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IN THE SUPREME COURT IN AND FOR THE STATE OF FLORIDA

LEAGUE OF WOMEN VOTERS
OF FLORIDA, et al.
Appellants,

Case No. SC14-1905
L.T. Nos. 1D14-3953, 2012-CA-00412, 2012-CA-00490

v.

KEN DETZNER, et al.,
Appellees.
_____/

On Appeal from a Decision of the Second Judicial Circuit,

Certified by the First District Court of Appeal

Brief of Amici Curiae LatinoJustice PRLDEF, Florida New Majority and Mi Familia Vota

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AMICI STATEMENT OF INTEREST

LatinoJustice PRLDEF is a nonprofit, nonpartisan national legal defense fund dedicated to protecting Latino civil rights through advocacy, education and impact litigation, since 1972. LatinoJustice PRLDEF's continuing mission is to protect Latino civil and constitutional rights, civic engagement, and to promote equal protection under the law for Latinos and their communities. LatinoJustice PRLDEF also operates its Southeast Regional Office in Orlando, Florida, and brings significant experience protecting Latino voting rights in Florida.[1]

Florida New Majority is a nonprofit statewide voter participation organization, which defends and expands voting rights for all citizens. Through education and advocacy, Florida New Majority empowers Latinos throughout Florida to fully participate in the political process.

Mi Familia Vota is a national nonprofit that works to unite the Latino community to promote social and economic justice through civic participation. Its efforts include increasing citizenship, census education, and Get Out the Vote projects. Mi Familia Vota's Florida Statewide Office focuses on civic engagement including voter protection.

[1] *See , e.g.*, *Arcia v. Fla. Sec'y of State*, 746 F.3d 1273 (11th Cir. 2014) substituted opinion at 2014 US App. LEXIS 21685 (November 17, 2014).

Amici bring collective experience in working with and advocating for the voting rights of Florida's Latino[2] communities, and seek to provide this Court with a unique perspective on the impact of the recent round of redistricting on Latino voting rights to the current review of the validity of the subject remedial maps, and the design of District 9, in particular, where it has the effect of retrogressively or currently diluting or diminishing the opportunities available to Latino voters to elect representatives of their choice. Amici represent Latino community interests as they may be impacted by the results of this litigation, provide pertinent legal analysis and raise questions and concerns about the lack of adequate review and demographic analysis, which may not have otherwise been presented to the Court by the parties in this litigation.

INTRODUCTION

Throughout our history in the United States, Latino voters have encountered unequal treatment, disenfranchisement and exclusion from the political process. From lack of bilingual ballots and voter registration purges[3], to persistent concerns

[2] According to the United States Census Bureau, "Hispanic or Latino refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish Culture or origin regardless of race," a*vailable at* United States Census Bureau Glossary, http://www.census.gov/glossary/#term_HispanicorLatino origin (last visited Dec. 1, 2014). The terms Latino and Hispanic will be used interchangeably throughout this Brief.

[3] *Arcia v. Fla. Sec'y of State,* 746 F.3d 1273 (11th Cir. 2014) substituted opinion at 2014 US App. LEXIS 21685 (November 17, 2014) (No. 1215738) (Court held that Secretary of State's systematic attempt to remove voters from registration rolls

regarding retrogression and vote dilution in Osceola County[4], Florida's Latino voters are no strangers to obstacles placed in front of them when trying to cast their votes. Latino voters' arduous journey to obtain equal access to the electoral process continues today in Florida. The Latino community significantly contributed to Florida's population growth, particularly in the Central Florida region. As a result of this growth, Florida gained two (2) congressional districts during the 2012 redistricting cycle. In the 2012 version of District 9 in H000C9047, which encompassed Osceola and parts of Orange and Polk counties, is a largely Latino/Hispanic District with a Latino/Hispanic population of 44.1%.[5]

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within 90 days of a Federal election violated the 90-day provision of Federal voting laws. The Secretary of State alleged concerns over non-U.S. citizens voting as a basis for his systematic removal of voters).

[4] *U.S. v. The School Board of Osceola County*, Consent Judgment and Decree, Case No. 6:08-CV-582-ORL-18DAB, (M.D. Fla. 2008), *available at* http://www.justice.gov/crt/about/vot/sec_2/osceola_school_cd.php (districting plan for Osceola County's school board violated Section 2 of the Voting Rights Act of 1965 (VRA)); *U.S. v. Osceola County*, Remedial Order, Case No. 6:05-cv-1053-ORL-31 (M.D. Fla. 2006), *available at* www.justice.gov/crt/about/vot/sec_2/osceola_order06.php (at-large election for county commissioners violated Section 2; court entered remedial order adopting five single-member district map submitted by U.S., ordering special election); *U.S. v. Osceola County*, Consent Decree, Case No. 6:02-CV-738-ORL-22JGG (M.D. Fla. 2002), *available at* http://www.justice.gov/crt/about/vot/litigation/recent_sec2.php (U.S. alleged Osceola County violated Section 2 and Section 208 of the Voting Rights Act by discriminating against Hispanic voters; parties entered consent decree to remedy violations) (hereinafter, "U.S. DOJ Cases").

[5] *See* CS/SB 1174, Florida Senate Congressional Redistricting 2012 Plan (2012 Plan, hereinafter "H000C9047"), District Demographic Profile at 9, *available at*

SUMMARY OF THE ARGUMENT

Florida voters approved Fair Districts Amendments 5 and 6 in 2010,[6] which amended the state constitution and provided clear guidelines to the state legislature as to how to draw district lines, setting forth clear mandates which protect minority voting rights in both state legislative and federal congressional apportionment and redistricting. The Florida Constitution contains express constitutional provisions that seek to protect the voting rights and equal opportunity of racial and language minorities to participate in the political process and to elect representatives of their choice. Art III, §§ 20, 21, Fla. Const.

However, the current maps placed before this Court for review reflect the fact that these state constitutional provisions have not been not complied with where the parties have failed to take into account the extent to which the 2014 maps, as currently drawn, could deny, abridge or diminish the opportunity of Latino voters in Florida to participate in the political process or elect representatives of their choice.

In particular, Amici remain concerned that the opportunities Latino Floridians have to participate in the political process and elect representatives of

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http://www.flsenate.gov/PublishedContent/Session/Redistricting/Plans/h000c9047/h000c9047_district_details.pdf (last visited Dec. 1, 2014).

[6] Art. III, § 20, Fla. Const.; Florida Department of State Division of Elections, Standards for Legislature to Follow in Congressional Redistricting 07-15, http://election.dos.state.fl.us/initiatives/initdetail.asp?account=43605&seqnum=1 (last visited Dec. 1, 2014).

their choice may have been diminished as a result of minimal or poor research on voting age population demographics, racially polarized voting ("RPV"), and voting history in the establishment of congressional district boundaries.

The parties' proposed remedial maps in this case drastically reduce the Latino voting age population in District 9, an area where significant Latino/Hispanic population growth contributed to the creation of a new congressional district. This reduction, from 41.4% of the HVAP under the 2012 Congressional District Map[7] to 37.23% under the Coalition Appellants' Remedial Maps[8] and 38.37% under the Legislature's remedial map,[9] risks effectively diminishing or abridging the Latino community's ability to elect a candidate of its choice by diluting the vote, and with retrogressive effect.

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[7] *See* CS/SB 1174, Florida Senate Congressional Redistricting 2012 Plan (2012 Plan, hereinafter "H000C9047"), District Demographic Profile at 9, *available at* http://www.flsenate.gov/PublishedContent/Session/Redistricting/Plans/h000c9047/h000c9047_district_details.pdf (last visited Dec. 1, 2014).

[8] Exhibit 2: Coalition Exemplar Remedial Map, In Support of Plaintiff's Motion to Impose Remedy in *League of Women Voters v. Browning/Detzner,* Case No. 2012-CA-000490, (Filed in Fla. 2d Jud. Cir. Ct. July 23, 2014), *available at* http://judicial.clerk.leon.fl.us/image_orders.asp?caseid=2516445&jiscaseid=&defseq=&chargeseq=&dktid=102256873&dktsource=CRTV (last visited Dec. 1, 2014)

[9] *See* 2014 Redistricting Plan H0000C9057, Florida House Of Representatives Staff Analysis for PCB SCOR 14A-01 at 16 *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0001Az.SCOR.DOCX&DocumentType=Analysis&BillNumber=0001A&Session=2014A (last visited Dec. 1, 2014).

STANDARD OF REVIEW

Amici agree with the Court's application of the appropriate standard of review on this matter.

ARGUMENT

I. REDUCING THE LATINO VOTING POPULATION IN CONGRESSIONAL DISTRICT 9 WITHOUT ANALYZING WHETHER IN DOING SO, IT DILUTES THE LATINO VOTE AND ABRIDGES OR DIMINISHES THE GROUP'S ABILITY TO ELECT A REPRESENTATIVE OF ITS CHOICE, VIOLATES ARTICLE III, SECTION 20 OF THE FLORIDA CONSTITUTION.

"The right to elect representatives – and the process by which we do so – is the very bedrock of our democracy." *In re Senate Joint Resolution of Legislative Apportionment*, 83 So. 3d 597, 600 (Fla. 2012) (herein "*Apportionment I*") (evaluating the constitutionality of a state legislative redistricting plan under Article III, section 21 of the Florida Constitution). The ballot initiative history, language, form and purpose of Article III, sections 20 and 21 are nearly identical – the only difference being that section 20 pertains to standards for establishing congressional district boundaries, and section 21 pertains to standards for establishing state legislative district boundaries. *See* Art III, §§ 20, 21, Fla. Const.

Florida courts have in fact relied on this Court's interpretation of Art. III, § 21, Fla. Const. in the legislative redistricting context to interpret the nearly identical provisions of Article III, section 20 in the congressional redistricting

context. *See Romo* v. *Detzner et al,* Case No. 2012-CA-00412, and *League of Women Voters et al. v. Detzner et al*., Case No. 2012-CA-00490 at 5 (consolidated proceedings) (Fla. 2d Jud. Cir. Ct. July 10, 2014) Order at 5 (citing *Apportionment I*, 83 So. 3d 597).

In 2010, Florida voters approved the Fair Districts Amendments 5 and 6 to enact state safeguards for minority voters and provide guidance for elected representatives during the redistricting process. *Apportionment I* at 602. The plain language of the Florida Constitution contains an express mandate and states that: "No apportionment plan or individual district shall 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". Art. III, § 20(a), Fla. Const. (emphasis added).

The Florida Supreme Court analyzes Florida Constitutional provisions for minority voting protections as a safeguard against retrogression and the dilution of voting strength. *Apportionment I* at 627. The Fair Districts Amendments contain two tiers of requirements. The Tier One requirement in section 21(a) and its parallel in section 20(a) protects minority voting strength against dilution and retrogression and is of utmost importance; the Legislature is obligated to adhere to its requirements. *See Apportionment I* at 615.

During the redistricting process, the Legislature is constitutionally required to comply with both the federal "one-person, one-vote" equal protection standard based on the fourteenth and fifteenth amendments to the U.S. Constitution and Florida's Constitutional provisions protecting racial and language minority groups. *Apportionment I* at 602; *see generally* U.S. Const., amends. XIV, XV; Art. III, §§ 20, 21, Fla. Const. A state legislature can take into account the impact that new districts will have on language minorities. *Brown v. Secretary of State,* 668 F.3d 1271, 1283 (11th Cir. 2012) (holding that Florida voters' act of lawmaking via statewide initiative in approving Article III, sections 20 and 21 of the Florida constitution was fully consistent with, and did not violate federal Elections Clause (U.S. Const., art. 1, § 4)). The Fair Districts Amendments' racial and language minority voting rights protection provisions ensure equality among all voters by "leveling the playing field" and increasing opportunities for all candidates. *Id.* at 1281.

a. The Legislature Risked Unlawful Vote Dilution in Violation of the Florida State Constitution by Failing to Engage in a Local Appraisal of Latino and African American Voting Strength as a Coalition Group in District 9 and other Central Florida Districts in the Remedial Mapping Process.

Preserving racial and language minorities' voting strength has been ratified by the Courts and traditionally used in drawing congressional boundary lines. *Brown v. Secretary of State*, 668 F. 3d 1271. Vote dilution is the illegal practice of reducing a minority group's potential effectiveness by diluting or diminishing the

strength of their voting power and opportunity to influence or impact the outcome of an election such that they can no longer effectively elect a candidate or representative of choice. Manipulating district lines by either "packing" minorities into a particular district or "cracking" and fragmenting them into other districts effectively reduces minority voting power. *Apportionment I,* at 621-22.

Under Section 2 of the federal Voting Rights Act ("VRA") of 1965, illegal vote dilution occurs where an electoral standard, practice, or procedure results in a denial or abridgement of the right to vote on account of race or color. 42 U.S.C 1973(a). "A successful vote dilution claim under section 2 [of the Voting Rights Act of 1965], requires a showing that a minority group was denied a majority-minority district that, but for the purported dilution, could have potentially existed." *Apportionment I,* at 622; 42 U.S.C. 1973(b). The Section 2 results-based standard provides that a voting rights violation exists:

> if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election… are not equally open to participation by… citizens protected by [Section 2] in that [they] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.
>
> 42 U.S.C § 1973(b) (see also id. §§ 1973(a), 1973b(f)(2) (extending Section 2 protection to racial and language minorities).

The key standards for a redistricting totality of circumstances test are: " (1) a racial minority population is 'sufficiently large and geographically compact to constitute

a majority in a single-member district'; (2) the minority population is 'politically cohesive' and (3) the majority population, usually white, 'votes sufficiently as a bloc to enable it …. usually to defeat the minority's preferred candidate." *Apportionment I* at 622 (citing *Gingles* at 50-51). A vote dilution examination requires an intensely local appraisal of the area where the dilution or potential dilution is alleged. *Gingles*, 478 U.S. at 79. Here, this local appraisal failed to occur during the remedial map drawing process. This is cause for concern because reducing voting population without conducting such appraisal may result in unconstitutional vote dilution.

Under applicable law, the combined Latino and African American populations of congressional District 9 may also create a majority-minority coalition district, and where Latino and African American voters vote cohesively as a coalition minority group, their shared interest must be protected in accordance with the Florida Constitution. Art. III, § 20(a), Fla. Const.; *see also Concerned Citizens of Hardee County v. Hardee County Bd. of Comm'rs,* 906 F.2d 524, 526 (11th Cir. 1990), explicitly recognizing minority coalition claims under the analysis set forth under the Section 2 vote dilution analysis in *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986). Under Section 2 of the federal Voting Rights Act, "Two minority groups . . . may be a single [S]ection 2 minority if they can establish that they behave in a politically cohesive manner." *Id.* at 526-27.

In the case of the coalition district that may exist in congressional District 9, both the Legislature and the Appellants failed to address or analyze whether Latinos and African Americans with shared political preferences vote cohesively as a minority coalition district in Osceola and Orange Counties, and whether or not the creation of District 9 reduces or diminishes the power of Latinos and African Americans, as a coalition, to elect a candidate of choice.

Under the 2012 Congressional Map, District 9 is 44.1% Latino and 11.8% African American, comprising a majority of 55.9%. Osceola and Orange Counties both have sizable Latino and African American populations, and the two counties make up the majority of District 9's population.[10] Osceola County's notably recent history of Section 2 and 5 cases brought by the U.S. Department of Justice over the last decade should also have raised red flags and placed the Legislature on notice that any redistricting in Osceola County deserved closer review than other counties.[11]

By removing portions of Osceola County from District 9, without analyzing racially polarized voting and the election histories of both Latino and African American voters, both as subgroups and as a cohesive coalition minority group that

[10] *See* CS/SB 1174, Florida Senate Congressional Redistricting 2012 Plan (2012 Plan, hereinafter "H000C9047"), District Demographic Profile at 9, *available at* http://www.flsenate.gov/PublishedContent/Session/Redistricting/Plans/h000c9047/h000c9047_district_details.pdf (last visited Dec. 1, 2014).
[11] *See* U.S. DOJ cases cited *supra* note 4.

could comprise 50 percent plus one or more of the voting age population (VAP) of a proposed district under established federal redistricting standards, the Legislature risks unconstitutionally diminishing the strength of their voting power such that they can no longer effectively elect a candidate or representative of choice. The Legislature's failure to conduct a good faith local appraisal of voter cohesion among African American and Latino voters and the electoral performance of a coalition district in Osceola and Orange counties risks impermissible vote dilution under Article III, section 20 of the Florida Constitution.

II. THE STATE LEGISLATURE REDUCED THE LATINO VOTING POPULATION IN DISTRICT 9 WITHOUT ANALYZING WHETHER SUCH REDUCTION RESULTS IN A RETROGRESSION WHICH CONTRAVENES FLORIDA'S CONSTITUTION AND DIMINISHES THE ABILITY OF LATINO VOTERS TO ELECT A REPRESENTATIVE OF THEIR CHOICE.

The Florida Fair Districts Amendments codify the principles and standards set forth under the federal Voting Rights Act: "Consistent with the goals of Sections 2 and 5 of the VRA, Florida's corresponding state provision aims at safeguarding the voting strength of minority groups against both impermissible dilution and retrogression." *Apportionment I* at 620. Section 2 of the VRA prohibits redistricting plans that afford minorities less opportunity than other electorate members to participate in the political process. 42 U.S.C. 1973(b). Section 5 of the VRA aims to remove impermissible retrogression, including

redistricting that has the effect of reducing the ability of a minority group to elect a candidate of its choice. 42 U.S.C. 1973c(b) (2006).

While Amici recognize that the U.S. Supreme Court struck down the coverage formula in Section 4 of the VRA in *Shelby County v. Holder*, 570 U.S. ___ (2013), which determined where Section 5 preclearance provisions applied as part of the federal review process for retrogression, Amici understand that Section 5 provisions that protect against retrogression still remain good law, and while this Court is guided by the U.S. Supreme Court precedent, it has an independent constitutional obligation to interpret state constitutional provisions. *Apportionment I* at 621.

"[A]lthough Section 5 applie[d] only to 'covered jurisdictions,' Florida's constitutional prohibition applies to the entire state." *Id.* at 620. Accordingly, state constitutional provisions addressing retrogression here, including Article III, section 20(a) of the Florida Constitution, may look to standards of review that were well established at the time the amendments were incorporated into the state constitution, including those established under Section 5, for guidance.

a. The Legislature Failed to Engage in a Functional Analysis to Protect Against Retrogression where New Districts May Reduce Latino Voting Opportunity and Effective Voting Power.

Section 5 of the VRA seeks to eliminate impermissible retrogression in a minority group's ability to elect a candidate of its choice. *Apportionment I*, 83

So.3d at 620 (citing 42 U.S.C. 1973c(b) (2006)). Florida's constitutional provision regarding redistricting codifies Section 5 of the VRA's retrogression principle and applies it statewide. "Florida now has a statewide non-retrogression requirement independent of Section 5." *Apportionment I* at 624.

"A proposed plan is retrogressive under Section 5 (of the Voting Rights Act of 1965) if its net effect would be to reduce minority voters' 'effective exercise of the electoral franchise' when compared to the benchmark plan." U.S. Department of Justice Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 76 Fed. Reg. 7470, 7471 (Feb. 9, 2011) (DOJ Guidance Notice) (requiring a functional analysis of voting behavior to determine whether retrogression has occurred) (hereinafter "DOJ Guidance Notice") (citing *Beer v. US*, 425 U.S. 125, 141 (1976). A benchmark plan is … " the last legally enforceable redistricting plan in force of effect." DOJ Guidance Notice, 76 Fed. Reg. at 7471 (citing *Riley v. Kennedy*, 553 US 406 (2008).

A violation of the Florida minority voting protection provision in the state constitution could be established by a pattern of "overpacking" minorities into districts where other coalition or influence districts could be created when compared to the benchmark plan. *See Apportionment I* at 645. Under Florida law, districts that increase minority voting strength when compared to benchmark plan are allowed. *Apportionment I* at 655.

A retrogression evaluation, however, necessarily requires an inquiry into "whether a district is likely to perform for minority candidates of choice," and a "'functional analysis,' requiring consideration not only of the minority population in the districts, or even the minority voting-age population in those districts, but of political data and how a minority population group has voted in the past." . *Apportionment I* at 625-26 (citing US DOJ Guidance Notice, 76 Fed. Reg. at 7471 (2011); Texas, 2011 U.S. Dist. LEXIS 147586, 2011 WL 6440006, at *15-18 (proposing a functional test similar to that of the DOJ).

Further, The United States Department of Justice (DOJ) has clarified that a functional analysis of electoral behavior entails: an "analysis of the electoral behavior within the particular jurisdiction or election district" and that "[C]ensus data alone may not provide sufficient indicia of electoral behavior to make the requisite determination. Circumstances, such as differing rates of electoral participation within discrete portions of a population, may impact on the ability of voters to elect candidates of choice, even if the overall demographic data show no significant change." *Apportionment I* at 625-26 (citing DOJ Guidance Notice, 76 Fed. Reg. at 7471 (2011); Texas, 2011 U.S. Dist. LEXIS 147586, 2011 WL 6440006, at *15-18 (proposing a functional test similar to that of the DOJ)).

The Florida State Legislature failed to engage in a functional analysis of electoral behavior among Latino voters and across different racial and ethnic

demographics in Central Florida, particularly where it would impact District 9 and Osceola County. Similarly where the remedial plans split Poinciana from District 9, it failed to adequately analyze the effectiveness and strength of the Latino voting population to elect representatives of their choice in District 9.

Voter turnout is important in a diminishment analysis. The trial court held that no Hispanic opportunity district existed in Central Florida under the 2002 benchmark plan. *See* Trial Court's Final Judgment, *League of Women Voters, et al. v. Detzner*, Case Nos. 2012-CA-00412, 2012-CA-00490, at *33. While the Court was correct in this observation as to the benchmark plan alone, Central Florida's Hispanic population grew significantly after the implementation of the benchmark plan. For instance, Osceola County's Hispanic population grew from 29.4% in 2000 to 45.5% in 2010.[12] However, a thorough analysis was not conducted to determine the effect of Hispanic Voting Age Population reduction in District 9 and the ability for Latino voters to elect a candidate of their choice.

b. The Legislature Failed to Engage in a Functional Analysis to Protect Against Retrogression where New Districts May Unconstitutionally Reduce Latino and African American Coalition Voting Opportunity and Effective Voting Power.

[12] *Compare* United States Census Bureau, Profile of General Demographic Characteristics 2000, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF *with* United States Census Bureau, Profile of General Population and Housing Characteristics 2010, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF (last visited on Dec. 1, 2014).

Under applicable law, the combined Latino and African American populations of District 9 may create a majority-minority group, and where Latino and African American voters vote cohesively, their shared interest must be protected in accordance with Article III, section 20 of the Florida constitution which prevents the diminishment of a minority group's ability to elect a candidate of its choice through the protection of what courts have referred to as coalition districts. In a coalition district, two or more minority groups work together to elect their preferred candidate." *Texas v. United States*, 887 F. Supp. 2d 133, 147 (D.D.C. 2012) vacated and remanded, 133 S. Ct. 2885 (2013) (citations omitted).

Although the United States Supreme Court has not directly addressed whether coalition districts are protected under Section 5, the U.S. District Court for the District of Columbia found that a "close reading of Georgia v. Ashcroft suggests that it does." *Texas v. United States*, Civil Action No. 11-1303-RMC-TBG-BAH, (D.D.C. Nov. 8, 2011) at 83. This reading is buttressed by the Supreme Court's Section 2 jurisprudence, which has long recognized the existence of coalition and crossover districts in order to provide the means for minority voters to elect candidates of choice. *Id*. at 148.

As the U.S. District Court for the District of Columbia pointed out in *Texas v. United States*, "although section 2 does not require states to draw new crossover districts, we read section 5's ban on retrogression to extend protection to districts in

which minority voters have demonstrated an ability to elect their preferred candidates via either assembling a coalition or attracting sufficient crossover votes, or both." *Id*. at 149. In so ruling, the court in *Texas v. United States* also held that in order to qualify as a protected coalition district under section 5, there must be "sufficient evidence to find that minorities vote cohesively and have the ability to elect their preferred candidates." *Id*. at 150 (noting that the analysis is the same for crossover districts, but the "ability to-elect analysis is more complicated").

As discussed above, Florida's constitutional prohibition on retrogression applies statewide. Thus, under applicable federal and Florida law, redistricting cannot reduce the population of minority groups in historically performing minority districts where the diminishment of that group would hurt their ability to elect a preferred candidate. *See Texas v. United States*, Civil Action No. 11-1303-RMC-TBG-BAH (D.D.C. Nov. 8, 2011) (citation omitted) (concluding that minority coalition districts are also included in the calculation of whether a new districting plan diminishes the ability of a minority group to elect a candidate of choice).

In combination with the prohibition on retrogression, this protection can supersede the compactness criteria codified in Florida's Constitution. *See Apportionment I*, at 64; Art III, §§ 20, 21, Fla. Const. In applying this analysis, the United States Department of Justice has made it clear that population in the

districts is not the sole criteria, and that political data about how a minority population group has voted should be taken into account. DOJ Guidance Notice, 76 Fed. Reg. at 7471; *see also Texas*, 2011 WL 6440006, at *15-18 (proposing a similar test to that of DOJ).

In the case of the coalition district that may exist in congressional District 9, the Legislature failed to conduct a functional analysis as to whether Latinos and African Americans with shared political preferences vote cohesively as a minority coalition district in Osceola and Orange Counties, and whether or not the creation of District 9 reduced or diminished their ability to elect a candidate of choice.

As previously set forth in Sections I(a) and II(a) of this Brief, the voting statistics under the 2012 Congressional District Map, speak to the need for a functional analysis of how Osceola and Orange counties, if not split or "cracked" up by the current District 9, could function as an effective district where a coalition could elect a candidate of choice. Furthermore, Osceola County's recent history of Section 2 and 5 cases filed by the U.S. Department of Justice over the last decade should have raised red flags and placed the legislature on notice that any redistricting in Osceola County deserved closer review than other counties.[13] By removing portions of Osceola County from District 9 without conducting a functional analysis of the electoral performance of an African American and Latino

[13] *See* U.S. DOJ cases cited *supra* note 4.

coalition district in Osceola and Orange counties, the Legislature risks impermissible vote dilution and retrogression under Article III, section 20 of the Florida Constitution.

CONCLUSION

In accordance with Florida's State Constitution, which unequivocally and explicitly provides protection against vote dilution and retrogression, we respectfully request that this Court evaluate the maps before it under established vote dilution and retrogression voting standards, and where the legislature failed to meet these standards to analyze the impact on Latino voters, and on Latino and African American voters where they may vote cohesively as a coalition, order the state legislature to conduct further review and redraw the maps in accordance with Article III, section 20 of the Florida Constitution.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to counsel of record as identified on the attached service list on this 1st day of December, 2014.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief is in Times New Roman 14-point font and complies with all the requirements of Florida Rules of Appellate Procedure 9.210(a)(2).

/s/ Martha A. Pardo
Attorney