

Logistics & Congressional Redistricting

Part 1 of the Special Session 2022C Briefing Series



Prepared by House Democratic Office Staff

JX 0064-0001

Objectives

In this presentation we will:

- Review Special Session logistics with a focus on rule changes;
- Understand what happened so far with Congressional Redistricting; and
- Unpack the Governor's attacks on the VRA/Fair Districts.

We will not be adopting a strategy in this briefing.



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2

JX 0064-0002

Logistics

Special Session Protocols and Rule
Changes



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3

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What is a Special Session

- An extraordinary legislative session of up to 20 days to address a specific issue or set of issues.
- Three ways to call a special session
 - Gubernatorial proclamation
 - Joint proclamation of the President of Senate and Speaker of the House
 - A Poll of the Members (this has never been successful)



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4

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What is “the Call”

- “The Call” of a special session is its purpose as stated when the special session is declared. The Legislature is legally limited to the scope of the call unless it is expanded.
- We can expand the call in several ways:
 - A communication from the Governor expanding the call
 - Consent of two-thirds of the membership of each house
- Whether or not an issue is within the scope of the call is up to the Presiding officer to decide in the first instance.



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5

Our Call for 2022C


NOW, THEREFORE, I, RON DESANTIS, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1) of the Florida Constitution, do hereby proclaim as follows:

Section 1. The Legislature of the State of Florida is convened in Special Session commencing at 12:00 p.m., Tuesday, April 19, 2022, and extending no later than 11:59 p.m., Friday, April 22, 2022.

Section 2. The Legislature of the State of Florida is convened in Special Session for the sole and exclusive purpose of considering legislation relating to the establishment of congressional districts for the State of Florida and any legal challenges thereto, including the appropriation of additional funding for pending and prospective redistricting litigation.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation convening the Legislature in Special Session at the Capitol, this 29th day of March, 2022.


RON DESANTIS, GOVERNOR



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6

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Procedural Rules are Different for Special

- Committee meeting notice deadline is reduced to **2 hours** before the meeting.
- Committee amendment deadline is **1 hour** before the meeting.
- The Special Order Calendar may be taken up **the same day** it is published.
- Special Order floor amendments must be filed **2 hours** before floor session.
- Third Reading floor amendments must be filed **at the earlier of 1 hour** before floor session or **9 am**.



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7

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Substantive Rules are Different for Special

- A member may neither solicit nor accept any campaign contribution for state, district, county, or municipal office **during special session** on the member's own behalf, on behalf of a political party, on behalf of any organization with respect to which the member's solicitation is regulated under s. 106.0701, Florida Statutes, or on behalf of a candidate for the House of Representatives; however, a member may contribute to the member's own campaign.
- Lobbyists may not contribute to a member's campaign **during special session.**



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8

Key Takeaways

- Special Session moves fast.
- Special Session is dynamic.
- Special Session has its own procedural and substantive rules.
- We are coming back for Congressional Redistricting, but be prepared for more.

PROCLAMATION
STATE OF FLORIDA
EXECUTIVE OFFICE OF THE GOVERNOR
TALLAHASSEE

TO THE HONORABLE MEMBERS OF THE
FLORIDA SENATE AND HOUSE OF REPRESENTATIVES

WHEREAS, Article III, Section 3 of the Florida Constitution permits the Governor to convene the Legislature in Special Session during which only such legislative business may be transacted as is within the purview of this Proclamation, or of a communication from the Governor, or as is introduced by consent of two-thirds of the membership of each house of the Legislature; and

WHEREAS, Article III, Section 3 of the Florida Constitution limits the duration of a Special Session to twenty (20) consecutive days; and

WHEREAS, on March 29, 2022, the Legislature presented to me CS/SB 102, an act relating to establishing the congressional districts of the State of Florida; and

WHEREAS, on March 29, 2022, pursuant to Article III, Section 8 of the Florida Constitution, I vetoed and transmitted my objection to CS/SB 102; and

WHEREAS, redistricting is primarily the duty and responsibility of the states, *see* U.S. Const. art. I, § 4, cl. 1; and

WHEREAS, the Legislature and Governor have an obligation every ten years to redraw Florida's congressional districts consistent with the most recent decennial census, *see* 2 U.S.C. §§ 2a-2c, and the one-person, one-vote requirement of the U.S. Constitution, *see Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969); and



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9

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Congressional Redistricting

What happened and what the Governor is doing?



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10

Quick Recap on Congressional Redistricting

1. The House and Senate started drawing maps
2. The Governor interjected himself
 1. He drew his own maps
 2. He asked for an advisory opinion from the Supreme Court which was rejected
3. The House changed course, moved to a two-map ranked choice plan that prioritized compactness but still attempted to ensure minority ability to elect candidates of choice
4. The Governor vetoed the maps & called a special session



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11

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What is the Law Governing Redistricting?



Voting Rights Act
of 1965



Constitution of
the United States
of America



Florida Constitution
including the Fair
Districts Amendments



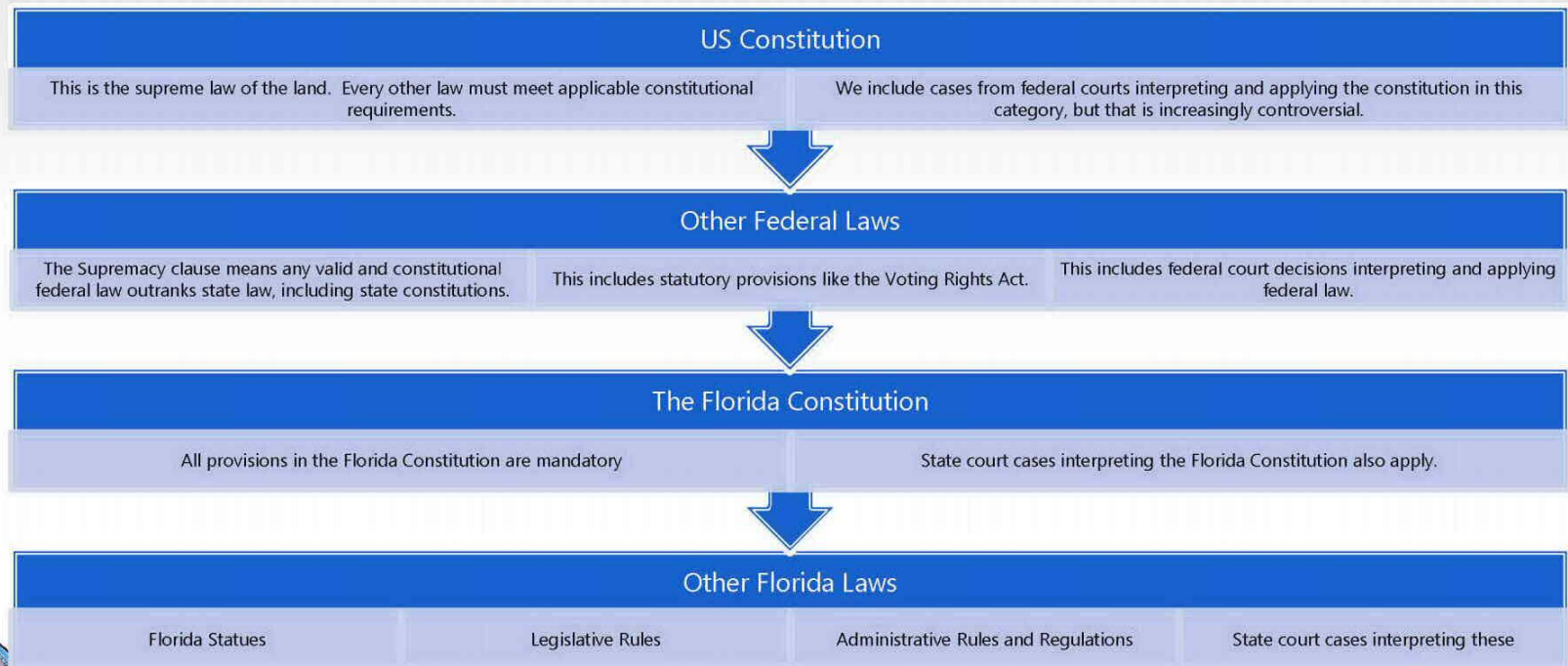
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12

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Hierarchy of Law



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13

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The US Constitution Text

Article I, Section 2:

Representatives ... shall be apportioned among the several States ... according to their respective Numbers...

The 14th Amendment, Section 1:

No state shall ... deny to any person within its jurisdiction the equal protection of the laws.



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14

The US Constitution Case Law

14th Amendment Case Law: One Person, One Vote

- Congressional Districts have to be equal in size; they can't deviate by more than a person without justification.
- US Census results every 10 years are a safe harbor data set and the starting point for reapportionment and redistricting.

14th Amendment Case Law: Race Based Laws, Strict Scrutiny

- The differential treatment based on race must be necessary to achieve a compelling government purpose.
- Put another way, the government must show an extremely important reason *and* that they cannot do it through any less restrictive means (aka narrowly tailor the law to meet the purpose).



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15

Constitutional Strict Scrutiny



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16

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The Voting Rights Act of 1965 (VRA)

- Historic legislation during the Civil Rights Movement
- Set forth protections from election devices that discriminate based on race, color, or language minority
- Prohibits redistricting plans that would stop minority voters from having an equal opportunity to elect the representatives of their choice
 - The VRA has been held by courts to require the creation of “minority-majority” districts in certain instances when specific factors are met
 - Prohibits dilution of a minority’s vote through splitting a minority presence into several districts in a practice known as “cracking”
 - Can prohibit “packing” where minorities are concentrated in a district in higher numbers than necessary to elect their candidate of choice to reduce their influence in other districts



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17

The VRA Gingles Test

Gingles Test:

1. The racial or language minority group "sufficiently large and ***geographically compact*** to constitute a majority in a single-member district"
2. The minority group is "politically cohesive" (meaning its members tend to vote similarly); and
3. The "majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate.

Elements 2 & 3 are what we call racially polarized voting



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18

The Florida Constitution

- The state constitution says redistricting will happen in the regular session of the Legislature the second year after the US Census
- Congressional redistricting happens by law
 - This means it is not a joint resolution
 - This means the Governor may veto the bill
- The Fair Districts Amendments to the Florida Constitution
 - Proposed by citizen initiative and adopted in 2010
 - Creates two tiers of considerations in redistricting
 - The majority of the Florida Supreme Court which first robustly interpreted and applied Fair Districts is gone now



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19

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The overall goal ... is to require the Legislature to redistrict in a manner that prohibits favoritism or discrimination, while respecting geographic considerations, as well as to require legislative districts to follow existing community lines so that districts are logically drawn, and bizarrely shaped districts are avoided.

”

-In re Senate Joint Resolution of Legislative Apportionment 2-B, 89 So. 3d 872, 878 (Fla. 2012)



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20

The Fair District Amendments

- Tier One:
 - No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and
 - *Districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and*
 - Districts shall consist of contiguous territory.



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21

JX 0064-0021

The Fair District Amendments

- Tier Two:
 - Districts shall be as nearly equal in population as is practicable;
 - ***Districts shall be compact***, and
 - Districts shall, where feasible, utilize existing political and geographical boundaries.
- Must comply with Tier One standards
- Must comply with Tier Two standards unless compliance conflicts with Tier One standards or federal law



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22

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The VRA Appears to be Changing

- The Supreme Court seems to have changed what the VRA means using the Shadow Docket without really telling anyone. Chief Justice Roberts and Justice Sotomayor have both written passionate dissents to this point
- Alabama had implementation of their court-ordered congressional maps stayed
 - Chief Justice dissents. Say this was inappropriate unless the law changed. Justice Sotomayor dissents.
- Wisconsin had their state legislative maps invalidated
 - SCOTUS says lower court got the relationship between the VRA and constitution wrong. SCOTUS says ***"[w]e have assumed that complying with the VRA is a compelling interest."*** Justice Sotomayor dissents



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23



RON DESANTIS
GOVERNOR

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-717-9418

MEMORANDUM

2022 MAR 29 AM 11:50
STATE
LEGISLATIVE
COUNCIL

To: Ron DeSantis, Governor of Florida

From: Ryan Newman, General Counsel, Executive Office of the Governor **RDN**

Date: March 29, 2022

Re: Constitutionality of CS/SB 102, An Act Relating to Establishing the
Congressional Districts of the State

Congressional District 5 in both the primary and secondary maps enacted by the Legislature violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it assigns voters primarily on the basis of race but is not narrowly tailored to achieve a compelling state interest.



4/11/2022

Memo Accompanying DeSantis Veto of SB 102

24

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"Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools," the U.S. Supreme Court has made clear that the State also "may not separate its citizens into different voting districts on the basis of race."

”

-Ryan Newman, General Counsel for Gov. Ron DeSantis,
selectively quoting *Miller v. Johnson*



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25

Governor's 14th Amendment & VRA Arguments in Short

- ✓ 1. We can't consider race unless it passes strict scrutiny which requires: a) compelling state interest; b) least restrictive means.
- ✗ 2. Compliance with the VRA caselaw and Fair Districts Amendments is not a compelling interest.
- ✗ 3. Where Black majority districts don't occur without departing from other traditional redistricting criteria (emphasis on compactness), you cannot create them.



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26

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Governor's Fair Districts Argument



1. Diminishment occurs when you significantly decrease the minority population of a district even if a minority population retains effective control of a district.



2. You cannot rely on a district that violates the non-diminishment standard of Fair Districts to craft a minority district consistent with the Fair Districts.



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27

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What can we expect?

- Indications are the Legislature intends to send a map to the Governor that he will sign. A new map requires less votes than a veto override.
- The Governor says he will only sign a map that eliminates at least one Black district. He has proposed eliminating more.
- Federal courts will likely be made to ignore any constitutional violations until after the election due to the *Purcell* Principle.



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28

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Summary

- Special Sessions are fast and you have to stay on your toes.
- We don't have congressional maps.
- There are ongoing state and federal lawsuits asking the courts to draw Florida's Congressional map.
- The Governor wants to use the 14th Amendment to eliminate or diminish the Voting Rights Act and the Fair Districts Amendments as we understand them.
- House & Senate Leadership want Legislatively approved maps.



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29

Question & Answer

Not strategy...



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30

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Special Briefing on:
Unregulated Open Carry,
Property Insurance, &
Data Privacy

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31



JX 0064-0031