



## HDO Redistricting Briefing on Minority Districts

### Fair Districts Tier One Text on Minority Districts:

*"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." [Sections 20 and 21, Article III, Florida Constitution.](#)*

- These constitutional provisions track statutory provisions of the **Voting Rights Act (VRA)** but are separate and independent in the **Florida Constitution**.
- We look to federal cases and other states with similar laws to understand our constitutional provisions, but they could mean something different in Florida.
- Unlike other requirements in Tier One, these provisions embody a purpose or effects test. That means we are looking at both intent and at what a proposal actually does if it becomes law.

### What the Text of Fair Districts Means:

*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.*

- This provision prevents **dilution** of minority voters through **packing** or **cracking**.
- This provision can, in limited circumstances, require the creation of a **minority-majority district** if an **effective minority district** does not currently exist and the minority population is sufficiently large, sufficiently compact, and subject to **racially polarized** voting (meets the *Gingles Factors*).
- This is the **VRA Section 2** standard.

*Districts shall not be drawn with the intent or result of diminishing the ability of racial or language minorities to elect representatives of their choice.*

- This provision prevents **retrogression**.
- This provision requires **functional analysis** to determine which districts in the **benchmark plan** elected the **representative of choice of racial or language minorities** and that the new plan is **at least as effective** as the benchmark.
- This is the **VRA Section 5** standard and it applies throughout all of Florida, even though the federal version is currently unenforceable.

### Additional Insights:

Florida's constitutional protections for racial and language minorities in the redistricting process interact in complex ways all with the objective of ensuring that they have full participation in the political process. **Voting Age Population (VAP)** percentages of districts tell part of the story, but not all of it. Many other criteria and evaluation methods come into play.



Any redistricting criteria that is not prohibited by the constitution is available for your consideration. Sometimes we refer to these additional criteria as "**Tier Three**" criteria. Tier Three criteria are perfectly legitimate as long as they are expressed in a district that is otherwise compliant with Tier One and Tier Two.

Many Tier Three concerns implicate elements of Tier One and Tier Two concerns since almost every redistricting decision will have rippling impacts. For example, keeping **communities of interest** together, while not an enumerated criteria in the state constitution on its own, oftentimes can be expressed using the other values enumerated in the constitution. For example, adding a community of interest might increase district **compactness**, help equalize **population**, or do a better job of following **pre-existing geographic or political boundaries**. Similarly, grouping enough racial or language communities of interest may allow you to create a minority-majority district consistent with the protections in Tier One of the Fair Districts amendments.

In questions or debate, explain how your Tier Three concerns advance Tier One and Tier Two concerns. This is the best way for your fellow members, committee staff, the public, and the Courts to understand how your proposal can improve the constitutional compliance of the maps. Tier Three concerns can never override other constitutional requirements.

#### **Hypotheticals for Illustrative Purposes:**

1. Atlantis is an emerging community off the coast of South Florida within our territorial waters. The population are US citizens and speak Atlantean which is a protected language minority. Atlanteans now number over 100,000 but are currently split between 4 House districts. How should the Legislature deal with this development?
  - a. A performance analysis should be done to see if any of the existing benchmark districts perform for Atlanteans. If so, such a district must be maintained.
  - b. The Legislature should make a minority-majority Atlantean district if the *Gingles* Factors are met.
  - c. The Legislature should not increase the percentage of Atlanteans in a district above a majority unless a functional analysis indicates a higher percentage is needed to ensure the Atlantean candidate of choice is selected. Needlessly adding more Atlanteans could be diminishment through packing and violate the state constitution and/or the VRA.
  - d. The Legislature cannot split the Atlanteans into a 5<sup>th</sup> district. To do so would diminish their ability to participate in the political process and influence the other districts.
2. The Amazons are a proud community of hereditary superheroes tracing their lineage to ancient Themyscira who have recently been identified as a protected





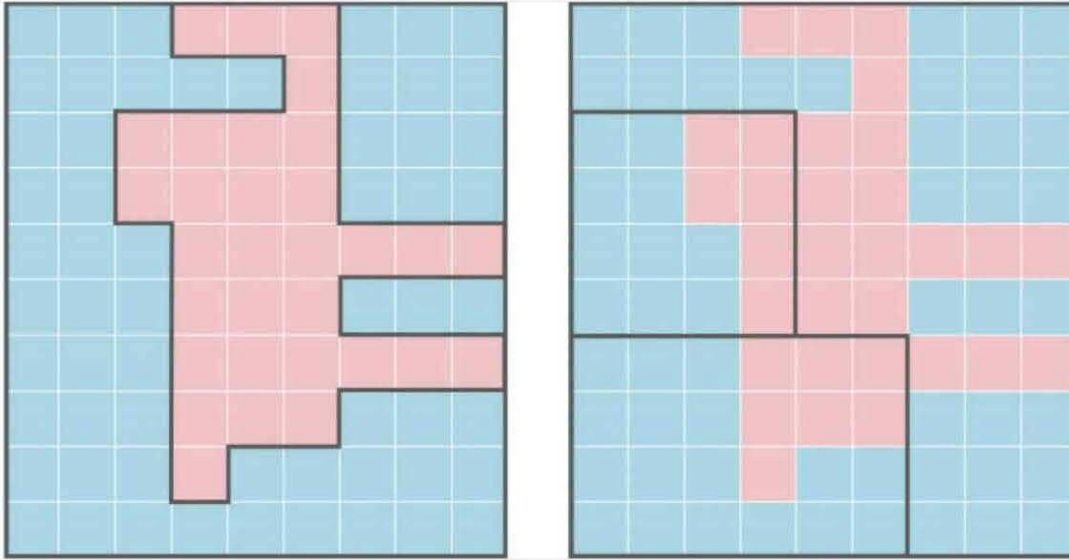
racial group in Florida. Amazonians, who are US citizens, vote according to perceived virtue of candidates, not by party. This perception of virtue is not consistent across Amazonians; Amazonians will disagree with each other about whether a specific candidate is virtuous. There are over 200,000 Amazonians spread roughly equally between St. Augustine, Cedar Key, Apalachicola, Key West, Tarpon Springs, and Pensacola. All live within the downtown area of their respective cities. How should the Legislature deal with this development?

- a. The Legislature need not create an Amazonian seat because the *Gingles* factors are not met.
    - i. Amazonians do not engage in racially polarized voting.
    - ii. Amazonians are also too spread out to be compact enough to be a majority in a district.
  - b. The legislature could create Amazonian influence seats by drawing districts that keep incorporated St. Augustine, Cedar Key, Apalachicola, Key West, Tarpon Springs, and Pensacola whole. Keeping cities whole following preexisting city boundaries is a Tier Two constitutional redistricting criteria.
3. A large population of over 200,000 Kryptonians has settled throughout Tallahassee alongside the local population. Kryptonians have been recognized as a racial minority by the Florida courts. These superpowered economic refugees have a low birth rate and are largely unnaturalized. As a result, only 10% of Kryptonians are eligible to vote. Those Kryptonians who are politically active have all joined the same party which advances Kryptonians rights. Voters in the Tallahassee community have soundly defeated the Kryptonian-supported candidate in every election fearing Kryptonian superpowers. This has disheartened Kryptonian voters who have had a 2% voter turnout in the last 5 election cycles. How should the Legislature deal with this development?
- a. Because the population of Kryptonians far exceed the number of persons needed for a House district, a functional analysis must be conducted.
  - b. Though it appears the *Gingles* Factors are met (there is a sufficiently large and compact population subject to racially polarized voting), performance data (citizenship, voter registration, voter turnout, and election results) all demonstrate it is impossible to draw a district that would perform for Kryptonians. Because only 10% of Kryptonians are voters, and only 2% of those voters turnout, the district will not reliably perform.
  - c. The legislature is free to craft a district without respect to Kryptonians.

**Visual Aid:**

**Packing**

**Cracking**



### **Supplemental Glossary:**

1. **ACS Data:** Yearly data from the American Community Survey conducted by the U.S. Census each year. Not as granular as the decennial Census. It includes a question about what language is spoken at home.
2. **Cracking:** A form of vote dilution in which a compact population of minority voters is divided between different districts to reduce their ability to effectively participate in the political process or elect candidates of their choice.
3. **Effective Minority District:** A district containing sufficient population to provide the minority community with an opportunity to elect a candidate of its choice. The idea is that the minority controls the primary that controls the destiny of the district. The percentage of minority voters necessary varies by jurisdiction and group due to issues such as citizenship, voter registration, racially polarized voting, turnout, etc.
4. **Gingles Factors/Preconditions:** The conditions required to be present in order for a Section 2 VRA claim of vote dilution to proceed. The threshold question for whether a certain minority group's ability to elect a candidate is being diminished or exists at all. These factors are used in evaluating the creation of a Tier One minority-majority district under the Florida Constitution.
  - a. The minority group must be sufficiently large and geographically compact to constitute a majority of the voting-age population in a single-member district.
  - b. The minority group must be politically cohesive.





- c. The majority must vote sufficiently as a bloc to enable it—in the absence of special circumstances—usually to defeat the minority group’s preferred candidate. This is called **Racially Polarized Voting**.
5. **Minority Opportunity District:** A district where minority votes are less than a numeric majority but are able to effect electoral outcomes to various degrees. This is sometimes called a **Minority Access District**. Examples recognized in Florida caselaw include **Coalition Districts**, **Crossover District**, and **Influence Districts**. (See Glossary released by Redistricting Committee).
6. **Packing:** A form of vote dilution in which members of a minority community are concentrated excessively in a single district in order to remove their ability to influence surrounding districts.
7. **Racial Gerrymandering:** The deliberate and arbitrary distortion of district boundaries for racial purposes, generally referring to drawing boundaries in a way to weaken a racial groups ability to achieve electoral success.
8. **Vote Dilution:** When a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by minority voters to elect their preferred representatives.

**Florida Supreme Court Cases for Further Reading:**

1. In re Senate Joint Resolution of Legislative Apportionment 1176, 83 So. 3d 597 (Fla. 2012).
2. In re Senate Joint Resolution of Legislative Apportionment 2-B, 89 So. 3d 872, 876 (Fla. 2012).
3. Florida House of Representatives v. League of Women Voters of Florida, 118 So. 3d 198 (Fla. 2013).
4. League of Women Voters of Florida v. Florida House of Representatives, 132 So. 3d 135 (Fla. 2013).
5. League of Women Voters of Florida v. Detzner, 172 So. 3d 363 (Fla. 2015).
6. League of Women Voters of Florida v. Detzner, 179 So. 3d 258 (Fla. 2015).