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Common Cause, et al. v. Cord Byrd

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Common Cause, et al.)
)
v.) 4:22-cv-109
)
Cord Byrd)

)

TRANSCRIPT OF VIDEO-RECORDED
HEARING OF THE FLORIDA HOUSE REDISTRICTING COMMITTEE
NOVEMBER 2, 2021

DIGITAL EVIDENCE GROUP
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1 CHAIR LEEK: The Redistricting -- Redistricting
2 Committee will come to order. DJ, please call the
3 roll.

4 CLERK: Chair Leek.

5 REP. LEEK: Here.

6 CLERK: Vice Chair Fine.

7 REP. FINE: Here.

8 CLERK: Ranking Member Geller.

9 REP. GELLER: Here.

10 CLERK: Representatives Andrade.

11 REP. ANDRADE: Here.

12 CLERK: Avilas.

13 REP. AVILA: [no audible response]

14 CLERK: Bush.

15 REP. BUSH: Here.

16 CLERK: Byrd

17 REP. BYRD: Here.

18 CLERK: Clemons

19 REP. CLEMONS: Here.

20 CLERK: Drake.

21 REP. DRAKE: Here.

22 CLERK: Driskell.

23 REP. DRISKELL: Here.

24 CLERK: Goff-Marcil.

25 REP. GOFF-MARCIL: Here.

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1 CLERK: Grall.
2 REP. GRALL: [no audible response]
3 CLERK: Grant has been excused. Jenne.
4 REP. JENNE: Here.
5 CLERK: Latvala.
6 REP. LATVALA: Here.
7 CLERK: Mariano.
8 REP. MARIANO: Here.
9 CLERK: Omphroy.
10 REP. OMPHROY: Here.
11 CLERK: Payne.
12 REP. PAYNE: Here.
13 CLERK: Robinson.
14 REP. ROBINSON: Here.
15 CLERK: Ramos.
16 REP. RAMOS: Here.
17 CLERK: Sirois.
18 REP. SIROIS: Here.
19 CLERK: Slosberg.
20 REP. SLOSBERG: Here.
21 CLERK: Thompson.
22 REP. THOMPSON: Here.
23 CLERK: Tuck.
24 REP. TUCK: Here.
25 CLERK: Quorum is present, Mr. Chair.

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1 REP. LEEK: Thank you, DJ. Members a few
2 reminders before we begin. Please silence all
3 electronic devices and if you wish to make a public
4 comment, please fill out a form and turn it in to the
5 sergeant's staff.

6 Also as a reminder for our members and
7 presenters, please ensure that, uh -- that you turn
8 your microphone on when you are speaking and off when
9 you are finished.

10 Welcome back to -- to our interim committee, uh,
11 meetings. So far in this process, we have covered an
12 introduction to redistricting concepts, reviewed our
13 website and current public input opportunities as well
14 as discussed our map drawing applications advanced
15 functionality and how those tools can assist us in
16 aligning our maps with our constitutional standards.

17 I explained during our first committee meeting
18 how important a comprehensive educational effort is to
19 understanding the full scope of redistricting. I hope
20 you're coming to appreciate that it is not an easy
21 task nor one with clear cut answers.

22 One of the last pieces of educational information
23 we need to cover as a committee is the legal aspect of
24 redistricting which includes applicable federal and
25 state law as well as case law related to the -- this

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1 process, especially Florida Supreme Court precedent
2 that was stab- -- that was established following the
3 2012 redistricting cycle. This will directly impact
4 how we view and apply our Tier 1 and Tier 2 standards.

5 For this redistricting cycle, the House has
6 retained outside counsel to advise the Chamber on
7 state and federal law, as well as relevant court
8 precedent. For today's presentation, our committee
9 will be hearing from Andy Bardos. Uh, Andy has been
10 with GrayRobinson for close to a decade, was involved
11 in the 2012 redistricting cycle, as well as having
12 previously served as special counsel in the Florida
13 Senate prior to joining the private sector.

14 Members, I want to differentiate that today's
15 counsel, um, presentation is for our education on
16 relevant redistricting law. It is not for discussing
17 hypothetical scenarios or specific policy decisions
18 that may become before our committee, because as I've
19 mentioned before, there is no single correct map.

20 When we begin reviewing district boundary lines,
21 decis- -- decisions must be weighed among one another
22 with the goal of drawing a legally compliment map. As
23 Andy goes through his presentation I encourage you to
24 take notes of questions you may have. Once the
25 presentation is concluded, we will take questions from

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1 members on the contents of the presentation and then
2 move on to public comment.

3 And with that, Mr. Bardos, welcome to the House
4 Redistricting committee, you are recognized to
5 present.

6 MR. BARDOS: Thank you, Mr. Chairman and members
7 of the committee. My name is Andy Bardos. I'm an
8 attorney with the GrayRobinson law firm. I'll be
9 providing an overview today of the legal standards
10 that govern redistricting plans, uh, at both the --
11 both the state legislative and congressional
12 redistricting.

13 Um, as the Chairman suggested, the standards are
14 complex, they overlap. Um, there is a hierarchy among
15 those standards and so we'll try to sort that out
16 today, um, as -- as well as we can.

17 I'll begin with, um, with the Federal Voting
18 Rights Act. As you can see on this slide there are
19 both federal redistricting standards and state
20 redistricting standards. We have federal redistricting
21 standards in the United States Constitution and in the
22 Federal Voting Rights Act and state standards in the
23 Florida Constitution, um, most of which were added to
24 the Constitution in 2010 when the voters adopted
25 Article 3, Sections 21 and 22.

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1 So the Federal Voting Rights Act was adopted by
2 Congress in 1965. It was adopted to enforce the 15th
3 Amendment which protects the rights of citizens, um,
4 to vote, um, and protects that from denial on the
5 basis of race, color, um, or previous condition of
6 servitude. The Federal Voting Rights Act implements
7 that, um, guarantee and it does it in the context of
8 redistricting through two provisions: Section 2 and
9 Section 5.

10 Section 5 is no longer in affect, um, but we will
11 cover it anyway because the State Constitution
12 incorporates a Section 5 principle and so although the
13 Federal Voting Rights Act Section 5 no longer applies,
14 there's an analog in Florida State Constitution that
15 does continue to apply.

16 Um, we will start with Section 2 however. Section
17 2 of the Voting Rights Act prohibits, um, election
18 procedures, um, that have the result of denying or
19 abridging the right of any citizen to vote on account
20 of race, color, or membership in a language minority
21 group. At its most basic level too requires the
22 creation of a minority opportunity district when
23 certain criteria are satisfied.

24 Um, those criteria apply where the minority
25 population in a particular region or locality is large

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1 enough to form a majority in a single member district
2 and where the minority population's voting preference
3 differs from that of the majority. And, so, in the
4 absence of a minority elec- -- minority opportunity
5 district, the majority population would out vote and
6 usually defeat the preferred candidate of the minority
7 population.

8 These criteria were announced by the United
9 States Supreme Court in a case called Thornburg versus
10 Gingles. Um, Gingles is a -- is a term that's commonly
11 used in redistricting, uh, law to refer to Section 2
12 in this -- and the criteria that govern Section 2. Um,
13 and the criteria are -- are stated on this slide.

14 Um, there are three prerequisites as Gingles
15 calls them or preconditions, um, to -- uh, to the
16 application of Section 2 and then ultimately if those
17 three preconditions are satisfied, there must be an
18 assessment based on the totality of circumstances to
19 determine whether members of the minority group have
20 less opportunity than other members of the electorate
21 to participate in the political process and elect
22 representatives of their choice.

23 And that totality of the circumstances analysis
24 can take into consideration, um, election procedures
25 that are discriminatory. It can take into

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1 consideration racially polarized voting meaning that
2 members of a minority group have different voting
3 preferences from members of the majority group. And it
4 can take into consideration any other, um,
5 circumstances that speak to the ability of minority,
6 um, voters to elect the candidates of their choice and
7 participate in the political process.

8 But before we even get to that analysis, the
9 three preconditions must be satisfied. And those
10 preconditions are more, um, quantifiable, more
11 objective, um, than the ultimate totality of the
12 circumstances and analysis.

13 So, the first condition is is that the minority
14 population must be nu- -- numerous enough to form a
15 majority in a single member district. So, there's a --
16 there's a requirement that minority population have
17 the potential to control the outcome in a -- in the
18 election. In the case of a Congressional district, for
19 example, that minority population must be quite
20 significant, over 300,000 people if we're considering
21 total population, um, in order to form a majority of
22 the population of a Congressional district.

23 So, right off the bat, we see that the -- with
24 the first precondition that the Section 2 analysis
25 will rarely apply, especially in districts as large as

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1 congressional districts. So, that's the first
2 requirement. The second is, and it's built into the
3 first, is that that minority population must be
4 geographically compact. So, Section 2 never requires
5 the creation of a district that is non-compact, that
6 combines minority populations that don't live in a
7 relatively compact geographical area.

8 But if we move beyond the first precondition, if
9 we assume that that is satisfied and that the minority
10 population is large enough to be a majority in a
11 single member district, and is sufficiently compact
12 that a -- that a compact district can be drawn for
13 that minority population, then we move to 2 and 3 and
14 these, uh, criteria 2 and 3 relate to this concept of
15 racially polarized voting.

16 So, number 2 is that the minority population must
17 be politically cohesive. In other words, the minority
18 pop- -- population has a strong preference for one
19 particular candidate over another and they're not
20 split between two candidates, um, in a relatively even
21 way. So, if the minority population is cohesive, if it
22 backs a single candidate, um, consistently.

23 And then number 3, the majority population
24 usually votes as a block to defeat the minority's
25 preferred -- minority population's preferred

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1 candidate, then we have racially polarized voting,
2 where the minority population's preferred candidate,
3 um, is defeated in -- in the -- in most elections by
4 the preference of the majority of the electorate.

5 And in that case, Section 2 might apply to
6 require that those -- the legislature to create a
7 district in which minority voters constitute a
8 majority and are therefore able to, um, elect the
9 candidates of their choice.

10 The other provision of the -- of the Voting
11 Rights Act that has applied to redistricting is
12 Section 5. Section 5 is the anti-retrogression
13 principal of the Voting Rights Act. Retrogression is a
14 -- is a legal term for backsliding. Section 5 assured
15 that when a -- when a redistricting plan is amended,
16 minority voters don't find themselves in a worse
17 position than they were in in the benchmark plan which
18 is the term we use for the existing plan or the prior
19 plan.

20 So, Section 5, um, required, uh, that minority
21 voters', um, ability to elect the candidates of their
22 choice not be diminished when a new plan is adopted.
23 Um, Section 5 also had a procedural component that
24 required the state to submit a new redistricting map
25 to either the United States Department of Justice or

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1 to a federal district court for preapproval before it
2 could go into effect. That, um, procedure of course,
3 is no longer in affect as we'll -- as we'll, um,
4 discuss when we talk about the Shelby County versus
5 Holder decision.

6 The other aspect of Section 5 that's notable is,
7 that Section 5 was limited to certain jurisdictions
8 that were identified through a formula in the Voting
9 Rights Act. Congress identified certain jurisdictions
10 in the 1960s and 1970s that had what are called tests
11 or devices in, place. The best example of that would
12 be a literacy test and in these jurisdictions that
13 held -- had a test or device in place in the '60s or
14 '70s, if those same jurisdictions had low rates of
15 registration or turnout among minority voters, they
16 were then subjected to Section 5 of the Voting Rights
17 Act, which then required, um, redistricting plans and
18 other election law changes to be preapproved by the
19 federal government before they could take effect.

20 However, in Shelby County versus Holder in 2013,
21 the United States Supreme Court held that this formula
22 by which Congress determined which jurisdictions would
23 be subject to the Section 5 of the Voting Rights Act
24 was outdated and it no longer ref- -- reflected
25 current conditions because it was based on data from

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1 the 1960s and '70s.

2 And, so, the court noted that much had changed,
3 that Congress was free to amend the formula to
4 establish a new formula based on current condition,
5 but Congress has not amended the formula and therefore
6 the formula remains unconstitutional and Section 5
7 therefore without a -- without a coverage formula is
8 not enforceable. But as we will see when we address
9 the State Constitutional standards, this anti-
10 retrogression principle now appears in Florida State
11 Constitution.

12 The -- the United States Constitution im- --
13 imposes a couple of restrictions as well. One is a
14 restriction on racial gerrymandering and we have on
15 this slide a reference to Miller versus Johnson, which
16 is the lead in case but there are a number of cases in
17 which the United States Supreme Court has addressed
18 racial gerrymandering. And racial gerrymandering is --
19 is the use of race as a predominant consideration in
20 redistricting.

21 And the equal protection clause prohibits the
22 predominant use to race in redistricting. And another
23 way that the court has expressed that is, that if
24 traditional redistricting principles such as
25 compactness or subordinated to race, made secondary to

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1 race, then race has become the predominant principle
2 and that -- that violates the equal protection clause.

3 The exception to that is if the Voting Rights Act
4 requires race to be considered as the predominant, um,
5 consideration in drawing districts. So, obviously, as
6 we just noted in -- when in Section 2, um, applies or
7 when Section 5 applied, the states were required by a
8 federal law to consider race and draw a districts on
9 account of race.

10 And in those situations, the U.S. Supreme Court,
11 while it hasn't express- -- expressly decided the
12 issue, has always assumed that the use of race in
13 order to implement the Voting Rights Act is
14 appropriate even if race then for that limited purpose
15 becomes the predominant consideration in drawing
16 district boundaries.

17 Another related issue is the -- is the issue of
18 partisan gerrymandering. There's been a -- a debate
19 for a long time over whether the equal protection
20 clause similarly prohibits, um, drawing districts on
21 the basis of partisanship, um, for political purposes.

22 Um, in 2019 in Rucho versus Common Cause, this is
23 a very recent decision of the United States Supreme
24 Court, the court determined that, um, partisan
25 gerrymandering is not a -- an issue that the federal

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1 courts will, um, adjudicate because the court held
2 that there is no, as the courts refer to it, um,
3 judicially discoverable and manageable standard for
4 determining when a redistricting plan goes too far in
5 considering partisanship.

6 And this is a little bit different from the state
7 constitutional standard which will -- we will address,
8 uh, in a moment. Um, the federal courts have -- the
9 United States Supreme Court has held that, some amount
10 of partisan gerrymandering is acceptable under the
11 United States Supreme Court so the question then
12 becomes, how do federal courts determine when it goes
13 too far.

14 And, so, the Supreme Court de- -- decided that
15 there's really no clear cut objective way for federal
16 courts to determine when partisan gerrymandering goes
17 too far and therefore it determined the federal courts
18 will not involve themselves in par- -- partisan
19 gerrymandering cases but as we will see the Florida
20 Constitution does place significant restrictions on
21 the consideration of partisanship, in fact prohibits
22 the consideration of partisanship, uh, in political
23 party advantage in drawing redistricting plans in
24 Florida.

25 So, Article 3, Section 16 has been a part of the

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1 Florida Constitution for a long time. This is the
2 provision that establishes the procedure or the
3 mechanics of passing a state legislative redistricting
4 plan. Um, it directs the legislature at its regular
5 session in the second year after the census to adopt a
6 redistricting plan for a state legislative district
7 and that would be the regular session which is, um, no
8 approaching, um, in 2022.

9 It requires that there be 30 to 40 senate
10 districts and between 80 and 120 representative
11 districts and that the districts be contiguous.
12 Contiguous means that a district consists of a -- a
13 single, um, lo- -- land area that is in actual
14 contact. It can't consist of two or more separate
15 pieces.

16 Um, water areas are -- are disregarded if a
17 district clearly can crossover lakes or rivers that's
18 -- that's not a violation of contiguity. A district
19 cannot meet at a point, those would be considered two
20 separate pieces of the district. If they simply meet
21 at a point, but otherwise the contiguity requirement
22 require that the district be a single integrated, um,
23 land area.

24 Article 3, Section -- Sections 20 and 21 were
25 adopted in 2010 by the voters. Um, these are -- are

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1 more recent state constitutional standards. Um, one of
2 the sections applies to congressional redistricting,
3 the other applies to state legislative redistricting.
4 They are substantively the same, um, even though
5 they're set forth in two separate sections.

6 The standards are, uh, divided into two tiers,
7 um, we frequently refer to them as Tier 1 and Tier 2.
8 Um, the standards in Tier 1 prevail over those in Tier
9 2 if there's a conflict. Um, one example of that might
10 be, um, in order to maintain a -- a district in which
11 minority voters have the ability to elect, it might be
12 a district that is non-compact, it might be in the
13 benchmark plan.

14 Um, and Tier 2 on the other hand requires
15 districts to be compact in order to avoid
16 diminishment. If it's necessary, that district can be
17 redrawn even if it's not compact in order to avoid
18 diminishing the ability of minority voters to elect
19 the candidates of their choice. That's one example in
20 which Tier 1 standards might conflict with Tier 2
21 standards and the Tier 1 standards will prevail in
22 that situation.

23 Within each tier, the standards have no priority,
24 so Tier -- Tier 1 standards among themselves are --
25 must be balanced. Um, they're not, um, stated in any

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1 sort of order of priority, and likewise within Tier 2
2 the standards don't have a priority over each other.
3 So, um, districts must be compact, they must be as
4 nearly equal in population as practicable and where
5 feasible they must utilize existing political and
6 geographical boundaries.

7 Those are the Tier 2 standards and they must be
8 harmonized by the legislature in drawing the map. And
9 sometimes there can be tension between them. Sometimes
10 preserving a municipality or a county can render a
11 district less compact. And, so, those standards have
12 to be harmonized and that's part of the -- the
13 legislative -- excuse me -- legislative task.

14 Now we will address some of the, uh, Florida
15 Supreme Court's interpretations of those standards.
16 Um, the Florida Supreme Court had several
17 opportunities during the last redistricting cycle, um,
18 to review those standards and apply those standards,
19 um, and those, uh, decisions give us guidance in
20 preparing the redistricting plan, um, during this
21 redistricting cycle.

22 Um, first we'll discuss the standard that
23 prohibits drawing districts within an intent to favor
24 disfavor a political party. And what the Florida
25 Supreme Court has said about this standard is that

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1 this standard prohibits intent and not affect. And
2 that's, um -- that's there in the -- in the plain
3 language of the provision.

4 Um, and -- and it -- obviously every drawing of
5 districts will have some sort of political affect. It
6 will have political consequences. And so, it's not
7 possible to draw a map that doesn't have political
8 consequences but the important thing is, is that the
9 legislature not draw with that intent. And, so, the
10 Florida Supreme Court has made that distinction very
11 clear.

12 It is also said that there is no acceptable level
13 of -- of improper intent. So, even if the district is
14 drawn for multiple reasons, intent to favor a
15 political party or -- or an incumbent may not be one
16 of those reasons. It simply may not be considered.

17 The Florida Supreme Court has also rejected any
18 suggestion that once the political results of a plan
19 are known, the legislature must alter the plan to
20 bring it more into balance with the composition of
21 voters statewide. Um, sometimes the legislature, as
22 we'll discuss in a moment, will have to review
23 political data in order to assure compliance with
24 minority voting protections.

25 But even if it knows the result of the plan

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1 politically, it has no obligation under Florida
2 Supreme Court precedent to then rebalance the map and
3 make it more balanced politically. The important thing
4 is that intent to favor or disfavor not be considered.

5 The Florida Supreme Court also went on to say
6 that the Florida Constitution does not require the
7 affirmative creation of a fair plan but rather a
8 neutral one in which no improper intent was involved.
9 So, Florida's Constitution doesn't require, um,
10 competitive districts or it doesn't require a
11 political balance, what it requires is, that the
12 legislature set aside any intention of favoring or
13 disfavoring any political party or an incumbent.

14 This slide refers to the incumbent aspect of that
15 same standard. Um, there's no, um, the -- the
16 legislature may not draw districts with an intent to
17 favor or dis- -- disfavor an incumbent. This slide
18 discusses some of the considerations that the court
19 will look at in determining whether a map was drawn
20 with a -- with an intent to favor or disfavor an
21 incumbent.

22 Um, obviously if there's direct evidence of that,
23 if members say that they are drawing a map with a --
24 with an intent to favor or disfavor an incumbent, that
25 would be very strong evidence. But the court will also

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1 look at circumstantial evidence, both as to political
2 parties and incumbents.

3 It will look at the shape of the district, it
4 will look at the demography of the district, it will
5 look at how closely the legislature complies with Tier
6 2 standards because Tier 2 standards, one of the
7 purposes of Tier 2 standards such as compactness, is
8 to limit the legislature's ability to draw districts
9 for any, um, purpose that's partisan or -- or
10 incumbent based.

11 So, here this slide notes that, um, the court
12 will look at the -- uh, the incumbent's legal
13 residence relative to the district to determine
14 whether there was -- might have been an attempt to
15 draw an incumbent into a district or out of a
16 district. These are some of the considerations that
17 the court, um, looked at last -- during the last cycle
18 to determine whether maps complied with this intent
19 standard.

20 Then we have in Tier 1 the standard that is the
21 analog to Section 2 of the Voting Rights Act. So, the
22 Florida Constitution has adopted the same Gingles
23 standard that we discussed before. This is known as
24 vote dilution. And it prohibits vote dilution and the
25 standard that, um, the Florida Supreme Court has

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1 adopted mirrors the standard that the United States
2 Supreme Court adopted in the Gingles case in 1986,
3 that is also part -- apart of the Florida Constitution
4 in addition to the Voting Rights Act.

5 The Florida Constitution also contains this
6 retrogression principal that was found in Section 5 of
7 the Voting Rights Act. So the Constitution provides
8 that districts shall not be drawn to diminish the
9 ability of racial or language minorities to elect
10 representatives of their choice.

11 And, so, even though this retrogression principal
12 no longer exists in the Federal, uh, Voting Rights
13 Act, is no longer enforceable, um, it does continue to
14 exist in the Florida Constitution and it does apply
15 statewide, unlike -- unlike Section 5 of the Voting
16 Rights Act which apply to only to select
17 jurisdictions.

18 So, under the Florida Constitution, the
19 legislature must assure that the -- that the ability
20 of minority voters to elect candidates of their choice
21 is not diminished when a new map is passed. The
22 primary focus of this inquiry is whether the new map
23 has as many districts -- at least as many districts as
24 the prior map in which minority voters are able to
25 elect the candidates of their choice.

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1 And to determine whether minority voters are able
2 to elect the candidates of their choice both in the
3 benchmark plan and in the new map that the legislature
4 will consider and pass. Um, a legislature must
5 consider elections data to determine whether the
6 minority population in fact has the ability to elect
7 its preferred candidates.

8 Simply looking at the voting age population is
9 not enough. The Florida Supreme Court has explained
10 that the voting age population is an important
11 starting point in that analysis, it does give some
12 indication as to whether minority voters will be able
13 to elect their preferred candidates in a district but
14 it doesn't tell the full story because turnout rates,
15 registration rates, whether high or low can impact the
16 ability of a minority population to elect candidates
17 of their choice.

18 And, so that's why in the, uh, redistricting, uh,
19 soft- -- software that is available to members of the
20 public, elections data is available for use in
21 determining whether minority voters are able to elect
22 the candidates of their choice in the districts of the
23 legislature, um, is considering.

24 Here's a slide that shows the Tier 2 standards.
25 Um, some of these have been covered in -- in past

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1 committee meetings. Um, but I will address these, um,
2 briefly as well. Um, the first is that districts must
3 be drawn, uh, with a population as nearly equal as --
4 as practicable. And this applies a little bit
5 differently in congressional redistricting and in
6 state legislative redistricting.

7 United States Supreme Court has said that in
8 congressional redistricting, um, the standard is
9 precise mathematical equality, which means that
10 district must be, um, as equal to -- to the average or
11 ideal population as possible. Um, usually the
12 difference between the most populous district and the
13 least populous district will be a single person. Um,
14 the courts have recognized some limited leeway where
15 there's a strong justification for it but typically
16 one person is the total deviation, um, when -- when it
17 comes to congressional redistricting.

18 Um, the federal courts in interpreting the U.S.
19 Constitution has been more willing to recognize leeway
20 where states are drawing their own state legislative
21 districts. And, so, when drawing state legislative
22 districts, the states may follow, um, traditional
23 redistricting principles and sometimes those
24 principles will result in a larger deviation than in
25 congressional maps.

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1 Um, the federal courts will generally accept a
2 deviation up to 10 percent, meaning that the most
3 populous district and the least populous district, the
4 difference between those will be 10 percent of the
5 ideal population of a district. Um, beyond 10 percent
6 it can be permissible but the state must justify it
7 and the state has a heavy burden at that point to
8 justify that deviation.

9 The second Tier 2 requirement is that districts
10 be compact. Um, this is a -- a common sense, um,
11 assessment in the first place, a visual assessment of
12 the district, um, to determine whether the district is
13 regular in its shape or is it bizarre or does it have
14 appendages. Is it unusual in the way that it looks.

15 And, so, districts that are more regular in their
16 shape, more circular, more square, or understandable
17 in terms of the -- of the geographical limitations of
18 the state, um, will be -- will be compact. Um, the
19 state's geography does impact the compactness
20 analysis. For example, in the Florida Keys there's no
21 way to draw a circle or a square. And, so, the
22 geography very much impacts what is possible.

23 So, visual compactness is the first measure. The
24 second measure is mathematical. Um, the courts have,
25 uh, two or three different mathematical measures that

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1 they use in order to assess the compactness of
2 districts. And those, um -- those measures come in aid
3 of the visual examination and, uh, and those -- uh,
4 and all of that is looked at in totality. There isn't
5 a single, um, single measure or a single bright line
6 rule as to -- as to whether a district is compact.

7 Um, finally, the third, uh, Tier 2 standard is
8 that districts must, where feasible, utilize existing
9 political and geographical boundaries. Um, the court
10 has recognized, uh, county and city boundaries as
11 being political boundaries. And it has recognized
12 rivers, railways, interstates, and state roads as
13 being geographical boundaries. There might be others
14 as well. The court has referred to easily
15 ascertainable and commonly understood geographical
16 boundaries.

17 The idea is that if voters recognize the
18 boundaries and immovable boundary like a state road or
19 like an interstate, it makes more sense to use that as
20 a district boundary than to simply draw a line where,
21 um, where there's no ability for a voter to recognize
22 it or refer to it, um, as a geographical boundary
23 does.

24 Um, these are the Tier 2 standards. Um, the --
25 the Florida Supreme Court has also emphasized in

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1 applying these standards, the legislature is not
2 required to enact the best possible plan or the most
3 compact district or maximize, um, the number of
4 counties and cities that are kept whole. It is allowed
5 to balance these standards.

6 The important thing is, that it pass a
7 constitutional map, not necessarily the best map
8 that's conceivable. Um, and so there are -- there are
9 different degrees but the important thing is that the
10 districts be as near- -- nearly equal in population as
11 practical, the districts be compact and that where
12 feasible they follow politically and geographical
13 boundaries.

14 And that's an overview of the legal standards
15 that apply to redistricting. Um, and Mr. Chairman, I'd
16 welcome any -- any questions.

17 REP. LEEK: Thank you, Mr. Bardos, uh, for your
18 presentation. Members, there are two specific items
19 that I would like to address on the record before we
20 take questions from committee members.

21 The first being incumbencies. I want to state
22 very clearly that we are not and will not be using any
23 incumbent or candidates' address to produce these
24 maps. The House took the same position last decade and
25 the Florida Supreme Court viewed that as a favorable

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1 step towards protecting against inadvertently favoring
2 or disfavoring an incumbent, one of the Tier 1
3 standards.

4 I think this is also a good point in time to very
5 candidly say members, as new dis- -- district lines
6 are workshopped and this process proceeds, there's a
7 chance any member may be paired with a fellow
8 incumbent in a newly created district in order to
9 create a legally compliant, uh, boundary lines.

10 I know that that may be an intimidating thought
11 for all members. However, that is part of the process.
12 And as you bring comments to Committee, please be
13 mindful that I will not entertain any discussion about
14 placing boundary lines in order to favor or disfavor a
15 current House member of potential challengers.

16 The second item I'd like to address is a point
17 Mr. Bardos touched on regarding the partisan makeup of
18 the maps that would become before our Committee. While
19 external third party groups seemingly prioritize the
20 Republic Democrat split over the legal compliance of
21 our boundary lines, that is not what we as
22 legislatures are charged to do.

23 Outside of using functional analysis data to
24 ensure our racial and language minority groups can
25 elect an candidate of their choice as directed by the

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1 Florida Constitution, I want to be clear that staff,
2 nor this committee nor our sub-committees will be
3 reviebing [sic] -- reviewing the overall partisan
4 split of a map at any stage in this process.

5 Additionally, I would encourage you to not engage
6 in any planned or unplanned conversations regarding
7 such topic as it may lend itself towards a violation
8 of the Tier 1 standards as interpreted by the Florida
9 Supreme Court.

10 Now, members, I'll open it up to questions from
11 committee members. Please address your questions
12 through the Chair.

13 Um, ranking member Geller, you're recognized.

14 REP. GELLER: Thank you, Mr. Chair, nice to see
15 you, and everyone.

16 Uh, thank you for your presentation, so very
17 thorough. Um, you were talking about, um, voting age
18 populations. And, um, my question specifically,
19 because it wasn't addressed, is how the law views and
20 how this committee should view prison population.

21 REP. LEEK: Okay. I'm going to be clear here. Uh,
22 I would like you, Mr. Bardos, to -- to please answer
23 every question there possibly, uh, could be asked of
24 you regarding the mechanics of how the law works. If
25 the question is policy or requires an opinion, then

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1 I'm going to say that that's a -- this is our job as
2 the committee and I'm going to ask Mr. Bardos not to
3 opine on that.

4 But if you want to know the mechanics of it, feel
5 free to answer the question.

6 REP. GELLER: Well, let me ask this, if I might
7 of you then, Mr. Chair. To clarify further, um, I
8 don't suggest that the gentleman is there to make our
9 decisions for us. But if there are policy options
10 permitted by the law, I'd want to know the range of
11 options that he thinks are available under the law
12 recognizing that if they're all legal options, the
13 choice among them is for us.

14 REP. LEEK: I -- I -- I appreciate your
15 distinction. It's quite frankly probably trampling
16 over the line of a policy question, but I'm -- I'm
17 going to ask Mr. Bardos to answer the question of how
18 the mechanics of that -- of the law work as to, uh,
19 Representative Geller's question.

20 MR. BARDOS: Sure. So, I can say that the Florida
21 statutes do require the use of U.S. census data, um,
22 in redrawing redistricting maps and so the legislature
23 in preparing its, um, software application has taken
24 the U.S. census data as it was provided by the Census
25 Bureau and that's what has been followed because

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1 that's what the Florida statutes require us to follow.

2 REP. LEEK: Representative Geller.

3 REP. GELLER: Um, recognizing that census data is
4 the starting point, to what degree does the law allow
5 us to make policy choices as to how prison populations
6 are treated in the lines we draw?

7 REP. LEEK: Thank you and I'm -- yeah, I -- I want
8 to make this clear because I think we've had this
9 question come up before. Um, and I'll -- I'll defer to
10 Mr. Bardos in a second here, but the law requires us
11 to use the census data as presented to us. The census
12 data that we are using is the one that is presented to
13 us. We are not permitted to manipulate it.

14 Uh, Mr. Bardos, have -- if you -- care to follow
15 up on that.

16 MR. BARDOS: Yeah. And that's the assumption I've
17 -- I've proceeded on and so I -- I would have to look
18 at that issue more closely and in the -- under the
19 assumption that the Florida statutes didn't require
20 the census data to be used, which they do, that that
21 would be a question that I would have to look at more
22 closely before I could give you a -- an opinion on
23 that.

24 REP. GELLER: Follow up, Mr. --

25 REP. LEEK: Yeah, I -- I'm going to follow up on

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1 that too. I -- I -- I think, you know, we can -- we
2 can look further at the statute, if you would like at
3 a -- at a different setting. But the statute clearly
4 requires to use those -- use the census -- in the
5 state of Florida, we are clearly required to use the
6 census data as presented to us. Redirect.

7 REP. GELLER: So, the follow up would be the
8 following, um, with your permission: Um, my
9 understanding is that as you say, correctly, that we
10 are required to use and the beginning of any inquiry
11 that we do is census data. And that's the census
12 treats prison populations in a certain way. It's where
13 people are currently at.

14 But it's also my understanding that there is, in
15 the analysis of minority districts and the ability to
16 elect a candidate of a minority community's choice,
17 that a functional analysis is employed and I think you
18 made some reference to that, uh, that has to do with
19 taking into account other factors like turn out and
20 not necessarily registration but ability to register.
21 For instance, if there's a large population of non-
22 citizens illegible to register to vote.

23 So, at least in terms of that functional analysis
24 as to the ability of minorities to elect candidates of
25 their choice, what are the policy options available to

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1 this committee to chose from in employing that
2 functional analysis in regard to prison population?

3 REP. LEEK: Boy, um, sure -- uh, sure sounds like
4 a policy question in there. Um, I -- I want to follow
5 up on -- on the census data because, I mean it's --
6 it's really very clear whatever the census tells us
7 and counts them, where they count them is the data
8 that we are required to use. I heard the question
9 start with something like that but end up with
10 functional analysis.

11 Do you -- do you understand the question, Mr.
12 Bardos? Can you answer that?

13 MR. BARDOS: I can address the functional
14 analysis component --

15 REP. LEEK: Okay.

16 MR. BARDOS: -- of that. That's -- it's a -- it's
17 a different issue from where people reside and -- and
18 different issue from the population data.

19 Um, this functional analysis is an assessment of
20 elections data to determine whether minorities are
21 likely to be able to elect the candidates of their
22 choice in the districts that the legislature has drawn
23 or the districts in the benchmark plan.

24 Um, so it consists of election results, it
25 consists of turnout data, it consists of registration

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1 data, and all of that is viewed in combination with
2 the voting age population. Because all of that informs
3 the primary analysis of the Florida Supreme Court has
4 required the legislature to conduct in drawing
5 minority districts and that is, number one, will
6 minority voters be able to control the primary, um --
7 primary election and elect the candidates -- nominate
8 the candidates from the primary that they prefer.

9 And number two, will mi- -- minority voters be
10 able to elect the candidates of their choice in the
11 general election. So, primary election, general
12 election. And, so, it requires us to look at the
13 elections' data from past elections, registration data
14 and turn out data to determine whether minority voters
15 are -- have sufficient numbers, sufficient turnouts,
16 sufficient registration in order to control the
17 primary and then ultimately the general election.

18 That's a somewhat different analysis from the
19 prison population issue, which is deciding where
20 people live and then how to count them in term -- for
21 the purpose of determining whether districts have
22 equal populations. So, the equal population component
23 is different from the minority district requirements
24 under Section 2 and Section 5 and the state law
25 analogs to those.

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1 REP. GELLER: One more follow up.

2 REP. LEEK: One last follow up.

3 REP. GELLER: So, on that, and I -- I'm -- I
4 understand what you've said in terms of equalizing
5 populations and as the Chair says, that's based on
6 census data, period. And I understand that there and
7 that's a good point.

8 But when one looks at the functional analysis,
9 which we are in some circumstances required to
10 utilize, how does the applicability and the existence
11 of a prison population separate and apart from the
12 equality that is required, affect the functional
13 analysis as to the ability of minorities to elect, uh,
14 representatives of their own choosing?

15 REP. LEEK: We're focused on legal questions here
16 so, I mean if that's a legal question, feel free to
17 answer that.

18 MR. BARDOS: So, thank you, Mr. Chairman.

19 Um, some of that will be built into the data that
20 we -- we look at in the functional analysis. Because
21 if we have voters, for example, who are not eligible
22 to vote who are not registered to vote, um, who -- or
23 who are not registered to vote where they currently
24 reside, that will be reflected in the elections data
25 that we have because the elections data then -- you

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1 know, will not show them as being a registered voter
2 there.

3 So, I think that information for purposes of
4 determining whether minority districts would perform
5 for minority voters is built in to the data, um, that
6 -- that reflects the actual situation of elections and
7 registration and turnout in that locality.

8 REP. GELLER: Thank you.

9 REP. LEEK: Thank you.

10 Uh, Vice Chair Fine, you're recognized for a
11 question.

12 REP. FINE: Uh, thank you, Mr. Chairman. Uh, this
13 is a question, I think, might be helpful the Committee
14 to ask.

15 If you follow the six standards that you laid
16 out, do you come up -- would one come up with one map?
17 Is there only one answer or is there some -- an
18 infinite number of possibilities that could be devised
19 that would meet all six standards?

20 REP. LEEK: You're recognized.

21 MR. BARDOS: Thank you, Mr. Chairman.

22 Um, a very good question. Uh, yes there would be
23 a -- if not an infinite a very, very large number of
24 potential compliant con- -- configurations of
25 districts. Um, we have thousands of census blocks

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1 across the state that can be combined in all sorts of
2 different combinations and the Florida Constitution
3 establishes certain, um, minimum requirements and
4 certainly there are different combinations of
5 districts that can satisfy those minimum requirements.

6 REP. LEEK: [inaudible] Chair Fine.

7 REP. FINE: Thank you. So -- thank you, Mr.
8 Chairman.

9 So to be clear, the -- the map that we propose
10 could be compliant if we follow all six of these
11 standards. But others -- other members of the
12 committee, the public, they could also have ideas for
13 other compliant maps as well, there's not one answer
14 to the question.

15 REP. LEEK: You're recognized.

16 MR. BARDOS: That's correct.

17 REP. FINE: Thank you.

18 REP. LEEK: Representative Driskell, you're
19 recognized.

20 REP. DRISKELL: Thank you, Mr. Chair.

21 Thanks for the presentation today. I had a
22 question about an [inaudible] Senate joint resolution,
23 the case that you discussed on page 13, one of the
24 quotes on page 13, if we could go there.

25 All right. So, it's, um, the third quote down

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1 where it says, "We also reject the suggestion that
2 once the political results of the plan are known, the
3 legislature must alter the plan to bring it in -- to
4 bring it more in balance with the composition of
5 voters statewide." And so, then as I was reading
6 that, my question is, it says that, you know, it's not
7 that the legislature must but doesn't that allow for
8 may? If I'm reading that correctly.

9 REP. LEEK: You're recognized.

10 MR. BARDOS: So, this is what the Florida Supreme
11 Court has tell -- told us. It is also recognized that
12 there can be circumstances in which a -- a map will
13 not necessarily reflect, um, statewide vote
14 distributions between the two political parties for
15 reasons totally unrelated to an intent to favor or
16 disfavor.

17 So, for example, it is recognized that, um,
18 members of one political party might concentrate in
19 geo- -- certain geographical areas at much higher
20 rates. And then drawing a district in that area will
21 en- -- encompass more members of that party, um, than
22 other districts and that changes the partisan balance
23 of the map.

24 It is also recognized that in drawing, um,
25 districts for minority voters, that might place a

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1 number of voters and -- a disproportionate number of
2 voters of one political party in a single district
3 which then affects the political composition of other
4 districts.

5 And, so, and that's -- those are the situations
6 that the court was speaking to. It recognized that,
7 given those factors, there might well be, um, a -- an
8 imbalance in the map that's unrelated to any sort of
9 intent. And the court was saying, when -- in light of
10 that, there's no need to rebalance that map.

11 What we -- what we do know beyond that, and the
12 Florida Supreme Court didn't speak beyond that, is
13 that the Florida Constitution does prohibit an intent
14 to favor or disfavor a political party or a incumbent.

15 And, so, if there are neutral reasons that cause
16 a map to be out of balance and then if the legislature
17 were to make changes to that map in order to rebalance
18 it, then there would be a potential for a violation of
19 the intent to favor or disfavor standard. That's what
20 the -- the, you know, the -- legislature will have to
21 consider whether, in changing the political
22 composition of a map, using political data in order to
23 do that, it is intentionally favoring one political
24 party.

25 And, you know, that -- that's an ans- -- that's a

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1 question the Florida Supreme Court didn't answer and
2 so I want to be cautious in not rendering opinions
3 that the courts haven't directly addressed. But those
4 are -- those are the considerations that I would
5 suggest the legislature should consider.

6 REP. DRISKELL: Mm-hmm.

7 REP. LEEK: Yeah, I appreciate that and
8 Representative, uh, Driskell, I'll give to you in just
9 a second but I -- I -- I think this is a good time to
10 -- I'm trying to figure out how to state this strongly
11 enough.

12 We particularly, as members of this committee,
13 should not suggest that we should rebalance the maps
14 based on the partisan split in the gubernatorial race.
15 It will lead us down a path that is disastrous and
16 wrong and we have got to stop saying it. I don't want
17 to hear it in this committee because it is a clear
18 violation of Tier 1 to the extent that -- that anybody
19 is suggesting that or saying that outside of this
20 committee --

21 REP. DRISKELL: Mm.

22 REP. LEEK: -- I recommend that you don't, don't
23 control that but -- but what we do in here is -- is,
24 uh -- uh, with- -- within my province and I'm going to
25 keep us on the straight and narrow.

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1 Um, so, forgive me for hijacking your question
2 there, uh, Representative Driskell. You're recognized.

3 REP. DRISKELL: Thank you, Mr. Chair. I
4 appreciate that and, um, I just -- I'm just trying to
5 understand what the -- what the court said and I'll go
6 back and read the opinion more fully.

7 Because the -- the way that I read that it --
8 it's a -- it says that the legislature doesn't have to
9 but it doesn't sound like it forecloses the
10 possibility of going back and looking at a map if we
11 decided -- it's -- it sounds to me -- maybe I could
12 put it this way, Mr. Chair.

13 It sounds like, and you can tell me if I'm
14 reading this wrong, but it -- it looks to me like the
15 court made a legal decision that allows for the
16 legislature to make the policy decision to go back and
17 look if it wants to, that's the may piece. But the
18 decision is -- is very clear that the -- that the --
19 the -- the legislature does not have to, that's the
20 must piece, go back and revisit that policy decision.

21 Am I reading that correctly or no?

22 REP. LEEK: You're recognized.

23 MR. BARDOS: Thank you, Mr. Chairman.

24 I think it's important to bear in mind that
25 courts only answer the questions that come before

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1 them. So, the court was addressing the arguments that
2 were being made in that case. Um, so it was not
3 addressing the question that -- that you're raising
4 now.

5 Um, but I do think that if -- in the situation
6 that the court was describing where there were neutral
7 considerations that make the map favor one political
8 party or an incumbent, and then the legislature were
9 to look at political data in order to shift more
10 districts to the other political party, I think that
11 someone would have a -- an extremely compelling case
12 that -- that's being done with an intent to favor a
13 political party.

14 REP. LEEK: Representative Kriskell, you're
15 recognized.

16 REP. KRISKELL: Thank you, Mr. Chair.

17 And so I think as I -- as I understand, I think
18 we're getting to the same page in this -- trying --
19 trying to understand that you're saying that the court
20 didn't address necessarily whether there could be a
21 may, which means there could be a may or maybe, maybe
22 not. I feel like I'm confusing -- using confusing
23 language saying may, may, may.

24 But it sounds to me like the court did not
25 foreclose the possibility that the legislature could

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1 make a policy choice, um, to revisit the maps, if they
2 de- -- if -- if we determine as a body that the -- the
3 maps look like they were favoring our disfavoring a
4 particular political party. But you are warning us
5 that if we go down that road it could be danger with
6 respect to Tier 1 but the court did not address it
7 either way.

8 REP. LEEK: You're recognized.

9 MR. BARDOS: What the court said is what's
10 printed here on the slide, so that's -- that's what
11 the court, um, said. Um, but the court did also
12 emphasize that the map cannot be drawn with the intent
13 to favor a political party and that no amount of
14 intent is permissible. So, if there's any intent at
15 all to favor a political party that map would be
16 invalidated.

17 REP. DRISKELL: I understand that. I'm -- I -- I
18 think we're kind of ships passing in the night on this
19 question unfortunately.

20 REP. LEEK: Let me see if -- if I can address
21 some of it too.

22 The -- you know, one on the back end is -- is
23 whether we go back and rebalance the maps. That's --
24 that's kind of on the back end of it after the maps
25 have -- have been, uh, passed and proposed. What we do

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1 know, the one half to that we have that, like 63
2 percent of the voters mandated to us in 2012, is that
3 we cannot pass a map with the intent of favoring or
4 disfavoring a political party.

5 So, to the point that we would pass on it before
6 it got to the courts, it would -- and we were to try
7 to rebalance the maps based on the -- the partisan
8 split and the gubernatorial election, we would be
9 passing a map with the intent of favoring or
10 disfavoring a political party. That's the one thing
11 that is clear to us that we cannot do.

12 Representative Omphroy, you're recognized for a
13 question.

14 REP. OMPHROY: Thank you very much, Chair. Um,
15 it's not on the lines of the last couple of questions.

16 Um, Mr. Bardos, um, my question is, um, I don't
17 know if I should even ask this, so Chair, please, keep
18 me in line if I go out of line. My county --

19 REP. LEEK: I'll work on it,

20 REP. OMPHROY: Thank you.

21 My county is the second largest population wise
22 in the state of Florida. I have three or four Congress
23 people but I don't have a congress person that only
24 belongs within the political boundaries of Broward
25 County. There is not one congressional person that

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1 only belongs to Broward.

2 Would that be considered an issue of -- of, you
3 know, political distortion or distortion of voice of
4 population considering that we don't have our own
5 individual political voice?

6 REP. LEEK: Uh, let me step in there for just a
7 second. Um, where the lines are drawn for
8 congressional districts is a policy decision. But to
9 the extent that your question asked about where they
10 would be drawn it is a policy decision, I'm -- I'm
11 going to say leave that for us.

12 Um, to the extent you can, you know, walk through
13 the legal mechanics of -- maybe -- maybe you can do
14 that with that question, um, I would encourage you to
15 do so.

16 REP. OMPHROY: Yeah.

17 REP. LEEK: Yeah. Representative Omphroy.

18 REP. OMPHROY: Thank you -- thank you, Chair.

19 And that's why I asked it because I didn't --
20 wasn't sure. My concern is, we talked about political
21 boundaries. My population is 1.9 million. In the
22 process of drawing congressional seats, we're supposed
23 to look at voices of political boundaries. Why or how
24 can we address this concern or -- just help me.
25 Because I don't understand it.

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1 REP. LEEK: If -- if -- if -- if you can walk
2 through the legal parameters on what we're allowed to
3 consider, most of that Representative Omphroy, and I
4 appreciate what you're asking, uh, will be a policy
5 decision for -- for the Committee.

6 MR. BARDOS: Mr. --

7 REP. LEEK: You're recognized.

8 MR. BARDOS: Thank you, Mr. Chairman.

9 Um, I'm not familiar with the specifics of -- of
10 the district's that you're, um, describing but, um,
11 the entire state, all of the districts are basically a
12 jig-saw puzzle and so there are a lot of
13 considerations that the legislature has to weigh.

14 For example, if a county is -- is, uh, at the
15 south end of the state and the districts are being
16 drawn, each district must have a certain amount of
17 population and so it could be that the district must
18 begin and end in a way that that particular county
19 doesn't have its own district. Um, it's simply a
20 matter of trying to fit all of the standards together
21 and -- and trying to balance them in the best possible
22 way.

23 Um, districts are required to follow political
24 and geographical boundaries but only where feasible.
25 And that re- -- where feasible re- -- um, provision in

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1 the Constitution recognizes that for any number of
2 reasons including, um, the geography of the state, the
3 population of the districts, the need to make
4 districts compact, the attempt to, um, perhaps
5 preserve political boundaries as opposed to
6 geographical boundaries or vice versa, it simply might
7 not work out that every -- even every large county has
8 a district in -- fully contained within it.

9 Um, so, it's -- it's all very much, um, a
10 localized analysis. It depends on a lot of
11 circumstances in each particular area of the state.
12 And those sorts of decisions about where to draw lines
13 will ultimately have to be made by the legislature in
14 trying to balance all of those different standards.

15 REP. LEEK: Members, any other questions? Uh,
16 Representative Geller hold for just a second. See if
17 anybody else has a question.

18 Representative Geller, you're recognized.

19 REP. GELLER: Thank you, Mr. Chair. I don't want
20 my second bite until everybody's has one.

21 Um, thank you, Mr. Chair, and -- and thank you
22 again, sir. And let me return to the questions that
23 Rep. Dreskill was asking but I'm not going to get in
24 to the must versus may although I thought that very
25 interesting frankly.

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1 But we were talking about why it would be
2 impermissible to rebalance by looking at a partisan
3 division and saying that it should be rebalanced. And
4 I understand, I think, the answer as to why that in
5 and of itself would be viewed as intent. But that also
6 presupposes that there is a, I'll call it, base map,
7 that has been arrived at and which someone is seeking
8 to redraw with an eye on partisan differences.

9 Isn't that different than if we're confronted
10 with, it could be multiple, but for the moment I'll
11 say two for simplicity, to different proposed maps,
12 both of which are compliant as you indicate there
13 could be not infinite but many possible choices?

14 Isn't the choosing of one above another when
15 they're still both proposed when we're not redrawing
16 something that if there are neutral reasons for it,
17 the decision to look to one of -- rather than another
18 proposed map, could itself be evidence of partisan
19 intent?

20 REP. LEEK: Give me a second, I'm still digesting
21 that. I think the question is whether something would
22 be partisan intent if you choose one over the other.

23 REP. GELLER: [inaudible].

24 REP. LEEK: See how quickly I got there.

25 REP. GELLER: [inaudible] it's not exactly how I

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1 would put it but --

2 REP. LEEK: So how quickly I got --

3 REP. GELLER -- it's not completely --

4 REP. LEEK: -- there Jeff [ph].

5 REP. GELLER: -- incorrect either.

6 REP. LEEK: Yeah. Okay. Um, and that's really not
7 about the legal mechanics of how we do this. If you're
8 comfortable answering that question without opining on
9 it. Uh, the question is whether it could be partisan
10 intent.

11 MR. BARDOS: Thank you, Mr. Chairman.

12 It all goes back to intent. If there are two maps
13 before the legislature and one has one political
14 balance and the other has another one and the
15 intention of the legislature is to chose one or the
16 other because of it's political impact because it
17 favors one party or because it favors another, that
18 would be a violation of the constitution.

19 If there are two maps before the legislature with
20 different political impacts and the legislature does
21 not consider, um, those -- or I should say the
22 legislature's not motivated by that consideration, its
23 intention is not to chose one or the other for
24 political reasons but it chooses the one map or the
25 other map for non-political reasons.

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1 If it chooses one because it believes that it's
2 more compact or this one prefers a -- a better -- is
3 more adherent to political or geographical boundaries,
4 then that would not violate an intents standard. So,
5 it all comes back to intent. Why is the legislature
6 drawing the district's the way that it's doing and why
7 is it choosing the map that it's choosing.

8 REP. GELLER: Re-follow, Mr. Chair.

9 REP. LEEK: The -- yeah, very quickly here, let
10 me say this. The -- the -- the -- I think the problem
11 with your -- your question is the premise because your
12 premise is that we will select a map. And remember the
13 -- the legislative maps we will select and they will
14 go on to the Supreme Court. So, whatever we pass out
15 of here is the map that we select.

16 And I believe the premise of your question
17 involves a rebalancing of the districts based on, you
18 know, the partisan split or the performance in the
19 gubernatorial election last time around.

20 Because that is a premise, it is necessarily
21 intent in my mind and -- and would be unlawful.

22 REP. GELLER: Don't think I disagree necessarily
23 with what you've just said, Mr. Chair. My question is
24 not -- specifically not about a rebalancing. It's
25 before -- because a rebalancing presumes we've made a

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1 choice.

2 So, to go back though to the specific answer that
3 Mr. Bardos gave, um, and not to give any major
4 practice tips here either, but, uh, wouldn't it
5 require in that circumstance where a choice had not
6 been made where it's not a rebalancing we're seeking,
7 um, for it to not be intent, wouldn't it require at
8 least some articulatable basis such as the two that
9 you offered for choosing one over the other to negate
10 the inference that partisan intent was involved in
11 that choice?

12 REP. LEEK: Yeah, I -- I don't want to get into
13 policy here but let me, uh, let me suggest this.
14 Having, uh, you know, gone back and -- and listened to
15 the entire 8, 12 hours of, uh, questions and debate on
16 the House floor and the last time around, um, there
17 will -- there will be an articulable reason for
18 essentially every line in the map. There -- there must
19 be.

20 And I'm confident that our, uh, minority caucus
21 will -- will, uh, you know, ensure that whatever lines
22 are drawn there will be an articulate basis for. To go
23 back to Vice Chair, you know, Fine's question, there's
24 no single one right answer. I -- the key here is to
25 make sure that we don't make decisions based on things

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1 that we clearly cannot do, uh, which in this instance,
2 would be, uh, you know, making -- drawing lines with
3 the intent to favor or disfavor a political party.

4 You're welcome to answer his question if you can.

5 MR. BARDOS: I think that's really an evidentiary
6 question for the court. The court will have to make
7 that determination. I don't think that the court's
8 expressed that there's a default assumption that just
9 because the legislature makes one choice over another
10 it must have been politically motivated.

11 Um, during the last redis- -- cycle of
12 redistricting litigation there was -- there was
13 evidence that the court considered to be sufficient to
14 establish a violation. Um, but I don't think that
15 that's necessarily the assumption that the court will
16 have at the outset.

17 Uh, so for example in 2012 when the Florida
18 Supreme Court reviewed the legislature's maps at the
19 outset, it did begin with the assumption that the --
20 that the legislation is constitutional and that -- and
21 that the -- and that there would be a measure of
22 deference to the -- accorded to the legislative will.

23 And, so, it really becomes an evidentiary
24 question beyond that, what can the parties prove about
25 what the intent of the legislature was, recognizing

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1 that every map is going to have political impacts and
2 different political impacts from all other maps.

3 REP. LEEK: Thank you, members, for those
4 questions. We will now hear from the public. We remind
5 you to keep your comments on the presentation today
6 and please address your questions through the Chair.

7 Do we have any members of the public wishing to
8 speak? Seeing no members of the public wishing to
9 speak, thank you for those, um -- members, with
10 counsel's presentation today if you have any follow up
11 questions, please direct them through the committee
12 staff and we will work to get your questions answered.

13 As to our next meeting, we will keep the
14 Committee updated on our next authorized date as we
15 find out more details about special session and any
16 impacts it may have on the -- the upcoming schedule.

17 Thank you, members. This concludes our committee
18 agenda for the -- for today. Representative Rempel
19 moves we rise.

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