995).
[49] *See generally* Section 8.0001, et seq., Florida Statutes (2007).

(b) Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(c) The order in which the standards within subsections (a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection."

These standards are set forth in two tiers. The first tier, subsections (a) above, contains provisions regarding political favoritism, racial and language minorities, and contiguity. The second tier, subsections (b) above, contains provisions regarding equal population, compactness and use of political and geographical boundaries.

To the extent that compliance with second-tier standards conflicts with first-tier standards or federal law, the second-tier standards do not apply.[50] The order in which the standards are set forth within either tier does not establish any priority of one standard over another within the same tier.[51]

The first tier provides that no apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent. Redistricting decisions unconnected with an intent to favor or disfavor a political party and incumbent do not violate this provision of the Florida Constitution, even if their effect is to favor or disfavor a political party or incumbent.[52]

The first tier of the new standards also provides the following protections for racial and language minorities:

- Districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process.

- Districts shall not be drawn to diminish the ability of racial or language minorities to elect representatives of their choice.

The Florida Supreme Court has construed the non-diminishment standard as imposing in all sixty-seven counties in Florida minority protections similar to those in Section 5 of the federal Voting Rights Act, as amended when reauthorized by Congress in 2006.

The first tier also requires that districts consist of contiguous territory. In the context of state legislative districts, the Florida Supreme Court has held that a district is contiguous if no part of the district is isolated from the rest of the district by another district.[53] In a contiguous district, a person can travel from any point within the district to any other point without departing from the district.[54] A district is not contiguous if its parts touch only at a common corner, such as a right angle.[55] The Court has also concluded that the presence in a district of a body of water without a connecting bridge, even if it requires land travel outside the district in order to reach other parts of the district, does not violate contiguity.[56]

[50] Article III, Sections 20(b) and 21(b), Florida Constitution.
[51] Article III, Sections 20(c) and 21(c), Florida Constitution.
[52] *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 617 (Fla. 2012).
[53] *In re Senate Joint Resolution 2G, Special Apportionment Session 1992*, 597 So. 2d 276, 279 (Fla. 1992) (citing *In re Apportionment Law, Senate Joint Resolution 1E*, 414 So. 2d 1040, 1051 (Fla. 1982)).
[54] *Id.*
[55] *Id*. (citing *In re Apportionment Law, Senate Joint Resolution 1E*, 414 So. 2d at 1051).
[56] *Id*. at 280.

The second tier of these standards requires that districts be compact.[57] Compactness "refers to the shape of the district."[58] The Florida Supreme Court has confirmed that the primary test for compactness is a visual examination of the general shape of the district.[59] "Compact districts should not have an unusual shape, a bizarre design, or an unnecessary appendage unless it is necessary to comply with some other requirement."[60]

In addition to a visual inspection, quantitative measures of compactness can assist courts in assessing compactness.[61] The Florida Supreme Court relied on two common, quantitative measures of compactness: the Reock and Convex Hull methods.[62] The Reock method divides the area of the district by the area of the smallest circle that can surround the district. The result is a number from zero to one. A Reock score of one indicates that a district covers 100% of the area of the surrounding circle—in other words, that the district fills the entire circle and therefore *is* a circle. A Reock score of 0.50 indicates that a district covers 50% of the area of the surrounding circle. A higher score indicates superior compactness, on the assumption that a district that occupies more of its surrounding circle is more compact than one that occupies less.

The Convex Hull method performs the same calculation, with one difference. Rather than surround the district with a circle, the Convex Hull method surrounds it with a convex polygon—a figure constructed of straight lines that do not turn inward (the shape created by a hypothetical rubber band placed around a district). The Convex Hull method then divides the area of the district by the area of the surrounding convex polygon. The score indicates, on a zero-to-one scale, the percentage of the area of the polygon that the area of the district covers.

The second tier of these standards also requires that "districts shall, where feasible, utilize existing political and geographical boundaries."[63] "Political boundaries" refers to county and municipal lines.[64] The protection for counties and municipalities is consistent with the purpose of the standards to respect existing community lines. "Geographical boundaries" refers to boundaries that are "easily ascertainable and commonly understood, such as rivers, railways, interstates, and state roads."[65]

It should also be noted that these second tier standards are often overlapping. Purely mathematical measures of compactness often fail to account for county, city and other geographic boundaries, and so federal and state courts almost universally account for these boundaries into consideration when measuring compactness. Courts essentially take two views:

1) That county, city, and other geographic boundaries are accepted measures of compactness;[66] or

2) That county, city and other geographic boundaries are viable reasons to deviate from compactness.[67]

Either way, county, city, and other geographic boundaries are primary considerations when evaluating compactness.[68]

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[57] Article III, Sections 20(b) and 21(b), Florida Constitution.
[58] *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 685 (Fla. 2012).
[59] *Id*. at 634 ("[A] review of compactness begins by looking at the shape of a district.").
[60] *Id*.
[61] *Id*.
[62] *Id*. at 635.
[63] Article III, Sections 20(b) and 21(b), Florida Constitution.
[64] *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 636-37 (Fla. 2012).
[65] *Id*. at 638 (marks omitted); *see also id*. ("Together with an analysis of compactness, an adherence to county and city boundaries, and rivers, railways, interstates and state roads as geographical boundaries will provide a basis for an objective analysis of the plans and the specific districts drawn.").
[66] *e.g., DeWitt v. Wilson*, 856 F. Supp. 1409, 1414 (E.D. Cal. 1994).
[67] *e.g.*, *Jamerson v. Womack*, 423 S.E. 2d 180 (1992). *See generally*, 114 A.L.R. 5th 311 at § 3[a], 3[b].
[68] *See id.*

Redistricting Plan Data Report for H110S9079

Name: H110S9079	
lation Fundamentals	
lation Assigned:	18,801,310 of 18,801,310
ct Population::	470,032
pulation :	30
pulation Range:	463,036 to 477,675
viation Range:	(-6,996) To 7,643
	(-1.48) To 1.62 Total 3.11%

Plan Type: Senate - 40 Districts	
Plan Geography Fundamentals:	
Census Blocks Assigned:	484,481 out of 484,481
Number Non-Contiguous Sections:	1 (normally one)
County or District Split :	16 Split of 67 used
City or District Split :	13 Split of 411 used
VTD's Split :	281 Split of 9,436 used

Districts by Race Language

	20%+	30%+	40%+	50%+	60%+
: VAP	8	6	3	2	1
VAP	7	6	3	2	0
VAP	14	8	6	3	3
VAP	14	7	4	4	3

	H110S9079			Number of Districts	40								
surements - Map Based													
	Base Shapes			Circle - Dispersion					Convex Hull - Indentation					
	Perimeter	Area	P/A	Perimeter	Area	P/A	Pc/P	A/Ac	Perimeter	Area	P/A	Pc/P	A/Ac	Width
	8,173	65,757	12.43%	7,603	172,186	4.41%	93.02%	47.68%	6,263	87,970	7.11%	76.62%	80.81%	1,945
	11,470	65,934	17.39%	9,035	234,011	3.86%	78.77%	31.68%	7,143	108,049	6.61%	62.27%	63.60%	2,121
le	8,177	65,757	12.43%				92.98%	38.18%				76.59%	74.74%	
	10,402	65,883	15.78%				86.86%	28.15%				68.66%	60.97%	

	Straight line in miles apart				Miles to drive by fastest route				Minutes to drive by fastest route			
	Pop	VAP	VAP Black	VAP Hispanic	Pop	VAP	VAP Black	VAP Hispanic	Pop	VAP	VAP Black	VAP
	16	16	14	11	22	22	19	15	31	31	28	24

B. SECTION DIRECTORY:

Section 1 Provides the definitions of the census geography utilized in apportionment.

Section 2 Provides the geographical description of the apportionment of the 40 senatorial districts.

Section 3 Provides for the apportionment of any territory not specified for inclusion in any district.

Section 4 Provides for the apportionment of any noncontiguous territory.

Section 5 Provides that the districts created by this joint resolution constitute and form the senatorial districts of the State.

Section 6 Provides a severability clause in the event that any portion of this joint resolution is held invalid.

Section 7 Provides that this joint resolution with respect to the qualification, nomination, and election of members of the Florida Senate in the primary and general elections held in 2016 and thereafter.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There does not appear to be any anticipated cost on the Department of State related to the redrawing of maps.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The reapportionment will have an indeterminate fiscal impact on Florida's 67 Supervisor of Elections offices. Local supervisors will incur the cost of data-processing and labor to change voter records to reflect new districts if they are impacted by this remedial map. As precincts are aligned to new districts, postage and printing will be required to provide each active voter whose precinct has changed with mail notification. Temporary staffing may be hired to assist with mapping, data verification, and voter inquiries.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

When compared to the 40 State Senate Districts in SJR 2-C (Plan S040S9124), the amendment adopted by the Select Committee on Redistricting (Plan H110S9079):

- Reduces the number of municipalities split from 20 to 13;
- Increases the statewide Reock compactness score from .43 to .48;
- Increases the statewide Convex Hull compactness score from .79 to .81;
- Increases the statewide Polsby-Popper compactness score from .39 to .41.

Specifically, the map blends the concepts of SJR 2-C as passed by the Senate in Plan S040S9124 with the plan submitted to the Legislature by the Coalition Plaintiffs (Plan SPUBS0202) in a way to improve the numeric metrics of the map while maintaining a consistent methodology of the treatment of county splits.