

# **EXHIBIT B**

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. SC14-1905**

THE LEAGUE OF WOMEN  
VOTERS OF FLORIDA, *et al.*,

Appellants,

L.T. Case No. 1D14-3953

vs.

KEN DETZNER, *et al.*,

Appellees.

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**THE FLORIDA SENATE’S SUPPLEMENTAL RESPONSE TO  
THE FLORIDA HOUSE OF REPRESENTATIVES’ MOTION FOR  
FURTHER RELINQUISHMENT OF JURISDICTION**

Pursuant to this Court’s order dated August 26, 2015, Appellee, the Florida Senate, files this supplemental response to the Florida House of Representatives’ Motion for Further Relinquishment of Jurisdiction (the “Motion”) and states as follows:

1. On August 26, the trial court issued an Order on Remedial Relinquishment, stating that the Legislative Defendants were “unable to comply” with the trial court’s directive to pass a remedial map by August 25, and that “it appears unlikely that a Legislative plan will be provided to me for review, in a timely fashion.” The trial court then stated that “[g]iven the specific directions of

the relinquishment order and the limitation of authority implicit therein,” it “request[s] further direction from the Court.”

2. It is the Legislature’s responsibility to enact a congressional plan; and only when it refuses to do so should a court draw its own plan. *See In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Sessions 1992*, 601 So. 2d 543, 545 (Fla. 1992) (redrawing the Senate apportionment plan only after the Court was advised that neither the governor nor the presiding officers of the Legislature “intend[ed] to convene the Legislature in an extraordinary apportionment session.”) As stated in its initial response, the Florida Senate remains open to further negotiations with the House, and is ready, willing, and able to reconvene in special session to fulfill the Legislature’s obligations to draw new congressional districts. In fact, on August 27, the Chair of the Senate Reapportionment Committee, Senator Bill Galvano, filed a map (S026C9066) that attempts to reconcile the differences between the map the House passed (H110C9071) and the map the Senate passed (S024C9054).<sup>1</sup> The Florida Senate believes that sufficient time remains for the trial court to review a plan passed by the Legislature before the trial court’s jurisdiction expires on October 17.

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<sup>1</sup> All proposed congressional plans, whether submitted by staff, a legislator, or the public, are available for viewing on the Florida Senate’s redistricting website, <http://www.flsenate.gov/Session/Redistricting/Plans?type=Congressional&from=ALL&sortBy=PlanDate&sortOrder=descending>.

3. Plaintiffs' suggestion that the Legislature has "disregard[ed]" this Court's mandate is without basis (pls. res. at 4). In compliance with the directions of this Court, the Legislature convened in a two-week special session from August 10 to August 21. Although the House and Senate were not able to agree on a single plan, the trial court's scheduling order (attached to the Senate's initial response as Exhibit A) specifically contemplated that the Legislature may not be able to draw a map by its August 25 deadline: "The Court recognizes that unanticipated contingencies may arise in any legislative process and directs the Legislative Parties, if they have reason to believe that the Remedial Plan will not be enacted by August 25, 2015, to provide prompt notice to the Court."

4. The Florida Senate believes that, given more time, the Legislature could convene a special session and pass a map within 20 days of this Court's order on the Motion. Although Plaintiffs criticize the Senate's position as a "'wait-and-see' approach," all of the parties must recognize that courts draw a redistricting map only as the very last resort. *See In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Sessions 1992*, 601 So. 2d at 545.

5. To the extent that the trial court believes that it lacks sufficient time to review a plan passed by the Legislature under the current deadlines, the Florida Senate requests that this Court extend its relinquishment of jurisdiction to allow the Legislature time to reconvene in special session; and allow the trial court time to

recommend approval or disapproval of any remedial plan passed by the Legislature or any alternative plans offered by the parties should the Legislature not enact a remedial plan.

6. A further relinquishment of jurisdiction for 60 days from the date of a further order would not prejudice any party. Assuming that the Court issues an order on Monday, August 31, all proceedings could be completed by October 30. Although the Legislature will be in special session at that time (beginning on October 19) to consider a remedial state Senate redistricting plan, all proceedings before the trial court will, in all likelihood, have ended; and all that will be left is for the trial court to issue its order.

7. Even if the Legislature does not adopt a plan, there is still time for the trial court to consider and recommend a remedial plan without jeopardizing this Court's ability to undertake its own review. Plaintiffs concede that they do not intend to take extensive discovery: "Based on the competing maps adopted by the House and Senate, Coalition Appellants do not see a need for further discovery to challenge those plans beyond what this Court has already recommended the Legislature to provide" (Coalition Response at 4). Therefore, the parties can submit their plans to the trial court, the Legislative Parties can take any discovery of Plaintiffs' maps they deem appropriate, and the trial court can conduct a

hearing. All this can be accomplished soon; indeed, even Plaintiffs suggest that it could be accomplished within the original 100-day window (pls. res. at 8-9).

8. The Court should reject, however, Plaintiffs' proposal to bypass additional proceedings in the trial court. This case does not concern a "facial review," but instead "fact-based claims," and therefore the development of a record is essential. *See League of Women Voters of Fla. v. Detzner*, 40 Fla. L. Weekly S432, *slip op.* at 64 (Fla. July 9, 2015) ("*Apportionment VII*"). Certainly the Florida Senate intends to take discovery to obtain evidence regarding whether Plaintiffs' alternative maps comply with the tier-one standards of Article III, Section 20 of the Florida Constitution. While in *Apportionment VII*, this Court held that Plaintiffs' maps were "not on trial," *id.* at 75 n.11, any alternative maps Plaintiffs now offer *will be* on trial: the Plaintiffs will be advocating that the Court adopt that map as the official congressional redistricting plan for Florida. Therefore, the failure to consider evidence of Plaintiffs' intent could result in the adoption of a plan drawn in violation of the tier-one standards.

9. Plaintiffs have extensive knowledge about the origins of the base map, as well as the maps ultimately passed by the House and Senate. The base map was drawn by Jason Poreda and Jeff Takacs (from the House) and Jay Ferrin (from the Senate). All three testified at a joint House and Senate committee hearing held on August 11 about how that map was drawn, the reason for its configurations, and

the reasoning behind decisions to go one way or another. They all attested that they spoke to no senator, House member, political consultant, or member of the public about the maps, and showed no maps to anyone except counsel for the House and Senate – and the Legislature has publicly stated that it would assert no attorney-client privilege regarding conversations between the map drawers and counsel regarding conversations during the drawing of the base map. Meanwhile, at public committee meetings, senators placed on the record their justification for any changes to the base plan; any proposed changes had to improve upon the metrics of the base plan. Plaintiffs have access to the Legislature’s extensive hearings to discuss both the base map and the maps ultimately passed by the House and Senate. In addition, any meeting between a Senator and a map drawer to discuss possible changes to the base map were recorded. All proposed maps have been made public.

10. In contrast, the Plaintiffs have to date offered no alternative map; much less have they revealed any information about the origins of any such map, and whether such a map – like other maps that had been submitted in the trial court – was drawn with partisan intent. To the extent Plaintiffs submit any alternative maps for adoption as the congressional redistricting map of the State of Florida, those maps should be subject to the same scrutiny for compliance with Tier 1 and Tier 2 standards as maps drawn by the Legislature.

11. The Plaintiffs' own timetable demonstrates that the trial court can allow for necessary discovery, hold a hearing, and make a recommendation with plenty of time left for the Court to review (pls. res. at 8-9).

WHEREFORE, the Florida Senate requests that this Court extend its relinquishment of jurisdiction to allow the Legislature to convene in special session to pass a remedial plan, and to provide the trial court with additional time to permit discovery and recommend approval or disapproval of any remedial plan passed by the Legislature or to consider alternative maps submitted by the parties.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on August 28, 2015, a copy of the foregoing was served by e-mail to all counsel on the attached service list.

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